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DRAFT REPORT

on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Judith Sargentini

(Initiative – Rule 46 and 52 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL))

The European Parliament,

- having regard to the Treaty on European Union, and in particular Article 2 and Article 7(1) thereof,
 - having regard to its resolution of 17 May 2017 on the situation in Hungary¹,
 - having regard to its resolutions of 16 December² and 10 June 2015³ on the situation in Hungary,
 - having regard to its resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012)⁴,
 - having regard to its resolution of 16 February 2012 on the recent political developments in Hungary⁵ and of 10 March 2011 on media law in Hungary⁶,
 - having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights,
 - having regard to its resolution of 1 April 2004 on 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,
 - having regard to Communication of 15 October 2003 from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based (COM(2003) 606)
 - having regard to Rule 45, 52 and 83 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgetary Control, the Committee on Culture and,
- A. whereas 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

¹ Texts adopted, P8_TA(2017)0216.

² Texts adopted, P8_TA(2015)0461.

³ OJ C 407, 4.11.2016, p. 46.

⁴ OJ C 75, 26.2.2016, p. 52.

⁵ OJ C 249 E, 30.8.2013, p. 27.

⁶ OJ C 199 E, 7.7.2012, p. 154.

of persons belonging to minorities, as set out in Article 2 of the Treaty on European Union (TEU) and whereas those values, which are common to the Member States, constitute the foundation of the rights enjoyed by those living in the Union;

- B. whereas any clear risk of a serious breach by a Member State of the values enshrined in Article 2 TEU does not concern solely the individual Member State where the risk materialises but has an impact on the very nature of the Union and its citizens' rights;
 - C. whereas the scope of Article 7 TEU is not limited to the areas covered by Union law and that the Union can assess the existence of a clear risk of a serious breach of the common values in areas falling under Member States' competences;
 - D. whereas despite repeated calls from Parliament on the Hungarian authorities to take the necessary measures to ensure that Union values are fully respected in Hungary, the situation has not been addressed and many concerns remain;
1. States that the concerns of Parliament relate to the following issues:
 - (1) the functioning of the constitutional system;
 - (2) the independence of the judiciary and of other institutions;
 - (3) corruption and conflicts of interest;
 - (4) privacy and data protection;
 - (5) freedom of expression;
 - (6) academic freedom;
 - (7) freedom of religion;
 - (8) freedom of association;
 - (9) the right to equal treatment;
 - (10) the rights of persons belonging to minorities, including Roma and Jews;
 - (11) the fundamental rights of migrants, asylum seekers and refugees;
 - (12) social rights.
 2. Believes that the facts and trends mentioned in the Annex to the motion for a European Parliament resolution taken together represent a systemic threat to democracy, the rule of law and fundamental rights in Hungary and constitute a clear risk of a serious breach of the values of Article 2 TEU;
 3. Submits, therefore, in accordance with Article 7(1) TEU, this reasoned proposal to the Council, inviting the Council to determine that there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU and to address appropriate recommendations to Hungary in this regard;

4. Instructs its President to forward this resolution and the reasoned proposal for a Council decision annexed hereto to the Commission and the Council and to the governments and parliaments of the Member States.

ANNEX TO THE MOTION FOR A RESOLUTION:

Proposal for a

Council decision

determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 7(1) thereof,

Having regard to the reasoned proposal from the European Parliament,

Having regard to the consent of the European Parliament,

Whereas:

- (1) The Union is founded on the values referred to in Article 2 of the Treaty on European Union ('TEU'), which are common to the Member States and which include respect for democracy, the rule of law and human rights and.
- (2) In its reasoned proposal, the European Parliament presents its concerns related to the situation in Hungary. In particular, the main concerns relate to the functioning of the constitutional system, the independence of the judiciary and of other institutions, corruption and conflicts of interest, privacy and data protection, freedom of expression, academic freedom, freedom of religion, freedom of association, the right to equal treatment, the rights of persons belonging to minorities, including Roma and Jews, the fundamental rights of migrants, asylum seekers and refugees, social rights.
- (3) The European Parliament also notes that the Hungarian authorities have repeatedly failed to take the actions recommended in its previous resolutions.
- (4) In its resolution of 17 May 2017 on the situation in Hungary, the European Parliament stated that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 TEU.
- (5) A wide range of actors at the national, European and international level have repeatedly expressed their deep concern about the situation of democracy, the rule of law and fundamental rights in Hungary, including the organs and bodies of the Union, the Council

of Europe, the Organisation for Security and Co-operation in Europe (OSCE), the United Nations (UN), as well as numerous civil society organisations.

Functioning of the constitutional system

- (6) Since its adoption and entry into force in January 2012, the Constitution of Hungary (the “Fundamental Law”) has been amended six times. The Venice Commission expressed its concern regarding the constitution-making process in Hungary on several occasions, both as regards the the Fundamental Law and amendments thereto. The criticism focused on the lack of transparency of the process, the inadequate involvement of civil society, the absence of sincere consultation, the endangerment of the separation of powers and the weakening of the national system of checks and balances.
- (7) The competences of the Hungarian Constitutional Court were restricted as a result of the constitutional reform, including with regard to budgetary matters, the abolition of the *actio popularis*, the possibility for the Court to refer to its case law prior to 1 January 2012 and the limitation on the Court’s ability to review the constitutionality of any changes to the Fundamental Law apart from those of a procedural nature only. The Venice Commission expressed serious concerns about those limitations and about the procedure for the appointment of judges, and made recommendations to the Hungarian authorities to ensure the necessary checks and balances in its Opinion on Act CLI of 2011 on the Constitutional Court of Hungary adopted on 19 June 2012 and in its Opinion on the Fourth Amendment to the Fundamental Law of Hungary adopted on 17 June 2013.
- (8) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the current constitutional complaint procedure affords more limited access to the Constitutional Court, does not provide for a time limit for the exercise of constitutional review and does not have a suspensive effect on challenged legislation. It also mentioned that the provisions of the new Constitutional Court Act weaken the security of tenure of judges and increase the influence of the government over the composition and operation of the Constitutional Court by changing the judicial appointments procedure, the number of judges in the Court and their retirement age. The Committee was also concerned about the limitation of the Constitutional Court’s competence and powers to review legislation impinging on budgetary matters.
- (9) In its statement adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the 2018 parliamentary elections were characterised by a pervasive overlap between state and ruling party resources, undermining the ability of candidates to compete on an equal basis. Voters had a wide range of political options but intimidating and xenophobic rhetoric, media bias and opaque campaign financing constricted the space for genuine political debate, hindering the ability of voters to make a fully informed choice. It also expressed concerns about the delineation of single-member constituencies. Similar concerns were expressed in the Joint Opinion of 18 June 2012 on the Act on the Elections of Members of

Parliament of Hungary adopted by the Venice Commission and the Council for Democratic Elections.

- (10) In recent years the Hungarian Government has extensively used national consultations. On 27 April 2017, the Commission pointed out that the national consultation “Let’s stop Brussels” contained several claims and allegations which were factually incorrect or highly misleading. Nevertheless, the Hungarian Government subsequently continued to have recourse to similar consultations.

Independence of the judiciary and of other institutions

- (11) As a result of the extensive changes to the legal framework enacted in 2011, the administration of courts became more centralised and the president of the newly created National Judicial Office (NJO) was entrusted with extensive powers. The Venice Commission criticised those extensive powers in its Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted on 19 March 2012 and in its Opinion on the Cardinal Acts on the Judiciary, adopted on 15 October 2012. Similar concerns have been raised by the UN Special Rapporteur on the independence of judges and lawyers on 29 February 2012 and on 3 July 2013, as well as by the Group of States against Corruption (GRECO) in its report adopted on 27 March 2015. All those actors emphasised the need to enhance the role of the collective body, the National Judicial Council (NJC), as an oversight instance, because the president of the NJO, who is elected by the Hungarian Parliament, cannot be considered an organ of judicial self-government. Following international recommendations, the status of the president of the NJO was changed and the president’s powers restricted in order to ensure a better balance between the president and the NJO.

- (12) Since 2012, Hungary has taken positive steps to transfer certain functions from the president of the NJO to the NJC in order to create a better balance between these two organs. However, further progress is still required. GRECO, in its report adopted on 27 March 2015, called for minimising the potential risks of discretionary decisions by the president of the NJO. The president of the NJO is, inter alia, able to transfer and assign judges, and has a role in judicial discipline. The president of the NJO also makes a recommendation to the President of Hungary to appoint and remove heads of courts, including presidents and vice-presidents of the Courts of Appeal. GRECO welcomed the recently adopted Code of Ethics for Judges, but considered that it could be made more explicit and accompanied by in-service training.

- (13) Following the judgment of the Court of Justice of the European Union (the “Court of Justice”) of 6 November 2012 in Case C-286/12, *Commission v. Hungary*¹, which held that by adopting a national scheme requiring the compulsory retirement of judges,

¹ Judgment of the Court of Justice of 6 November 2012, *Commission v. Hungary*, C-286/12, ECLI:EU:C:2012:687.

prosecutors and notaries when they reach the age of 62, Hungary failed to fulfil its obligations under Union law, the Hungarian Parliament adopted Act XX of 2013 which provided that the judicial retirement age is to be gradually reduced to 65 years of age over a ten year period and set out the criteria for reinstatement or compensation. In its report of October 2015, the International Bar Association's Human Rights Institute stated that a majority of the removed judges did not return to their original positions.

- (14) In its judgment of 16 July 2015, *Gaszó v. Hungary*, the European Court of Human Rights (ECtHR) held that there had been a violation of the right to a fair trial and the right to an effective remedy. The ECtHR came to the conclusion that the violations originated in a practice which consisted in Hungary's recurrent failure to ensure that proceedings determining civil rights and obligations are completed within a reasonable time and to take measures enabling applicants to claim redress for excessively long civil proceedings at a domestic level. The execution of that judgment is still pending.
- (15) In its judgment of 23 June 2016, *Baka v. Hungary*, the ECtHR held that there had been a violation of the right of access to a court and the freedom of expression of András Baka, who had been elected as President of the Supreme Court for a six-year term in June 2009, but ceased to have this position in accordance with the transitional provisions in the Fundamental Law, providing that the Curia would be the legal successor to the Supreme Court. The execution of that judgment is still pending because the Hungarian Government denies the fact that there is a need to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard.
- (16) On 29 September 2008, Mr András Jóri was appointed Data Protection Supervisor for a term of six years. However, with effect from 1 January 2012, the Hungarian Parliament decided to reform the data protection system and replace the Supervisor with a national authority for data protection and freedom of information. Mr Jóri had to vacate office before his full term had expired. On 8 April 2014, the Court of Justice held that the independence of supervisory authorities necessarily includes the obligation to allow them to serve their full term of office and that Hungary failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council¹.
- (17) The Venice Commission identified several shortcomings in its Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted on 19 June 2012. In its report, adopted on 27 March 2015, GRECO urged the Hungarian authorities to take additional steps to prevent abuse and increase the independence of the prosecution service by, inter alia, removing the possibility for the Prosecutor General to be re-elected. In addition, GRECO called for disciplinary proceedings against ordinary prosecutors to be made more transparent and for

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995 P. 31).

decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications.

Corruption and conflicts of interest

- (18) In its report adopted on 27 March 2015, GRECO called for the establishment of codes of conduct for members of the Hungarian Parliament (MPs) concerning guidance for cases of conflicts of interest. Furthermore, MPs should also be obliged to report conflicts of interest in an ad hoc manner and this should be accompanied by a more robust obligation to submit asset declarations. This should also be accompanied by provisions that allow for sanctions for submitting inaccurate asset declarations.
- (19) In its statement adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights concluded that the limited monitoring of campaign spending and the absence of thorough reporting on sources of campaign funds undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to OSCE commitments and international standards.
- (20) On 7 December 2016, the Open Government Partnership (OGP) Steering Committee received a letter from the Government of Hungary announcing its immediate withdrawal from the partnership. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations regarding their space to operate in the country.

Privacy and data protection

- (21) In its judgment of 12 January 2016, *Szabó and Vissy v. Hungary*, the ECtHR found that the right to respect for private life was violated on account of the insufficient legal guarantees against unlawful secret surveillance for national security purposes, including related to the use of telecommunications. The amendment of the relevant legislation is necessary as a general measure. The execution of this judgment is, therefore, still pending.
- (22) In the concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that Hungary's legal framework on secret surveillance for national security purposes allows for mass interception of communications and contains insufficient safeguards against arbitrary interference with the right to privacy. It was also concerned at the lack of provisions to ensure effective remedies in cases of abuse, and notification to the person concerned as soon as possible, without endangering the purpose of the restriction, after the termination of the surveillance measure.

Freedom of expression

- (23) On 22 June 2015 the Venice Commission adopted its Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of

Hungary, which called for several changes to the Press Act and the Media Act, in particular concerning the definition of “illegal media content”, the disclosure of journalistic sources and sanctions on media outlets. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe’s Commissioner for Human Rights in his opinion on Hungary’s media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. Those concerns had been shared by the Council of Europe’s Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. The Commissioner also mentioned the issues of concentration of media ownership and self-censorship and indicated that the legal framework criminalising defamation should be repealed.

- (24) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission insisted on the need to change the rules governing the election of the members of the Media Council to ensure fair representation of socially significant political and other groups and that the method of appointment and the position of the Chairperson of the Media Council or the President of the Media Authority should be revisited in order to reduce the concentration of powers and secure political neutrality; the Board of Trustees should also be reformed along those lines. The Venice Commission also recommended the decentralisation of the governance of public service media providers and that the National News Agency not be the exclusive provider of news for public service media providers. Similar concerns had been expressed in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in February 2011, by the previous Council of Europe’s Commissioner for Human Rights in his opinion on Hungary’s media legislation in light of Council of Europe standards on freedom of the media of 25 February 2011, as well as by Council of Europe experts on Hungarian media legislation in their expertise of 11 May 2012. Those concerns had also been shared by the Council of Europe’s Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014.
- (25) On 18 October 2012, the Venice Commission adopted its Opinion on Act CXII of 2011 on Informational Self-Determination and Freedom of Information of Hungary. Despite the overall positive assessment, the Venice Commission identified the need for further improvements. However, following subsequent amendments to that law, the right to access government information has been significantly restricted further. Those amendments were criticised in the analysis commissioned by the Office of the OSCE Representative on Freedom of the Media in March 2016.
- (26) In its statement adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights for the 2018 Hungarian parliamentary elections concluded that access to information as well as the freedoms of the media and association have been restricted, including by recent legal changes and that

media coverage of the campaign was extensive, yet highly polarized and lacking critical analysis. It further noted that politicization of the ownership, coupled with a restrictive legal framework, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information.

- (27) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about Hungary's media laws and practices that restrict freedom of opinion and expression. It was concerned that, following successive changes in the law, the current legislative framework does not fully ensure an uncensored and unhindered press. It noted with concern that the Media Council and the Media Authority lack sufficient independence to perform their functions and have overbroad regulatory and sanctioning powers.

Academic freedom

- (28) On 6 October 2017, the Venice Commission adopted its Opinion on Act XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. It concluded that introducing more stringent rules without very strong reasons, coupled with strict deadlines and severe legal consequences, for foreign universities which are already established in Hungary and have been lawfully operating there for many years, appears highly problematic from the standpoint of the rule of law and fundamental rights principles and guarantees. Those universities and their students are protected by domestic and international rules on academic freedom, the freedom of expression and assembly and the right to, and freedom of, education. The Venice Commission recommended that the Hungarian authorities, in particular, ensure that new rules on requirement to have a work permit do not disproportionately affect academic freedom and are applied in a non-discriminatory and flexible manner, without jeopardising the quality and international character of education already provided by existing universities. The concerns about the Amendment of Act CCIV of 2011 on National Tertiary Education have also been shared by the UN Special Rapporteurs on the freedom of opinion and expression, on the rights to freedom of peaceful assembly and association and on cultural rights in their statement of 11 April 2017. In the concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of such constraints on the freedom of thought, expression and association, as well as academic freedom.
- (29) On 17 October 2017, the Hungarian Parliament extended the deadline for foreign universities operating in the country to meet the new criteria to 1 January 2019. Negotiations between the Hungarian Government and foreign higher education institutions affected, in particular, the Central European University, are still ongoing, while the legal limbo for foreign universities remains.
- (30) On 7 December 2017, the Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that the Amendment of Act CCIV of 2011 on National Tertiary Education disproportionately restricts Union and non-Union

universities in their operations and that the Act needs to be brought back in line with Union law. The Commission found that the new legislation runs counter to the right of academic freedom, the right to education and the freedom to conduct a business as provided by the Charter of Fundamental Rights of the European Union (the “Charter”) and the Union’s legal obligations under international trade law.

Freedom of religion

- (31) In 2011, the Hungarian Parliament adopted 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 deprived many religious organisations of legal personality and reduced the number of legally recognised churches in Hungary to 14. On 16 December 2011 the Council of Europe Commissioner for Human Rights shared his concerns about this Act in a letter sent to the Hungarian authorities. In February 2012, responding to international pressure, the Hungarian Parliament expanded the number of recognised churches to 31. On 19 March 2012 the Venice Commission adopted its Opinion 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, where it indicated that the Act sets a range of requirements that are excessive and based on arbitrary criteria with regard to the recognition of a church, that the Act has led to a deregistration process of hundreds of previously lawfully recognised churches and that the Act induces, to some extent, an unequal and even discriminatory treatment of religious beliefs and communities, depending on whether they are recognised or not.
- (32) In February 2013, Hungary's Constitutional Court ruled that the deregistration of recognised churches had been unconstitutional. Responding to the Constitutional Court's decision, the Hungarian Parliament amended the Fundamental Law in March 2013. In June and September 2013, the Hungarian Parliament amended Act CCVI of 2011 to create a two-tiered classification consisting of “religious communities” and “incorporated churches”. In September 2013, the Hungarian Parliament also amended the Fundamental Law explicitly to grant itself the authority to select religious communities for “cooperation” with the state in the service of “public interest activities”.
- (33) In its judgment of 8 April 2014, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, the ECtHR ruled that Hungary had violated freedom of association, read in the light of freedom of conscience and religion. The execution of that judgment is still pending.

Freedom of association

- (34) On 9 July 2014, the Council of Europe Commissioner for Human Rights indicated in his letter to the Hungarian authorities that he was concerned about the stigmatising rhetoric used by politicians questioning the legitimacy of NGO work in the context of audits which had been carried out by the Hungarian Government Control Office concerning NGOs which were beneficiaries of the Norwegian Civil Fund. On 8-16

February 2016, the UN Special Rapporteur on the situation of human rights defenders visited Hungary and indicated in his report that significant challenges stem from the existing legal framework governing the exercise of fundamental freedoms, such as the rights to freedoms of opinion and expression, and of peaceful assembly and of association, and that legislation pertaining to national security and migration may also have a restrictive impact on the civil society environment.

- (35) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament. On 26 April 2017, the Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the Hungarian National Assembly noting that the draft law was introduced against the background of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as “foreign agents” based on the source of their funding and questioned their legitimacy. Similar concerns have been mentioned in the statement of 7 March 2017 of the President of the Conference of INGOs of the Council of Europe and President of the Expert Council on NGO Law, as well as in the Opinion of 24 April 2017 prepared by the Expert Council on NGO Law, and the statement of 15 May 2017 by the UN Special Rapporteurs on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.
- (36) On 13 June 2017, the Hungarian Parliament adopted the draft law with several amendments. In its Opinion of 20 June 2017, the Venice Commission recognised that some of those amendments represented an important improvement but at the same time some other concerns were not addressed and the amendments did not suffice to alleviate the concerns that the law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination. In its concluding observations of 5 April 2018, the UN Human Rights Committee noted the lack of a sufficient justification for the imposition of those requirements, which appeared to be part of an attempt to discredit certain NGOs, including NGOs dedicated to the protection of human rights in Hungary.
- (37) On 7 December 2017, the Commission decided to start legal proceedings against Hungary for failing to fulfil its obligations under the Treaty provisions on the free movement of capital, due to provisions in the NGO Law which indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission concluded that Hungary had violated the right to freedom of association and the rights to protection of private life and personal data enshrined in the Charter, read in conjunction with the Treaty provisions on the free movement of capital.
- (38) In February 2018, a legislative package consisting of three draft laws, also known as the “Stop-Soros Package” (T/19776, T/19775, T/19774), was presented by the Hungarian Government. On 14 February 2018, the President of the Conference of INGOs of the

Council of Europe and President of the Expert Council on NGO Law made a statement indicating that the package does not comply with the freedom of association, particularly for NGOs which deal with migrants. On 15 February 2018, the Council of Europe Commissioner for Human Rights expressed similar concerns. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that by alluding to the “survival of the nation” and protection of citizens and culture, and by linking the work of NGOs to an alleged international conspiracy, the legislative package would stigmatise NGOs and curb their ability to carry out their important activities in support of human rights and, in particular, the rights of refugees, asylum seekers and migrants. It was further concerned that imposing restrictions on foreign funding directed to NGOs might be used to apply illegitimate pressure on them and to unjustifiably interfere with their activities.

Right to equal treatment

- (39) On 17-27 May 2016, the UN Working Group on discrimination against women in law and in practice visited Hungary. In its report, the Working Group indicated that a conservative form of family, whose protection is guaranteed as essential to national survival, should not be put in an uneven balance with women’s political, economic and social rights and the empowerment of women. The Working Group also pointed out that a woman’s right to equality cannot be seen merely in the light of protection of vulnerable groups alongside children, the elderly and the disabled, as they are an integral part of all such groups.
- (40) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed regret that patriarchal stereotyped attitudes still prevail in Hungary with respect to the position of women in society, and noted with concern discriminatory comments made by political figures against women. It also noted that the Hungarian Criminal Code does not fully protect female victims of domestic violence.
- (41) On 27 April 2017, the Commission issued a reasoned opinion calling on Hungary to correctly implement Directive 2006/54/EC of the European Parliament and of the Council¹, given that Hungarian law provides an exception to the prohibition of discrimination on the grounds of sex that is much broader than the exception provided by that Directive. On the same date, the Commission issued a reasoned opinion to Hungary for non-compliance with Directive 92/85/EEC of the Council² that stated that employers have a duty to adapt working conditions for pregnant or breastfeeding workers to avoid a risk to their health or safety.

¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

² Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1).

(42) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the constitutional ban on discrimination does not explicitly list sexual orientation and gender identity among the grounds of discrimination and that its restrictive definition of family could give rise to discrimination as it does not encompass certain types of family arrangements, including same-sex couples. The Committee was also concerned about acts of violence and the prevalence of negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, particularly in the employment and education sectors. It also mentioned forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities, as well as reported violence and cruel, inhuman and degrading treatment and allegations of a high number of non-investigated deaths in closed institutions.

Rights of persons belonging to minorities, including Roma and Jews

(43) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe's Commissioner for Human Rights indicated that he was concerned about the deterioration of the situation as regards racism and intolerance in Hungary, with anti-Gypsyism being the most blatant form of intolerance, as illustrated by distinctively harsh, including violence targeting Roma people and paramilitary marches and patrolling in Roma-populated villages. He also pointed out that, despite positions taken by the Hungarian authorities to condemn anti-Semitic speech, anti-Semitism is a recurring problem, manifesting itself through hate speech and instances of violence against Jewish persons or property. In addition, he mentioned a recrudescence of xenophobia targeting migrants, including asylum seekers and refugees, and of intolerance affecting other social groups such as LGBTI persons, the poor and homeless persons. The European Commission against Racism and Xenophobia mentioned similar concerns in its report on Hungary published on 9 June 2015.

(44) In its Fourth Opinion on Hungary adopted on 25 February 2016, the Advisory Committee on the Framework Convention for the Protection of National Minorities noted that Roma continue to suffer systemic discrimination and inequality in all fields of life, including housing, employment, education, access to health and participation in social and political life. In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended the Hungarian authorities to make sustained and effective efforts to prevent, combat and sanction the inequality and discrimination suffered by Roma, improve, in close consultation with Roma representatives, the living conditions, access to health services and employment of Roma, take effective measures to end practices that lead to the continued segregation of Roma children at school and redouble efforts to remedy shortcomings faced by Roma children in the field of education, ensure that Roma children have equal opportunities for access to all levels of quality education, and continue to take measures to prevent children from being wrongfully placed in special schools and classes.

- (45) In its judgement of 29 January 2013, *Horváth and Kiss v. Hungary*, the ECtHR found that the relevant Hungarian legislation as applied in practice lacked adequate safeguards and resulted in the over-representation and segregation of Roma children in special schools due to the systematic misdiagnosis of mental disability, which amounted to a violation of the right to education free from discrimination. The execution of that judgment is still pending.
- (46) On 26 May 2016, the Commission sent a letter of formal notice to the Hungarian authorities in relation to both Hungarian legislation and administrative practices which result in Roma children being disproportionately over-represented in special schools for mentally disabled children and subject to a considerable degree of segregated education in mainstream schools.
- (47) In its judgement of 20 October 2015, *Balázs v. Hungary*, the ECtHR held that there had been a violation of the prohibition of discrimination in the context of a failure to consider the alleged anti-Roma motive of an attack. In its judgment of 12 April 2016, *R.B. v. Hungary*, the ECtHR held that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motivated abuse. The execution of both judgments is still pending.
- (48) On 29 June - 1 July 2015, the OSCE Office for Democratic Institutions and Human Rights conducted a field assessment visit to Hungary, following reports about the actions taken by the local government of the city of Miskolc concerning forced evictions of Roma. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent a letter to the Hungarian authorities expressing concerns about the treatment of Roma in Miskolc.
- (49) In its Resolution of 5 July 2017, the Committee of Ministers of the Council of Europe recommended that the Hungarian authorities continue to improve the dialogue with the Jewish community, making it sustainable, and to give combatting anti-Semitism in public spaces the highest priority, to make sustained efforts to prevent, identify, investigate, prosecute and sanction effectively all racially and ethnically motivated or anti-Semitic acts, including acts of vandalism and hate speech, and to consider amending the law so as to ensure the widest possible legal protection against racist crime.
- (50) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about reports that the Roma community continues to suffer from widespread discrimination and exclusion, unemployment, housing and educational segregation. It is particularly concerned that, notwithstanding the Public Education Act, segregation in schools, especially church and private schools, remains prevalent and the number of Roma children placed in schools for children with mild disabilities remains disproportionately high. It also mentioned concerns about the prevalence of hate crimes and about hate speech in political discourse, the media and on the internet targeting minorities, in particular Roma, muslims, migrants and refugees, including in the context of government-sponsored campaigns. The Committee expressed its concern over the

prevalence of anti-Semitic stereotypes. The Committee also noted with concern allegations that the number of registered hate crimes is extremely low because the police often fail to investigate and prosecute credible claims of hate crimes and criminal hate speech. Finally, the Committee was concerned about reports of the persistent practice of racial profiling of Roma by the police.

Fundamental rights of migrants, asylum seekers and refugees

- (51) On 3 July 2015, the UN High Commissioner for Refugees expressed concerns about the fast-track procedure for amending asylum law. On 17 September 2015, the UN High Commissioner for Human Rights expressed his opinion that Hungary violated international law by its treatment of refugees and migrants. On 27 November 2015, the Council of Europe Commissioner for Human Rights made a statement that Hungary's response to the refugee challenge falls short on human rights. On 21 December 2015, the UN High Commissioner for Refugees, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights urged Hungary to refrain from policies and practices that promote intolerance and fear and fuel xenophobia against refugees and migrants. On 6 June 2016, the UN High Commissioner for Refugees expressed concerns about the increasing number of allegations of abuse in Hungary against asylum-seekers and migrants by border authorities, and the broader restrictive border and legislative measures, including access to asylum procedures.
- (52) On 3 July 2014, the UN Working Group on Arbitrary Detention indicated that the situation of asylum seekers and migrants in irregular situations needs robust improvements and attention to ensure against arbitrary deprivation of liberty. Similar concerns about detention, in particular of unaccompanied minors, have been shared by the Council of Europe's Commissioner for Human Rights in the report following his visit to Hungary, which was published on 16 December 2014. On 21-27 October 2015 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Hungary and indicated in its report a considerable number of foreign nationals' (including unaccompanied minors) claims that they had been subjected to physical ill-treatment by police officers and armed guards working in immigration or asylum detention facilities. On 7 March 2017, the UN High Commissioner for Refugees expressed his concerns about a new law voted in the Hungarian Parliament envisaging the mandatory detention of all asylum seekers, including children, for the entire length of the asylum procedure. On 8 March 2017, the Council of Europe Commissioner for Human Rights issued a statement similarly expressing his concern about that law. On 31 March 2017, the UN Subcommittee on the Prevention of Torture urged Hungary to address immediately the excessive use of detention.
- (53) On 12-16 June 2017, the Special Representative of the Secretary General of the Council of Europe on migration and refugees visited Serbia and two transit zones in Hungary. In his report, the Special Representative made several recommendations, including a call on the Hungarian authorities to take the necessary measures, including by

reviewing the relevant legislative framework and changing relevant practices, to ensure that all foreign nationals arriving at the border or who are on Hungarian territory are not deterred from making an application for international protection. On 5-7 July a delegation of the Council of Europe Lanzarote Committee (Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse) also visited two transit zones and made a number of recommendations, including a call to treat all persons under the age of 18 years of age as children without discrimination on the ground of their age, to ensure that all children under Hungarian jurisdiction are protected against sexual exploitation and abuse, and to systematically place them in mainstream child protection institutions in order to prevent possible sexual exploitation or sexual abuse against them by adults and adolescents in the transit zones.

- (54) In its judgment of 14 March 2017, *Ilias and Ahmed v. Hungary*, the ECtHR found that there had been a violation of the applicants' right to liberty and security. The ECtHR also found that there had been a violation of the prohibition of inhuman or degrading treatment in respect of the applicants' expulsion to Serbia, as well as a violation of the right to an effective remedy in respect of the conditions of detention at the Rösztke transit zone. The case is currently pending before the Grand Chamber of the ECtHR.
- (55) On 7 December 2017, the Commission decided to move forward on the infringement procedure against Hungary concerning its asylum legislation by sending a reasoned opinion. The Commission considers that the Hungarian legislation does not comply with Union law, in particular Directives 2013/32/EU¹, 2008/115/EC² and 2013/33/EU³ of the European Parliament and of the Council and several provisions of the Charter.
- (56) In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns that the Hungarian law adopted in March 2017, which allows for the automatic removal to transit zones of all asylum applicants for the duration of their asylum procedure, with the exception of unaccompanied children identified as being below the age of 14, does not meet the legal standards as a result of the lengthy and indefinite period of confinement allowed, the absence of any legal requirement to promptly examine the specific conditions of each affected individual, and the lack of procedural safeguards to meaningfully challenge removal to the transit zones. The Committee was particularly concerned about reports of the extensive use of automatic immigration detention in holding facilities inside Hungary and was concerned that restrictions on personal liberty have been used as a general deterrent against unlawful entry rather than in response to an individualised determination of risk. In addition, the Committee was concerned about allegations of poor conditions in some holding facilities.

¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29.6.2013, p. 96).

It noted with concern the push-back law, which was first introduced in June 2016, enabling summary expulsion by the police of anyone who crosses the border irregularly and was detained on Hungarian territory within 8 kilometres of the border, which was subsequently extended to the entire territory of Hungary, and decree 191/2015 designating Serbia as a “safe third country” allowing for push-backs at Hungary’s border with Serbia. The Committee noted with concern reports that push-backs have been applied indiscriminately and that individuals subjected to this measure have very limited opportunity to submit an asylum application or right to appeal. It also noted with concern reports of collective and violent expulsions, including allegations of heavy beatings, attacks by police dogs and shootings with rubber bullets, resulting in severe injuries and, at least in one case, in the loss of life of an asylum seeker. It was also concerned about reports that the age assessment of child asylum seekers and unaccompanied minors conducted in the transit zones is inadequate, relies heavily on visual examination by an expert and is inaccurate, and about reports alleging the lack of adequate access by such asylum seekers to education, social and psychological services and legal aid.

Social rights

- (57) In his report following his visit to Hungary, which was published on 16 December 2014, the Council of Europe’s Commissioner for Human Rights indicated his concern at measures taken to prohibit rough sleeping and the construction of huts and shacks, which have widely been described as criminalising homelessness in practice. The Commissioner urged the Hungarian authorities to investigate reported cases of forced evictions without alternative solutions and of children being taken away from their families on the grounds of poor socio-economic conditions. In its concluding observations of 5 April 2018, the UN Human Rights Committee expressed concerns about state and local legislation, based on the Fourth Amendment to the Fundamental Law, which designates many public areas as out-of-bounds for “sleeping rough” and effectively punishes homelessness.
- (58) The 2017 Conclusions of the European Committee of Social Rights stated that Hungary is not in compliance with the European Social Charter on the ground that self-employed and domestic workers, as well as other categories of workers, are not protected by occupational health and safety regulations, that measures taken to reduce the maternal mortality have been insufficient, that the minimum amount of old-age pensions is inadequate, that the minimum amount of jobseeker’s aid is inadequate, that the maximum duration of payment of jobseeker’s allowance is too short and that the minimum amount of rehabilitation and invalidity benefits, in certain cases, is inadequate. The Committee also concluded that in Hungary is not in conformity with the European Social Charter on the ground that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate, on the ground that equal access to social services is not guaranteed for lawfully resident nationals of all States Parties and on the grounds that it has not been established that there is an adequate supply of housing for vulnerable families.

(59) In its Recommendation of 11 July 2017 on the 2017 National Reform Programme of Hungary and delivering a Council opinion on the 2017 Convergence Programme of Hungary, the Council indicated that the adequacy and coverage of social assistance and unemployment benefits is limited, that the duration of unemployment benefits is still the lowest in the Union at 3 months, below the average time required by jobseekers to find employment, and that the 2015 social assistance reform streamlined the benefits system but does not seem to have guaranteed a uniform and minimally adequate living standard for those in need.

(60) On [...] 2018, the Council heard Hungary in accordance with Article 7(1) TEU.

(61) For those reasons, it should be determined, in accordance with Article 7(1) TEU, that there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU.

HAS ADOPTED THIS DECISION:

Article 1

There is a clear risk of a serious breach by Hungary of the values on which the Union is founded.

Article 2

The Council recommends that Hungary takes the following actions within three months after notification of this Decision: [...]

Article 3

This Decision shall enter into force on [...] day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Decision is addressed to Hungary.

Done at Brussels,

For the Council

The President

EXPLANATORY STATEMENT

This is the first time since its founding that the Parliament has decided to write a report investigating the need to trigger an Article 7(1) TEU procedure. As such, your rapporteur has taken this opportunity to set out the steps taken in reaching the conclusion that there is indeed a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU. In doing so, your rapporteur hopes to help future colleagues who might find themselves facing a similar task.

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. 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.

If we all share these values, we owe it to ourselves to protect these values whenever they are in jeopardy. The EU is equipped with safeguarding our common values by making use of the process under Article 7 TEU. The scope of this article concerns Union law but also extends to areas where Member States act autonomously.

Your rapporteur took guidance from the European Commission Communication (COM(2003)606) 'Respect for and promotion of the values on which the Union is based'. There it says that:

'The scope of Article 7 is not confined to areas covered by Union law. This means that the Union could act not only in the event of a breach of common values in this limited field but also in the event of a breach in an area where the Member States act autonomously.' It continues to say: *'Article 7 thus gives the Union a power of action that is very different from its power to ensure that Member States respect fundamental rights when implementing Union law'*.

Your rapporteur hopes this clarifies the scope of the present report which indeed includes concerns about Hungarian legislation and practice that is not directly or indirectly linked to EU secondary law.

The report also refers to cases that have been addressed by the Commission in infringement procedures. Although these infringement cases might have found closure, they are still part of this report as they have had an effect on the overall atmosphere in the country. Individual legislation might have been, by the letter, restored to respect European values, but materially damage has been done. The chilling effect on the freedoms in society of measures executed and afterwards rolled back or put forward but not (yet) implemented are an undeniable part of an Article 7 analysis.

In 2011, the Parliament issued its first resolution concerning fundamental rights in Hungary (that time about a new media law). In 2013, an elaborate report 'on the situation of fundamental rights: standards and practices in Hungary' was voted on and the Parliament

continued to follow the situation. We continued to request action from the Council and the Commission, but without success. Only in 2014, the Commission presented a framework to safeguard the rule of law in the EU. Starting a Rule of Law dialogue with Hungary on the basis of this new mechanism would have been the logical thing to do. As this did not happen, in May 2017 the Parliament instructed the Committee on Civil Liberties, Justice and Home Affairs to draft this report.

Carefully weighing all the above while trying to include others in this process is not done overnight. Rushing to a vote would not do justice to the process.

Part of the process is to organise hearings for the European citizens to understand what the situation is, convene thorough meetings with fellow shadow rapporteurs to which external experts from international and European organisations are invited, consult different stakeholders, visit the Member State under scrutiny and invite other committees of the Parliament to get involved and share their opinions following their expertise.

After being mandated by the plenary of the Parliament, your rapporteur took the task of conducting an in-depth analysis and followed this elaborate approach. We have talked and listened to representatives of the Commission, Fundamental Rights Agency, Council of Europe Commissioner for Human Rights, Venice Commission, Special Representative of the Secretary General of the Council of Europe on migration and refugees, Lanzarote Committee, the Hungarian government representatives, a variety of NGOs and academics in Brussels, Strasbourg and Budapest. In a fashion of transparency your rapporteur has attached to this report a list of organisations met in the course of this research. As there was no official delegation visit by the Committee on Civil Liberties, Justice and Home Affairs, your rapporteur undertook her own visit. For future proceedings it is strongly recommended to send a parliamentary delegation to the Member State concerned. One can hardly explain to authorities and citizens of the Member State under scrutiny that the Parliament judges a situation as a clear risk of serious breach of European values as enshrined in the Treaties, without having made the effort of a visit.

The drafting of opinions by other parliamentary committees leads to a wider outreach among Members of Parliament, illustrates the shared responsibility and guarantees a more inclusive process. Your rapporteur therefore wants to wholeheartedly thank those committees that are contributing to the final report.

Every consideration made is based on opinions issued by third party actors, often bodies of the Council of Europe, United Nations, OSCE and from time to time based on verdicts by national and international courts. Although your rapporteur is thankfully relying on these institutions, it illustrates the hiatus the EU has in researching, analysing and publishing on the state of the democracy, rule of law and respect for fundamental rights in the Member States. Your rapporteur therefore wishes to echo the call of this Parliament upon the Commission to urgently establish an EU mechanism on Democracy, the Rule of Law and Fundamental Rights and use it.

Institutional constructions, however, will never succeed when there is a lack of political will. The European Union is a project built on shared values and solidarity. European history has been a violent one and the rights of individuals were often trampled on for a so-called greater good. We live 73 years after the end of the Second World War and 29 years after the fall of the Berlin wall. Both experiences are engraved in our collective memory.

It is that understanding of the past that has inspired the preamble of the TEU: We draw *'inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law, recalling the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe, confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law.'*

Responsible leaders take account of that heritage and act accordingly. Close friends do not shy away from telling each other the unpleasant truth.

Based on the process sketched above, your rapporteur sees the need to request the Council to come forward with appropriate measures to restore inclusive democracy, the rule of law and respect for fundamental rights in Hungary.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

| Entity and/or person |
|--|
| Amnesty International |
| ANKH |
| atlatszo.hu |
| A Varos Mindenkie |
| Center for Fundamental Rights |
| Central European University |
| Civil Liberties Union for Europe |
| Council of Europe, Office of the Commissioner for Human Rights |
| Council of Europe, Secretary General |
| Council of Europe, Special Representative of the Secretary General on migration and refugees |
| Council of Europe's Venice Commission |
| Council of Europe's Lanzarote Committee |
| ELTE Law School |
| European Commission |
| European University Institute, School of Transnational Governance |
| FIDH International Federation for Human Rights |
| Freedom House |
| Fundamental Rights Agency |
| Háttér Society |
| Hungarian Ambassador Extraordinary and Plenipotentiary Permanent Representation to the EU |
| Hungarian Minister of Foreign Affairs |
| Hungarian Minister of State for Parliamentary Affairs |
| Hungarian government officials at Röszke Transit Zone |
| Hungarian Civil Liberties Union |
| Hungarian Helsinki Committee |
| Idetartozunk Association |
| K-monitor |
| Menedek |
| Mertek Media Monitor |
| Middlesex University |
| MigSzol Migrant Solidarity Group of Hungary |
| MUOSZ National Association of Hungarian Journalists |
| Nepszabadsag |
| OLAF European Anti-Fraud Office |
| Open Society European Policy Institute |
| Political Capital Institute |

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| Princeton University |
| Reporters without Borders |
| Roma Initiatives Office at the Open Society Institute |
| Roma Lightbringers program |
| Roma mediator network |
| Roma Press Centre |
| RTL Group |
| Transparency International |
| Transvanilla Transgender Association |
| UNHCR |
| University of Pecs |
| 444.hu |