



**Doc. 13229 – Compendium of written amendments**

**(Final version)**

## **Request for the opening of a monitoring procedure in respect of Hungary**

| <b>Contents</b>           | <b>Page</b> |
|---------------------------|-------------|
| A. Draft Resolution ..... | 2           |

## A. Draft Resolution

1. The Parliamentary Assembly welcomes the report on the request to open a monitoring procedure in respect of Hungary, which was prepared following the motion for a resolution on "Serious setbacks in the fields of the rule of law and human rights in Hungary" (Doc. 12490). It takes note of, and supports the conclusions and recommendations of the European Commission for Democracy through Law (Venice Commission) on the Fundamental Law of Hungary and several Cardinal Acts, which were produced, inter alia, at the request of the Assembly's Monitoring Committee.

### Amendment 3

**Tabled by Mr Pedro AGRAMUNT, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Viorel-Riceard BADEA, Mr David DAVIES, Mr Andrzej HALICKI, Mr Gergely GULYÁS**

*In the draft resolution, paragraph 1, replace the word "welcomes" with the following words: "takes note of".*

### Amendment 4

**Tabled by Mr David DAVIES, Mr Pedro AGRAMUNT, Mr Thierry MARIANI, Mr Luigi VITALI, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Axel FISCHER, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR**

*In the draft resolution, paragraph 1, after the first sentence, insert the following sentence: "The Assembly takes note of the opinion of the Bureau of the Assembly which did not support the opening of the monitoring procedure in respect of Hungary."*

### Amendment 5

**Tabled by Mr Pedro AGRAMUNT, Mr Luigi VITALI, Ms Ismeta DERVOZ, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR, Mr David DAVIES**

*In the draft resolution, paragraph 1, replace the last sentence with the following sentence: "In this regard the Assembly supports the fact that the on-going dialogue continues between the European Commission for Democracy through Law (Venice Commission) and the Hungarian Government."*

2. The 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 the view of the Assembly, a constitutional framework should therefore be stable and based on a wide social acceptance and large political consensus.

### Amendment 6

**Tabled by Mr Márton BRAUN, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Axel FISCHER, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR, Mr David DAVIES**

*In the draft resolution, at the end of paragraph 2, insert the following sentence: "As a result of the 2010 election one party alliance gained a more than two-thirds majority in the Hungarian parliament which represents, according to common European standards, sufficient legitimacy for amending the constitution".*

3. The Assembly regrets that the Hungarian Constitution and related cardinal laws were adopted in a hasty and opaque manner that disrespected proper democratic procedure and which, as a result, are not based on a consensus between the widest possible range of political forces in Hungarian society. This undermines the democratic legitimacy of the new Hungarian constitutional framework.

**Amendment 7**

**Tabled by Mr Kimmo SASI, Mr Giorgi KANDELAKI, Mr Gabino PUCHE, Mr Pedro AGRAMUNT, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR, Mr David DAVIES**

*In the draft resolution, replace paragraph 3 with the following paragraph:*

*"The Assembly notes that the new Hungarian Parliament, for the first time in the history of free and democratic Hungary, amended the former one-party Constitution into a new and modern Fundamental Law through a democratic procedure, after intensive debates in the Parliament and with contributions by Hungarian civil society."*

4. The Assembly considers that the excessive use of, and wide range of subjects regulated by, cardinal laws and provisions – which need a two-thirds majority to be changed – can be harmful to democratic principles. For the Assembly, this might be interpreted as an attempt by the current ruling majority to cement its values and policy preferences into the constitutional framework, with the purpose of controlling the direction of national policy far beyond the mandate that it has received from the Hungarian voters. The sheer number of institutions and regulatory bodies that have been set up or changed by the authorities underscores this intention. The control of the national policy and regulatory framework far beyond the current mandate of the authorities raises important questions about the compatibility of the new constitutional framework with the basic tenets of Article 3 of the Protocol to the European Convention on Human Rights (ETS No. 9 and ETS No. 5).

**Amendment 8**

**Tabled by Mr Márton BRAUN, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Axel FISCHER, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA**

*In the draft resolution, replace paragraph 4 with the following paragraph:*

*"The Assembly supports the opinion of the Venice Commission by taking note that the number of subjects regulated by two thirds majority have not increased since the adoption of the new Fundamental law. In order to implement these laws with the widest possible support of the civil society, the Assembly calls upon the governing majority and all opposition parties to further cooperate on these topics."*

5. A constitutional framework should be based on broadly accepted values in society. The Assembly therefore regrets that the newly adopted constitutional framework includes several declarations and provisions that codify norms and values that are contentious and divisive in Hungarian society. This affects the democratic legitimacy and social acceptability of the constitutional framework, which is a matter for concern.

**Amendment 9**

**Tabled by Mr Luca VOLONTÈ, Mr Erich Georg FRITZ, Mr Axel FISCHER, Mr Márton BRAUN, Ms Katalin CSÖBÖR, Mr Gergely GULYÁS, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR, Mr David DAVIES, Mr Gábor Tamás NAGY**

*In the draft resolution, in paragraph 5, replace the second sentence with the following sentence: "The Assembly notes that several provisions are a concern to a part of Hungarian society. These provisions however are based on traditional European values, are noted in the Constitutions of many other European countries and were adopted by a democratic two-thirds majority in the Hungarian Parliament."*

6. The Assembly is deeply concerned about the erosion of democratic checks and balances as a result of the new constitutional framework in Hungary. This new framework has excessively concentrated powers, increased discretion and reduced accountability and legal oversight

**Amendment 10**

**Tabled by Mr Márton BRAUN, Ms Dora BAKOYANNIS, Mr Spyridon TALIADOUROS, Mr José Ignacio PALACIOS, Mr Giorgi KANDELAKI, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Axel**

of numerous government institutions and regulatory bodies in Hungary.

7. In the opinion of the Assembly, the curtailing of the powers and competences of the Constitutional Court – an important counter-balancing and stabilising institution in the Hungarian political system – is further evidence of the erosion of the system of checks and balances in Hungary. In this context, the fact that the ruling coalition has used its two-thirds majority in the parliament to circumvent Constitutional Court decisions and to reintroduce provisions in the constitution that were annulled by the Constitutional Court, has raised concerns.

8. Between May 2010 and the entry into force of the new Fundamental Law, on 1 January 2012, the previous constitution was amended 12 times. Since then, the new Fundamental Law has already been amended four times, the last time considerably. The constant changing of the constitution for narrow party political interests undermines the required stability of the constitutional framework. In addition, the Assembly wishes to underline that the main justification for a qualified two-thirds majority in constitutional matters is to protect the constitutional framework from frivolous changes by a ruling party and to ensure that the constitution is based on an as wide a consensus as possible between all political forces on the legal and democratic foundations of the State. The possession of a two-thirds majority does not relieve a ruling party or coalition from the obligation to seek consensus and to respect and accommodate minority views and interests. The will of the ruling coalition in Hungary to use its unique two-thirds majority to push through reforms is in contravention of these democratic principles.

**FISCHER, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR**

*In the draft resolution, delete paragraph 6.*

**Amendment 11**

**Tabled by Mr David DAVIES, Mr Márton BRAUN, Ms Dora BAKOYANNIS, Mr Spyridon TALIADOUROUROS, Mr José Ignacio PALACIOS, Ms Ismeta DERVOZ, Mr Giorgi KANDELAKI, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Axel FISCHER, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR**

*In the draft resolution, replace paragraph 7 with the following paragraph:*

*"The Assembly, confirming the opinion of the Venice Commission, takes the view that the Fourth Amendment of the Fundamental Law creates the possibility for the Constitutional Court to examine the Fundamental Law and its amendments from procedural aspects. At the same time the Assembly calls upon the Hungarian authorities to ensure all safeguards in respect of the constitutional examination of budgetary regulation."*

**Amendment 12**

(If adopted, amendment 21 falls)

**Tabled by Mr Luca VOLONTÉ, Mr Márton BRAUN, Mr Gergely GULYÁS, Mr Andrzej HALICKI, Mr Zbigniew GIRZYŃSKI**

*In the draft resolution, replace paragraph 8 with the following paragraph:*

*"The Assembly closely followed the debates in respect of the Fourth Amendment of the Fundamental Law and takes note that the Venice Commission in its opinion identified positive elements, but criticized some parts of it. In this regard, the Assembly welcomes the intention of the Hungarian Government to modify the Fundamental Law and thereby eliminate the legal institution of transfer of court cases and the issue of special tax in case of international court judgments leading to payment obligations."*

**Amendment 21**

(Falls if amendment 12 is adopted)

**Tabled by Ms Lolita ČIGĀNE, Ms Inese LĪBIŅA-EGNERE, Mr Andris BĒRZINŠ, Mr Kimmo SASI, Mr Gediminas JAKAVONIS**

*In the draft resolution, paragraph 8, replace the last sentence with the following sentence: "The attempt of the ruling coalition in Hungary to use its unique two-thirds majority to push through*

*arbitrary reforms has been in contravention of these democratic principles."*

9. The Assembly regrets the recent adoption of the so-called fourth amendment to the constitution against the recommendations of many national and international experts and against the explicit advice of Hungary's international partners. The fact that this fourth amendment knowingly contains a number of provisions that had previously been declared unconstitutional by the Constitutional Court of Hungary and/or flagged as being at variance with European principles and norms by the Venice Commission, is unacceptable and raises questions about the willingness of the current authorities to abide by European standards and norms.

**Amendment 13**

(If adopted, amendment 22 falls)

**Tabled by Mr David DAVIES, Mr Márton BRAUN, Mr Thierry MARIANI, Mr Luigi VITALI, Ms Dora BAKOYANNIS, Mr Spyridon TALIADOURO, Mr José Ignacio PALACIOS, Ms Ismeta DERVOZ, Mr Giorgi KANDELAKI, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR**

*In the draft resolution, delete paragraph 9.*

**Amendment 22**

(Falls if amendment 13 is adopted)

**Tabled by Mr Tamás GAUDI NAGY, Ms Pelin GÜNDEŞ BAKIR, Mr Burhan KAYATÜRK, Mr Peter van DIJK, Mr Valeriu GHILETCHI**

*In the draft resolution, replace paragraph 9 with the following paragraph:*

*"The Assembly welcomes the provisions (Clause U) in the Fourth Amendment to the constitution that could serve as a legal guarantee to punish the perpetrators of crimes against humanity during the communist times and - in the absence of effective execution of these provisions - urges the Hungarian authorities to start these processes in order to cease the impunity of perpetrators of such crimes."*

**Sub-amendment 1 to amendment 22**

**Tabled by Mr Tamás GAUDI NAGY, Mr Peter van DIJK, Mr Arkadiusz MULARCZYK, Ms Nermina KAPETANOVIĆ, Mr David DAVIES**

*At the end of amendment 22, insert the following sentences: "The Assembly stresses that between 2002-2010, during the 8 year-long rule of the socialist-liberal governments, there was a human rights crisis in Hungary, especially in the autumn of 2006, when hundreds of people were attacked by the police, more than a dozen people were shot in the eye and hundreds of arbitrary processes were performed against demonstrators and innocent victims. Reports of human rights organisations, judgments and official reports of the Hungarian Parliament all confirmed these serious breaches of human rights. It is not compatible with the values of the Council of Europe that punishment of the perpetrators - inter alia the former prime-minister - still has not happened. The Hungarian authorities should take the necessary legal steps in order to cease their impunity."*

10. The 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. The Assembly urges the Hungarian authorities to reduce the number of areas that are regulated by Cardinal Acts and provisions and to take full advantage of the recommendations of the Venice Commission.

**Amendment 1**

**Tabled by Ms Kerstin LUNDGREN, Ms Marina SCHUSTER, Mr Andrej HUNKO, Mr Nikolaj VILLUMSEN, Ms Mailis REPS**

*In the draft resolution, after paragraph 9, insert the following paragraph:*

*"The Assembly takes note of the opinion of the Venice Commission on the 4th constitutional amendment, the conclusions and findings of which confirm the concerns of the Assembly expressed in this resolution and in the report of the Monitoring Committee. It urges the Hungarian authorities, in close co-operation with the Venice Commission, to fully address the concerns and implement the recommendations contained in the opinion."*

**Amendment 14**

**Tabled by Mr Luca VOLONTÈ, Mr Márton BRAUN, Mr Gergely GULYÁS, Mr Attila GRUBER, Mr Imre VEJKEY**

*In the draft resolution, paragraph 10, replace the second sentence with the following sentence:*

*"The Assembly calls upon the Hungarian authorities to continue the open and constructive dialogue with the Venice Commission and all other European institutions."*

**Amendment 15**

**Tabled by Mr Márton BRAUN, Ms Carmen QUINTANILLA, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Viorel-Riceard BADEA, Ms Pelin GÜNDEŞ BAKIR, Mr David DAVIES**

*In the draft resolution, after paragraph 10, insert the following paragraph:*

*"The Assembly welcomes the fact that as a result of the dialogue with the Venice Commission and the Secretary General of the Council of Europe, the Hungarian Parliament amended the media law twice, changed the acts on judiciary, the law on freedom of information, the transitional provisions of the Fundamental Law and put forward the proposal for the Fifth Amendment of the Fundamental Law. The Assembly notes that, by the adoption of the act on the election of the members of Parliament, the Hungarian government responded to the previous recommendation of the Venice Commission and terminated the disproportionality of the constituencies. The Assembly notes that the decision of the Parliament meets the request of the Constitutional Court according to which the electoral boundaries have to be regulated by law."*

11. In addition, the Assembly calls upon the Hungarian authorities, with regard to:
  - 11.1. the Act on Freedom of Religion and the Status of Churches, to:
    - 11.1.1. remove the right to decide to recognise a religious denomination as a church from the competencies of the parliament, which is inherently a political body, and to ensure that such decisions are made by an impartial administrative authority on the basis of clear legal criteria;
    - 11.1.2. establish 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;
    - 11.1.3. provide for the possibility to appeal 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;
  - 11.2. the Act on Elections of Members of the Parliament, to:
    - 11.2.1. ensure that the election districts are drawn up by an independent authority on the basis of clear legal criteria;
    - 11.2.2. ensure that the district boundaries themselves are not defined by law, especially not by a cardinal law. In addition, the Assembly recommends 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;
  - 11.3. the Act on the Constitutional Court, to:
    - 11.3.1. remove the limitation of the jurisdiction of the Constitutional Court on economic matters;
    - 11.3.2. remove from the constitution the prohibition of the Constitutional Court to refer back to its case law from before 1 January 2012;
    - 11.3.3. implement a mandatory cooling-down period between political activities and being elected to the Constitutional Court;
  - 11.4. 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, to:

**Amendment 16**

**Tabled by Mr Márton BRAUN, Ms Carmen QUINTANILLA, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA**

*In the draft resolution, replace paragraph 11.3.3 with the following paragraph:*

*"introduce a mandatory 'cooling-down' period in respect of members of parliament, which already exists for members of the government, leading officials of a political party or state leaders, between the end of their political mandates and before the start of their new function, in the case they are elected as judge of the Constitutional Court;"*

**Amendment 17**

**Tabled by Mr Márton BRAUN, Ms Carmen QUINTANILLA, Mr Gabino PUCHE, Mr**

- 11.4.1. remove the possibility to transfer cases from the powers of the Chairperson of the National Judicial Office;
- 11.4.2. remove 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;
- 11.4.3. to ensure 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;
- 11.5. media legislation, to:

- 11.5.1. abolish registration requirements for print and online media;
- 11.5.2. separate, functionally and legally, the Media Council from the Media Authority;
- 11.5.3. ensure that, 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.

12. The Assembly considers that each of the concerns outlined above is inherently serious in terms of democracy, the rule of law and respect for human rights. Taken separately, they would already warrant close scrutiny by the Assembly. In the present case, however, what is striking is 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.

13. When acceding to the Council of Europe, Hungary voluntarily committed itself to upholding the highest possible standards in relation to the functioning of democratic institutions, the protection of human rights and respect for the rule of law. Regrettably, the above-mentioned developments have raised serious and sustained concerns about the extent to which the country is still complying with these obligations. The Assembly therefore decides to open a monitoring procedure in respect of Hungary until such time as the concerns

**Agustín CONDE, Mr Pedro AGRAMUNT, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA**

*In the draft resolution, delete paragraph 11.4.*

**Amendment 18**

**Tabled by Mr Márton BRAUN, Ms Carmen QUINTANILLA, Mr Gabino PUCHE, Mr Agustín CONDE, Mr Pedro AGRAMUNT, Mr Erich Georg FRITZ, Mr Viorel-Riceard BADEA, Mr David DAVIES**

*In the draft resolution, replace paragraph 11.5 with the following paragraph:*

*"media legislation, to further comply with ECHR case-law, notwithstanding the improvements made to the relevant laws, in cooperation with the Secretary General of the Council of Europe."*

**Amendment 19**

**Tabled by Mr Luca VOLONTÈ, Mr Márton BRAUN, Mr Gergely GULYÁS, Mr Arkadiusz MULARCZYK, Mr Grzegorz CZELEJ, Mr James CLAPPISON**

*In the draft resolution, delete paragraph 12.*

**Amendment 20**

*(If adopted, amendment 2 falls)*

**Tabled by Mr Gergely GULYÁS, Mr Márton BRAUN, Mr Gábor Tamás NAGY, Ms Katalin CSÖBÖR, Mr Attila GRUBER, Mr Imre VEJKEY, Mr Ferenc KALMÁR**

*In the draft resolution, paragraph 13, replace the second and the third sentences with the following sentences: "New constitutional provisions have raised legal questions about the extent to which the country is complying with*

mentioned in, inter alia, this resolution and the accompanying report have been satisfactorily addressed.

*these obligations. The Assembly however decides not to open a monitoring procedure in respect of Hungary, as such a decision is disproportionate in view of their current open and constructive dialogue with the European Commission, the Venice Commission and all relevant bodies of the Council of Europe."*

**Amendment 2**

(Falls if amendment 20 is adopted)

**Tabled by Mr René ROUQUET, Mr Martin HENRIKSEN, Mr Mike HANCOCK, Mr Pedro AGRAMUNT, Ms Karin S. WOLDSETH, Mr Joachim HÖRSTER**

*In the draft resolution, paragraph 13, replace the final sentence with the following sentence: "The Assembly, however, decides not to open a monitoring procedure in respect of Hungary but resolves to closely follow the situation in Hungary and to take stock of the progress achieved in the implementation of this resolution."*