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# 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 45 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 the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention on Human Rights and Fundamental Freedoms and the Protocols thereto,
- having regard to the Universal Declaration of Human Rights,
- having regard to the international human rights treaties of the United Nations and the Council of Europe, such as the European Social Charter and the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),
- having regard to its resolution of 17 May 2017 on the situation in Hungary<sup>1</sup>,
- having regard to its resolutions of 16 December 2015<sup>2</sup> and 10 June 2015<sup>3</sup> 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)<sup>4</sup>,
- having regard to its resolutions of 16 February 2012 on the recent political developments in Hungary<sup>5</sup> and of 10 March 2011 on media law in Hungary<sup>6</sup>,

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<sup>1</sup> Texts adopted, P8\_TA(2017)0216.

<sup>2</sup> Texts adopted, P8\_TA(2015)0461.

<sup>3</sup> OJ C 407, 4.11.2016, p. 46.

<sup>4</sup> OJ C 75, 26.2.2016, p. 52.

<sup>5</sup> OJ C 249 E, 30.8.2013, p. 27.

<sup>6</sup> OJ C 199 E, 7.7.2012, p. 154.

- 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<sup>1</sup>,
  - having regard to its legislative 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<sup>2</sup>,
  - 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<sup>3</sup>,
  - having regard to the annual reports of the European Union Agency for Fundamental Rights (FRA) and European Anti-Fraud Office (OLAF),
  - having regard to Rules 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 Education, the Committee on Constitutional Affairs and the Committee on Women’s Rights and Gender Equality (A8-0250/2018),
- 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 of persons belonging to minorities, as set out in Article 2 of the Treaty on European Union (TEU) and as reflected in the Charter of Fundamental Rights of the European Union and embedded in international human rights treaties, and whereas those values, which are common to the Member States and to which all Member States have freely subscribed, 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 other Member States, on mutual trust between them and on the very nature of the Union and its citizens’ fundamental rights under Union law;
- C. whereas, as indicated in the 2003 Commission Communication on Article 7 of the Treaty on European Union, the scope of Article 7 TEU is not confined to the obligations under the Treaties, as in Article 258 TFEU, and whereas 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;

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<sup>1</sup> Texts adopted, P8\_TA(2016)0409.

<sup>2</sup> OJ C 104 E, 30.4.2004, p. 408.

<sup>3</sup> COM(2003)0606.

- D. whereas Article 7(1) TEU constitutes a preventive phase endowing the Union with the capacity to intervene in the event of a clear risk of a serious breach of the common values; whereas such preventive action provides for a dialogue with the Member State concerned and is intended to avoid possible sanctions;
- E. whereas, while the Hungarian authorities have consistently been ready to discuss the legality of any specific measure, the situation has not been addressed and many concerns remain, having a negative impact on the image of the Union, as well as its effectiveness and credibility in the defence of fundamental rights, human rights and democracy globally, and revealing the need to address them by a concerted action of the Union;
1. States that the concerns of Parliament relate to the following issues:
- (1) the functioning of the constitutional and electoral system;
  - (2) the independence of the judiciary and of other institutions and the rights of judges;
  - (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, and protection against hateful statements against such minorities;
  - (11) the fundamental rights of migrants, asylum seekers and refugees;
  - (12) economic and social rights.
2. Believes that the facts and trends mentioned in the Annex to this resolution taken together represent a systemic threat to the values of Article 2 TEU and constitute a clear risk of a serious breach thereof;
3. Notes the outcome of the parliamentary elections in Hungary, which took place on 8 April 2018; highlights the fact that any Hungarian government is responsible for the elimination of the risk of a serious breach of the values of Article 2 TEU, even if this

risk is a lasting consequence of the policy decisions suggested or approved by previous governments;

- 4 Submits, therefore, in accordance with Article 7(1) TEU, this reasoned proposal to the Council, inviting the Council to determine whether 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;
5. 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 EUROPEAN PARLIAMENT 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. In accordance with Article 49 TEU, accession to the Union requires respect for and the promotion of the values referred to in Article 2 TEU.
- (2) The accession of Hungary was a voluntary act based on a sovereign decision, with a broad consensus across the Hungarian political spectrum.
- (3) In its reasoned proposal, the European Parliament presented its concerns related to the situation in Hungary. In particular, the main concerns related to the functioning of the constitutional and electoral system, the independence of the judiciary and of other institutions, the rights of judges, 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, and protection against hateful statements against such minorities, the fundamental rights of migrants, asylum seekers and refugees, and economic and social rights.

- (4) The European Parliament also noted that the Hungarian authorities have consistently been ready to discuss the legality of any specific measure but failed to take all the actions recommended in its previous resolutions.
- (5) 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 and warrants the launch of the Article 7(1) TEU procedure.
- (6) In its 2003 Communication on Article 7 of the Treaty on European Union, the Commission enumerated many sources of information to be considered when monitoring respect for and promotion of common values, such as the reports of international organisations, NGO reports and the decisions of regional and international courts. A wide range of actors at national, European and international level, have expressed their deep concerns about the situation of democracy, the rule of law and fundamental rights in Hungary, including the institutions 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, but these are to be considered legally non-binding opinions, since only the Court of Justice of the European Union may interpret the provisions of the Treaties.

#### ***Functioning of the constitutional and electoral system***

- (7) The Venice Commission expressed its concerns regarding the constitution-making process in Hungary on several occasions, both as regards the Fundamental Law and amendments thereto. It welcomed the fact that the Fundamental Law establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles and acknowledged the efforts to establish a constitutional order in line with common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with binding international instruments. 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.
- (8) The competences of the Hungarian Constitutional Court were limited 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. In its opinions, the Venice Commission also identified a number of positive elements of the reforms, such as the



provisions on budgetary guarantees, ruling out the re-election of judges and the attribution of the right to initiate proceedings for *ex post* review to the Commissioner for Fundamental Rights.

- (9) 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.
- (10) In its preliminary findings and conclusions, adopted on 9 April 2018, the limited election observation mission of the OSCE Office for Democratic Institutions and Human Rights stated that the technical administration of the elections was professional and transparent, fundamental rights and freedoms were respected overall, but exercised in an adverse climate. The election administration fulfilled its mandate in a professional and transparent manner and enjoyed overall confidence among stakeholders. The campaign was animated but hostile and intimidating campaign rhetoric limited space for substantive debate and diminished voters' ability to make an informed choice. Public campaign funding and expenditure ceilings aim at securing equal opportunities for all candidates. However, the ability of contestants to compete on an equal basis was significantly compromised by the government's excessive spending on public information advertisements that amplified the ruling coalition's campaign message. 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, *in which* it was mentioned that the delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering).
- (11) In recent years the Hungarian Government has extensively used national consultations, expanding direct democracy at the national level. 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. The Hungarian Government also conducted consultations entitled 'Migration and Terrorism' in May 2015 and against a so-called 'Soros Plan' in October 2017. Those consultations drew parallels between terrorism and migration, inducing hatred towards migrants, and targeted particularly the person of George Soros and the Union.

***Independence of the judiciary and of other institutions and the rights of judges***

- (12) As a result of the extensive changes to the legal framework enacted in 2011, 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 NJC.
- (13) 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. GRECO also acknowledged the amendments that were made to the rules on judicial recruitment and selection procedures between 2012 and 2014 in Hungary, through which the NJC received a stronger supervisory function in the selection process. On 2 May 2018, the NJC held a session where it unanimously adopted decisions concerning the practice of the president of the NJO with regard to declaring calls for applications to judicial positions and senior positions unsuccessful. The decisions found the president's practice unlawful.
- (14) On 29 May 2018, the Hungarian Government presented a draft Seventh Amendment to the Fundamental Law (T/332), which was adopted on 20 June 2018. It introduced a new system of administrative courts.
- (15) 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*<sup>1</sup>, which held that by adopting a national scheme requiring the compulsory retirement of judges,

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<sup>1</sup> 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. According to the Act, there was a possibility for retired judges to return to their former posts at the same court under the same conditions as prior to the regulations on retirement, or if they were unwilling to return, they received a 12-month lump sum compensation for their lost remuneration and could file for further compensation before the court, but reinstatement to leading administrative positions was not guaranteed. Nevertheless, the Commission acknowledged the measures of Hungary to make its retirement law compatible with Union law. 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, partly because their previous positions had already been occupied. It also mentioned that the independence and impartiality of the Hungarian judiciary cannot be guaranteed and the rule of law remains weakened.

- (16) In its judgment of 16 July 2015, *Gazsó 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. A new Code of Civil Procedure, adopted in 2016, provides for the acceleration of civil proceedings by introducing a double-phase procedure. Hungary has informed the Committee of Ministers of the Council of Europe that the new law creating an effective remedy for prolonged procedures will be adopted by October 2018.
- (17) 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. On 10 March 2017, the Committee of Ministers of the Council of Europe solicited to take measures to prevent further premature removals of judges on similar grounds, safeguarding any abuse in this regard. The Hungarian Government noted that those measures are not related to the implementation of the judgment.
- (18) On 29 September 2008, Mr András Jóri was appointed Data Protection Commissioner 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 Commissioner 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 Council<sup>1</sup>. Hungary amended the rules on the appointment of the Commissioner, presented an apology and paid the agreed sum of compensation.

- (19) 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 decisions to move cases from one prosecutor to another to be guided by strict legal criteria and justifications. According to the Hungarian Government, the 2017 GRECO Compliance Report acknowledged the progress made by Hungary concerning prosecutors (publication is not yet authorised by the Hungarian authorities, despite calls by GRECO Plenary Meetings). The Second Compliance Report is pending.

### *Corruption and conflicts of interest*

- (20) 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 which arise 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. Moreover, asset declarations should be made public online to allow for genuine popular oversight. A standard electronic database should be put in place to allow for all declarations and modifications thereto to be accessible in a transparent manner.
- (21) In its preliminary findings and conclusions 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 until after the elections undercuts campaign finance transparency and the ability of voters to make an informed choice, contrary to OSCE commitments and international standards. The legislation in force opts for an ex-post monitoring and controlling mechanism. The State Audit Office has the competence to monitor and control whether the legal requirements have been met. The

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<sup>1</sup> 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).

preliminary findings and conclusions did not include the official audit report of the State Audit Office concerning the 2018 parliamentary elections, as it had not been completed at the time.

- (22) 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, which voluntarily brings together 75 countries and hundreds of civil society organisations. The Government of Hungary had been under review by OGP since July 2015 for concerns raised by civil society organisations, in particular regarding their space to operate in the country. Not all Member States are members of the OGP.
- (23) Hungary benefits from Union funding amounting to 4,4 % of its GDP or more than half of public investment. The share of contracts awarded after public procurement procedures that received only a single bid remains high at 36 % in 2016. Hungary has the highest percentage in the Union of financial recommendations from OLAF regarding the Structural Funds and Agriculture for the 2013-2017 period. In 2016, OLAF concluded an investigation into a EUR 1,7 billion transport project in Hungary, in which several international specialist construction firms were the main players. The investigation revealed very serious irregularities as well as possible fraud and corruption in the execution of the project. In 2017, OLAF found “serious irregularities” and “conflicts of interest” during its investigation into 35 street-lighting contracts granted to the company at the time controlled by the Hungarian Prime-Minister’s son-in-law. OLAF sent its final report with financial recommendations to the Commission’s Directorate-General for Regional and Urban Policy to recover EUR 43,7 million and judicial recommendations to the General Prosecutor of Hungary. A cross-border investigation, concluded by OLAF in 2017, involved allegations related to the potential misuse of Union funds in 31 Research and Development projects. The investigation, which took place in Hungary, Latvia and Serbia, uncovered a subcontracting scheme used to artificially increase project costs and hide the fact that the final suppliers were linked companies. OLAF therefore concluded the investigation with a financial recommendation to the Commission to recover EUR 28,3 million and a judicial recommendation to the Hungarian judicial authorities. Hungary decided not to participate in the establishment of the European Public Prosecutor’s Office responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union.
- (24) According to the Seventh report on economic, social and territorial cohesion, government effectiveness in Hungary has diminished since 1996 and it is one of the Member States with the least effective governments in the Union. All Hungarian regions are well below the Union average in terms of quality of government. According to the EU Anti-corruption Report published by the Commission in 2014, corruption is perceived as widespread (89 %) in Hungary. According to the Global Competitiveness Report 2017-2018, published by the World Economic Forum, the high level of corruption was one of the most problematic factors for doing business in Hungary.

### ***Privacy and data protection***

- (25) 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 possible unlawful secret surveillance for national security purposes, including related to the use of telecommunications. The applicants did not allege that they had been subjected to any secret surveillance measures, therefore no further individual measure appeared necessary. The amendment of the relevant legislation is necessary as a general measure. Proposals for amendment of the Act on National Security Services are currently being discussed by the experts of the competent ministries of Hungary. The execution of this judgment is, therefore, still pending.
- (26) 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 by 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***

- (27) 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. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated 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.
- (28) In its Opinion of 22 June 2015 on Media Legislation, the Venice Commission acknowledged the efforts of the Hungarian government, over the years, to improve on the original text of the Media Acts, in line with comments from various observers, including

the Council of Europe, and positively noted the willingness of the Hungarian authorities to continue the dialogue. Nevertheless, 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. In his statement of 29 January 2013, the Council of Europe's Secretary General welcomed the fact that discussions in the field of media have led to several important changes. Nevertheless, the remaining concerns were reiterated 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.

- (29) 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. It indicated that the amounts to be charged for direct costs appear to be entirely reasonable, but the charging for the time of public officials to answer requests is unacceptable. As was acknowledged by the Commission's 2018 country report, the Data Protection Commissioner and the courts, including the Constitutional Court, have taken a progressive position in transparency-related cases.
- (30) In its preliminary findings and conclusions, 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 stated 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. The public broadcaster fulfilled its mandate to provide free airtime to contestants, but its newscasts and editorial output clearly favoured the ruling coalition, which is at odds with international standards. Most commercial broadcasters were partisan in their coverage, either for ruling or opposition parties. Online

media provided a platform for pluralistic, issue-oriented political debate. It further noted that politicisation of the ownership, coupled with a restrictive legal framework, had a chilling effect on editorial freedom, hindering voters' access to pluralistic information. It also mentioned that the amendments introduced undue restrictions on access to information by broadening the definition of information not subject to disclosure and by increasing the fee for handling information requests.

- (31) 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.
- (32) On 13 April 2018, the OSCE Representative on Freedom of the Media strongly condemned the publication of a list of more than 200 people by a Hungarian media outlet which claimed that over 2 000 people, including those listed by name, are allegedly working to "topple the government". The list was published by the Hungarian magazine *Figyelő* on 11 April and includes many journalists and other citizens. On 7 May 2018, the OSCE Representative on Freedom of the Media expressed major concern over the denial of accreditation to several independent journalists, which prevented them from reporting from the inaugural meeting of Hungary's new parliament. It was further noted that such an event should not be used as a tool to curb the content of critical reporting and that such a practice sets a bad precedent for the new term of Hungary's parliament.

### *Academic freedom*

- (33) 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.

- (34) 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 at the request of the institutions concerned and following the recommendation of the Presidency of the Hungarian Rectors' Conference. The Venice Commission has welcomed that prolongation. 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, although the Central European University complied with the new requirements in due time.
- (35) 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***

- (36) On 30 December 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, which entered into force on 1 January 2012. The Act reviewed the legal personality of many religious organisations 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. Furthermore, it indicated 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.
- (37) 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”, giving itself a discretionary power to recognise a religious organisation with a two-thirds majority.

- (38) 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 Constitutional Court of Hungary found that certain rules governing the conditions of recognition as a church were unconstitutional and ordered the legislature to bring the relevant rules in line with the requirements of the European Convention on Human Rights. The relevant Act was accordingly submitted to the Hungarian Parliament in December 2015, but it did not obtain the necessary majority. The execution of that judgment is still pending.

### ***Freedom of association***

- (39) 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 operators and beneficiaries of the NGO Fund of the EEA/Norway Grants. The Hungarian Government signed an agreement with the Fund and, as a result, the payments of the grants continue to operate. . 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.
- (40) In April 2017 a draft law on the Transparency of Organisations Receiving Support from Abroad was introduced before the Hungarian Parliament with the stated purpose of introducing requirements related to the prevention of money laundering or terrorism. The Venice Commission acknowledged in 2013 that there may be various reasons for a state to restrict foreign funding, including the prevention of money-laundering and terrorist financing, but those legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. 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; the term “foreign

agents” was, however, absent from the draft. 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.

- (41) 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 the term ‘organisation receiving support from abroad’ is neutral and descriptive, and 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.
- (42) 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 in the view of the Commission, indirectly discriminate and disproportionately restrict donations from abroad to civil society organisations. In addition, the Commission alleged 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, defined in Article 26(2) and Articles 56 and 63 TFEU.
- (43) In February 2018, a legislative package consisting of three draft laws, (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. On 8 March 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance warned that the bill would lead to undue restrictions on the freedom of association and the freedom of expression in Hungary. 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. One of the draft laws aimed to tax any NGO funds received from outside Hungary, including Union funding, at a rate of 25 %; the legislative package would also deprive NGOs of a legal remedy to appeal against arbitrary decisions. On 22 March 2018, the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the draft legislative package.

- (44) On 29 May 2018, the Hungarian Government presented a draft law amending certain laws relating to measures to combat illegal immigration (T/333). The draft is a revised version of the previous legislative package and proposes criminal penalties for ‘facilitating illegal immigration’. The same day, the Office of the UN High Commissioner for Refugees called for the proposal to be withdrawn and expressed concern that those proposals, if passed, would deprive people who are forced to flee their homes of critical aid and services, and further inflame tense public discourse and rising xenophobic attitudes. On 1 June 2018, the the Council of Europe Commissioner for Human Rights expressed similar concerns. On 31 May 2018, the Chair of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe confirmed the request for an opinion of the Venice Commission on the new proposal. The draft was adopted on 20 June 2018 before the delivery of the opinion of the Venice Commission. On 21 June 2018, the UN High Commissioner for Human Rights condemned the decision of the Hungarian Parliament. On 22 June 2018, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights indicated that the provision on criminal liability may chill protected organisational and expressive activity and infringes upon the right to freedom of association and expression and should, therefore, be repealed.

### ***Right to equal treatment***

- (45) 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. New school books still contain gender stereotypes, depicting women as primarily mothers and wives and, in some cases, depicting mothers as less intelligent than fathers. On the other hand, the Working Party acknowledged the efforts of the Hungarian Government to strengthen the reconciliation of work and family life by introducing generous provisions in the family support system and in relation to early childhood

education and care. In its preliminary findings and conclusions 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 stated that women remain underrepresented in political life and there are no legal requirements to promote gender equality in the electoral context. Although one major party placed a woman at the top of the national list and some parties addressed gender-related issues in their programmes, empowerment of women received scant attention as a campaign issue, including in the media.

- (46) In its concluding observations of 5 April 2018, the UN Human Rights Committee welcomed the signature of the Istanbul Convention but 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. It expressed concern that women are underrepresented in decision-making positions in the public sector, particularly in Government ministries and the Hungarian Parliament. The Istanbul Convention has not yet been ratified.
- (47) The Fundamental Law of Hungary sets forth mandatory provisions for the protection of parents' workplaces and for upholding the principle of equal treatment; consequently, there are special labour law rules for women and for mothers and fathers raising children. 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 Council<sup>1</sup>, 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 Council<sup>2</sup> 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. The Hungarian Government has committed itself to amend the necessary provisions of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, as well as Act I of 2012 on the Labour Code. Consequently, on 7 June 2018 the case was closed.
- (48) 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

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<sup>1</sup> 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).

<sup>2</sup> 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).

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.

- (49) In its concluding observations of 5 April 2018, the UN Human Rights Committee 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, and protection against hateful statements against such minorities***

- (50) 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 (ECRI) mentioned similar concerns in its report on Hungary published on 9 June 2015.
- (51) 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. The Hungarian Government has taken several substantial measures to foster the inclusion of Roma. On 4 July 2012, it adopted the Job Protection Action Plan on

4 July 2012 to protect the employment of disadvantaged employees and foster the employment of the long-term unemployed. It also adopted the “Healthy Hungary 2014–2020” Healthcare Sectoral Strategy to reduce health inequalities. In 2014, it adopted a strategy for the period 2014-2020 for the treatment of slum-like housing in segregated settlements. Nevertheless, according to FRA’s Fundamental Rights Report 2018, the percentage of young Roma with current main activity not in employment, education or training, has increased from 38 % in 2011 to 51 % in 2016.

- (52) 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.
- (53) 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, thus hampering social inclusion. The Hungarian Government actively engaged in dialogue with the Commission. The Hungarian Inclusion Strategy focuses on promoting inclusive education, reducing segregation, breaking the intergenerational transmission of disadvantages, and establishing an inclusive school environment. Furthermore, the Act on National Public Education was complemented with additional guarantees as of January 2017, and the Hungarian Government initiated official audits in 2011-2015, followed by actions by government offices.
- (54) 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*, and in its judgment of 17 January 2017, *Király and Dömötör v. Hungary*, the ECtHR held that that there had been a violation of the right to private life on account of inadequate investigations into the allegations of racially motivated abuse. In its judgment of 31 October 2017, *M.F. v. Hungary*, the ECtHR held that there was a violation of the prohibition of discrimination in conjunction with the prohibition of inhuman or degrading treatment as the authorities had failed to investigate possible racist motives behind the incident in question. The execution of those judgments is still pending. Following the *Balázs v. Hungary* and *R.B. v. Hungary* judgments, however, the modification of the fact pattern of the crime of ‘inciting violence or hatred against the community’ in the Penal Code entered into force on 28 October 2016 with the purpose of implementing Council

Framework Decision 2008/913/JHA<sup>1</sup>. In 2011 the Penal Code had been amended in order to prevent campaigns of extreme right paramilitary groups, by introducing the so-called ‘crime in uniform’, punishing any provocative unsocial behaviour inducing fear in a member of a national, ethnic or religious community with three years of imprisonment.

- (55) 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. The local authorities adopted a model of anti-Roma measures, even before the change of the local decree of 2014, and public figures in the city often made anti-Roma statements. It was reported that in February 2013, the Mayor of Miskolc said he wanted to clean the city of “anti-social, perverted Roma” who allegedly illegally benefited from the Nest programme (Fészekrakó programme) for housing benefits and people living in social flats with rent and maintenance fees. His words marked the beginning of a series of evictions and during that month, fifty apartments were removed from 273 apartments in the appropriate category - also to clean up the land for the renovation of a stadium. Based on the appeal of the government office in charge, the Supreme Court annulled the relevant provisions in its decision of 28 April 2015. The Commissioner for Fundamental Rights and the Deputy-Commissioner for the Rights of National Minorities issued a joint opinion on 5 June 2015 about the fundamental rights violations against the Roma in Miskolc, the recommendations of which the local government failed to adopt. The Equal Treatment Authority of Hungary also carried out an investigation and rendered a decision in July 2015, calling on the local government to cease all evictions and to develop an action plan on how to offer housing in accordance with human dignity. On 26 January 2016 the Council of Europe Commissioner for Human Rights sent letters to the governments of Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden concerning forced evictions of Roma. The letter addressed to the Hungarian authorities expressed concerns about the treatment of Roma in Miskolc. The action plan was adopted on 21 April 2016 and in the meantime a social housing agency was also established. In its decision of 14 October 2016, the Equal Treatment Authority found that the municipality fulfilled its obligations. Nevertheless, ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary published on 15 May 2018 that, despite some positive developments to improve the housing conditions of Roma, its recommendation had not been implemented.
- (56) 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,

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<sup>1</sup> Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328, 6.12.2008, p. 55).



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.

- (57) The Hungarian Government ordered that the life annuity of Holocaust survivors was to be raised by 50 % in 2012, established the Hungarian Holocaust – 2014 Memorial Committee in 2013, declared 2014 to be the Holocaust Memorial Year, launched renovation and restoration programmes of several Hungarian synagogues and Jewish cemeteries and is currently preparing for the 2019 European Maccabi Games to be held in Budapest. Hungarian legal provisions identify several offences related to hatred or incitement of hatred, including anti-Semitic or Holocaust-denying or denigrating acts. Hungary was awarded the chairmanship of the International Holocaust Remembrance Alliance (IHRA) in 2015-2016. Nevertheless, in a speech held on 15 March 2018 in Budapest, the Prime Minister of Hungary used polemic attacks including clearly anti-Semitic stereotypes against George Soros that could have been assessed as punishable.
- (58) 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.
- (59) In a case regarding the village of Gyöngyöspata, where the local police was imposing fines solely on Roma for minor traffic offences, the first instance judgment found that the practice constituted harassment and direct discrimination against the Roma even if the individual measures were lawful. The second instance court and the Supreme Court ruled that the Hungarian Civil Liberties Union (HCLU), which had submitted an *actio popularis* claim, could not substantiate discrimination. The case was brought before the ECtHR.
- (60) In accordance with the Fourth Amendment of the Fundamental Law, the ‘freedom of expression may not be exercised with the aim of violating the dignity of the Hungarian nation or of any national, ethnic, racial or religious community’. The Hungarian Penal Code punishes inciting violence or hatred against a member of a community. The

Government has established a Working Group Against Hate Crime providing training for police officers and helping victims to cooperate with the police and report incidents.

***Fundamental rights of migrants, asylum seekers and refugees***

- (61) 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. On 10 April 2017, the Office of the UN High Commissioner for Refugees called for an immediate suspension of Dublin transfers to Hungary. In 2017, out of 3 397 applications for international protection filed in Hungary, 2 880 applications were rejected, which amounted to a rejection rate of 69,1 %. In 2015, out of 480 judicial appeals relating to applications for international protection, there were 40 positive decisions, i.e. 9 %. In 2016, there were 775 appeals, 5 of which resulted in positive decisions, i.e. 1 %, while there were no appeals in 2017.
- (62) The Fundamental Rights Officer of the European Border and Coast Guard Agency visited Hungary in October 2016 and March 2017, owing to the Officer's concern that the Agency might be operating under conditions which do not commit to the respect, protection and fulfilment of the rights of persons crossing the Hungarian-Serbian border, that may put the Agency in situations that *de facto* violate the Charter of Fundamental Rights of the European Union. The Fundamental Rights Officer concluded in March 2017 that the risk of shared responsibility of the Agency in the violation of fundamental rights in accordance with Article 34 of the European Border and Coast Guard Regulation remains very high.
- (63) 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 and explore alternatives.

- (64) In its judgment of 5 July 2016, *O.M. v. Hungary*, the ECtHR held that there had been a violation of the right to liberty and security in the form of detention that verged on arbitrariness. In particular, the authorities failed to exercise care when they ordered the applicant's detention without considering the extent to which vulnerable individuals – for instance, LGBT people like the applicant – were safe or unsafe in custody among other detained persons, many of whom had come from countries with widespread cultural or religious prejudice against such persons. The execution of that judgment is still pending.
- (65) 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 stated that violent pushbacks of migrants and refugees from Hungary to Serbia raise concerns under Articles 2 (the right to life) and 3 (prohibition of torture) of the European Convention on Human Rights (ECHR). The Special Representative also noted that the restrictive practices of admission of asylum seekers into the transit zones of Röszke and Tompa often make asylum-seekers look for illegal ways of crossing the border, having to resort to smugglers and traffickers with all the risks that this entails. He indicated that the asylum procedures, which are conducted in the transit zones, lack adequate safeguards to protect asylum seekers against refoulement to countries where they run the risk of being subjected to treatment contrary to Articles 2 and 3 of the ECHR. The Special Representative concluded that it is necessary that the Hungarian legislation and practices are brought in line with the requirements of the ECHR. 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 2017 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. On 18-20

December 2017, a delegation of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Hungary, including two transit zones, and concluded that a transit zone, which is effectively a place of deprivation of liberty, cannot be considered as appropriate and safe accommodation for victims of trafficking. It called on the Hungarian authorities to adopt a legal framework for the identification of victims of human trafficking among third-country nationals who were not legally resident and to step up its procedures for identifying victims of such trafficking among asylum seekers and irregular migrants. As of 1 January 2018, additional regulations were introduced favouring minors in general and unaccompanied minors in specific; among others a specific curriculum was developed for minor asylum seekers. ECRI mentioned in its conclusions on the implementation of the recommendations in respect of Hungary, published on 15 May 2018, that while acknowledging that Hungary has faced enormous challenges following the massive arrivals of migrants and refugees, it is appalled at the measures taken in response and the serious deterioration in the situation since its fifth report. The authorities should, as a matter of urgency, end detention in transit zones, particularly for families with children and all unaccompanied minors.

- (66) 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 Röszke transit zone. The case is currently pending before the Grand Chamber of the ECtHR.
- (67) On 14 March 2018, Ahmed H., a Syrian resident in Cyprus who had tried to help his family flee Syria and cross the Serbian-Hungarian border in September 2015, was sentenced by a Hungarian court to 7 years' imprisonment and 10 years' expulsion from the country on the basis of charges of 'terrorist acts', raising the issue of proper application of the laws against terrorism in Hungary, as well as the right to a fair trial.
- (68) In its judgment of 6 September 2017 in Case C-643/15 and C-647/15, the Court of Justice of the European Union dismissed in their entirety the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers in accordance with Council Decision (EU) 2015/1601. However, since that judgment, Hungary has not complied with the Decision. On 7 December 2017, the Commission decided to refer the Czech Republic, Hungary and Poland to the Court of Justice of the European Union for non-compliance with their legal obligations on relocation.
- (69) 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/EU<sup>1</sup>, 2008/115/EC<sup>2</sup> and 2013/33/EU<sup>3</sup> of the European Parliament and of the Council and several provisions of the Charter.

(70) 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. 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. According to the new proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU the medical age assessment will be a measure of a last resort.

### ***Economic and social rights***

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

(71) On 15 February 2012 and 11 December 2012, the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing called on Hungary to reconsider legislation allowing local authorities to punish homelessness and to uphold the Constitutional Court's decision decriminalising homelessness. 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. On 20 June 2018, the Hungarian Parliament adopted the Seventh amendment to the Fundamental law which forbids habitual residence in a public space. The same day, the UN Special Rapporteur on the right to adequate housing called Hungary's move to make homelessness a crime cruel and incompatible with international human rights law.

(72) The 2017 Conclusions of the European Committee of Social Rights stated that Hungary is not in compliance with the European Social Charter on the grounds 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 Hungary is not in conformity with the European Social Charter on the grounds that the level of social assistance paid to a single person without resources, including elderly persons, is not adequate, equal access to social services is not guaranteed for lawfully resident nationals of all States Parties and it has not been established that there is an adequate supply of housing for vulnerable families. With regard to trade union rights, the Committee has stated that the right of workers to paid leave is not sufficiently secured, that no promotion measures have been taken to encourage the conclusion of collective agreements, while the protection of workers by such agreements is clearly weak in Hungary and in the civil service the right to call a strike is reserved to those unions which are parties to the agreement concluded with the government; the criteria used to determine public servants who are denied the right to strike go beyond the scope of the Charter; public service unions can only call a strike with the approval of the majority of the staff concerned.

- (73) Since December 2010, strikes in Hungary were made illegal in principle when the government of Victor Orban passed an amendment to the so-called Act on strikes. The changes mean that strikes will, in principle, be allowed in companies associated with governmental administration through public service contracts. The amendment does not apply to professional groups that simply do not have such a right, such as train drivers, police officers, medical personnel and air traffic controllers. The problem lies somewhere else, mainly in the percentage of employees who must take part in the strike referendum, to make it important -up to 70 %. Then the decision on the legality of strikes will be taken by a labour court that is completely subordinate to the state. In 2011, nine applications for strike permits were submitted. In seven cases they were rejected without giving a reason; two of them were processed, but it proved impossible to issue a decision.
- (74) The UN Committee on the Rights of Children's report on 'Concluding observations on the combined third, fourth and fifth periodic reports of Hungary', published in 14 October 2014, voiced concerns over an increasing number of cases where children are being taken away from their family based on poor socio economic condition. Parents may lose their child due to unemployment, lack of social housing and lack of space in temporary housing institutions. Based on a study by the European Roma Right Centre, this practice disproportionately affects Roma families and children.
- (75) In its Recommendation of 23 May 2018 for a Council Recommendation on the 2018 National Reform Programme of Hungary and delivering a Council opinion on the 2018 Convergence Programme of Hungary, the Commission indicated that the proportion of people at risk of poverty and social exclusion has decreased to 26,3 % in 2016 but remains above the Union average; children in general are more exposed to poverty than other age groups. The level of minimum income benefits is below 50 % of the poverty threshold for a single household, making it among the lowest in the Union. The adequacy of unemployment benefits is very low: the maximum duration of 3 months ranks as the shortest in the Union and represents only around a quarter of the average time required by job seekers to find employment. In addition, the levels of payment are among the lowest in the Union. The Commission recommended that the adequacy and coverage of social assistance and unemployment benefits be improved.
- (76) On [...] 2018, the Council heard Hungary in accordance with Article 7(1) TEU.
- (77) 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 take the following actions within three months of the 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.

The European Parliament is taking action to protect the rule of law in Europe. Over the years the European Parliament and the European Commission addressed many of its concerns as set out in this report, in different ways, with different actions and numerous exchanges with the Hungarian authorities. The European Parliament debated on multiple occasions with the Hungarian prime minister, ministers and other governmental officials. However no substantial changes have been made to safeguard the rule of law in Hungary. Therefore the rapporteur sees no other choice then to pursue an article 7(1) TEU procedure and submits a reasoned proposal inviting the Council to find that there is a clear risk of a serious breach of the rule of law and to make recommendations to Hungary to take actions. It is thus to be noted that this procedure addresses the Council as a whole and not as such the Member State under scrutiny, since the means and possibilities in addressing the latter have been tried without success before moving to an article 7(1) procedure.

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 RAPPOREUR 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 report, until the adoption thereof in committee:

| <b>Entity and/or person</b>  |
|--|
| 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 Rösztke 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  |
| Princeton University   |
| Reporters without Borders  |

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|---|
| 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  |

## MINORITY OPINION

pursuant to Rule 52a(4) of the Rules of Procedure  
Marek Jurek, Beata Gosiewska, Mylène Troszczynski, Auke Zijlstra, Barbara Kappel

Wniosek o uruchomienie art. 7 Traktatu przeciw Węgrom to działanie wprost zmierzające do dzielenia Unii Europejskiej i pogłębiania jej kryzysu. Różnice polityczne powinny być przedmiotem dialogu, a nie sankcji. Negowanie tej zasady jest działaniem przeciw współpracy naszych państw.

Przed wszystkim jednak wniosek ten nie ma uzasadnienia faktycznego. W wielu wypadkach atakuje wprost procedury demokratyczne, na przykład zmianę Konstytucji i konsultacje społeczne. Czyni Węgrom zarzut z powodu rozwiązywania problemów społecznych - takich jak integracja mniejszości romskiej - które występują w wielu krajach Europy, i z którymi Węgry radzą sobie lepiej niż inni.

Rezolucja zupełnie abstrahuje od zasadniczej przesłanki polityki władz węgierskich: konieczności przebudowy społecznej, usuwającej skutki prawie półwiekowej dominacji sowieckiej i totalitarnych rządów kolaboracyjnych. Rezolucja nie twierdzi, że zadanie to jest realizowane niewłaściwie lub przesadnie, ale w ogóle ignoruje konieczność jego realizacji. W tym sensie jest aktem lekceważenia wobec społeczeństwa węgierskiego i motywów jego demokratycznych decyzji.

U podstaw raportu jest bowiem założenie, że Węgry nie mają prawa do decyzji podejmowanych przez inne państwa Unii Europejskiej. To założenie wprost sformułowano w trakcie prac nad raportem („nie będziemy porównywać ustaw węgierskich z ustawami w innych krajach europejskich”). Z tych wszystkich względów uważamy projekt Rezolucji, a szczególnie jego główny wniosek, za wybitnie szkodliwy.

26.4.2018

## OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Civil Liberties, Justice and Home Affairs

on the situation in Hungary (pursuant to the European Parliament resolution of 17 May 2017)  
(2017/2131(INL))

Rapporteur: Ingeborg Gräßle

(Initiative – Rule 45 of the Rules of Procedure)

### SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to Article 325(5) of the Treaty on the Functioning of the European Union,
- having regard to the study entitled “Intensity of Competition, Corruption Risks and Price Distortion in the Hungarian Public Procurement – 2009-2016” prepared by the Corruption Research Center Budapest,
- having regard to the Analysis of the Use and Impact of European Union Funds in Hungary in the 2007-2013 programming period, commissioned by the Hungarian Prime Minister’s Office and prepared by KPMG Tanácsadó Ltd. and its subcontractor GKI Gazdaságkutató Corp.,
- having regard to its resolutions of 17 May 2017, of 10 June and of 16 December 2015 on the situation in Hungary<sup>1</sup>, of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary<sup>2</sup>, of 16 February 2012 on the recent political developments in Hungary<sup>3</sup>,
- having regard to the Corruption Perception Index of Transparency International for the

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<sup>1</sup> Texts adopted, P8\_TA(2017)0216, OJ C 407, 4.11.2016, p. 46, and OJ C 399, 24.11.2017, p. 127.

<sup>2</sup> OJ C 75, 26.2.2016, p. 52.

<sup>3</sup> OJ CE 249, 30.8.2013, p. 27.

years 2006-2016,

- having regard to the Global Competitiveness Index 2017-2018 of the World Economic Forum,
- A. whereas Union funds amount to 1,9-4,4 % of Hungarian GDP and account for over half of public investment;
- B. whereas Hungary was allocated EUR 25,3 billion over the 2007-2013 period and EUR 25 billion for the 2014-2020 period under the cohesion and structural funds;
- C. whereas cohesion policy funds (European Regional Development Fund (ERDF), Cohesion Fund (CF) and European Social Fund (ESF)) payments from the Union to Hungary between 2004 and 2017 amounted to EUR 30,15 billion; whereas the amount of financial correction resulting from Union audits amounts, to date, to an approximate amount of EUR 940 million for the ERDF, CF and ESF and is expected to exceed EUR 1 billion;
- D. whereas the Union financial contribution for participants in Hungary is EUR 288,1 million under the Seventh Framework Programme and EUR 174,9 million under Horizon 2020;
- E. whereas Hungary had one of the highest absorption rates of Union funds among the Member States who joined the Union after 2004;
- F. whereas the Hungarian GDP has grown 16,1 % between 2004 and 2016, which is just slightly above the Union average and considerably lower than the growth rates of the other Visegrád countries (Poland, Czech Republic and Slovakia);
- G. whereas, since 2008, Hungary has fallen by 19 points in the Corruption Perception Index, making it one of the worst performing Member States;
- H. whereas the 2016 Worldwide Governance Indicators underline that Hungary has made steps backwards in the field of government effectiveness, the rule of law and control of corruption;
- I. whereas the Council Recommendations of 11 July 2017 on the 2017 National Reform Programme of Hungary and delivering a Council opinion on the 2017 Convergence Programme of Hungary<sup>1</sup> highlighted the need to improve the transparency of public finances, to strengthen transparency and competition in public procurement by implementing a comprehensive and efficient e-procurement system, and to strengthen the anti-corruption framework; whereas, according to the Country Specific Recommendations (the 'CSRs'), limited progress has been made in the transparency of public finances with the adoption of the Public Procurement Act, but important actions were delayed, especially in the field of e-procurement, and the indicators show that competition and transparency are still unsatisfactory in public procurement; whereas, according to the CSRs, no progress has been registered as regards the improvement of the anti-corruption framework and no changes are envisaged in the National Anti-Corruption Programme to make it more effective in preventing corruption and applying dissuasive sanctions;

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<sup>1</sup> OJ C 261 9.8.2017, p. 71



whereas, according to the CSRs, the prosecution of high-level corruption cases remains the exception;

- J. whereas the number of investigations carried out by the European Anti-Fraud Office (OLAF) for 2013-2016 in relation to Hungary, at 57, is the second highest in the Union; whereas 80 % of the investigations were concluded with judicial recommendations, financial recommendations, or both;
  - K. whereas Hungary was the Member State with the highest amount of financial correction applied in 2016, amounting to a total of EUR 211 million;
  - L. whereas the financial impact of OLAF investigations relating to Hungary in the areas of Structural Funds and Agriculture for 2013-2016 reached 4,16 %, which is the highest in the Union;
  - M. whereas less than 10 % of the information coming to OLAF from Hungary in 2016 came from public sources;
  - N. whereas the actions taken by the Hungarian national judicial authorities following OLAF's recommendations for 2009-2016 concerned only 33 % of all of OLAF's recommendations;
  - O. whereas the Transparency Index (TI) of public procurement in Hungary over the 2015–2016 period remained far below the 2009–2010 level; whereas, since 2011, Union-funded tenders were characterised by significantly lower TI values in each year compared to non-Union-funded tenders; whereas the detailed analysis shows that the level of transparency was significantly lower in 2016 than in 2015;
  - P. whereas the European Public Prosecutor's Office (EPPO) was established in the framework of enhanced cooperation between 21 Member States but Hungary decided not to participate in its establishment;
  - Q. whereas estimations show a very high level of direct social loss in Hungary, reaching 15-24 % in total contract value in the 2009-2016 period, which amounts to at least between EUR 6,7 billion and EUR 10,6 billion;
  - R. whereas a vibrant civil society sector should play a vital role in promoting the transparency and accountability of governments with respect to their finances and their fight against corruption;
1. Believes that the current level of corruption, the lack of transparency and accountability of public finances, and the ineligible expenditure or overpricing of the financed projects affects Union funds in Hungary; considers that this might represent a breach of the values referred to in Article 2 of the Treaty on European Union (TEU) and warrants the launch of the procedure under Article 7(1) TEU;
  2. Recalls its recommendation of 13 December 2017 to the Council and to the Commission following the inquiry into money laundering, tax avoidance and tax evasion, in which it noted that the anti-corruption monitoring by the Commission was to be pursued through the European Semester process, took the view that anti-corruption might be overshadowed

by other economic and financial matters in that process, and called on the Commission to lead by example, resuming the publication of the anti-corruption report and committing to a much more credible and comprehensive anti-corruption strategy; points out that the fight against corruption is a matter of police and judicial cooperation, a policy area where Parliament is co-legislator and has full powers of scrutiny;

3. Recalls its resolution of 25 October 2016 with recommendations to the Commission on the establishment of a Union mechanism on democracy, the rule of law and fundamental rights, specifically calling for the establishment of an annual report on democracy, the rule of law and fundamental rights (European DRF Report) with country-specific recommendations, including a specific focus on corruption;
4. Criticises shortcomings in public procurement practices in Hungary; notes with concern that the share of contracts awarded after public procurement procedures that received only a single bid remains very high, at 36 % in 2016, in Hungary, which is the second highest number in the Union after Poland and Croatia (45 %) <sup>1</sup>; believes that this indicates that there are strong risks of corruption in Hungarian public procurement tenders; is of the view that the Commission needs to implement an effective monitoring tool to avoid the perpetration of practices that run counter to the spirit of the Directive 2014/24/EU of the European Parliament and of the Council <sup>2</sup> and to provide for legislative integration in order to remedy the weaknesses hitherto detected; requests information about the companies that act as single bidders in Hungary; demands an investigation into whether the tenders are made with the aim of earmarking contracts to certain companies; calls on the Hungarian government to publish a complete annual list on its website of all contractors who obtained contracts with a value of more than EUR 15 000 and to include on this list the name and address of the contractor, the type and subject of the contract, its duration, its value, the procedure followed and the responsible authority;
5. Regrets that government effectiveness in Hungary has diminished since 1996 <sup>3</sup> and that it is one of the Member States with the least effective governments in the Union; notes with concern that all Hungarian regions are well below the Union average in terms of quality of government; notes that the low quality of government in Hungary <sup>4</sup> hinders economic development and reduces the impact of public investment;
6. Notes that the regional innovation performance <sup>5</sup> in the Hungarian regions is still only moderate; notes that Hungary has not yet reached the Europe 2020 target to invest 3 % of its GDP in research and development <sup>6</sup>; asks Hungary to foster growth and employment and to invest Union funds in innovation;

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<sup>1</sup> Public procurement – a study on administrative capacity in the EU, p. 101 onwards

<sup>2</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>3</sup> See Seventh report on economic, social and territorial cohesion, Quality of governance varies substantially in Europe, p. 137

<sup>4</sup> See Seventh report on economic, social and territorial cohesion, Map 6 European Quality of Government index, 2017

<sup>5</sup> See Seventh report on economic, social and territorial cohesion, Map 5 Regional innovation performance, 2017

<sup>6</sup> See Seventh report on economic, social and territorial cohesion, Map 6 European Quality of Government index, 2017

7. Encourages Hungary to use Union funds to continue modernising its economy and to strengthen its support for SMEs; underlines the fact that in Hungary 30,24 % of the Union financial contribution under Horizon 2020 is for SME participants while the SME applicant success rate stands at 7,26 %, which is lower than the EU-28 SME applicant success rate; notes furthermore that the success rate for all applications dropped from 20,3 % (FP7) to 10,8 % (Horizon 2020), which ranks Hungary 26th for Horizon 2020;
8. Calls on the Commission to incentivise Member States to join the EPPO;
9. Stresses that Hungary has the highest percentage in the Union of financial recommendations from OLAF regarding the Structural Funds and Agriculture for the 2013-2016 period; stresses that the overall financial impact of OLAF cases in Hungary is four times higher than that of national investigations; calls on the Commission and on Hungary to take the necessary efforts to combat fraud with respect to Union funds;
10. Deplores the fact that the Commission suspended the publication of the anti-corruption report; urges the Commission to change its decision and to regularly publish such a report.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

|   |  |
|---|--|
| <b>Date adopted</b>   | 25.4.2018  |
| <b>Result of final vote</b>                                     | +: 12<br>-: 0<br>0: 2  |
| <b>Members present for the final vote</b>                       | Zigmantas Balčytis, Martina Dlabajová, Luke Ming Flanagan, Ingeborg Gräßle, Cătălin Sorin Ivan, Georgi Pirinski, Petri Sarvamaa, Marco Valli, Tomáš Zdechovský |
| <b>Substitutes present for the final vote</b>                   | Richard Ashworth, Péter Niedermüller, Julia Pitera   |
| <b>Substitutes under Rule 200(2) present for the final vote</b> | Andrea Bocskor, Tiemo Wölken   |

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 12      | +   |
|---------|---|
| ALDE    | Martina Dlabajová   |
| GUE/NGL | Luke Ming Flanagan  |
| PPE     | Richard Ashworth, Ingeborg Gräßle, Julia Pitera, Petri Sarvamaa, Tomáš Zdechovský         |
| S&D     | Zigmantas Balčytis, Cătălin Sorin Ivan, Péter Niedermüller, Georgi Pirinski, Tiemo Wölken |

| 0 | - |
|---|---|
|   |   |

| 2    | 0              |
|------|----------------|
| EFDD | Marco Valli    |
| PPE  | Andrea Bocskor |

Key to symbols:

+ : in favour

- : against

0 : abstention

17.5.2018

## **OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION**

for the Committee on Civil Liberties, Justice and Home Affairs

on the situation in Hungary (pursuant to the European Parliament resolution of 17 May 2017)  
(2017/2131(INL))

Rapporteur for the opinion: Petra Kammerevert

(Initiative - Rule 45 of the Rules of Procedure)

### **PROPOSALS**

The Committee on Culture and Education calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

#### **Act amending the National Higher Education Act**

1. Acknowledges that in the absence of unified Union norms or models in the field of education, it is for the Hungarian government to establish, and periodically review, the most appropriate regulatory framework applicable to foreign universities on its territory and to seek to improve this framework, as also stated in the conclusions of the Venice Commission; stresses, however, that according to Article 165 of the Treaty on the Functioning of the European Union (TFEU) the Union is to contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their actions, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems as well as their cultural and linguistic diversity; stresses furthermore that the education laws implemented by the Hungarian government must be fully compatible with the internal market freedoms and fundamental rights;

2. Recalls that, in April 2017, following the adoption of the Act amending the National Higher Education Act in Hungary, the Parliamentary Assembly of the Council of Europe asked the Venice Commission for an opinion and that in its conclusions the Venice Commission stated that the introduction of more stringent rules coupled with strict deadlines and severe legal consequences for foreign universities which were already established in Hungary and had been lawfully operating there for many years appeared highly problematic from the standpoint of rule of law and fundamental rights principles and guarantees.
3. Acknowledges that the Hungarian government has acceded to some of the demands in the resolution of the European Parliament of 17 May 2017 on the situation in Hungary, in particular as regards the suspension of the deadlines established in the Act amending the National Higher Education Act and the launching of a dialogue with the US authorities responsible for the Central European University; regrets, however, that the cooperation agreement between the Hungarian government and the government of the Central European University's country of seat, which has been ready since last year, still has not been signed by the Hungarian Prime Minister; regrets furthermore that the Hungarian Government has not rescinded the Act amending the National Higher Education Act;
4. Notes, further, that suspending deadlines on a long-term basis is not conducive to planning certainty for universities, their teaching staff and students; welcomes, in that connection, the fact that the Hungarian authorities visited the US State of New York on 13 April 2018 with a view to allaying the Hungarian government's remaining reservations about the Central European University; regrets, however, that the cooperation agreement between the Hungarian government and the government of the Central European University's country of seat remains unsigned and unratified although the Hungarian authorities indicated during the visit that the Central European University would now meet the requirements of Lex CEU; calls, therefore, on the Hungarian government to unblock and pursue the conclusion of the cooperation agreement on the Central European University, which has already been negotiated, with the US State of New York, so that the university can carry out its work properly;
5. Regrets that the legal dispute between the Commission and Hungarian government concerning the Act amending the National Higher Education Act has not been settled so far, leading to the initiation by the Commission of proceedings before the Court of Justice of the European Union; stresses that, while Hungary has the right to have its own education laws, those laws must not run counter to the internal market freedoms, in particular the freedom to provide services and the freedom of establishment, and to the right to academic freedom, the right to education and the freedom to conduct business, enshrined in the Charter of Fundamental Rights of the European Union;

### **Segregation of Roma children**

6. Expresses concern over the fact that multiple forms of daily discrimination in general and the segregation of Roma children in education in particular remain a structural and deep-rooted phenomenon in Hungary and in other European countries, contributing to the social exclusion of Roma and reducing their chances of integration in the education system, the labour market and in society as a whole; recalls that the issue of Roma segregation has been subject of a number of recommendations from the Commission and therefore calls on the Hungarian government to follow those recommendations and implement effective measures;

### **Media policy**

7. Is of the opinion that the Commission, when reviewing the media legislation of 2010, was not thorough enough and failed to take into consideration the values set out in Article 2 TFEU; recalls that in June 2015 the Venice Commission published its opinion on media legislation in Hungary, where it stated that several issues require revision as a priority, if the Hungarian authorities wish not only to improve the situation with regard to media freedom in the country, but also to change the public perception of media freedom;
8. Considers that the media law of 2010 with its insufficient cross-ownership rules resulted in a distorted and imbalanced media market; stresses that the Hungarian market has become more concentrated, plenty of independent local stations disappeared and the previously flourishing segment of community radios has also been losing out; believes that it is necessary to strengthen the transparency of media ownership, especially if the media outlet has been receiving public funds;
9. Is of the opinion that media council (into which all the members could be delegated only by the governing party since 2010) actively helped the restructuring of the radio market in order to satisfy the prevailing political needs; is outraged by the fact that the media council has failed to guarantee even the minimum level of balance in the media;
10. Emphasises that state advertising spending disproportionately favours certain media enterprises over others; points out that state spending was higher in 2017 than ever before and state advertisements are typically awarded to media that are loyal to the government, which are predominantly controlled by oligarchs;
11. Recalls that in May 2017, the Parliament of Hungary adopted a law raising the country's advertising tax from 5,3 % to 7,5 %, which raises worries about possible pressure on the remaining independent media in the country; is concerned that political party advertising is only allowed in public and private media if it is free of charge, which has raised concerns in terms of limiting access to information, since private media may not be willing to broadcast free advertising; believes that it is necessary to ensure that public advertising contracts are concluded with all media in a fair and transparent manner;



12. Emphasises that the so-called public media broadcaster (MTVA), which includes all public radio and television stations, uncritically disseminates the government's messages and, in particular, continuously reflects the anti-refugee or Stop-Soros campaigns carried out by the government; stresses that the public television station M1 as a 24-hour news channel offers more possibilities than previously for propaganda and for transmitting the messages of the government;
13. Points out that the public media broadcaster does not comply with transparency requirements, provides no publicly accessible information for tracking the spending of public funds and, unlike many European public broadcasters, has no annual report, and that it is not known how it defines or discharges public service responsibilities;
14. Recalls that media freedom and pluralism are fundamental rights enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and constitute the essential foundations of democratic societies; urges, therefore, the Hungarian government to guarantee media freedom and pluralism as a key value of the Union;
15. Stresses, with reference to the 'Democracy Index 2017', published recently by the Economist Intelligence Unit (EIU), and to the 2018 World Press Freedom Index by Reporters Without Borders that, as a result of State intervention and increased State control, media freedom and pluralism have been a source of major concern in Hungary in the past years; expresses its concerns, in that connection, over the sale and subsequent closure of Népszabadság, one of the oldest and most prestigious newspapers in Hungary;
16. Stresses that journalists of independent media are often seriously hindered while doing their job, media outlets are regularly banned from entering the Parliament building and spaces are restricted in the Parliament for journalist to ask and interview politicians;
17. Is concerned that the Hungarian government, after Hungary's last independent regional newspapers were taken over by oligarchs close to the government, has recently further extended its control over the media, with media concentration in Hungary reaching an unprecedented and grotesque level according to 'Reporters Without Borders'; believes that it is necessary to strengthen the transparency of media ownership, especially if the entrepreneur has been awarded public contracts;
18. Regrets that the pro-government news website 888.hu recently published a black list of journalists working for foreign media, who are described as foreign propagandists for Soros, and that this clearly runs counter to the principle of media freedom;

### **Non-governmental organisations**

19. Is deeply worried by the shrinking space for civil society organisations in Hungary; regrets in this regard the attempts of the Hungarian government to control NGOs and to restrict their ability to carry out their legitimate work, notably through the Lex NGO and the Lex Stop Soros;

20. Points out that the Lex NGO, a law on foreign-funded NGOs, interferes unduly with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, in particular the right to freedom of association, introduces unjustified and disproportionate restrictions on the free movement of capital and raises concerns about the respect for the right to protection of private life and of personal data; emphasises that the Commission was therefore forced to initiate proceedings before the Court of Justice of the European Union regarding the Lex NGO; regrets deeply the fact that, despite the ongoing proceedings before the Court of Justice of the European Union regarding the Lex NGO, the Hungarian government introduced another law in February 2018, the so-called Lex Stop Soros, which intends to further restrict the right of association and the work of NGOs; deplores in this regard the intention of the Hungarian government to force-close all Soros-funded NGOs and to require a state permit for NGOs to work in the field of migration; is deeply concerned that the proposed laws could serve as a model within the Union that will undermine the valuable work of civil society organisations fighting for the respect of human rights, a danger that the EU Fundamental Rights Agency has recently underlined; draws further attention to the fact that the governing party has built a network of government-organised NGOs, supported by public funds, whose main activity is to echo the government's messages and to organise demonstrations on the side of the government;

#### **In general**

21. Believes that the situation in the field of higher education, Roma education, media freedom and pluralism and the situation of NGOs in Hungary represent a clear risk of a serious breach of the values referred to in Article 2 of the Treaty on the European Union (TEU); therefore urges the Commission to continue to deploy all means available under the Treaties; 22. is of the opinion, in this connection, that the launch of the Article 7 TEU procedure is warranted in order to uphold the Union's common values and to guarantee the rule of law;
23. Calls on the Commission to continue to closely monitor the unfolding legislative process and the extent to which the proposals breach Union law, including fundamental rights, and to make any evaluation promptly and publicly available;
24. Calls on the OSCE/ODIHR to engage in a follow up process within the election observation mission activities after the outcome of the Hungary's parliamentary elections and to closely monitor the misuse of the freedom of expression and the abuse of the administrative resources;
25. Calls on the Commission to increase funding for independent projects in the field of media freedom and pluralism such as, among others, the Media Pluralism Monitor, mapping violations to media freedom and supporting journalists under threat.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

|   |  |
|---|--|
| <b>Date adopted</b>   | 16.5.2018  |
| <b>Result of final vote</b>                                     | +: 13<br>-: 4<br>0: 8  |
| <b>Members present for the final vote</b>                       | Isabella Adinolfi, Dominique Bilde, Andrea Bocskor, Nikolaos Chountis, Silvia Costa, Damian Drăghici, Jill Evans, María Teresa Giménez Barbat, Giorgos Grammatikakis, Petra Kammerevert, Svetoslav Hristov Malinov, Curzio Maltese, Luigi Morgano, John Procter, Michaela Šojdrová, Helga Trüpel, Sabine Verheyen, Julie Ward, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski, Milan Zver, Krystyna Łybacka |
| <b>Substitutes present for the final vote</b>                   | Algirdas Saudargas   |
| <b>Substitutes under Rule 200(2) present for the final vote</b> | António Marinho e Pinto  |

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 13        | +  |
|-----------|--|
| ALDE      | María Teresa Giménez Barbat, António Marinho e Pinto   |
| GUE/NGL   | Nikolaos Chountis, Curzio Maltese  |
| S&D       | Silvia Costa, Damian Drăghici, Giorgos Grammatikakis, Petra Kammerevert, Krystyna Łybacka, Luigi Morgano, Julie Ward |
| Verts/ALE | Jill Evans, Helga Trüpel   |

| 4   | -   |
|-----|---|
| ENF | Dominique Bilde                               |
| PPE | Andrea Bocskor, Michaela Šojdrová, Milan Zver |

| 8    | 0   |
|------|---|
| ECR  | John Procter  |
| EFDD | Isabella Adinolfi   |
| PPE  | Svetoslav Hristov Malinov, Algirdas Saudargas, Sabine Verheyen, Bogdan Brunon Wenta, Theodoros Zagorakis, Bogdan Andrzej Zdrojewski |

**Key to symbols:**

+ : in favour

- : against

0 : abstention

26.3.2018

## **OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the situation in Hungary (pursuant to the European Parliament resolution of 17 May 2017)  
(2017/2131(INL))

Rapporteur: Maite Pagazaurtundúa Ruiz

(Initiative – Rule 45 of the Rules of Procedure)

### **SUGGESTIONS**

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the European Union's founding values include the respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of people belonging to minorities (Article 2 TEU) and whereas these values are universal and common to the Member States;
- B. whereas the free participation of a fully developed civil society is a key aspect of any democratic decision-making process;
- C. whereas Union legislation is the product of collective decision-making in which all Member States participate;
- D. whereas, in accordance with Article 9 TEU and Article 20 TFEU, every person holding the nationality of a Member State is a citizen of the Union; whereas the European Citizenship shall be additional to and not replace national citizenship;

- E. Whereas AFCO Committee visited Hungary in November 2016;
1. Strongly emphasises that all Member States share and must uphold the values enshrined in Article 2 TEU, as these values are the core values of the European Union;
  2. Recalls that the content of Article 2 TEU reflects binding and well-established principles of international law endorsed by all the Member States; stresses, therefore, that the full respect, protection and promotion of the rule of law, democracy and human rights represents a common responsibility and an obligation arising from the fact of simply belonging to the international community;
  3. Reminds that, according to Article 49 TEU, candidate countries must demonstrate that they satisfy the Copenhagen criteria in order to become members of the Union and the Commission has a duty to demand full compliance with them; stresses that, once they become members of the Union, Member States are under a corresponding obligation to respect and to ensure the protection of the rule of law and its constitutive elements, and that the principle of mutual trust enshrined in Union law does not exonerate Member States from evaluating the compliance of other Member States with Union law and particularly with the fundamental rights recognised by Union law;
  4. Recalls that the values enshrined in Article 2 TEU are protected by the procedure established in Article 7 is of the opinion, however, that the Union should be equipped with an additional and more-structured framework to monitor and assess the respect and promotion of the principles set out in Article 2 TEU;
  5. Reiterates its call on the Commission to make full use of the expertise of the European Union Agency for Fundamental Rights (FRA) in monitoring the situation of fundamental rights in the Union by proposing a revision of the FRA's founding Regulation in order to grant it wider and more independent powers, as well as greater human and financial resources;
  6. Recalls that the Venice Commission defined the essential characteristics of the rule of law as legality, legal certainty and prohibition of arbitrariness, access to justice, respect for human rights, non-discrimination and equality before the law; shares the concerns expressed by the Venice Commission in its opinions on Hungarian legislation since 2011, including the opinions on the Fundamental Law and the amendment thereto; reiterates that the Venice Commission concluded in its opinion on the fourth and most current amendment to the Fundamental Law of Hungary on 17 June 2013 that the measures taken amount to a threat to constitutional justice and to the supremacy of the basic principles contained in the Fundamental Law of Hungary; recalls that Hungary recognises the Venice Commission since its accession to the Council of Europe in 1990;
  7. Points out that the Venice Commission stated in its opinion on Act XXV of 4 April 2017, concerning the Amendment of Act CCIV of 2011 on National Tertiary Education,

that such act appears to be highly problematic from the standpoint of rule of law and fundamental rights principles and guarantees to foreign universities who are already established in Hungary and have been lawfully operating there for many years; further reminds that the European Commission decided to refer Hungary to the Court of Justice of the European Union on the grounds that its National Tertiary Education Law as amended on 4 April 2017 disproportionately restricts Union and third country universities in their operations and needs to be brought back in line with Union law;

8. Reiterates its deep concern about the recent developments in Hungary which are jeopardising the rule of law and hampering the application of the principles stated in Article 2 TEU, including, inter alia, those concerning the functioning of the constitutional system, the independence of the judiciary and of other institutions and the systematic removal of checks and balances, freedom of expression, freedom of the press, academic freedom, the human rights of migrants, asylum seekers and refugees, freedom of assembly and association, the right to equal treatment, social rights, the defence of civil society organisations, the rights of people belonging to minorities, including Roma, Jews and LGBTI people;
9. Notes that the term citizenship itself entails a clear political will to respect the equality of individuals; underlines that the values and principles on which the Union is based define a sphere with which every European citizen can identify himself or herself, irrespective of political or cultural differences linked to national identity; is concerned about the public use of nationalist ideas based on exclusive identities coming from Hungarian officials;
10. Notes that the Venice Commission stated that the limitation of the role of the Hungarian Constitutional Court leads to a risk that it may negatively affect the separation of powers, the protection of human rights and the rule of law; is particularly concerned about the reintroduction, at the constitutional level, of provisions that should fall within the scope of ordinary law, and which have already been found to be unconstitutional, with the aim to avoid constitutional review; recommends a review of the functioning and powers of the National Judicial Council in order to ensure that it can fulfil its role as Hungary's independent body of judicial self-government, and calls for the jurisdiction of the Constitutional Court to be restored in full;
11. Is worried about the shrinking space for civil society organisations and the attempts to control NGOs and to restrict their ability to carry out their legitimate work, such as the adoption of the so-called "Stop Soros" legislative package; recalls that the Venice Commission stated in its "opinion on the draft law on the transparency of organisations receiving support from abroad" (endorsed on 17 June 2017) that such a law would cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination;

12. Deeply regrets the antagonistic and misleading rhetoric sometimes used by the Hungarian institutions when referring to the European Union; and the deliberate choice of the authorities to adopt legislation directly breaching Union values; recalls the objectives set out in Article 3(1) and (2) TEU that Hungary agreed to attain when joining the Union in 2004; reminds that joining the European Union was a voluntary act based on the national sovereignty, with a broad consensus across the Hungarian political spectrum;
13. Emphasises that the infringement procedure has shown its limits in addressing systematic violations of Union values because of its main focus on technical matters which allow governments to propose formal remedies while keeping the laws breaching Union law in force; believes that in the case of the violation of the principle of sincere cooperation embodied in Article 4 TEU, the Commission has no legal obstacle preventing it from building on infringement cases to identify a pattern amounting to a breach of Article 2 TEU;
14. Believes that, if a serious and persistent breach of the rule of law by a Member State has been established, the Commission should use every tool at its disposal to defend the fundamental values on which the Union is founded, including the activation of Article 7 TEU; recalls that 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<sup>1</sup> asked the Commission to submit by September 2017 a proposal for the conclusion of a Union Pact for democracy, the rule of law and fundamental rights (EU Pact for DRF); regrets that this proposal has not yet come and stresses that there is an urgent need to set-up an efficient mechanism to safeguard Union's fundamental values since there is an inconsistency between the obligations incumbent on candidate countries under the Copenhagen criteria and the application of those criteria by the Member States after joining the Union; highlights that an appropriate response to the violation of Union fundamental values requires a combination of adequate legal instruments and political will;
15. Believes that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 TEU and warrants the launch of the procedure set out in Article 7(1) TEU;

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<sup>1</sup> Texts adopted, P8\_TA(2016)0409.



## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

|   |  |
|---|--|
| <b>Date adopted</b>                           | 21.3.2018  |
| <b>Result of final vote</b>                   | +: 15<br>-: 4<br>0: 5  |
| <b>Members present for the final vote</b>     | Gerolf Annemans, Michał Boni, Mercedes Bresso, Elmar Brok, Fabio Massimo Castaldo, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Alain Lamassoure, Jo Leinen, Morten Messerschmidt, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, Helmut Scholz, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Claudia Țapardel, Kazimierz Michał Ujazdowski |
| <b>Substitutes present for the final vote</b> | Max Andersson, Pervenche Berès, Sylvia-Yvonne Kaufmann, Jérôme Lavrilleux, Cristian Dan Preda, Jasenko Selimovic, Rainer Wieland   |

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| <b>15</b> | <b>+</b>   |
|-----------|--|
| ALDE      | Maite Pagazaurtundúa Ruiz, Jasenko Selimovic   |
| EFDD      | Fabio Massimo Castaldo   |
| GUE/NGL   | Helmut Scholz, Barbara Spinelli  |
| PPE       | Michał Boni, Danuta Maria Hübner   |
| S&D       | Pervenche Berès, Mercedes Bresso, Sylvia-Yvonne Kaufmann, Jo Leinen, Pedro Silva Pereira, Claudia Țapardel |
| VERTS/ALE | Max Andersson, Pascal Durand   |

| <b>4</b> | <b>-</b>  |
|----------|---|
| ECR      | Morten Messerschmidt, Kazimierz Michał Ujazdowski |
| ENF      | Gerolf Annemans                                   |
| PPE      | György Schöpflin                                  |

| <b>5</b> | <b>0</b>   |
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| PPE      | Elmar Brok, Esteban González Pons, Alain Lamassoure, Markus Pieper, Paulo Rangel |

17.5.2018

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY**

for the Committee on Civil Liberties, Justice and Home Affairs

on the situation in Hungary (pursuant to the European Parliament resolution of 17 May 2017)  
(2017/2131(INL))

Rapporteur for opinion: Maria Noichl

(Initiative – Rule 45 of the Rules of Procedure)

### **SUGGESTIONS**

The Committee on Women's Rights and Gender Equality calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to the report of the UN Working Group on the issue of discrimination against women in law and in practice<sup>1</sup>, 27th of May, 2016,
  - having regard to the reasoned opinions by the EU Commission with regards to EU law on equal treatment of men and women in employment and occupation (Equal Treatment Directive, Directive 2006/54/EC) as well as the Maternity Leave Directive (Council Directive 92/85/EEC), 27th of April 2017,
- A. whereas Article 8 of the Treaty on the Functioning of the European Union (TFEU) stipulates that equality between women and men is a fundamental principle of the Union, which must therefore also be a core concern of all Member States;

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<sup>1</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20027&LangID=E>

- B. whereas the European Union is founded on the values of respect for the rule of law and respect for human rights, including gender equality and the rights of people belonging to minorities, and whereas those values are universal and common to the Member States (Article 2 TEU);
- C. whereas Hungary occupies, with 50.8 points, the second to last place in the European comparison of the European Institute for Gender Equality's Gender Equality Index 2017 and has, furthermore, lost 1.6 points since 2010;
- D. whereas it is a legitimate expectation that non-governmental organisations have a transparent financial background;
- E. whereas Hungary has been strongly criticised by various international human rights organisations for its backlash against human rights and the restrictions imposed upon the functioning of its civil society, including women's rights organisations; whereas the restrictive regulations and policies put in place, as described below, have significantly hindered women's rights organisations that provide unique services for victims of gender-based and domestic violence and put them at risk of being excluded from tax and other benefits;
- F. whereas Hungary is one of the top countries of origin of victims of human trafficking within the Union;
- G. whereas, although Hungary has a strong national health system and public health insurance and despite the recommendations of various UN treaty monitoring bodies, the cost of modern contraception is wholly excluded from Hungary's health scheme, which offers no reimbursement for any method of contraception and thus creates an obstacle to modern family planning and Hungary is one of a few Member States that requires a prescription for emergency contraception or the "morning after" pill, which goes against the 2015 recommendation from the Commission that emergency contraceptives be made available over the counter; whereas, with the exception of emergency care, undocumented migrant women are not able to access any health care, which also prevents them from obtaining any prenatal care; whereas, despite the concerns of the United Nation's Committee on the Elimination of Discrimination against Women (CEDAW), which called on the government to ensure access to safe abortion without subjecting women to mandatory counselling and a medically unnecessary waiting period, those requirements are still in practice and medical abortion is still not available, thus complicating and stigmatising women's access to those healthcare services;
- H. whereas the definition of family in the Hungarian constitution as "marriage and partner-child relationships" is outdated and based on conservative beliefs; whereas same-sex marriage is banned; whereas almost 70 % of the respondents in the 2014 Fundamental Rights Agency's LGBT survey reported avoiding certain locations or places in fear of being harassed or assaulted on account of being LGBTI;

- I. whereas out of the 47 members of the Council of Europe, 30 have so far ratified the Istanbul Convention and another 15 members, including Hungary, have signed the Convention but have not yet ratified; whereas progress on the process of ratification in Hungary has stalled since February 2017; whereas, although legislation criminalising domestic violence was introduced in 2013, its implementation is problematic and the definition of domestic violence does not include sexual violence; whereas, furthermore, Hungary does not have a holistic strategy or action plan on preventing and combating violence against women; whereas the latest research carried out by the European Union Agency for Fundamental Rights (FRA) shows that evidence of widespread gender violence is present: according to 2015 data from the European Institute for Gender Equality, 27,7 % of women in Hungary have experienced physical violence, sexual violence, or both, since the age 15 and at least 50 women die every year at the hands of their relatives or partners and hundreds of thousands of women are regularly abused within their families; whereas, according to women's rights organisations, the perpetrator, in 95 % of cases of violence, is a man and the victim is a woman or a girl whereas many women are reluctant to report abuse since they are confronted with a hostile environment in police stations and courts; whereas law enforcement officers and the judiciary are largely ineffective in pursuing and prosecuting abusers, which additionally deters victims of violence from reporting and fosters distrust in authorities; whereas there is a culture of victim-blaming from both authorities and social circles;
- J. whereas CEDAW's Concluding observations in 2013 called on Hungary, amongst other recommendations, to review its family and gender equality policies in order to ensure that the former do not restrict the full enjoyment by women of their right to non-discrimination and equality, to ensure appropriate remedies for victims of discrimination on the grounds of intersecting factors. to systematically carry out gender impact assessments of current and proposed laws and to ensure that the new legislative framework does not bring about a regression with its implementation; whereas those recommendations have not, to date, been duly implemented by any government; whereas no implementation plan has been elaborated for those recommendations;
- K. whereas harmful gender stereotypes and assumptions about women's roles in society are widespread in Hungarian society, including discrimination on grounds of sex; whereas the Hungarian government takes a regressive approach to gender issues, and uses the promotion of 'family mainstreaming' – replacing gender mainstreaming – in the context of a desired demographic increase and misinterprets and misuses the concepts of 'gender' and 'gender equality';
- L. whereas the rate of employment among women in Hungary has seen a significant rise compared to the 2010 level;
1. Notes the efforts taken in recent years to achieve a better reconciliation of work and private life; recalls the Commission's proposal for a directive on work-life balance for

parents and carers<sup>1</sup> presented in April 2017 and encourages the Hungarian government to contribute to its swift adoption;

2. Welcomes the fact that between 2010 and 2016 the available places in nurseries increased by around 23 % and that in 2017 Hungary introduced a new and more flexible nursery system that aligns better with local circumstances and helps women to go back to the labour market;
3. Deplores nevertheless the fact that Hungary has still not met the Union's Barcelona Targets and calls on the Hungarian Government to prioritise those targets and to tailor its family policies to the needs of the most vulnerable members of society;
4. Deplores the reinterpretation and narrowing of gender equality policies towards family policies and recalls the National Strategy for the Promotion of Social Equality of Women and Men – Goals and Objectives 2010–2021, which Hungary has not yet implemented; points out that a misinterpretation of the concept of gender has dominated the public discourse in Hungary and deplores this wilful misinterpretation of the terms 'gender' and 'gender equality'; emphasises that the aim of gender equality policy in all areas of society must be to ensure that no one is discriminated on the grounds of his or her gender, that the rights of every individual are safeguarded and that the involvement of women and men at all levels of social life on an equal basis is guaranteed; calls, therefore, for a return to the idea of gender mainstreaming as an analytical and policy-making tool and for the national strategy to be implemented with those objectives in all areas; calls on the Hungarian government to implement the 2013 recommendations of CEDAW without further delay and to elaborate and update its stalled National Strategy or to replace it with a new gender equality strategy, ensuring concrete deadlines and responsible actors and providing funding and monitoring mechanisms for its effective implementation, while consulting throughout the process with women's rights organisations;
5. Deplores the narrow definition of family which discriminates against cohabitants and same-sex couples; reminds Hungary that discrimination on the grounds of sexual orientation is prohibited;
6. Highlights the importance of the empowerment of women, in particular with regard to their political, economic and social rights, as a precondition for an environment where families can flourish;
7. Deplores the very low number of women in political decision-making positions and, in that connection, the fact that until now only 10 % of the members of the Hungarian Parliament have been women, the lowest proportion in any Member State, and that there

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<sup>1</sup> COM(2017)0253.

is no female minister in the national government; emphasises that the involvement of women in political decision-making on an equal footing with men is fundamental to democracy; recalls the recommendations by CEDAW and the OSCE to implement legislative quotas for national elections; stresses that political parties should lead by example with regard to equal opportunities and gender balance and introduce effective legislative measures to increase women's participation in political life and decision-making; points out that a better balance between work and family life and a shared responsibility between parents are important steps towards higher representation of women in political decision-making on all levels;

8. Notes that the current employment rate of women is 61,2 %, while the greatest improvement in women's employment is to be found in the group of women who raise children under the age of 6, in light of the positive measures taken by the Hungarian Government since 2010 to help families and women with children, which include, *inter alia*, "the child care fee extra" and the new day-care system;
9. Welcomes the fact that since 2010 the Hungarian government has adopted several social, social inclusion, family policy, health policy and educational measures, addressed to, among others, Roma, such as the Roma mother-child health programme, training Roma health guardians, training Roma health representatives as well as early childhood development programs; encourages the Hungarian government to continue to further implement those policies and measures and to provide evidence as soon as possible about their impact on Roma women;
10. Is worried about the shrinking space for civil society organisations and the attempts to control non-governmental organisations by restricting their ability to carry out legitimate work; is concerned about the impact of Hungary's Law on the Transparency of Organisations Receiving Foreign Funds on civil society organisations that receive funds from the Union, the EEA and the third countries as well as the introduction of the so-called 'Stop Soros' legislative package; highlights that those developments negatively impact the functioning of non-governmental organisations, including many organisations which are working for the rights of women, LGBTI people, people with disabilities, ethnic and religious minorities, migrants, refugees, asylum seekers and other groups in a vulnerable situation and which are crucial for the protection of fundamental human rights and the functioning and progress of society since they provide services, raise the awareness of professionals and the public and engage in capacity building, as well as advocate for and contribute to legislative and policy changes to improve equality; notes with concern the atmosphere in society, which has been fuelled by the policies implemented in recent years, and condemns the mistrust and hostility which many women's rights advocates and academics encounter as a result of their commitment; urges the Hungarian government to promote and improve democracy and human rights issues and to repeal the laws that stigmatise those organisations that use foreign funding; encourages the government to utilise instead the

expertise and experiences of women's rights organisations when planning and implementing legislative and policy measures in the field of gender equality and women's rights and to make adequate use of the established consultative forums in that regard;

11. Proposes that a European Democracy Fund be set up for the strengthened support of civil society and NGOs working in the fields of democracy and human rights to be managed by the Commission in order to strengthen civil society actors such as girls and women's rights organisations;
12. Regrets that developments in Hungary have led to a serious deterioration of the rule of law over the past few years, without which no rights can be guaranteed sufficiently in a non-discriminatory fashion regarding women and women of minorities such as Roma, migrants and LBT women;
13. Is concerned about the hostile climate towards migrants and refugees in Hungary; condemns the hate speech coming from state and government officials; calls on the Hungarian government to ensure that the human rights of migrants and refugees are reinforced;
14. Recalls that violence against women in Hungary, as in all other Member States, is a persistent structural violation of human rights; calls on the Hungarian government to ratify the Istanbul Convention without reservations as soon as possible and commit to incorporating its provisions into domestic law, which would constitute an important step in changing the cultural norm of domestic abuse and protecting women and girls victims of violence; condemns the fact that domestic violence must be perpetrated twice before being treated as a criminal offence; calls for bodies which provide information, advice and assistance to continue receiving funding, as a way of offering women effective protection and safety; calls on the Commission to continue its dialogue with the Hungarian government, in cooperation with the Council of Europe, and to address its concerns and, in particular, to clarify misleading interpretations of the Istanbul Convention on the definition of gender-based violence and the definition of gender in Article 3(c) and (d), which are currently preventing a comprehensive approach to the Convention, in accordance with the General Remarks of the Commissioner of Human Rights of the Council of Europe;
15. Calls on the Hungarian government to amend the Criminal Code in order to include in the definition of domestic violence all acts of physical violence, including physical harm, bodily injury or assault, sexual violence, stalking and harassment, the infliction of fear of imminent physical harm, bodily injury, or assault, and coercive control, i.e. psychological and economic violence that forms part of a pattern of domination through intimidation, isolation, degradation, and deprivation, as well as physical assault; calls further on the Hungarian government to amend the Act on Restraining Orders in order to expand the scope of domestic violence victims to include and protect all victims,



including those who do not cohabit or have children with their abuser, or are not considered as relatives (e.g. intimate partners), and in order to expand the period of the ban on contact for as long as needed; calls finally on the Hungarian government to amend procedural legislation to ensure that domestic violence constitutes a crime and is subject to public prosecution with penalties;

16. Strongly recommends that law enforcement officers and the judiciary be trained on best practice standards with regard to responding to domestic violence, in cooperation with victims support organisations and in line with international human rights standards; strongly recommends in addition to provide adequate training, pay due attention to the role of medical staff in the prevention of and response to domestic violence, and increase the capacity of health care personnel for this purpose;
17. Recognises the efforts made in the anti-human trafficking laws and encourages the government to continue to improve its data collection, improve the services for trafficking victims and to tackle the demand by criminalising the purchase of services from victims of trafficking, including sexual services;
18. Stresses the importance of the right of women to self-determination and, in this context, the importance of respecting their sexual and reproductive rights, including access to swift abortion care, by making sure that emergency contraception is easily accessible and patients' rights to a safe, non-violent and women-centred birth are respected; urges the Hungarian government to ensure access to affordable contraceptive methods by fully or partially covering the costs of modern contraceptive methods under its public health insurance and to improve access to emergency contraception by eliminating the prescription requirement; calls on the Hungarian government to remove barriers in the access to safe abortion services such as the unavailability of medical abortion, biased counselling and the mandatory waiting period requirements;
19. Strongly condemns, in this context, the ill-treatment and discrimination of minorities, in particular Roma women, in fields such as access to healthcare; draws attention to the cases of forced sterilisation which have come to light and which constitute an unacceptable violation of the human rights of the women concerned; denounces the particularly harmful restrictions for undocumented migrant women who are excluded from any access to medical care that is not emergency care;
20. Acknowledges that the programmes launched, which aim to foster the education and employment of Roma women, will train social caretakers, nurses and social assistants in social, child welfare, child protection and education institutions and that church organisation and foundations, as well as the state, will receive support for the employment of Roma women; asks the Hungarian government to deliver information and figures about the concrete impact of those programmes;

21. Welcomes the establishment of the Women in Research Careers Presidential Commission within the Hungarian Academy of Sciences which aims to increase the proportion of women among professors and the doctors of the Hungarian Academy of Sciences as well as to raise the interest of girls in education in natural sciences;
22. Condemns the attacks on free teaching and research, in particular on gender studies the aim of which is to analyse power relationships, discrimination and gender relations in society and find solutions to forms of inequality and which have become the target of defamation campaigns; calls for the fundamental democratic principle of educational freedom to be fully restored and safeguarded;
23. Emphasises the importance of prejudice-free and stereotype-free upbringing and education; calls for this to be taken into account when a new national curriculum is drawn up, with a view to guaranteeing in the future the provision of education which does not encourage stereotyping and the denigration of women and girls, and also of men and boys;
24. Expresses concern about the policies implemented in recent years and the use of rhetoric and symbols to create an attitude, widely held in society, which reduces women to the role of mothers and grants them respect only in that role; points out that this restricts the freedom of both women and men to develop and take decisions and deprives women of their rights;
25. Emphasises that women's rights and equal rights are shared, fundamental European values; deplors the fact that Hungary is increasingly turning its back on those values and thus leaving itself isolated;
26. Believes that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 TEU and warrants the launch of the procedure set out in Article 7(1) TEU.

## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

|   |  |
|---|--|
| <b>Date adopted</b>   | 15.5.2018  |
| <b>Result of final vote</b>                                     | +: 18<br>-: 5<br>0: 3  |
| <b>Members present for the final vote</b>                       | Beatriz Becerra Basterrechea, Malin Björk, Vilija Blinkevičiūtė, Anna Maria Corazza Bildt, Iratxe García Pérez, Arne Gericke, Anna Hedh, Teresa Jiménez-Becerril Barrio, Agnieszka Kozłowska-Rajewicz, Florent Marcellesi, Angelika Mlinar, Krisztina Morvai, Maria Noichl, Marijana Petir, Pina Picierno, Elissavet Vozemberg-Vrionidi, Anna Záborská, Maria Gabriela Zoană |
| <b>Substitutes present for the final vote</b>                   | Mylène Troszczynski, Julie Ward  |
| <b>Substitutes under Rule 200(2) present for the final vote</b> | José Blanco López, Benedek Jávor, Merja Kyllönen, Ulrike Müller, Julia Reda, Barbara Spinelli  |

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 18        | +   |
|-----------|---|
| ALDE      | Beatriz Becerra Basterrechea, Angelika Mlinar, Ulrike Müller  |
| GUE/NGL   | Malin Björk, Merja Kyllönen, Barbara Spinelli   |
| PPE       | Anna Maria Corazza Bildt  |
| S&D       | José Blanco López, Viliija Blinkevičiūtė, Iratxe García Pérez, Anna Hedh, Maria Noichl, Pina Picierno, Julie Ward, Maria Gabriela Zoană |
| VERTS/ALE | Benedek Jávor, Florent Marcellesi, Julia Reda   |

| 5   | -                             |
|-----|-------------------------------|
| ECR | Arne Gericke                  |
| ENF | Mylène Troszczynski           |
| NI  | Krisztina Morvai              |
| PPE | Marijana Petir, Anna Záborská |

| 3   | 0  |
|-----|--|
| PPE | Teresa Jiménez-Becerril Barrio, Agnieszka Kozłowska-Rajewicz, Elissavet Vozemberg-Vrionidi |

Key to symbols:

+ : in favour

- : against

0 : abstention

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

|   |  |
|---|--|
| <b>Date adopted</b>   | 25.6.2018  |
| <b>Result of final vote</b>                                     | +: 37<br>-: 19<br>0: 0   |
| <b>Members present for the final vote</b>                       | Asim Ademov, Jan Philipp Albrecht, Gerard Batten, Malin Björk, Michał Boni, Daniel Dalton, Frank Engel, Kinga Gál, Ana Gomes, Brice Hortefeux, Sophia in 't Veld, Dietmar Köster, Cécile Kashetu Kyenge, Roberta Metsola, Claude Moraes, Judith Sargentini, Birgit Sippel, Sergei Stanishev, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský, Auke Zijlstra |
| <b>Substitutes present for the final vote</b>                   | Carlos Coelho, Gérard Deprez, Maria Grapini, Lívia Járóka, Marek Jurek, Sylvia-Yvonne Kaufmann, Jean Lambert, Jeroen Lenaers, Andrejs Mamikins, Angelika Mlinar, Christine Revault d'Allonnes Bonnefoy, Barbara Spinelli, Jaromír Štětina, Axel Voss   |
| <b>Substitutes under Rule 200(2) present for the final vote</b> | John Stuart Agnew, Goffredo Maria Bettini, Andrea Bocskor, Norbert Erdős, Beata Gosiewska, György Hölvényi, Agnes Jongerius, Barbara Kappel, Arndt Kohn, Ádám Kósa, Julia Pitera, Evelyn Regner, Dominique Riquet, Bart Staes, Lola Sánchez Caldentey, Mylène Troszczynski, Lieve Wierinck, Marco Zullo  |

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| <b>37</b> | <b>+</b>   |
|-----------|--|
| ALDE      | Gérard Deprez, Sophia in 't Veld, Angelika Mlinar, Dominique Riquet, Lieve Wierinck  |
| EFDD      | Marco Zullo  |
| GUE/NGL   | Malin Björk, Lola Sánchez Caldentey, Barbara Spinelli, Marie-Christine Vergiat   |
| PPE       | Michał Boni, Carlos Coelho, Frank Engel, Jeroen Lenaers, Roberta Metsola, Julia Pitera, Jaromír Štětina, Axel Voss   |
| S&D       | Goffredo Maria Bettini, Ana Gomes, Maria Grapini, Agnes Jongerius, Sylvia-Yvonne Kaufmann, Arndt Kohn, Dietmar Köster, Cécile Kashetu Kyenge, Andrejs Mamikins, Claude Moraes, Evelyn Regner, Christine Revault d'Allonnes Bonnefoy, Birgit Sippel, Sergei Stanishev, Josef Weidenholzer |
| VERTS/ALE | Jan Philipp Albrecht, Jean Lambert, Judith Sargentini, Bart Staes  |

| <b>19</b> | <b>-</b>   |
|-----------|--|
| ECR       | Daniel Dalton, Beata Gosiewska, Marek Jurek  |
| EFDD      | John Stuart Agnew, Gerard Batten, Kristina Winberg   |
| ENF       | Barbara Kappel, Mylène Troszczynski, Auke Zijlstra   |
| NI        | Udo Voigt  |
| PPE       | Asim Ademov, Andrea Bocskor, Norbert Erdős, Kinga Gál, György Hölvényi, Brice Hortefeux, Lívía Járóka, Ádám Kósa, Tomáš Zdechovský |

| <b>0</b> | <b>0</b> |
|----------|----------|
|          |          |

Key to symbols:

+ : in favour

- : against

0 : abstention