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Revised Hungarian constitution

European Parliament resolution of 5 July 2011 on the Revised Hungarian Constitution

The European Parliament,

- having regard to Articles 2, 3, 4, 6 and 7 of the Treaty on European Union (TEU), Articles 49, 56, 114, 167 and 258 of the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights (ECHR), which deal with respect for and the promotion and protection of fundamental rights,
 - having regard to the Basic Law of Hungary, adopted on 18 April 2011 by the National Assembly of the Hungarian Republic that will enter into force on 1 January 2012 (hereinafter referred to as ‘the new Constitution’),
 - having regard to Opinions Nos CDL(2011)016, CDL(2011)001 of the European Commission for Democracy through Law (Venice Commission) on the new Hungarian constitution and the three legal questions arising out of the process of drafting the new Hungarian constitution,
 - having regard to motion for resolution No 12490 on serious setbacks in the fields of the rule of law and human rights in Hungary tabled on 25 January 2011 in the Parliamentary Assembly of the Council of Europe,
 - having regard to the ruling No 30141/04 of the European Court of Human Rights (Schalk and Kopf vs. Austria), and particularly its *obiter dicta*,
 - having regard to the Oral Questions tabled in the European Parliament on the new Hungarian Constitution and to the Council and Commission statements on the revised Hungarian constitution and following the debate held on 8 June 2011,
 - having regard to Rules 115(5) and 110(4) of its Rules of Procedure,
- A. whereas the European Union is founded on the values of democracy and the rule of law, as stipulated in Article 2 TEU, on unequivocal respect for fundamental rights and freedoms, as enshrined in the Charter of Fundamental Rights of the European Union and in the ECHR, and on the recognition of the legal value of said rights, freedoms and principles, which is further demonstrated by the EU’s forthcoming accession to the ECHR,
- B. whereas Hungary has signed the ECHR, the International Covenant on Civil and Political Rights and other international legal instruments obliging it to respect and implement principles concerning the separation of powers, the implementation of institutional checks and balances and the promotion of democracy and human rights,
- C. whereas, while the drafting and the adoption of a new constitution falls within the remit of Member States’ competences, Member States, current and acceding, and the EU have a duty to ensure that the contents and processes are in conformity with EU values, the Charter of Fundamental Rights and the ECHR, and that the letter and spirit of adopted constitutions do

not contradict these values and instruments; whereas this is clearly demonstrated by the fact that a number of current EU Member States had to review and amend their constitutions to ensure accession to the EU or adapt their constitutions to subsequent EU treaty requirements, notably at the request of the Commission,

- D. whereas the constitution-making process lacked transparency and the drafting and adoption of the new Constitution was conducted in an exceptionally short time frame that did not allow sufficient time for a thorough and substantial public debate on the draft text; and whereas a successful and legitimate constitution should be based on the largest consensus possible,
- E. whereas the Constitution has been widely criticised by national, European and international NGOs and organisations, the Venice Commission and representatives of Member States' governments, and was adopted exclusively with the votes of the MPs from the governing parties, so that no political or social consensus was achieved,
- F. whereas the European Parliament shares the concerns voiced by the Venice Commission, particularly regarding the transparency, openness and inclusiveness of and the time frame for the adoption process, and regarding the weakening of the system of checks and balances, in particular the provisions concerning the Constitutional Court and the courts and judges that may put the independence of the Hungarian judiciary at risk,
- G. whereas the new Constitution fails to explicitly lay down a number of principles which Hungary, stemming from its legally binding international obligations, is obliged to respect and promote, such as the ban on the death penalty and life imprisonment without parole, the prohibition on discrimination on the grounds of sexual orientation and the suspension or restriction of fundamental rights by means of special legal orders,
- H. whereas the new Constitution, through the values it enshrines and its unclear wording when defining basic notions such as 'family' and the right to life from the moment of conception, creates the risk of discrimination against certain groups in society, namely ethnic, religious and sexual minorities, single-parent families, people living in civil partnerships and women,
- I. whereas the unclear wording of the preamble, particularly the parts concerning the Hungarian state's obligations towards ethnic Hungarians living abroad, may create a legal basis for actions that neighbouring countries would consider as interference in their internal affairs, which may lead to tensions in the region,
- J. whereas the new Constitution stipulates that its preamble has legal force, which may have legal and political implications and may lead to legal uncertainty,
- K. whereas the incorporation of the Charter of Fundamental Rights of the European Union into the new Constitution may give rise to overlaps in competences between Hungarian and international courts, as pointed out in the opinion issued by the Venice Commission,
- L. whereas the new Constitution provides for the extensive use of cardinal laws, whose adoption is also subject to a two-thirds majority, which will cover a wide range of issues relating to Hungary's institutional system, the exercise of fundamental rights and important arrangements in society; whereas in practice this makes their adoption part of the new Hungarian constitutional process,

- M. whereas, under the new Constitution, a number of issues, such as specific aspects of family law and the tax and pension systems, which normally fall within the sphere of competence of the government or are covered by the regular decision-making powers of the legislature, will also have to be regulated by cardinal laws, which means that future elections will have less significance and more scope will be created for a government with a two-thirds majority to cement its political preferences; whereas the process of enacting specific and detailed rules by means of cardinal laws can thus put the principle of democracy at risk,
- N. whereas, as underlined by the Venice Commission, cultural, religious, socio-economic and financial policies should not be set in stone by means of cardinal laws,
- O. whereas a non-parliamentary body, the Budget Council, with its limited democratic legitimacy, will have the power to veto the adoption of the general budget, in which case the Head of State can dissolve the National Assembly, severely restricting the scope for action of the democratically elected legislature,
- P. whereas the effective system of four parliamentary commissioners will be downgraded to one consisting of a general ombudsman and two deputies, which may not provide the same level of protection of rights and whose powers will not include those of the former Commissioner for Personal Data and Freedom of Information; whereas the latter's powers will be transferred to an authority whose *modus operandi* is not specified,
- Q. whereas in parallel with the adoption of the new Constitution, the Hungarian Government and the governing parties made many new appointments to key positions, such as Attorney-General, President of the State Audit Office and President of the Budget Council; whereas more recently the Hungarian Parliament elected the judges who will sit on the new Hungarian Constitutional Court, as required by the new Constitution; whereas the nomination procedure and the election were not based on political consensus,
- R. whereas the new Constitution lays down very general rules governing the judicial system, and leaves it unclear as to whether the Supreme Court, under its new name, will continue with its current president,
- S. whereas the Parliamentary Assembly of the Council of Europe has decided to prepare a report on the new Hungarian Constitution, based on the opinion of the Venice Commission,
- T. whereas the drafting and adoption of a new constitution was not mentioned in the electoral manifesto of the governing parties,
- U. whereas the Secretary-General of the United Nations, Ban Ki-moon, has stated that he would 'appreciate it if the Hungarian Government were to seek advice and recommendations from within the country and from the Council of Europe or the United Nations' and takes the view that Hungary, as an EU Member State, should ask the European institutions to give advice and review the new Constitution,
- 1. Calls on the Hungarian authorities to address the issues and concerns raised by the Venice Commission and to implement its recommendations, either by amending the new Constitution or through future cardinal and ordinary laws, notably to:
 - (a) actively seek consensus, to ensure greater transparency and to foster genuine political and social inclusion and a broad public debate in connection with the forthcoming

drafting and adoption of the cardinal laws laid down in the new Constitution;

- (b) adopt only the basic and clearly defined scope of cardinal laws regulating the tax and pension systems, family policies and cultural, religious and socio-economic policies, allowing future governments and democratically elected legislatures to take autonomous decisions on these policies; revise the current mandate of the Budget Council;
 - (c) guarantee equal protection of the rights of every citizen, no matter which religious, sexual, ethnic or other societal group they belong to, in accordance with Article 21 of the Charter of Fundamental Rights, in the Constitution and its preamble;
 - (d) explicitly guarantee in the Constitution, including its preamble, that Hungary will respect the territorial integrity of other countries when seeking the support of ethnic Hungarians living abroad;
 - (e) reaffirm the independence of the judiciary by restoring the right of the Constitutional Court to review budget-related legislation without exception, as required by ECHR-based law, by revising the provision on the lower mandatory retirement age for judges and by guaranteeing explicitly the independent management of the judicial system;
 - (f) explicitly protect in the new Constitution all fundamental civil and social rights in line with Hungary's international obligations, ban the death penalty, life imprisonment without parole and discrimination on the basis of sexual orientation, provide sufficient guarantees concerning the protection of fundamental rights, and make it clear that fundamental rights are acquired at birth and are unconditional;
 - (g) ensure that the reorganisation of the system of parliamentary commissioners will not serve to water down the existing guarantees concerning the protection and promotion of rights in the areas of the protection of national minorities, the protection of personal data and the transparency of publicly relevant information, as well as the independence of the respective bodies responsible for these areas;
 - (h) make sure that the incorporation of the Charter of Fundamental Rights into the new Constitution does not cause problems of interpretation and overlapping competences between domestic courts, the new Hungarian Constitutional Court and the European Court of Justice;
2. Calls on the Commission to conduct a thorough review and analysis of the new Constitution and of the cardinal laws to be adopted in the future in order to check that they are consistent with the *acquis communautaire*, and in particular the Charter of Fundamental Rights of the European Union, and with the letter and spirit of the Treaties;
 3. Instructs its relevant committees to follow up the matter, in cooperation with the Venice Commission and the Council of Europe, and to assess whether and how the recommendations have been implemented;
 4. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe, the governments and parliaments of the Member States, the Fundamental Rights Agency, the OSCE and the UN Secretary General.