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

### Committee Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Arcadio DÍAZ TEJERA, Spain, Socialist Group

### A. Conclusions of the committee

1. The committee welcomes the report by the Committee on Political Affairs and Democracy and congratulates its rapporteur on the thorough assessment of a number of specific issues raised in [Resolution 1941 \(2013\)](#) and on reasserting the Parliamentary Assembly's position on the abolition of the death penalty. In order to further strengthen the draft resolution, it is proposing a number of amendments to state more clearly the extent to which the Assembly's recommendations have been implemented. In line with its mandate, the committee also proposes to take into account some additional legal and human rights issues placing the specific issues in their wider context.

### B. Proposed amendments

#### *Amendment A (to the draft resolution)*

In paragraph 2.1, delete the words "and there are no restrictions on Hungarian citizens following their chosen faith" from the first sentence.

#### *Amendment B (to the draft resolution)*

After paragraph 2.1, insert the following paragraph:

*"the right to decide to recognise a religious denomination as a church remains within the competencies of the parliament, rather than an independent authority as requested by the Assembly. There is still no provision for the possibility to appeal against any decision to grant, or reject, a request to be recognised as a church;"*

#### *Amendment C (to the draft resolution)*

At the end of paragraph 2.3.3, add the words ", as recommended by the Assembly in its [Resolution 1941 \(2013\)](#)".

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1. Reference to committee: Bureau Decision, Reference 3989 of 30 September 2013. Reporting committee: Committee on Political Affairs and Democracy. See [Doc. 13806](#). Opinion approved by the committee on 22 June 2015.



*Amendment D (to the draft resolution)*

In paragraph 2.4, replace the words “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;” with the following text:

*“The chairperson of the National Judicial Office still has the power to annul the outcome of a competition for the appointment of a judge, but this power has been somewhat limited by the statutory imposition of certain conditions that must be met for the chairperson to exercise this power. There is still no guaranteed appeals process relating to the decisions of the chairperson;”*

*Amendment E (to the draft resolution)*

After paragraph 2.6, add the following paragraph:

*“2.7. the Assembly recalls that certain constitutional and democracy issues, such as the wide scope of the ‘cardinal laws’ and the requirement of qualified majorities for future changes pointed out by the Venice Commission, still need to be addressed.”*

### **C. Explanatory memorandum by Mr Díaz Tejera, rapporteur for opinion**

1. The Committee on Political Affairs and Democracy has submitted a report on the “Situation in Hungary following the adoption of Assembly [Resolution 1941 \(2013\)](#)”. The Parliamentary Assembly decided in 2013 not to open a monitoring procedure. Instead, it resolved to closely follow the situation in Hungary in light of the amendment of the former constitution into a new Fundamental Law and the adoption of various cardinal laws. The Assembly identified five specific areas of concern, but also referred to general concerns regarding the “erosion of the system of checks and balances in Hungary”. The lead committee chose to focus its report almost entirely on the five specific issues identified in [Resolution 1941 \(2013\)](#), thus foregoing the discussion regarding broader issues of the new constitutional framework in Hungary. It is therefore up to the Committee on Legal Affairs and Human Rights, in the present opinion, to complement the discussion of the procedural and substantive issues regarding the new Fundamental Law, its amendments, and the various cardinal laws enacted in conjunction with the new Constitution.

2. I welcome the fact that the Committee on Political Affairs and Democracy has reasserted the Assembly’s strong commitment to the abolition of the death penalty, which has recently been put into question by Prime Minister Orbán. The Committee on Political Affairs duly notes that “the prohibition of the death penalty is enshrined in the core values of the Council of Europe” and its reintroduction would violate Hungary’s commitments vis-à-vis both the Council of Europe and the European Union.<sup>2</sup> It would appear that Hungary is now reconsidering its stance on the death penalty issue,<sup>3</sup> but the Parliamentary Assembly remains duty-bound to make its position perfectly clear.

3. Nevertheless, various issues that are flagged in Assembly [Resolution 1941 \(2013\)](#) and the accompanying memorandum are not addressed in the report. Crucially, the resolution identifies the concern that a number of constitutional provisions and cardinal laws, several of which speak to divisive and contentious norms and values, were adopted with a two-thirds majority and will require a two-thirds majority to change. The Assembly expressed a fear that such overuse of a two-thirds majority could undermine the democratic legitimacy of the legislative process. Some may interpret the use of a two-thirds majority as a method to set in concrete the views of the current ruling party, whereas the Assembly notes that a constitutional framework should be based on wide social acceptance and large political consensus. Substantively, the Assembly fears that the new constitutional framework excessively concentrates powers, increases discretionary powers granted to a wide range of government institutions, and thereby reduces accountability and legal oversight of the same.

4. As the Assembly has stated, the specific topics identified each have serious implications for democracy and rule of law and would warrant scrutiny even taken separately, yet the more striking concern is the accumulation of reforms that threaten to weaken the system of checks and balances in Hungary. I feel that the report submitted by the Committee on Political Affairs and Democracy, while thoroughly addressing the

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2. Euractive, “Hungary’s Orbán angers EU over death penalty, migrants”, 20 May 2015; and *The Telegraph*, “Hungary could be thrown out of the EU if it brings back death penalty says Jean-Claude Juncker”, 1 June 2015.

3. Reuters, “Hungary’s Orbán climbs down on death penalty amid EU uproar”, 30 April 2015.

specific topics identified by the Assembly and appropriately mentioning the recent death penalty debate, deserves to be further strengthened by also taking account of the broader political and constitutional situation in Hungary.

### **1. Amendment A (to the draft resolution)**

*Explanatory note:*

Although the Fundamental Law of Hungary guarantees the freedom of religion to Hungarian citizens, I believe the original text of paragraph 2.1 misrepresents the practical implications of the registration requirements and arbitrary deregistration of over 400 Churches, addressed in the judgment of the European Court of Human Rights of 8 April 2014.<sup>4</sup> The Court held that the Hungarian Church Act violates Article 11 (freedom of assembly and association) of the European Convention on Human Rights (ETS No. 5), read in light of Article 9 (freedom of thought, conscience, and religion). Whilst in theory a citizen of Hungary might still worship his chosen religion in the absence of a registered Church, I find the text misleading and unnecessary in light of the serious issues identified by the Assembly, the European Commission for Democracy through Law (Venice Commission), and last but not least the European Court of Human Rights with respect to the shortcomings of the Hungarian Act on Churches.

### **2. Amendment B (to the draft resolution)**

*Explanatory note:*

This amendment supplies additional information relating to specific measures requested by the Assembly in [Resolution 1941 \(2013\)](#). The Assembly should indicate clearly whether Hungary fulfilled its specific requests.

The parliamentary power to decide whether to recognise a religious denomination as a Church allows the Hungarian Parliament the discretion to continue utilising criteria that may not be in keeping with international norms or standards. For example, parliament imposes a time restriction that the religious community must have been in existence for 100 years internationally or 20 years in Hungary, which is contrary to guidelines provided by the Venice Commission. Parliament may also deny recognition on the basis of national security, which the Venice Commission has not recognised as a legitimate reason for restrictions of the freedom of religion under the European Convention on Human Rights.

### **3. Amendment C (to the draft resolution)**

*Explanatory note:*

This amendment aims to further clarify paragraph 2.3.3, in order to state more clearly that Hungary did not implement the Assembly's recommendation.

With respect to the judiciary, it should be noted that Hungary has taken other measures to increase the independence of the judiciary, such as increasing the term of a Constitutional Court judge to 12 years and eliminating the possibility for re-election. Nevertheless, since the Assembly made specific requests of Hungary, it is necessary to indicate whether Hungary fulfilled those requests.

### **4. Amendment D (to the draft resolution)**

*Explanatory note:*

This amendment seeks to rectify the vagueness of the original text by indicating specifically how the powers of the chairperson of the National Judicial Office have been limited. Assembly [Resolution 1941 \(2013\)](#) asked Hungary to limit the power of the chairperson by removing his/her ability to annul the outcome of a competition for the appointment of a judge. The original draft does not indicate whether this was done or not; the amendment clarifies that the Chairperson still holds this power, but that it is now subject to limitations.

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4. [Magyar Keresztény Mennonita Egyház and Others v. Hungary](#), Applications Nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, judgment of 8 April 2014.

These limitations, as well as the circumstances in which a losing judge may appeal, are addressed in the information submitted to the Assembly by the Hungarian delegation. It would appear from this information that these conditions may be quite easily met, but it remains to be seen in practice how much the new statutory conditions actually limit the power of the chairperson to annul the outcome of a competition for the appointment of a judge.

#### **5. Amendment E (to the draft resolution)**

*Explanatory note:*

This amendment highlights the Assembly's broader concerns regarding the wide scope of cardinal laws and the two-thirds majority required to change them. These are precisely some of the issues that caused the Assembly to fear for the democratic legitimacy of the new government and the new Constitution, and the Assembly should take the opportunity to make it clear that these concerns still exist. Particularly in light of the reports of the Venice Commission concerning democratic shortcomings of the new Fundamental Law and various cardinal laws, the amendment emphasises that the underlying concerns regarding the erosion of checks and balances still, in large part, remain to be addressed.