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*Committee on Civil Liberties, Justice and Home Affairs*

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## **WORKING DOCUMENT 5**

on the situation of Fundamental Rights: standards and practices in Hungary  
(pursuant to the EP resolution of 16 February 2012) - Concluding remarks by  
the Rapporteur

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Rui Tavares

## **1. Introduction**

This fifth document provides:

- a summary of the methodology used to address the Plenary resolution of 16 February 2012;
- an overview on the scope and implications of the European common values enshrined in Article 2 of the Treaty on European Union (TEU) and of the corresponding monitoring and sanctioning mechanism laid down in Article 7 TEU;
- an update of the legal analysis carried out in the previous working documents by taking account the very recent adoption of the Fourth Constitutional Amendment by the Hungarian Parliament;
- a table listing laws which require a two-thirds majority and cardinal laws in the old Constitution and the Fundamental Law of Hungary;

Lastly, it draws a number of conclusions, which will be further developed in the upcoming draft report.

## **2. A fact-based approach to address the Plenary resolution of 16 February 2012**

In its resolution of 16 February 2012 on the recent political developments in Hungary<sup>1</sup>, the European Parliament instructed its 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 following recommendations have been implemented and to present its findings in a report:

- the full independence of the judiciary, in particular ensuring that the National Judicial Authority, the Prosecutor's Office and the courts in general are governed free from political influence, and that the mandate of independently-appointed judges cannot be arbitrarily shortened;
- that the regulation of the Hungarian National Bank abides by European legislation;
- that the institutional independence of data protection and freedom of information is restored and guaranteed by the letter and the implementation of the relevant law;
- that the right of the Constitutional Court to review any legislation is fully restored, including the right to review budgetary and tax laws;
- that the freedom and pluralism of the media is guaranteed by the letter and the implementation of the Hungarian Media Law, especially with regard to the participation of civil and opposition representatives in the Media Council;

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0053+0+DOC+XML+V0//EN>

- that the new electoral law meets European democratic standards and respects the principle of political alternation;
- that the right to exercise political opposition in a democratic way is ensured both within and outside institutions;
- that the law on churches and religious denominations will respect the basic principles of the freedom of conscience and refrain from subjecting the registration of churches to the approval of a two-thirds majority in the Hungarian Parliament.

With a view to complying with the commissioned monitoring and follow-up task, four thematic working documents<sup>1</sup> have been drawn up on the basis of thorough legal assessments. Furthermore, each working document has been co-signed by the Rapporteur and a shadow Rapporteur of a different political group thus demonstrating wide consensus among the various political forces on the very factual and objective analysis conducted in the working documents.

Comments by the Hungarian authorities on the various working documents have been taken into account in duly revised versions of these documents.

The LIBE Committee was authorised by the Conference of Presidents on 27 June 2012 to send an ad-hoc delegation to Budapest on 24-26 September 2012, composed of eight Members representing all political groups and the non-attached Members. LIBE Hungarian Members were invited to participate in the meetings as observers.

This visit has been an important step in initiating a dialogue between the Hungarian authorities and the European Parliament.

In the preparatory phase as well as in the course of the visit, the EP delegation could count on the full support of the Hungarian authorities. The delegation would like to thank the Members of the Hungarian National Assembly, of the Hungarian Government, of the Judiciary, and all personalities, experts, organisations and diplomatic missions that provided Members of the European Parliament with detailed information and analysis.

### **3. Article 2 TEU and its implications**

Article 2 TEU enshrines the *values* upon which the Union is founded: "*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*".

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<sup>1</sup> Working documents No 1 on the situation of Fundamental Rights: standards and practices in Hungary (pursuant to the EP resolution of 16 February 2012) - the Independence of the Judiciary; No 2 on the situation of Fundamental Rights: standards and practices in Hungary (pursuant to the EP resolution of 16 February 2012) - Fundamental principles and fundamental rights; No 3 on the situation of Fundamental Rights: standards and practices in Hungary (pursuant to the EP resolution of 16 February 2012) - Media legislation; No 4 on the situation of Fundamental Rights: standards and practices in Hungary (pursuant to the EP resolution of 16 February 2012) - The principles of democracy and the rule of law.

Respecting and promoting the European common values is first of all an essential element of the European Union's identity and a condition for becoming an EU member. Article 49 TEU clearly states that *Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union*" (besides becoming a party to the European Convention of Human Rights).

Respecting and promoting the European common values is also a condition for fully preserving membership prerogatives as confirmed by the specific procedure set out in Article 7 TEU. Article 7(1) TEU grants the EU institutions the power to assess whether there is a clear risk of a serious breach of the common values referred to in Article 2 by a Member State, and to engage politically with the country concerned in order to prevent and redress violations, while the ultimate purpose of the means laid down in Article 7(2) and (3) TEU is to penalise and remedy a serious and persistent breach of the common values.

The European common values go hand in hand with the EU commitment to diversity, translated into the obligation for the Union to respect "*the equality of Member States before the treaties as well as their national identities*" as stated in Article 4(2) TEU. In the framework of the Treaties respect for "*national identities*" and for "*different legal systems and traditions of the Member States*"<sup>1</sup> are intrinsically associated with the principles of *sincere cooperation*<sup>2</sup>, *mutual recognition*<sup>3</sup> and thus *mutual trust*. This means that a departure from (or a violation of) the European common values by a Member State cannot be justified by the application of national traditions nor by the expression of a national identity when such departure results in the deterioration of the principles, which are at the heart of the European integration such as the principle of mutual recognition. Therefore, a referral to Article 4(2) TEU is applicable only so far as a Member States respect the values expressed in Article 2 TEU. In other words, the respect for common fundamental values is an indispensable condition for ensuring effective mutual recognition (as explicitly enshrined, for example, in Articles 81 and 82 TFEU) and cross-border cooperation built on mutual trust about respecting the same set of fundamental values, and thus creating a genuine and functioning EU area of freedom, security and justice.

Furthermore, compliance with common fundamental values is an indispensable condition for respecting the substance of Union citizenship<sup>4</sup>. Indeed, as clarified by the case law of the Court of Justice of the European Union (CJEU), the *European common values* constitute the hard core of the rights attached to the status of EU citizen irrespective of the political and cultural differences linked to national identity<sup>5</sup>.

Lastly, the credibility of the Union itself in the eyes of third countries being founded on the seriousness with which the Union takes democratic and fundamental rights aspects of its values, would be put at risk if the Member States were not able or willing to live up to the

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<sup>1</sup> See Article 67 TFEU.

<sup>2</sup> Article 4(3) TEU.

<sup>3</sup> Articles 81 and 82 TFEU.

<sup>4</sup> For detailed explanations of this assertion see Working Document 2 on the situation of Fundamental Rights: standards and practices in Hungary (pursuant to the EP resolution of 16 February 2012) - Fundamental principles and fundamental rights.

<sup>5</sup> See case C-34/09, *Gerardo Ruiz Zambrano*, where the Court of Justice of the European Union held that "Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union".

standards they gave themselves.

In the light of the above, it is clear that the protection of the European common values applies to both cross border and domestic situations, as Article 2 TEU is not bound by the limitation of Article 51(1) of the Charter<sup>1</sup> and Article 7 TEU is not limited to policy areas covered by EU law. Such a reasoning is being confirmed by the CJEU referring to the "*genuine enjoyment of the substance of the rights attaching to the status of the EU citizen*" even in a purely internal situation.<sup>2</sup>

In addition, the respect for the rights of persons belonging to minorities is explicitly recognised among the values referred to in Article 2. Pursuant to Article 3 TEU, the Union is committed to promote these values and combat social exclusion and discrimination and has to this end put in place a legal framework to fight discrimination, racism and xenophobia<sup>3</sup>. Member States' governments are therefore required to enact national legislation which prohibits discrimination. However, legislation on its own cannot achieve the goal of creating a society free from discrimination. The authorities in the Member States have a positive obligation to act to avoid violation of these rights and cannot remain neutral in this issue.

The responsibility of Member States to ensure that human rights of all are respected, irrespective of their ethnicity or belief, covers all levels of public administration as well as law enforcement authorities and it also implies promoting tolerance actively and denouncing phenomena such as hate speech in the public sphere.

Recently some cases of anti-Semitic and anti-Roma public statements as well as the award of the national journalism prize have raised very serious concerns about intolerance and racism in Hungary. Racism has been a plague in the history of Europe: neither can the Union remain silent nor a national government remain inactive when faced with such facts.

#### **4. The impact of the Fourth Constitutional Amendment**

On 11 March 2013 the Hungarian Parliament adopted the Fourth Constitutional Amendment, the proposal of which was tabled on 8 February 2013 in the form of an individual member's bill<sup>4</sup>. The amendment was adopted with 265 votes for, 11 against and 33 abstentions. It was signed by the Speaker of the House on 18 March and by the President of Hungary on 25 March. It has been published in the Official Journal of Hungary on the same day.<sup>5</sup>

The only one-year-old Constitution was therefore modified by a 9-page long amendment comprising of 22 Articles. This happened despite a request of the Secretary General of the Council of Europe, Mr Jagland, to delay the adoption of the amendment until it could be assessed

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<sup>1</sup> Whereby the CJEU interprets the application of EU law in a broad sense - see, for example, case C-260/89, *ERT*.

<sup>2</sup> See in that regard case C-34/09, *Gerardo Ruiz Zambrano*.

<sup>3</sup> Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (JO L 328, 6.12..2008, p. 55).

<sup>4</sup> [http://www.parlament.hu/internet/plsql/ogy\\_irom.irom\\_adat?p\\_ckl=39&p\\_izon=9929](http://www.parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=9929)

<sup>5</sup> <http://www.magyarokozlony.hu/>. Vol. 49 of 2013.

by the Commission on Democracy through Law (the Venice Commission)<sup>1</sup>.

In a joint statement issued on the same day as the adoption of the Fourth Constitutional Amendment the European Commission President Mr Barroso and Mr Jagland expressed the concerns of the European Commission and of the Council of Europe with respect to the principle of the rule of law<sup>2</sup>. The same concerns as regards the adoption of the Fundamental Law itself as well as regards its changes were expressed by the U.S. administration.<sup>3</sup>

The main aim of the Fourth Constitutional Amendment is to integrate into the text of the Fundamental Law all transitional provisions - with the exception of the provision requiring electoral registration - which were annulled by the Constitutional Court of Hungary on 28 December 2012 (decision No 45/2012). Notwithstanding the fact that the transitional provisions were annulled on formal, procedural grounds, and that the Court called on the Parliament to "review the regulatory subjects of the annulled non-transitional provisions, and [...] to decide about which ones need repeated regulation, on what level of the sources of law", the Court gave a clear ruling also on the substantive aspect and ruled on the practice of neutralising judicial review by opening up the text of the constitution:

"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

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<sup>1</sup>[http://www.coe.int/fr/web/secretary-general/home/-/asset\\_publisher/hr4DDZ5cshvP/content/secretary-general-calls-upon-hungarian-government-and-parliament-to-postpone-vote-on-constitutional-amendments;jsessionid=7DDB4E538CFC2C0141728B694A16E728?redirect=http%3A%2F%2Fwww.coe.int%2Ffr%2Fweb%2Fsecretary-general%2Fhome%3Bjsessionid%3D7DDB4E538CFC2C0141728B694A16E728%3Fp\\_p\\_id%3D101\\_INSTAN CE\\_hr4DDZ5cshvP%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_pos%3D1%26p\\_p\\_col\\_count%3D2](http://www.coe.int/fr/web/secretary-general/home/-/asset_publisher/hr4DDZ5cshvP/content/secretary-general-calls-upon-hungarian-government-and-parliament-to-postpone-vote-on-constitutional-amendments;jsessionid=7DDB4E538CFC2C0141728B694A16E728?redirect=http%3A%2F%2Fwww.coe.int%2Ffr%2Fweb%2Fsecretary-general%2Fhome%3Bjsessionid%3D7DDB4E538CFC2C0141728B694A16E728%3Fp_p_id%3D101_INSTAN CE_hr4DDZ5cshvP%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_pos%3D1%26p_p_col_count%3D2)

<sup>2</sup> [http://ec.europa.eu/commission\\_2010-2014/president/news/archives/2013/03/20130312\\_1\\_en.htm](http://ec.europa.eu/commission_2010-2014/president/news/archives/2013/03/20130312_1_en.htm); <http://www.reuters.com/article/2013/03/11/us-hungary-constitution-vote-eu-idUSBRE92A0V520130311>

See also the analysis by Princeton Professor Kim Lane Scheppele, U.S. Commission on Security and Cooperation in Europe (Helsinki Commission) hearing, 19 March 2013 - <http://hungarianspectrum.wordpress.com/2013/03/19/kim-lane-scheppeles-testimony-at-the-helsinki-commission-hearing-on-hungary-full-text/>.

<sup>3</sup> See, for example, the statement of Brent Harley, U.S. Deputy Assistant Secretary of State, U.S. Commission on Security and Cooperation in Europe (Helsinki Commission) hearing, 19 March 2013: *"Before former Secretary Clinton visited Hungary in June 2011, we took notice of Hungary's controversial media law and a new constitution – which in Hungarian is called the Fundamental Law – portions of which also raised concerns among impartial observers. In both cases, we had concerns about the content as well as the process by which they were passed... for something as fundamental as a constitution or a law impacting freedom of the press, the process must lead to a consensus built from a broad cross-section of society, rather than reflect only the opinions of the ruling coalition. The speed with which these laws were drafted and then passed, and the lack of serious consultation with different sectors of society, did not honor the democratic spirit that the people of Hungary have long embraced. That is why when Secretary Clinton visited Budapest in 2011, she called for Hungary to show "a real commitment to the independence of the judiciary, a free press, and governmental transparency." ...We were further heartened when, early this year, Hungary's Constitutional Court issued several rulings striking down controversial legislation. This demonstrated that the Court could serve as an effective check on government. Unfortunately, the reaction by the Hungarian government again called into question its commitment to checks and balances and institutional independence. The government drafted and swiftly passed a new constitutional amendment, parts of which reinstated laws that had just been struck down by the Court. Again, the process was rushed and lacking in broad societal consultation. Moreover, the Hungarian Government ignored pleas from the State Department, European Commission, and Council of Europe – as well as several respected, non-partisan Hungarian NGOs – to engage in a more careful, deliberative process and allow for the Venice Commission's experts to review the amendment."*

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. In democratic States under the rule of law, constitutions have constant substantial and procedural standards and requirements. The substantial and procedural constitutional requirements shall not be set lower in the era of the Fundamental Law than they were at the time of the Constitution (Act). The requirements of a constitutional State under the rule of law continue to be constantly enforced requirements in the present and they are programs for the future. The constitutional State under the rule of law is a system of constant values, principles and guarantees. The level of the values, principles and guarantees once adopted in a constitutional State under the rule of law may not be lessened, and they shall be required to be enforced just as severely as before. "<sup>1</sup>

Despite this ruling, the Fourth Constitutional Amendment automatically incorporates, as mentioned above, all but one annulled transitional provisions, as well as other, previously annulled provisions<sup>2</sup>.

Furthermore, the Fourth Constitutional Amendment contains at least two clauses on the Constitutional Court that raise major concerns.

According to the first provision, the Constitutional Court can review the Fundamental Law and any amendments to it only for conformity with procedural requirements set out in the Fundamental Law with respect to its adoption and promulgation (Articles 2 and 12(3) of the amendment). Thus, in the future the Hungarian Constitutional Court will not be able to review the substance of any constitutional amendment and the substantive compatibility of

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<sup>1</sup> Decision 45/2012, point IV.7, see: [http://www.mkab.hu/letoltesek/en\\_0045\\_2012.pdf](http://www.mkab.hu/letoltesek/en_0045_2012.pdf).

<sup>2</sup> The incorporated rules include:

- the provisions on the former communist party including the non application of statute of limitations of the serious crimes committed in the communist dictatorship (Article 3 of the amendment, which adds new Article U to the part of the "Fundamental Principles" of the Fundamental Law - previous Preamble and Articles 1-4 of the Transitional Provisions), whereby sensitive legal questions of the respect of the presumption of innocence, right to property, legality and even freedom of expression may arise, as already shown by past ECtHR jurisprudence (see, for example, *Korbely v. Hungary*, a. no. 9174/02, Judgment of 19 September 2008; *Vajnai v. Hungary*, a. no. 33629/06, 8 July 2008; or *Fratanoló v. Hungary*, a. no. 29459/10, Judgment of 3 November 2011). Without questioning the moral right to fully condemn the former Communist totalitarian regime in Hungary and the grave injustice it caused, any legal measures against individuals (criminal law measures or others) have fully to respect the rule of law in a democracy;
- the parliament's power to draw up the list of officially recognized churches (Article 4 of the amendment - previous Article 21(1) of the Transitional Provisions);
- the parliament's power to determine by virtue of a cardinal Act detailed rules on the rights of nationalities living in Hungary and the requirements for recognition as a nationality (Article 9 of the amendment - previous Article 21(2) of the Transitional Provisions);
- the power of the president of the National Judicial Office to designate courts other than the competent general court to trial cases in order to ensure "the adjudication of cases within a reasonable period of time." (Article 14 of the amendment - Previous Article 11(3)-(4) of the Transitional Provisions); whereby such a possibility raises serious legal concerns about the possibility of political influence upon the work of the courts;<sup>2</sup>
- the extension of the restriction of the judicial review of budgetary and financial laws to an indefinite period (Article 17(1) of the amendment).

constitutional amendments with fundamental constitutional principles. It follows that the Fundamental Law will be open to any amendment regardless of its content<sup>1</sup>.

Following the adoption of the Fourth Constitutional Amendment the Hungarian Constitutional Court "is no longer the supreme organ of constitutional protection"<sup>2</sup> as Parliament will from now on have the right to modify the Fundamental Law as it wishes even in the case its constitutional modifications contradict other constitutional rules and principles. It goes without saying that this shift of powers in constitutional matters, to the advantage of the Parliament and at the expense of the Constitutional Court, severely undermines the principle of separation of powers and a correctly functioning system of checks and balances, which are key corollaries of the rule of law. Whereby the past European history clearly shows that a real democracy based on the rule of law does not mean only a parliamentary majority (as a majority could even dismantle democracy itself) but consists of a fine equilibrium between the majority opinion and the respect of minorities and fundamental rights of the individual<sup>3</sup>, with a substantial role for the courts in that regard as an equal partner to the legislator. In a democratic system any attack against or limitation of the independence of the judiciary presents a direct attack against the democratic republic as such, as already stated by A. de Tocqueville in his analysis of the separation of powers concept in the United States (his famous work "Democracy in America"). In a democracy based on the rule of law decisions of the Constitutional Court should in principle not be bypassed by changing the Constitution itself, as a modern democratic legislator is not omnipotent as regards constitutional changes but limited by the frame of preserving the democratic essence, the rule of law (especially as regards the separation of powers doctrine) and fundamental rights.

According to the second provision of the Fourth Constitutional Amendment concerning the Court, the rulings of the Constitutional Court adopted before the entry into force of the Fundamental Law shall be repealed. This provision, however, is "without prejudice to the legal effects produced by those rulings"<sup>4</sup> (Article 19(2) of the amendment). In other words, the Fourth Constitutional Amendment wipes out 20 years of constitutional jurisprudence containing "constitutional requirements on future legislation, treaties of principle, interpretations and clarifications of concepts - in other words, an entire system resting on a foundation of principle"<sup>5</sup>, including any potential case-law affecting the application of EU law. In this regard it is worth recalling that several constitutional principles of Hungarian law are based solely on case law of the Court. For example, besides the obligations under international law, the domestic legal base for the non-existence of the death penalty is decision 23/1990 of the Constitutional Court. In that regard the current Hungarian government itself was referring to such case-law when faced with criticism of no explicit provision on the prohibition of the death penalty in the new Fundamental Law.<sup>6</sup> Therefore, the Fourth

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<sup>1</sup> The settled case law of the Court has indeed been that it only reviewed constitutional amendments on procedural grounds, but this practice was rather based on the self-restraint of the Court and not on a constitutional prohibition.

<sup>2</sup> László Sólyom, "Separation of powers terminated in Hungary", published in *Népszabadság*, 11 March 2013. [http://nol.hu/lap/forum/20130311-a\\_hatalommegosztas\\_vege](http://nol.hu/lap/forum/20130311-a_hatalommegosztas_vege). Mr Sólyom was the first president of the Hungarian Constitutional Court (1990-98) and President of the Republic (2005-10).

<sup>3</sup> See, for example, the judgment of the *Bundesverfassungsgericht*, *BVerfGE* 5, 85 of 17. August 1956.

<sup>4</sup> I.e. annulled laws will not come into effect again as a result of the amendment.

<sup>5</sup> Sólyom, *ibidem*.

<sup>6</sup> See Comments of the Hungarian Government to the second LIBE Working document on fundamental principles and fundamental rights (DT/906320) of 6 September 2012.



Constitutional Amendment and such statements clearly contradict each other. Moreover, the amendment leads to a further result which seems to be paradoxical. According to Article R(3) of the Fundamental Law, its provisions shall be "interpreted in accordance with [...] the achievements of our historical constitution". Pursuant to the Fourth Constitutional Amendment, a law or a court ruling dating, for example, from the 19th century or earlier can be regarded as the "achievement" of the historical constitution for the purposes of authentic constitutional interpretation, whereas the constitutional jurisprudence of the last two decades adopted in a democratic framework respecting fundamental rights is wiped out from the legal system. In that regard it was highlighted by some commentators that any referral and comparison by the Hungarian government to similar features in other national systems is tricky if taken out of context of the whole picture. A constitutional legal instrument or legal feature usually functions more beneficially and coherently if it is the product of legal evolution and tradition (including public debate and possible corrections by the courts), than if imposed in a quick "dusk till dawn" manner.

Last of all, the Fourth Constitutional Amendment narrows down a number of fundamental rights despite the fact that the Constitutional Court previously declared such limitations as unconstitutional:

- the freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation (and of other communities, such as ethnic, racial or religious minorities), already declared unconstitutional by decisions 30/1992<sup>1</sup> and 18/2004<sup>2</sup> (Article 5(2) of the amendment), whereby the notion of "Hungarian nation" does not provide sufficient legal certainty and raises questions as regards the compatibility with Article 10 ECHR; in that regard it is necessary to point out the existing ECtHR case-law on a similar concept used in Turkish law ("Turkishness" or "Turkish nation") that was according to the ECtHR "too wide and vague and thus the provision constitutes a continuing threat to the exercise of the right to freedom of expression. In other words, the wording of the provision does not enable individuals to regulate their conduct or to foresee the consequences of their acts" (see, *Altug Taner Akçam v. Turkey*, a. no. 27520, Judgment of 25 October 2011; see also *Dink v. Turkey*, a. nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment of 14 September 2010);
- by virtue of an Act of Parliament, financial support of higher education studies may be bound to participation for a definite period in employment or to exercising for a definite period of entrepreneurial activities, regulated by Hungarian law (Article 7 of the amendment), already declared unconstitutional on formal grounds by Constitutional Court's decision 32/2012<sup>3</sup>;
- an Act of Parliament or a local ordinance may declare illegal staying in a public area as a permanent abode in order to protect public order, public security, public health and cultural values (Article 8 of the amendment); such provisions were already declared unconstitutional by decision 38/2012<sup>4</sup> and they raise serious legal questions on criminalizing a status as such and not an act of a person;

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<sup>1</sup> [http://www.mkab.hu/letoltesek/en\\_0030\\_1992.pdf](http://www.mkab.hu/letoltesek/en_0030_1992.pdf)

<sup>2</sup> [http://www.mkab.hu/letoltesek/en\\_0018\\_2004.pdf](http://www.mkab.hu/letoltesek/en_0018_2004.pdf)

<sup>3</sup> <http://public.mkab.hu/dev/dontesek.nsf/0/780CA328B83B304BC1257ADA00524DBC?OpenDocument>

<sup>4</sup> <http://public.mkab.hu/dev/dontesek.nsf/0/1C19F4D0CFDE32FBC1257ADA00524FF1?OpenDocument>

The amendment also adds a provision according to which "family ties shall be based on marriage and the relationship between parents and children" (Article 1 of the amendment). This definition, previously contained in Article 7 of Act CCXI of 2011 on the protection of families, was annulled by the Court in decision 43/2012.

The introduction of rules previously declared unconstitutional further confirms that the Fourth Constitutional Amendment is not merely a technical amendment to the Fundamental Law<sup>1</sup> as argued by the Hungarian authorities "but a stealthy introduction of a new constitution with a different identity"<sup>2</sup>.

## 5. Concluding remarks

The Rapporteur would like to thank all Members of the LIBE Committee and in particular the representatives of the political groups who have co-authored the previous working documents. Notwithstanding the sensitivity of the question under examination, a constructive working atmosphere could develop thanks to their very cooperative spirit.

The Rapporteur would like to emphasize that the current process is about Hungary, but not only about Hungary. It is about Europe, 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 capacity to engage in dialogue. It is about the need to implement Treaties which all Member States have voluntarily acceded to. It is about the mutual help and mutual trust that the Union, its citizens and Member-States need to have if these Treaties are to be more than words on paper, but the legal basis for a true just and open Europe respecting fundamental rights. It is about a Union that is not only a "union of democracies" but a "Union of democracy", based upon the respect of human rights, the rule of law and pluralistic societies.

The draft report the Rapporteur will submit for consideration will aim at providing a framework for such a dialogue, as a contribution to the respect of the rule of law and fundamental rights as enshrined in Article 2 of the TEU. It will take due account of recent developments, of the analysis expected from the European Commission as well as from the Council of Europe. As a following step in this open process the Rapporteur will suggest opening the possibility for the Hungarian government to give its views and comment on the draft report.

Europe's history has not been perfect and, in many cases, it has been tragic. Too often the people of Europe have been abandoned, subject to unfair or unjust treatment. It has been frequently pointed out to the LIBE Committee during the course of this work that in the past Europe has failed to act on the face of grave injustice and violation of human rights. This is true; the Union is historically founded on an historical awareness of this very fact which has prompted Member States into building the necessary legal basis to correct it.

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<sup>1</sup> Letter from Mr Navracsics, Deputy Prime Minister of Hungary, to the Secretary General of the Council of Europe of 7 March 2013, and letter from Mr Martonyi, Minister of Foreign Affairs of Hungary, to the Ministers for Foreign Affairs of the Member States of the European Union of 8 March 2013.

<sup>2</sup> László Sólyom, "Separation of powers terminated in Hungary", published in *Népszabadság*, 11 March 2013. [http://nol.hu/lap/forum/20130311-a\\_hatalommegosztas\\_vege](http://nol.hu/lap/forum/20130311-a_hatalommegosztas_vege)

It has also been pointed out that, in the present or the future, there could be a danger of the Union using a “double standard” if its institutions only concentrate on a particular Member State where a risk of fundamental rights exists while not considering similar problems in other Member States. The same would happen, of course, if the Union would choose to be inactive, in disregard of its obligations under the Treaties. But it is a serious matter that the Union should equip itself to carry out its Treaty obligations on democracy, fundamental rights and the rule of law, while trying to ensure that there is no unfair treatment of its citizens or any risk of double standards between its Member States. Your Rapporteur, with the support of all the LIBE Committee, has made great efforts to make sure that we would avoid those risks in the working documents, and the upcoming report will provide some recommendations to EU institutions on future action in such matters.

The European promise implicit in the democratic revolutions of the last century, and particularly in the spirit of the revolutions of 1989, is that the fate of every Member State is a matter of interest for all, the fundamental rights of each European citizen a matter of concern for every European citizen, the respect for the rights of every human being a foundation for the Union among us all. Hence the motto *United in diversity*, which is the European Union’s since 2000. Such a motto implies that checks and balances, the separation of powers and the rule of law are to be implemented at all levels, be it the Union level or the local level. Unity and diversity are two sides of the same coin. These are also the principles that the Union and its Member States have made explicit in the Treaties, as reformed by the Lisbon Treaty in force since December 2009, particularly but not exclusively on the articles on the values of the Union (Article 2 TEU); its aims also include a proactive obligation to promote the values of the Union (Article 3 TEU); the principles of the equality of all Member States before the Treaties, respect of the Member States’ national identities, as well as the principle of loyal cooperation between the Member States and the Union (Article 4 TEU); the competences of the Union (Article 5 TEU); the provisions on the Charter of Fundamental Rights (Article 6 TEU) and the actions to take if there is a clear risk of a serious breach of the values of the Union (Article 7 TEU).

In times of deep economic and social crisis one may yield to the temptation to disregard institutional issues like the effectiveness of separation of powers in a Member State. Not only are economic, financial and social policies key to the well-being of citizens, the credibility and robustness of institutions, though less striking at first sight, also play a pivotal role.

*Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying tasks which flow from the Treaties. (...) The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.*

*Article 4(3) of the Treaty on European Union*

**Table 1**

**Laws requiring two-thirds majority and cardinal laws in the old Constitution and the Fundamental Law of Hungary — based on subject matters covered<sup>1</sup>**

	<b>Constitution<sup>2</sup></b>	<b>Fundamental Law</b>	<b>Notes</b>
1.	EU Treaties and their ratification: Article 2/A	EU Treaties and their ratification: Article E(4) "The authorisation for expressing consent to be bound by an international treaty referred to in paragraph (2) shall require the votes of two-thirds of all Members of Parliament."	Still requires a two-thirds supermajority (two-thirds of the component Members of Parliament)
2.	Act on legislation: Article 7/A(4) "(4) A majority of two-thirds of the votes of the Members of Parliament present shall be required for passing a law on legislation."	—	
3.	Detailed regulation concerning state of emergency	The forms and detailed regulation of military service (Art. XXXI(3)), some of the institutional rules on the defence forces (Art. 45(5)), detailed rules to be applied under any special legal order (Art. 54(4))	in spite of different formulation the subject matter is unaltered
4.	Remuneration of Members of Parliament; legal status of Members of Parliament	Public offices that cannot be held by Members of Parliament and other cases of conflict of interest (Art. 4(2)), remuneration and legal status of Members of Parliament (Art. 4(5))	The scope of the subject matter is unaltered
5.	National referenda and people's initiatives	—	
6.	Remuneration, privileges and reimbursement the President of the Republic is entitled to	The detailed rules on the status of the President and his remuneration (Art. 12(5))	
7.	Structure and functioning of the Constitutional Court	The detailed rules on the competencies, structure and functioning of the Constitutional Court	

<sup>1</sup> The source of the table: András Jakab, *Az új Alaptörvény keletkezése és gyakorlati következményei* [The come into being and practical consequences of the new Fundamental Law], HVG-Orac, Budapest 2011, p. 173-176.

<sup>2</sup> The English version of the previous Constitution can be found among others at:  
[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=190398](http://www.wipo.int/wipolex/en/text.jsp?file_id=190398)

8.	Ombudsmen	—	
9.	The structure and the basic principles of the functioning of the State Audit Office	The detailed rules on the structure and the functioning of the State Audit Office (Art. 43(4))	
10.	In all matters in connection with European integration, the detailed rules governing the oversight powers of Parliament or its committees, the relationship between Parliament and the Government, and the Government's obligation to disclose information	—	
11.	The law on the Police and on the use of special investigative means and techniques, and on the detailed regulations pertaining to issues of national security.	The detailed rules of the organisation and operation of the police and the national security services, the rules of the use of covert operative means and methods as well as the rules relating to national security activities (Art. 46(6))	
12.	Law on local governments	The rules relating to local government (Art. 31(3))	
13.	The structure and administration of the courts, the legal status and the remuneration of judges	The detailed rules of the organisation and administration of courts and the legal status and remuneration of judges (Art. 25(7))	
14.	Law on the Public Prosecution Service and on the legal status of Public Prosecutors.	The detailed rules of the organisation and operation of the Prosecution Service, of the legal status of the Prosecutor General and of public prosecutors, as well as their remuneration (Art. 29(7))	
15.	The right to move freely	—	
16.	The right to choose one's place of residence	—	
17.	Protection of personal data and access to data of public interest	An independent authority set up by a cardinal Act shall supervise the enforcement of the right to the protection of personal data and of the right to access data of public interest (Art. VI(3))	Only the rules concerning the organisation of the authority requires law adopted by two-thirds majority. The rules concerning the basic right itself do not (narrower subject matter).
18.	The law on the freedom of belief and religion	The detailed rules relating to churches (Art. VII(3))	Only the organisational aspects are regulated (narrower subject-matter).
19.	The law on the freedom of the press, the basic principles on media contents, and the law on the supervision of media services	The detailed rules relating to the freedom of the press and to the organ supervising media services, press products and the info-communications market	The organ supervising the info-communications market is included (broader subject-matter).
20.	Right of assembly	—	
21.	Right to establish organizations	—	

22.	The financial management and operation of political parties	The detailed rules for the operation and financial management of political parties (Art. VIII(4))	
23.	Right to asylum	—	
24.	Rights of national and ethnic minorities; election of representatives to their self-government	The detailed rules relating to the rights of nationalities living in Hungary, as well as those relating to the election of their local and national self-governments (Art. XXIX), the participation in the work of Parliament of nationalities living in Hungary (Art. 2(2))	Broader subject-matter, it includes the participation of nationalities living in Hungary in the work of Parliament.
25.	Citizenship	Citizenship (Art. G(4))	
26.	Right to strike	—	
27.	Provisions for the election of Members of Parliament, Members of the European Parliament and members of representative bodies of local governments and mayors.	Election of members of Parliament (Art. 2(1)), local elections (Art. 35(1))	The election of the Members of European Parliament does not require two-thirds majority. (narrower subject-matter).
28.	The law on the Coat of Arms and National Flag of the Republic of Hungary and the use thereof	The detailed rules for the coat of arms and the flag, as well as the state decorations (Art. I)(4))	State decorations are also included: more extended subject-matter. (So far the rule has been the two-thirds supermajority, i.e. the two-thirds of the component Members of Parliament; currently only the two-thirds of the members of Parliament present required.
29.	—	The protection of families (Art. L(3))	
30.	—	The provisions ensuring regular sittings of Parliament (Art. 5(8)) The inquiry activities of parliamentary committees and the obligation to appear before such committees (Art. 7(3))	
31.	—	Establishment of autonomous regulatory organs for the performance of certain tasks and the exercise of certain competences belonging to the executive branch (Art. 23(1))	(Not an independent subject matter.)
32.	—	The requirements for preserving and protecting national assets, as well as for the responsible management thereof (Art. 38(1))	

		The scope of the exclusive property and of the exclusive economic activities of the State, as well as the limitations and conditions of the alienation of national assets of outstanding importance for the national economy (Art. 38(2))	
33.	—	The basic rules for the sharing of public burdens and for the pension system (Art. 40)	
34.	—	The detailed rules of the organisation and operation of the National Bank of Hungary (Art. 41(5))	
35.		The rules relating to the organ supervising the financial intermediary system (Art. 42)	
36.	—	The detailed rules of the operation of the Budget Council (Art. 44(5))	
	<b>Subject-matters in total</b> <b>28</b>	<b>Subject-matters in total</b> <b>26</b>	

**Table 2****Cardinal laws tabled or adopted since the adoption of the new Fundamental Law — based on individual pieces of legislation<sup>1</sup>**

	N° of Document	Title of the legal proposal handed in	N° of the act adopted	Availability of acts adopted (Hungarian version of the texts)	Notes
<b>Proposals for Cardinal Acts, all provisions of which require a two-thirds majority</b>					
1.	T/3109	On the State Audit Office	Act LXVI of 2011	<a href="http://www.kozlonyok.hu/nkonline/mkpdf/hiteles/mk11069.pdf">http://www.kozlonyok.hu/nkonline/mkpdf/hiteles/mk11069.pdf</a>	Tabled by the Committee for Economic and IT Affairs on 09/05/2011; Enacted: 24 June 2011
2.	T/4424	On the Constitutional Court	Act CLI of 2011	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK11136.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK11136.pdf</a>	Tabled by the Committee for Constitutional Affairs on 3/10/2011; Enacted: 21 November 2011
3.	T/5006	On the election of Members of Parliament	Act CCIII of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11165.pdf">http://jogszabalykereso.mhk.hu/MK11165.pdf</a>	Tabled as an individual member's bill on 20/11/2011; Enacted: 30 December 2011
4.	T/5128	On the protection of families	Act CCXI of 2011	<a href="http://www.magyarkozlony.hu/pdf/11546">www.magyarkozlony.hu/pdf/11546</a>	Tabled as an individual member's bill on 2 December 2011 by 4 individual MPs, all belonging to the Christian Democratic People's Party. Enacted: 31 December 2011
5.	T/5315	On the freedom of belief and religion, and the status of churches	Act CCVI of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11166.pdf">http://jogszabalykereso.mhk.hu/MK11166.pdf</a>	Tabled as an individual member's bill on 21 December 2011 with proposal for urgency. On 23 December 2011 the Speaker of the House Mr. László Kövér proposed to derogate from the Standing Orders by placing the votes on the amendments and the final vote on 30 December 2011. Enacted: December 31, 2011.
6.	T/5839	On the modification of the	Act VII of 2012	<a href="http://magyarkozlony.hu/pdf/12126">magyarkozlony.hu/pdf/12126</a>	Tabled by the Committee for Human Rights on 10

<sup>1</sup> State of play on 28 October 2012. Source: homepage of the Hungarian Parliament (<http://www.mkogy.hu/fotitkar/sarkalatos/benyujtott.htm>).



		Act CCVI of 2011 on the freedom of belief and religion, and the status of churches			February 2012. Enacted: February 29, 2012.
7.	T/3507	On the freedom of belief and religion, and the status of churches	Act C of 2011 repealed by the Constitutional Court Decision 164/2011 (XII. 20.)	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK11085.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK11085.pdf</a>	Tabled as an individual member's bill by members belonging to the Christian Democratic People's Party: on June 14, 2011 Enacted: July 19, 2011 Note: the proposal for placing it on the agenda of the extraordinary session between June 16 and July 11, 2011 received the eligible number of signatures.
<b>Proposals for Cardinal Acts, specific provisions of which have to be adopted by simple majority</b>					
8.	T/3478	On defence, the defence forces and the introduction of measures during special legal order	Act CXIII of 2011	<a href="http://www.magyarkozlony.hu/pdf/9926">www.magyarkozlony.hu/pdf/9926</a>	Tabled by the Government (Minister of Defence): June 10, 2011 Urgency Enacted: July 27, 2011 June 10, 2011: Proposal for urgency (Adopted: June 14)
9.	T/3497	On the legal status and remuneration of the President of the Republic	Act CX of 2011	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11088.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11088.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice): June 10, 2011 Urgency Enacted: July 27, 2011 Proposal for urgency: June 10 Urgency adopted: June 14 Proposal for amendment before final vote on July 7
10.	T/4743	On the structure and administration of the courts	Act CLXI of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11143.pdf">http://jogszabalykereso.mhk.hu/MK11143.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on October 21, 2011 Enacted: December 2, 2011 Note: joint general debate with T/4744 November 28: Proposals for amendment before final vote
11.	T/4744	On the legal status and remuneration of the judges	Act CLXII of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11143.pdf">http://jogszabalykereso.mhk.hu/MK11143.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on October 21, 2011 Enacted: December 2, 2011 Note: joint general debate with T/4743

12.	T/4745	On the Public Prosecution Service	Act CLXIII of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11143.pdf">http://jogszabalykereso.mhk.hu/MK11143.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on October 21, 2011 Enacted: December 2, 2011 Note: Joint general debate with T/4746 November 18: Proposal for amendment before final vote
13.	T/4746	On the legal status and career of the Chief Public Prosecutor, public prosecutors and other employees of the public prosecution	Act CLXIV of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11143.pdf">http://jogszabalykereso.mhk.hu/MK11143.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on October 21, 2011 Enacted: December 2, 2011 Note: Joint general debate with T/4746 November 18: Proposal for amendment before final vote
14.	T/4864	On local governments	Act CLXXXIX of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11161.pdf">http://jogszabalykereso.mhk.hu/MK11161.pdf</a>	Tabled by the Government (Minister of Home Affairs) on November 5, 2011 Enacted on December 28, 2011 Note: proposal of Government for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011 Way of debate: urgency Proposal for urgency: November 5 Urgency accepted: November 7 Proposal for amendment before final vote on 16 and 19 December
15.	T/4988	On the coat of arms and national flag as well as the state decorations of Hungary	Act CCII of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11165.pdf">http://jogszabalykereso.mhk.hu/MK11165.pdf</a>	Tabled by as an individual members' bill (4 members of Christian Democratic People's Party) on November 18, 2011 Enacted on December 30, 2011 Note: Proposal for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011 was adopted by eligible number of signatures Proposal for amendment before final vote: December 27, 2012
16.	T/4995	On the remuneration of members of Parliament			Tabled as an individual members' bill on November 18, 2011 Submitter of the proposal withdrew the proposal. Permission for withdrawal: May 7, 2012

17.	T/4997	On the rights of national minorities	Act CLXXIX of 2011	<a href="http://www.magyarkozlony.hu/pdf/11286">www.magyarkozlony.hu/pdf/11286</a>	<p>Tabled by the Government (Minister of Public Administration and Justice) on November 19, 2011</p> <p>Enacted: December 19, 2011</p> <p>Way of debate: urgency</p> <p>Note: Proposal of Government for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011</p> <p>Proposal for urgency: November 19</p> <p>Proposal for amendment before final vote on December 19, 2011</p>
18.	T/5130	On the economic stability of Hungary	Act CXCV of 2011 on the economic stability of Hungary	<a href="http://jogszabalykereso.mhk.hu/MK11164.pdf">http://jogszabalykereso.mhk.hu/MK11164.pdf</a>	<p>Tabled by the Government (Minister of National Economy) on December 4, 2011</p> <p>Enacted: December 30, 2011</p> <p>Note: Proposal of Government for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011</p> <p>Proposal for amendment before final vote on 21, 22, 23 December 2011</p>
19.	T/7669	On the modification of the Act CXCV of 2011 on the economic stability of Hungary	Act CXLI of 2012	<a href="http://magyarkozlony.hu/pdf/14466">magyarkozlony.hu/pdf/14466</a>	<p>Tabled by the Government (Minister of National Economy): June 15, 2012</p> <p>Enacted: October 9, 2012</p> <p>Proposal for amendment before final vote: September 20, 2012</p>
20.	T/5161	On the national assets	Act CXCVI of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11164.pdf">http://jogszabalykereso.mhk.hu/MK11164.pdf</a>	<p>Tabled by Government (Minister of National Development): December 6, 2011</p> <p>Enacted: December 30, 2011</p> <p>Note: Proposal of Government for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011</p> <p>Proposal for amendment before final vote: 21, 22, 23 December, 2011</p>
21.	T/5248	On the National Bank of Hungary	Act CCVIII of 2011	<a href="http://jogszabalykereso.mhk.hu/MK11166.pdf">http://jogszabalykereso.mhk.hu/MK11166.pdf</a>	<p>Tabled by Government (Minister of National Economy): December 13, 2011</p> <p>Enacted: December 31, 2011</p> <p>Way of debate: urgency</p>

					<p>Note:  Proposal for placing it on the agenda of extraordinary session between December 28-30 by eligible number of signatures  Proposal of Government for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011  Proposal for urgency: December 13, 2011  December 16: urgency accepted</p>
22.	T/6818	On the modification of Act CCVIII of 2011 on the National Bank of Hungary			<p>Tabled by the Government (Minister of National Economy) on April 17, 2011  Submitter of the proposal withdrew the proposal on June 18, 2012</p>
23.	T/7742	On the modification of Act CCVIII of 2011 on the National Bank of Hungary	Act XCIX of 2012	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12091.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12091.pdf</a>	<p>Tabled by the Government (Minister of National Economy) on June 21, 2012  Enacted: July 13, 2012  Way of debate: urgency</p>
24.	T/6464	On the modification of Act CXCVI of 2011 on the national assets			<p>Tabled as an individual member's bill on March 22, 2012  Submitter of the proposal withdrew the proposal on April 18, 2012</p>
25.	T/6952	On the modification of Act CXCVI of 2011 on the national assets	Act XLVIII of 2012	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12061.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12061.pdf</a>	<p>Tabled by the Government (Minister of National Economy) on April 27, 2012  Enacted on May 22, 2012</p>
26.	T/7417	On the modification of Act CXCVI of 2011 on the national assets and the relating acts	Act LXXXIV of 2012	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12079.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12079.pdf</a>	<p>Tabled by the Government (Minister of National Development) on June 3, 2012  Enacted on June 28, 2012  Note: Proposal of Government for placing it on the agenda of the extraordinary session between June 18 and July 13, 2012  June 16: Proposal for amendment before final vote</p>
27.	T/6391	On the Parliament	Act XXXVI of 2012	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12047.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12047.pdf</a>	<p>Tabled as an individual members' bill on March 14, 2012  Enacted on April 19, 2012  Proposal for amendment before final vote on April 13, 15 2012</p>

Proposals for Acts, the specific provisions of which require the two-thirds majority of the Members of Parliament present <sup>1</sup>					
28.	T/3479	On the initiatives of referenda			Tabled the by Government (Minister of Public Administration and Justice) on June 10, 2012 State: general debate closed waiting for detailed debate
29.	T/3585	On the commissioner of fundamental rights (ombudsman)	Act CXI of 2011 Articles required to be voted by two-thirds: Art 47, 49	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11088.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11088.pdf</a>	Tabled the by Government (Minister of Public Administration and Justice) on June 17, 2011 Enacted on July 26, 2011 Way of debate: urgency Proposal for urgency on June 17 June 20: urgency accepted Proposals for amendments before final vote: July 7
30.	T/3586	On the right to information and freedom of information	Act CXII of 2011 Articles required to be voted by two-thirds: Subtitle 1, 2, 4, 5; Art. 28; 26 Section (1) (2)	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11088.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/mk11088.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on June 17, 2011 Enacted on July 26, 2011
31.	T/3499	On disaster recovery and the modification of relating acts	Act CXXVIII of 2011 Provisions of two-thirds: Art. 52-66; 71-72; 174 Section (1); Art. 67-70; 71-72; Subtitle 20-24; Art. 90; 97	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK11113.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK11113.pdf</a>	Tabled by the Government (Minister of Home Affairs) on June 10, 2011 Enacted on October 3, 2011 Way of debate: urgency (proposal for it: June 10; Accepted: June 14)
32.	T/4458	On the modification of the Act CXXII of 2010 on the Bureau for National Tax and Customs Administration and of relating acts	Act CXLI of 2011 Provisions of two-thirds: Art. 33; 34; 43 Section 13-15; Art. 48; 49; 54; 55-56; 62	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK11128.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK11128.pdf</a>	Tabled by the Government (Minister of National Economy affairs) on October 7, 2011 Enacted on November 3, 2011 Decision on derogation from the Standing Orders: October 10
33.	T/4656	On the modification of the Acts establishing the budget of Hungary for the year of 2012	Act CLXVI of 2011 Provisions of two-thirds: Article 87 Section (1)	<a href="http://www.magyarokozlony.hu/pdf/11166">www.magyarokozlony.hu/pdf/11166</a>	Tabled by Government (Minister of National Economy) on October 14, 2011 Enacted on December 9, 2011

<sup>1</sup> These are proposals for acts which are not qualified as cardinal laws by the Fundamental Law based on their titles. Nevertheless, these proposals for acts include such modifications that are qualified by the Fundamental Law as cardinal laws.

					Way of debate: urgency (proposal on October 14, accepted October 17) Proposal for amendment before final vote: 28 November
34.	T/4991	On the performance of obligations concerning Home Defence, the military administrative tasks attached to that; the record of the persons of military age, supplying of data in favour of ensuring the economic and financial services and data management attached to the identification cards applied in the field of home defence	Act CLXXVII of 2011 Provisions of two-thirds: Article 17-20	<a href="http://jogszabalykereso.mhk.hu/MK111151.pdf">http://jogszabalykereso.mhk.hu/MK111151.pdf</a>	Tabled by Government (Minister of Defence) on November 18, 2011 Enacted on December 14, 2011
35.	T/5001	On the modification of certain acts in connection with the Fundamental Law	Act CCI of 2011 Provisions of two-thirds: Article 25 Section (1); Art 26; 27; 28; 29; 31; 32; 33 Section (1) (2); 34; 35; 36; 71 Section (1); 72; 73 Section (2) Subtitle 161; Article 145 Section (1), (3), (6); Article 146 a, b, i; Art. 147; Subtitle 132; 244 Section (1); 263 Section (13),(14); 365 Section (1); 366; 371; 385 Section (1)-(10); 389 Section (1)-(7); 390-392; Subtitle 282, 290; Article 414; 415 a-k); 416; 417 Subtitle 296; Article 432; 433 Section (2); 434	<a href="http://jogszabalykereso.mhk.hu/MK111165.pdf">http://jogszabalykereso.mhk.hu/MK111165.pdf</a>	Tabled by Government (Minister of Public Administration and Justice) on November 19, 2011 Enacted on December 30, 2011 Way of debate: urgency Note: Proposal of Government for placing it on the agenda of the extraordinary session between December 16 and December 23, 2011 Proposal for urgency: November 19; accepted: November 21)
36.	T/5003	On transitional, modified and repealed provisions concerning the act on officials in the public service and the relating acts	Act V of 2012 Provisions of two-thirds: Article 21 Section (1) (4); 22; 32 Section (1); 33 Section (1); 35 Section (1) and (4); 39; 59 Section	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12022.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12022.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on November 19, 2011 Enacted on: February 27, 2012 Note: Proposal of Government for placing it on the agenda of the extraordinary session between December

			(4)		16 and December 23, 2011
37.	T/5004	On the modification of certain acts in the field of law enforcement and relating acts	Act CCVII of 2011 Provisions of two-thirds; Article 1-3; 5-13; 16; 18 Section (1) Paragr. 2-6, 8-16 and 19-20; Article 18 Section (2); 19-21; 24-28; 30 Section (1) Paragr. 2-9 and 11-16; Art. 30 Section (2) a, c-d, f, Art. 31 Section (1) (2)	<a href="http://jogszabalykereso.mhk.hu/MK111166.pdf">http://jogszabalykereso.mhk.hu/MK111166.pdf</a>	Tabled by the Government (Minister of Home Affairs) on November 20, 2011 Enacted on December 31, 2011 Way of debate: urgency (proposal on November 20, accepted: November 21) Proposal for amendment before final vote on 29, 30 December
38.	T/6390	On the modification of Act II of 2012 on petty offences, procedures and the system of petty offences' register, and the corresponding acts and the modification of certain legal provisions of disaster recovery	Act XXXI of 2012 Provisions of two-thirds: Article 7; 37 Point 15; Art. 23 Section (1)-(4)	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12044.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12044.pdf</a>	Tabled by the Government (Minister of Home Affairs) on March 14, 2012 Enacted on April 13, 2012 April 6: proposal for amendment before final vote
39.	T/6590	On the modification of the act on the establishment of the administrative districts and the attached acts	Act XCIII of 2012 Provisions of two-thirds: Article 13; 23; 25; 40; 80; 83	<a href="http://www.magyar kozlonyok.hu/pdf/13386">www.magyar kozlonyok.hu/pdf/13386</a>	Tabled by the Government (Minister of Public Administration and Justice) on March 30, 2012 Enacted on July 5, 2012 May 24, June 3, 22: proposals for amendment before final vote
40.	T/7022	On the modification of the acts concerning the media services and the press products	Act LXVI of 2012 Provisions of two-thirds: Article 4 and 5	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12073.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12073.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on May 10, 2012 Enacted on: June 18, 2012 Proposal for amendment before final vote: May 22
41.	T/7035	On the simplification of certain procedures concerning family law and company law	Act LXXXV of 2012 Provisions of two-thirds: Art. 38 and 39	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12079.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12079.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on May 11, 2012 Enacted on June 28, 2012 Note: Proposal of Government for placing it on the agenda of the extraordinary session between June 18 and July 13, 2012 Proposal for amendment before final vote: June 15
42.	T/7415	On the transitional provisions and the modification concerning Act I of 2012 on the Labour Code	Act LXXXVI of 2012 Provisions of two-thirds: Art. 73; 75; 78; 79 Section (1)-(12). (15)-(16), (17) a,c, Section (18)	<a href="http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12080.pdf">http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK12080.pdf</a>	Tabled by the Government (Minister of National Economy) on June 1, 2012 Enacted on June 28, 2012 Note: Proposal of Government for placing it on the

			(19); Art. 80 Section (5)-(13), (19), (20), (22) a,d, (23)		agenda of the extraordinary session between June 18 and July 13, 2012
43.	T/7676	On the modification of the acts concerning the field of justice affairs and public administration	Act CXVII of 2012 Provisions of two-thirds: Article 81; 82; 84-87; 121; 122	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12098.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12098.pdf</a>	Tabled by the Government (Minister of Public Administration and Justice) on June 15, 2012 Enacted on July 23, 2012 Way of debate: Urgency (proposal: June 15, accepted: June 18) Proposal for amendment before final vote: July 6
44.	T/7677	On the modification of the acts establishing the annual central budget of Hungary for the year 2013	Act CXCVI of 2012 Provision of two-thirds: Article 18	<a href="http://www.magyarkozlony.hu/pdf/15306">www.magyarkozlony.hu/pdf/15306</a>	Tabled by the Government (Minister of National Economy) on June 15, 2012 Enacted on December 15, 2012 Proposal of Government for placing it on the agenda of the extraordinary session between June 18 and July 13, 2012
45.	T/7772	On the modification of acts concerning the activities of persons with tasks of law enforcement and certain acts in order to step up against pupils' absence from schools	Act CXX of 2012 Provisions of two-thirds: Article 28	<a href="http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12098.pdf">http://kozlonyok.hu/nkonline/MKPDF/hiteles/MK12098.pdf</a>	Tabled by Government (Minister of Home Affairs) on June 22, 2012 Enacted on July 23, 2012 Note: Proposal of Government for placing it on the agenda of the extraordinary session between June 18 and July 13, 2012 Proposal for amendment before final vote: July 10
46.	T/8099	On the modification of certain acts of financial topic	Act CLI of 2012 Provisions of two-thirds majority: Article 88, 90, 93, 108-109, 114	<a href="http://www.kozlony.magyarorszag.hu/pdf/14646">www.kozlony.magyarorszag.hu/pdf/14646</a>	Tabled by the Government (Minister of National Economy) on July 26, 2012 Enacted on October 25, 2012 Proposal for amendment before final vote: October 5, 2012
47.	T/8289	On the modification of acts in connection with the age limit in certain judicial professions			Tabled by the Government (Minister of Public Administration and Justice) on September 7, 2012 State: withdrawn Waiting for permission of withdrawal
48.	T/8483	On the postal services	Act CLIX of 2012 Provisions requiring two-thirds majority: Article 62	<a href="http://www.magyarkozlony.hu/pdf/14846">www.magyarkozlony.hu/pdf/14846</a>	Tabled by the Government (Minister of National Development) on September 21, 2012 Enacted on November 9, 2012 Proposal for amendment before final vote: October 27
49.	T/8572	On the modification of the acts	Act CLXXXI of 2012	<a href="http://kozlony.magyarorszag.hu/pdf/14846">http://kozlony.magyarorszag.hu/pdf/14846</a>	Tabled by the Government (Minister of Home Affairs)



		on the exchange of information within the framework of the second generation of the Schengen Information System and in connection with law enforcement and the Program "Magyari" of Simplification	Provisions requiring two-thirds majority: Article 48 (1)-(4); (7)-(8); (10) Point a-d; Article 49 (2) and (4) Article 66 (1)-(2); (4)-(5)	hu/pdf/15106	on September 27, 2012 Enacted: November 30, 2012 Proposal for amendment before final vote: October 31, 2012
50.	T/8571	On the modification of the Act II of 2004 on motion pictures	Act CXCI of 2012 Provisions requiring two-thirds majority: Article 28 Section (1) Point 35-36; Article 29 Section (1) Point 7	www.magyarkozlony.hu/pdf/15306	Tabled by the Government (Minister of Human Resources) on October 14, 2012 Enacted on December 15, 2012
51.	T/8887	On the modification of the acts on the transmitting of certain properties to the local government of the capital city and concerning the local governments	Act CXCI of 2012 Provisions requiring two-thirds majority: Article 1; 3; 6; 8	magyarkozlony.hu/pdf/15186	Tabled by the Government (Minister of Home Affairs) on October 27, 2012 Enacted on December 7, 2012
52.	T/8889	On the modification of the acts on the transmitting of the special social institutions and of child protection by the State and modification of other acts	Act CXCI of 2012 Provisions requiring two-thirds majority: Article 78-79	magyarkozlony.hu/pdf/15186	Tabled by the Government (Minister of Human Resources) on October 28, 2012 Enacted on December 7, 2012 Way of debate: urgency (proposal on October 28, accepted on October 29) Note: closure of general debate (in favour of submitting the proposals for amendment) is November 7, end of day of session
53.	T/8405	On the electoral procedure			Tabled as an individual members' bill on September 18, 2012 November 5: derogation from the Standing Orders Adoption: 26 November 2012. Decision 1/2013 of the Constitutional Court declared the following provisions unconstitutional: §§ 82(2), 88(1), 92, 106, 151, 152(5), 154(1), 353(4).

**Additional acts<sup>1</sup> with certain provisions the adoption of which require two-thirds majority:**

+1	T/6319	On the modification of Act CXII of 2011 on the right to information and freedom of information	Act XXV of 2012 Provisions requiring two-thirds majority: Article 1-6	<a href="http://www.magyarkozlony.hu/pdf/12506">www.magyarkozlony.hu/pdf/12506</a>	Tabled by Government (Minister of Public Administration and Justice) on March 9, 2012 Enacted on April 6, 2012
+2	T/8737	On the modification of Act XL of 2008 on natural gas supply and Act CXCVI of 2011 on national assets	Act CCXVIII of 2012 Provisions requiring two-thirds majority: Article 5-9	<a href="http://www.magyarkozlony.hu/pdf/15507">www.magyarkozlony.hu/pdf/15507</a>	Tabled by individual members' bill on October 12, 2012 Enacted on December 27, 2012
+3	T/8967	On the modification of Act CXXII of 2010 on the Bureau for National Tax and Administration	Act CLXXV of 2012 Provisions requiring two-thirds majority: Article 32 (16)	<a href="http://magyarkozlony.hu/pdf/15026">magyarkozlony.hu/pdf/15026</a>	Tabled by Government (Minister for National Economy) on Oct 30, 2012 Enacted on Nov, 27, 2012

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<sup>1</sup> These acts additional to Table 2 are not listed in the Table of cardinal laws on the website of the Hungarian Parliament.