Resolution on the revised Hungarian Constitution

2011/2655(RSP) - 05/07/2011 - Text adopted by Parliament, single reading

Following the debate at the sitting of 8 June 2011, the European Parliament adopted by 331 votes to 274 with 54 abstentions a resolution on the Revised Hungarian Constitution.

The resolution was tabled by the S&D, GUE/NGL, Greens/EFA and ALDE groups.

It refers to the Opinions of the European Commission for Democracy through Law (Venice Commission) on the Basic Law of Hungary, adopted on 18 April 2011 by the National Assembly of Hungary that will enter into force on 1 January 2012 ('the new Constitution'), and also notes that 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.

Parliament states that it 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.

Amongst the criticisms of the new Constitution, Members note the following (i) the constitution-making process **lacked transparency** and the adoption of the new Constitution was conducted in an exceptionally short time frame that did not allow sufficient time for a thorough public debate on the draft text; (ii) the new Constitution **fails explicitly to lay down a number of principles** which Hungary, is obliged to respect, 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; (iii) 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, the new Constitution **creates the risk of discrimination** against certain groups in society; (iv) 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; (v) the new Constitution stipulates that its preamble has legal force, which may have legal and political implications and may lead to legal uncertainty; (vi) the incorporation of the Charter of Fundamental Rights of the EU 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; (viii) 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 in practice this makes their adoption part of the new Hungarian constitutional process.

Parliament 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:

- 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;
- 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;

- 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;
- 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;
- 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;
- 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;
- 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;
- 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;

The Commission is asked 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 EU. Parliament’s competent committees are instructed 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.