Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 13806
08 June 2015

Situation in Hungary following the adoption of Assembly Resolution 1941 (2013)

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Robert WALTER, United Kingdom, European Conservatives Group

Summary

Two years after the adoption of its Resolution 1941 (2013) on a request for the opening of a monitoring procedure in respect of Hungary, the Committee on Political Affairs and Democracy takes stock of the evolution of the political situation in Hungary and in particular of the measures taken by the Hungarian authorities in the implementation of that resolution.

Regarding the Act on Freedom of Religion and the Status of Churches, the Act on Elections of Members of the Parliament, the Act on the Constitutional Court, the Acts on the Judiciary and media legislation, the committee welcomes the measures taken by the Hungarian authorities and, noting that not all the Assembly recommendations have been met, encourages them to continue their dialogue with the Council of Europe.

The Parliamentary Assembly should therefore ask the Hungarian authorities to endeavour to solve the outstanding issues and decide that the special examination of these matters by the Assembly should now be concluded.

1. Reference to committee: Bureau decision, Reference 3989 of 30 September 2013.

Contents **Page**

A. Draft resolution 3
B. Explanatory memorandum by Mr Walter, rapporteur 5
1. Background 5
2. Specific measures asked for by the Assembly 6
3. Act on Freedom of Religion and the Status of Churches 7
4. Act on Elections of Members of the Parliament 7
5. Act on the Constitutional Court 8
6. Acts on the Judiciary 9
7. Media legislation 9
8. Other comments 10
9. Conclusions 11

A. Draft resolution[2]

1. In June 2013, the Parliamentary Assembly adopted Resolution 1941 (2013) on a request for the opening of a monitoring procedure in respect of Hungary. Expressing its concern "about the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary", the Assembly pointed out that "[t]he assessments of the constitution and several cardinal laws by the Venice Commission and Council of Europe experts raise a number of questions with regard to the compatibility of certain provisions with European norms and standards, including with the case law of the European Court of Human Rights". More specifically, the Assembly:

1.1. called on the Hungarian authorities to continue the open and constructive dialogue with the Venice Commission and all other European institutions and to take a specific set of measures with regard to the Act on Freedom of Religion and the Status of Churches, the Act on Elections of Members of the Parliament, the Act on the Constitutional Court, the Acts on the Judiciary and media legislation;

1.2. noted that the new Hungarian Parliament, for the first time in the history of free and democratic Hungary, had amended the former constitution – inherited from the one-party system – into a new and modern Fundamental Law through a democratic procedure, after intensive debates in the parliament and with contributions from Hungarian civil society;

1.3. while pointing out that, taken separately, each of the concerns outlined was inherently serious, warned against "the sheer accumulation of reforms that aim to establish political control of most key institutions while in parallel weakening the system of checks and balances";

1.4. decided, in conclusion, not to open a monitoring procedure in respect of Hungary but resolved "to closely follow the situation in Hungary and to take stock of the progress achieved in the implementation of this resolution".

2. Two years later, the Assembly takes stock of such progress and notes in particular the following:

2.1. concerning the new Hungarian Church Act, it is clear that the freedom of religion is important in Hungarian society and there are no restrictions on Hungarian citizens following their chosen faith. However, in considering the registration of churches, the European Court of Human Rights found in its judgment of 8 April 2014 a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights (ETS No. 5), read in the light of Article 9 (freedom of thought, conscience and religion), as such act violated the rights of religious communities when it stripped them of their church status. On 15 May 2015, the Hungarian authorities informed the Council of Europe that six churches were about to sign an agreement, while four others were about to sign a partial agreement, but this fact does not ensure compliance with the judgment of the European Court of Human Rights;

2.2. as required by the Constitutional Court, electoral constituencies were redrawn to become more equal, a positive change recognised by the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR). The opposition parties, however, claim that the situation is still not fair. Although the Assembly recommendations, echoed by the Venice Commission and the OSCE/ODIHR, regarding the need for an independent body to deal with the drawing of electoral districts have not been met, the main concern does not seem to be the Act on the Election of Members of Parliament but the Act on Electoral Procedures, which has not so far been examined by the Venice Commission;

2.3. with regard to the Constitutional Court:

2.3.1. no statutory changes were made with respect to the limitation of its jurisdiction on economic matters, which the Venice Commission has clearly criticised;

2.3.2. although no statutory changes were made following the opinion of the Venice Commission on the possibility for the Constitutional Court to refer back to its case law, the Hungarian Constitutional Court, in a decision taken in 2013, stated that it was possible to refer back to the substance of its case law created under the former Communist era constitution and has indeed done so in a number of its recent decisions;

2. Draft resolution adopted by the committee on 4 June 2015.

2.3.3. there is no legal requirement that Constitutional Court judges should have been judges before. A “cooling-down” period in respect of members of parliament between the end of their political mandates and before they could be elected as judge of the Constitutional Court should be introduced;

2.4. with regard to the judiciary, the issue of the transfer of cases between judges was resolved through legislative amendments in the framework of the dialogue with the Secretary General of the Council of Europe. Generally, the position of the Chairperson of the National Judicial Office – a quite unique institution in Europe – has changed and his powers are now limited;

2.5. concerning the issues related to the media, the Commissioner for Human Rights of the Council of Europe, in his report on Hungary published in December 2014, pointed out that media in Hungary still suffered from both an inadequate legal framework and political pressures. For its part, the Assembly, at its January 2015 part-session, invited the Venice Commission to identify the provisions which pose a danger to the right to freedom of expression and information through the media in the Hungarian Act CLXXXV of 2010 on Media Services and Mass Media, in the Hungarian Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content, and in the Hungarian tax laws on progressive tax on advertising revenue for media. The Venice Commission is expected to adopt its opinion on 19 and 20 June 2015;

2.6. as regards the recent debate on the reintroduction of the death penalty in Hungary, the Assembly strongly underlines once again that the prohibition of the death penalty is enshrined in the core values of the Council of Europe and welcomes the withdrawal of any proposal on this matter.

3. In conclusion, the Assembly welcomes the measures taken by the Hungarian authorities and their ongoing co-operation with the Secretary General of the Council of Europe, and encourages them to continue the open and constructive dialogue with the different Council of Europe interlocutors and other international organisations. It therefore resolves to ask the Hungarian authorities to endeavour to solve the outstanding issues, but that special examination of these matters by the Assembly should now be concluded.

B. Explanatory memorandum by Mr Walter, rapporteur

1. Background

1. In June 2013, the Parliamentary Assembly adopted Resolution 1941 (2013) on a request for the opening of a monitoring procedure in respect of Hungary. In this text, the Assembly pointed out that "the new Hungarian Parliament, for the first time in the history of free and democratic Hungary, amended the former constitution – inherited from the one-party system – into a new and modern Fundamental Law through a democratic procedure, after intensive debates in the parliament and with contributions from Hungarian civil society". It also said that "[t]he constitution and related organic laws are the basis for the legal and democratic functioning of a country. They provide the basic democratic rules and the framework for the protection of the human rights of its citizens and the respect for the rule of law". In addition the Assembly expressed its concern about "the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary" and pointed out that "[t]he assessments of the constitution and several cardinal laws by the Venice Commission and Council of Europe experts raise a number of questions with regard to the compatibility of certain provisions with European norms and standards, including with the case law of the European Court of Human Rights".

2. The Assembly called on the Hungarian authorities to continue the open and constructive dialogue with the European Commission for Democracy through Law (Venice Commission) and all other European institutions and to take a specific set of measures with regard to the Act on Freedom of Religion and the Status of Churches, the Act on Elections of Members of the Parliament, the Act on the Constitutional Court, the Acts on the Judiciary and media legislation.

3. While pointing out that, taken separately, each of the concerns outlined was inherently serious, the Assembly warned against "the sheer accumulation of reforms that aim to establish political control of most key institutions while in parallel weakening the system of checks and balances".

4. In conclusion, the Assembly decided not to open a monitoring procedure in respect of Hungary but resolved "to closely follow the situation in Hungary and to take stock of the progress achieved in the implementation of this resolution".

5. On 2 September 2013, the Bureau of the Assembly decided to refer the question of the "Situation in Hungary following the adoption of Assembly Resolution 1941 (2013)" to the Committee on Political Affairs and Democracy for report and to the Committee on Legal Affairs and Human Rights and the Committee on Culture, Science, Education and Media for opinion.

6. On 1 October 2013, the Committee on Political Affairs and Democracy appointed me as rapporteur.

7. During the January 2014 part-session of the Assembly, I held exchanges of views with members of the Hungarian delegation representing the government and the opposition, with the Hungarian Permanent Representative to the Council of Europe and with the secretariat of the Venice Commission.

8. I also wrote to the Hungarian delegation and asked our colleagues to inform us in writing about the follow-up given by the Hungarian authorities to the specific issues referred to in Resolution 1941 (2013). I received a reply from the Hungarian authorities and also the position of the Hungarian Socialist Party. I have also received submissions from non-governmental organisations (NGOs).

9. On Sunday 6 April 2014, parliamentary elections were held in Hungary. The ruling coalition, Fidesz and the Christian Democratic People's Part (KDNP), lost votes but, with 45.04% of the vote, secured a two-thirds majority of the seats (66.83%).[3]

10. At a press conference in Budapest the day after the parliamentary elections, the Organisation for Security and Co-operation in Europe (OSCE) election observation delegation stated that they had identified several positive changes in election legislation, but at the same time some changes had weakened the "checks and balances" system in Hungary and had created an "undue advantage" for Fidesz at the polls.

11. In July, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) issued a report on the elections where it confirmed: "The 6 April parliamentary elections were efficiently administered and offered voters a diverse choice following an inclusive

3. On 22 February 2015, as the result of a by-election, Fidesz lost its two-thirds majority.

candidate registration process. The main governing party enjoyed an undue advantage because of restrictive campaign regulations, biased media coverage and campaign activities that blurred the separation between political party and the State."

12. I considered carefully all the material submitted and, on 17 and 18 June 2014, when the new parliament and the new government were operational, I went to Budapest where I met parliamentarians, the Minister of Justice, the Chairs of the National Election Committee and of the Constitutional Court, government officials, ambassadors of Council of Europe member States and representatives of religious groups, the media and human rights organisations.

13. In this respect, I should like to express my thanks to the Hungarian delegation and to all the officials, ministers and parliamentarians that I met on that occasion. Everybody was very open and wanted to help me in preparing this report to the Parliamentary Assembly.

14. Following an oral statement on my visit during the October 2014 part-session, the committee held, in January 2015, a hearing with the participation of members of the new Hungarian delegation, Mr Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, who had issued a report following his visit to Hungary in July 2014, and Mr Thomas Markert, Secretary of the Venice Commission.

2. Specific measures asked for by the Assembly

15. In paragraph 12 of its Resolution 1941 (2013), the Assembly outlined a number of concerns considered to pose challenges in terms of democracy, the rule of law and respect for human rights. Accordingly, the Assembly called on the Hungarian authorities to take a specific set of measures in different areas.

16. With regard to the Act on Freedom of Religion and the Status of Churches, the Assembly asked:

16.1. that the right to decide to recognise a religious denomination as a church be removed from the competencies of the parliament, and to ensure that such decisions were made by an impartial administrative authority on the basis of clear legal criteria;

16.2. for the establishment of clear legal criteria for the recognition of a church that are fully in line with international norms, including the case law of the European Court of Human Rights;

16.3. for the provision for the possibility to appeal against any decision to grant, or reject, a request to be recognised as a church before a normal court of law, both on substantial as well as on procedural grounds.

17. With regard to the Act on Elections of Members of the Parliament, the Assembly, fully in line with a 2005 decision of the Hungarian Constitutional Court, which had criticised the lack of criteria, asked that:

17.1. the election districts be drawn up by an independent authority on the basis of clear legal criteria;

17.2. the district boundaries themselves not be defined by law, especially not by a cardinal law. In addition, the Assembly recommended that the authorities seek a wide consensus between all political parties on the so-called compensation formula and to allow minority voters up until election day the choice of voting for a regular party or a minority list.

18. With regard to the Act on the Constitutional Court, the Assembly further asked:

18.1. that the limitation of the jurisdiction of the Constitutional Court on economic matters be removed;

18.2. that the prohibition of the Constitutional Court to refer back to its case law from before 1 January 2012 be removed from the Constitution;

18.3. for a mandatory "cooling-down" period in respect of members of parliament, which already existed for members of the government, leading officials of a political party or State leaders, between the end of their political mandates and before they could be elected as judge of the Constitutional Court.

19. With regard to the Acts on the Judiciary, notwithstanding the improvements made to the relevant laws in co-operation with the Secretary General of the Council of Europe, the Assembly asked:

19.1. that the possibility to transfer cases be removed from the powers of the Chairperson of the National Judicial Office;

19.2. for the removal of the possibility in the law for the Chairperson of the National Judicial Office to annul the outcome of a competition for the appointment of a judge;

19.3. that, by law, all decisions of the Chairperson of the National Judicial Office can be appealed before a court of law, both on substantial and on procedural grounds.

20. Finally, with regard to media legislation, the Assembly asked that:

20.1. registration requirements for print and online media be abolished;

20.2. the Media Council be separated, functionally and legally, from the Media Authority;

20.3. by law, all decisions of the Media Council or Media Authority can be appealed before a court of law, both on substantial and on procedural grounds.

3. Act on Freedom of Religion and the Status of Churches

21. Concerning Cardinal Act CCVI on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, the Hungarian authorities explained in their first reply on 28 March 2014 the processes and the criteria of recognition of a religious denomination as a church, and the role of the parliament, and informed me that the legal criteria for the recognition of a church was fully in line with international norms, including the case law of the European Court of Human Rights.

22. They did not refer to a provision for the possibility to appeal against any decision to grant, or reject, a request to be recognised as a church, before a normal court of law, both on substantial as well as on procedural grounds, which had been requested by the Assembly.

23. During my visit to Hungary, I met with a number of religious groups and discussed this matter with a number of other people whilst I was in Hungary. It appears that there is a distinction in Hungary between what are called “traditional” and “non-traditional” Churches; the traditional Churches enjoy certain amounts of State funding, whereas the non-traditional Churches do not. There is some resentment amongst the so-called non-traditional Churches about this. I felt that there was no pressure or restriction on the freedom of religion in Hungary. Anybody can worship the faith of their choice; it is just that the religious groups may not have the same financial resources.

24. The answer in terms of the funding which was made available was that this is for social work of a charitable nature carried out by the Churches, such as helping deprived people and other community projects.

25. According to the Secretary of the Venice Commission, progress could be noted on freedom of religion. The Assembly and the Venice Commission had criticised the fact that religious communities were directly recognised by parliament and that had been changed by the 5th amendment. Now parliament no longer recognised the religious community as such, but it took the decision whether to co-operate with a specific religious community or not. This did not change much in practice.

26. The European Court of Human Rights, in its judgment of 8 April 2014, found a violation of Article 11 (freedom of assembly and association) of the European Convention of Human Rights (ETS No. 5), read in the light of Article 9 (freedom of thought, conscience and religion), as the act in question violated the rights of religious communities when it stripped them of their Church status. The Court found in particular that the Hungarian Government had not shown that there were not any other, less drastic solutions to problems relating to abuse of State subsidies by certain Churches than to de-register the applicant communities. Furthermore, it was inconsistent with the State’s duty of neutrality in religious matters that religious groups had to apply to parliament to obtain reregistration as Churches and that they were treated differently from incorporated Churches with regard to material benefits without any objective grounds. The Hungarian Government’s request for referral to the Grand Chamber was rejected and the judgment became final on 8 September 2014. In its judgment, the Court reserved the main part of the questions of just satisfaction (Article 41) and invited the parties to notify the Court within six months, that is until 8 March 2015, of any agreement that they may reach. The Hungarian Government has informed the Court that negotiations were progressing and asked for a postponement of the deadline to 15 May 2015. On 15 May 2015, the Hungarian authorities informed the Council of Europe that six Churches were about to sign an agreement, while four others were about to sign a partial agreement.

4. Act on Elections of Members of the Parliament

27. With regard to the Cardinal Act CCIII on the Election of Members of the Parliament of Hungary, the Assembly recommendations were fully in line with a 2005 decision of the Hungarian Constitutional Court, which had also criticised the lack of criteria for redrawing constituency boundaries. However, the election districts were not redrawn by an independent authority on the basis of clear legal criteria, as the Assembly had

asked. That said, the Assembly itself acknowledges that "with the adoption of the Act on Elections of Members of the Parliament, the authorities responded to the recommendation of the Venice Commission and the decision of the Constitutional Court regarding the disproportionality of the election districts".

28. To the Assembly request that the district boundaries themselves should not be defined by law, especially not by a cardinal law, the Hungarian authorities replied that, in their view, definition by cardinal law was necessary.

29. To the Assembly recommendation that the authorities should seek a wide consensus between all political parties on the so-called compensation formula and allow minority voters up until election day the choice of voting for a regular party or a minority list, those authorities replied that for practical reasons it was impossible to allow minority voters to choose up to election day. The authorities explained that, according to the Venice Commission, the preliminary registration of minority voters is acceptable if a reasonably short time-frame is available for them to make their choice. In line with the legal provisions in force, a minority voter can register as such until 16 days before election day. In this case, he can vote for the list of his nationality or, in the absence thereof, for a party list. However, the option to annul his registration in the electoral roll is open until two days before election day (in practice, until Friday). By this time, the voter is informed about all the circumstances, such as the parties having a party list, the existence of his minority's list, and also the names that appear on this list.

30. My interlocutors in Hungary explained that the Constitutional Court had invalidated the previous electoral map, which had been established under government decree in the last years of Communist rule; and had required that electoral districts were made more proportional in terms of the number of voters. Therefore, the electoral districts were redrawn by the government. The Chairperson of the National Election Committee denied that there was any political intent in the way in which the districts were redrawn. The Hungarian authorities also pointed out that the starting point of Resolution 1941 (2013) was incorrect in respect of the level of regulation. In 2010, the Constitutional Court decided to annul the government decree which regulated the constituency boundaries. In its ruling, the Court stressed that the definition of constituencies is closely linked to the exercise of the right to vote.

31. According to the Secretary of the Venice Commission, the issue of constituency boundaries raised by the Assembly had not been resolved, but the main concern did not seem to be the Act on the Election of Members of the Parliament, but the Act on Electoral Procedures, which had not been examined by the Venice Commission. There had been a lot of criticism, especially as regards voting abroad. However it is not unusual for Council of Europe member States to grant voting rights to citizens living abroad, and the criticism in respect of other member States is usually of the limitations on those citizens' voting rights. On 15 March, the European Court of Human Rights ruled against the applications of *Vámos and others v. Hungary*, who had complained about discrimination among Hungarian citizens living abroad concerning the exercise of their voting rights.

5. Act on the Constitutional Court

32. With regard to the Cardinal Act CLI on the Constitutional Court, the limitation of the jurisdiction of the Constitutional Court on economic matters, which the Assembly had asked to be removed, remained in force. The Hungarian authorities explained that, according to the Fundamental Law, as long as the State debt exceeds half of the Gross Domestic Product (GDP) the Constitutional Court may review certain acts on economic matters with the Fundamental Law exclusively in connection with the rights to life and human dignity, to the protection of personal data, freedom of thought, conscience and religion, or the rights related to Hungarian citizenship, and it may annul these acts only for the violation of these rights. They underline that the above restriction is temporary in nature and limited in scope. Moreover, the Constitutional Court may continue to review the infringement of the individual fundamental rights defined in the Fundamental Law. Thus, the rule restricting the Constitutional Court does not prevent the body, for instance, from reviewing fiscal laws with reference to the infringement of the right to human dignity.

33. The Hungarian authorities claim that, in connection with the previous rulings of the Constitutional Court, the purpose of the prohibition of the Constitutional Court to refer back to its case law from before 2012 is to ensure that the provisions of the Fundamental Law are constructed in the context of the Fundamental Law independently of the system of the former Constitution. With this, the legislator made it clear that the Constitutional Court is not bound by its decisions adopted on the basis of the former Constitution but the Court is free to refer to its former doctrine.

34. The mandatory “cooling-down” period in respect of members of parliament, which the Assembly had called for and which already existed for members of the government, leading officials of a political party or State leaders, between the end of their political mandates and before they could be elected as judge of the Constitutional Court was not introduced as the authorities felt that the matter needed further examination.

35. The opposition was critical of the power of the majority to appoint former MPs as judges of the Constitutional Court without having been judges and without a cooling-off period between their political activities and their judicial activities.

36. According to Mr Thomas Markert, Secretary of the Venice Commission, in spite of the restrictions criticised in the Assembly resolution, the Constitutional Court had been able to play its role as the main check on the power of those who currently had the majority. However, it would still be desirable to abrogate some of the provisions adopted in the 4th amendment.

6. Acts on the Judiciary

37. With regard to the Cardinal Acts on the Judiciary, there were some concerns about the powers of the Chairperson of the National Judicial Office to transfer cases and the possibility for that person to annul the outcome of the competition for the appointment of a judge.

38. I was informed of the improvements made to the relevant laws, in co-operation with the Secretary General of the Council of Europe, and in particular that the possibility to transfer cases had indeed been removed from the powers of the Chairperson of the National Judicial Office, as the Assembly had asked.

39. As regards the recommendation made by the Assembly regarding the removal of the possibility for the Chairperson of the National Judicial Office to annul the outcome of a competition for the appointment of a judge, I was informed that this possibility had been specified and limited and that the independent National Judicial Council was the authorised body to decide on these proposals.

40. The Hungarian authorities confirmed that, by law, all decisions of the Chairperson of the National Judicial Office could be appealed before a court of law, both on substantial and on procedural grounds, as the Assembly had asked.

41. According to the Secretary of the Venice Commission, the independence of the judiciary was the area where most progress had been made and the system was now more balanced as regards the powers of the Chairperson of the National Judicial Office and the bodies of judicial self-government.

7. Media legislation

42. In May 2012, the Council of Europe Directorate General for Human Rights and the Rule of Law had published an expert assessment of the Hungarian media legislation, which highlighted several areas of concern. Based on this assessment, the Secretary General of the Council of Europe and the Hungarian authorities entered into a series of talks further to which some changes were introduced into the legislation.

43. In its resolution of 2013, the Assembly asked that registration requirements for print and online media be abolished. However, the Hungarian authorities informed me that such requirements had always existed. Moreover, they underlined that registration is merely a formality, an administrative type procedure, which does not entail any substantive review of the content of the service. The legislation clearly stipulates that registration is not a condition for starting an activity, since it is sufficient that registration of the media outlet take place within 60 days from commencement. Hence, registration is not a constitutive act, but a declarative one. The authority has no discretionary powers during registration concerning the evaluation of the registration. The authority is obliged to enter a media outlet on the register, provided that the statutory requirements are met.

44. The Assembly resolution also asked that the Media Council be separated, functionally and legally, from the Media Authority; and that it be ensured by law that all decisions by the Media Council or Media Authority could be appealed before a court of law.

45. The Media Council was not separated, functionally and legally, from the Media Authority as the Assembly had asked. In their reply, the authorities state that there is no other “Media Authority” besides the Media Council, but only a single, convergent authority administering media and information and

communications technology matters, and one of the separate and independent bodies of this authority is the Media Council, equipped with the powers precisely defined under the law, whereas the President of the "Media Authority" does not exercise any powers regarding the media.

46. As far as the Media Council and the Media Authority are concerned, it does appear that these two bodies have separate functions. The Media Council deals mainly with the broadcast and print media; the Media Authority deals with the Internet and other forms of electronic media. They operate from the same building, but, in my view, there seems to be no essential conflict of interest between the activities of those two bodies.

47. Finally, the Hungarian authorities informed me that, by law, all decisions of the Media Council or Media Authority could be appealed before a court of law, both on substantial and on procedural grounds, as the Assembly had asked.

48. There were a couple of extra issues which were raised at the time of my visit and one of them concerned some new taxation on the media and taxation on the revenues of private television channels. One issue which did give rise to concern was that only one private television channel was going to be affected by this, namely the channel RTL Klub, which is partly owned by the Bertelsmann company; there was a feeling that this was discriminatory. The Hungarian authorities explained that the underlying principle of the new regulation is that everyone should pay taxes according to their capacity and financial performance. On the basis of the same principle, increased taxation has been levied on the banking, energy, retail and telecommunication sectors as well. Companies operating in these sectors receive high advertising revenues which are not subject to value-added or corporation tax, thus constituting a loss to the Hungarian State budget and at the same time a violation of the principle of equitable distribution of taxation burdens. The advertising tax is not intruding into the internal operations of a single newspaper, television channel or other media platforms; therefore it will have no effect on media freedom. The authorities informed me that a broad amendment of this law is under preparation but has not yet been submitted to the parliament.

49. Mr Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, who visited Hungary in July 2014 (CommDH(2014)21), pointed out that media still suffered from both an inadequate legal framework and political pressures.

50. The Venice Commission has not looked into media legislation. It has, however, expressed criticism at the prohibition of paid advertising in the media during election campaigns as it was afraid that this could be a barrier for access to the media, especially for small and opposition parties, and it also thought that the constitutional restriction on the freedom of speech to protect the dignity of the Hungarian nation or of communities was too broad.

51. At its January 2015 part-session, the Assembly invited the Venice Commission to identify the provisions which pose a danger to the right to freedom of expression and information through the media in the Hungarian Act CLXXXV of 2010 on Media Services and the Mass Media, in the Hungarian Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content, and in the Hungarian tax laws on progressive tax on advertising revenue for media. The Venice Commission expects to adopt its opinion in June 2015.

8. Other comments

52. The Hungarian Socialist Party (opposition) sent me their views on the matters under scrutiny on 11 January 2015. Its conclusion was that "the Hungarian government respected very few of the recommendations of the Parliamentary Assembly of the Council of Europe made in June 2013. The greatest development of the most recent period is that these days Prime Minister Viktor Orbán openly expresses his views rejecting liberal democracy. … Consequently, according to the Socialist Party, the government led by Viktor Orbán no longer makes even the slightest official attempt to comply with the basic principles of liberal democracy concerning State organisation and protection of the law, the promotion of which is the most important mission of the Council of Europe".

53. During the committee hearing that took place during the January 2015 part-session, Mr Gábor Harangozó, member of the Hungarian delegation to the Assembly representing the opposition, recalled that the vote against the opening of a monitoring procedure in respect of Hungary had been won in the Monitoring Committee by one vote only. Very few of the Assembly's concerns expressed in the Resolution 1941 (2013) had found remedies. The law on Churches should be revised in the light of the ruling of the European Court of Human Rights. The Act on the Constitutional Court had not been amended in accordance with the recommendations. In the field of the media, the separation of the Media Council from the Media Authority had

not taken place and a number of new restrictive measures had been introduced. The electoral system still provided the ruling party with an unfair advantage, as it secured a two-thirds majority with only 44% of the votes. In addition, since 2013, there had been developments in Hungary which had a negative influence on the functioning of democracy. Therefore the Socialist Party did not think that the time had come to put an end to the thorough scrutiny of what was going on in Hungary.

54. In the view the Secretary of the Venice Commission, the Constitution remained the document of one political party, not a document uniting the whole nation. Too many issues were regulated by cardinal laws which were difficult to change as a two-thirds majority was required.

55. Mr Zsolt Németh, Chairperson of the Hungarian delegation to the Assembly, pointed out that the government and the parliamentarian majority had managed to approve a new fundamental law and several cardinal laws to replace old legislation. He was grateful for the support of the Venice Commission and of the Commissioner for Human Rights: all remarks by the Council of Europe were useful for "fine-tuning". The media was not interfered with and the government had been outspoken on zero tolerance for anti-Roma racism and for anti-Semitism.

56. One of our committee members hoped that comments made by the Parliamentary Assembly would be useful for Hungary. Other central European countries should follow carefully what was happening there. Another member felt that there was a clear upsurge of authoritarianism in Hungary and that the Assembly should ask the Hungarians to listen to the concerns of their friends, including the Venice Commission and the Commissioner for Human Rights. Some of the checks and balances, which were essential, had been supressed.

9. Conclusions

57. Two years since the adoption of Assembly Resolution 1941 (2013), it is time to take stock of the progress achieved in the implementation of that resolution.

58. Concerning the new Hungarian Church Act, the European Court of Human Rights, in its judgment of 8 April 2014, found a violation of Article 11 (freedom of assembly and association) of the European Convention of Human Rights, read in the light of Article 9 (freedom of thought, conscience and religion), as the act in question violated the rights of religious communities when it stripped them of their Church status.

59. With regard to the redrawing of electoral districts in Hungary, in response to a decision by the Constitutional Court, I have to say that I have reflected on the fact that in my own country, we went through exactly the same discussion. If it were not for disagreements within the governing coalition partners the changes would have been passed. They would have been to the advantage of the Conservative party and to the disadvantage of the Labour party, but as my electors object to the fact that there are 75 000 of them and in some other parts of the country there are only 45 000 electors, we thought that was reasonable and fair. So the Constitutional Court in Hungary probably thought it was reasonable to redraw the boundaries.

60. Opposition parties claim that it is not fair, but it is significant that the Venice Commission did not find evidence of unfair re-districting. The Assembly recommendation on this issue, which has not been met, is that this process should be carried out by an independent body. This view is supported by the OSCE/ODIHR.

61. The Venice Commission clearly criticised the restriction of the Constitutional Court on economic matters.

62. As mentioned before, no statutory changes were made following the opinion of the Venice Commission on the possibility for the Court to refer back to its case law. However, the Constitutional Court, in its decision 13/2013, stated that it is possible to refer back to the substance of its case-law created under the former Constitution and has done so in a number of its recent decisions (that is to say those adopted after the entry into force of the Fourth Amendment). The Constitutional Court indeed refers to its previous case law extensively (for example decisions 12/2013, 3109/2013 and 3104/2013).

63. There is no requirement that Constitutional Court judges should have been judges before. Although a "cooling-down" period would make sense under current circumstances in Hungary, it is not usual in other countries.

64. On the subject of the judiciary, the issue of the transfer of cases between judges was resolved through legislative amendments in the framework of the dialogue with the Secretary General. Generally, the position of the Chairperson of the National Judicial Office is not as strong as it used to be.

65. Concerning the issues related to the Media, the Venice Commission was not involved in media regulation issues. However, at its January 2015 part-session, the Assembly invited the Venice Commission to identify the provisions which pose a danger to the right to freedom of expression and information through the media, in the Acts on Media Services and Mass Media, on the Freedom of the Press and the Fundamental Rules of Media Content, and in the Hungarian tax laws on progressive tax on advertising revenue for media. The Venice Commission expects to adopt its opinion in June 2015.

66. In conclusion, while we must welcome the measures taken by the Hungarian authorities and the ongoing co-operation with the Secretary General of the Council of Europe, we encourage the Hungarian authorities to continue the open and constructive dialogue with the different Council of Europe interlocutors and other international organisations.

67. As was the case two years ago, I still stand by my opinion and I am still confident that the Parliamentary Assembly made the right decision not to open a monitoring procedure in respect of Hungary. Based on the above, I think that there is no need for any further special examination in respect of Hungary.