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NOTE

from: General Secretariat of the Council
to: Delegations
Subject : Plenary Session of the European Parliament, Strasbourg, 2 July 2013
**Debate on the report of Rui Tavares (A7-0229/2013) - Situation of
fundamental rights: standards and practices in Hungary**

The rapporteur, Mr TAVARES (Greens, EFA, PT), started by quoting Article 2 of the Treaty on EU values, adding that Hungary had agreed to respect these values like other Member States. He considered that the systemic changes to Hungarian law and the Constitution by the government which touched the cornerstones of democracy, tended to move away from the values in Article 2. He explained that his own-initiative report addressed several recommendations to the Hungarian Government, called on the European Commission to establish a new mechanism overseeing compliance of Member States with Article 2, and called for a constructive dialogue on this matter. He explained that the new mechanism could take the form of a Copenhagen High-Level Group, in order to ensure continuing respect for the Copenhagen criteria. He concluded by saying that different national systems had to be respected but that they needed to be compatible with the values of democracy outlined in the Treaties.

Mr BARROSO delivered the speech in annex I on behalf of the Commission.

Mr ORBÁN, Prime Minister of Hungary, thanked the European Commission for the productive dialogue and expressed his respect towards the European Parliament. However, he considered that the Tavares report was very negative and unfair vis-à-vis Hungary and did not recognise the efforts

which had been made to modernise the country. He considered that some proposals in the report were not in line with the Treaties and disregarded the balance of powers between the institutions. He also deplored the fact that the current majority was not recognised and that double standards were being applied to Hungary.

On behalf of the political groups:

- Mr WEBER (EPP, DE) stressed that the EPP supported the findings of the Commission as Guardian of the Treaties. He welcomed the fact that Hungary had delivered in this regard and referred to the recent decision of the Parliamentary Assembly of the Council of Europe not to launch a monitoring procedure against Hungary. He considered that the Tavares Report was unacceptable and went far beyond the competence of the European Parliament. He considered that the European Parliament did not have the right to interfere in issues such as defining marriage and references to Christianity in the Constitution which belong solely to national competence. He was also critical of the holding of a political debate on that matter and the use of double standards by the S&D group which refused to discuss the situation in Romania and had voted against a Plenary discussion on the situation in Bulgaria.
- Mr SWOBODA (S&D, AT) contested Mr Weber's allegations regarding the S&D. He stated that the report was not against Hungary and its citizens but about the rule of law. He considered that the government had introduced a number of constitutional and legal reforms which were in clear breach of EU fundamental values. He was particularly worried by the effects of these reforms on citizens and investors, respect for the opposition and minorities, and the independence of the judiciary and media freedom. He also raised strong concerns about growing anti-semitism in Hungary.
- Mr VERHOFSTADT (ALDE, BE) started by replying to Mr Weber that the previous government in Bulgaria had been supported for two years by Ataka and that the EPP had never intervened in the European Parliament on this subject. He then stressed that the Venice Commission report had identified nineteen serious problems in the fourth amendment and highlighted that the Venice Commission was composed of constitutionalists without any political background. He underlined that the Venice Commission report concluded that these constitutional amendments were problematic because constitutional control was being blocked in a systematic way, and also because their substance was in contradiction with European standards. He said that, according to the Venice Commission, the Hungarian government was

using the constitution for ordinary politics instead of respecting the fundamental laws and democratic values. He therefore believed that the procedure laid down in Article 7(1) of the Treaty had to be activated in the interests of Hungarian democracy and citizens.

- Ms LUNACEK (Greens/ALE, AT) said that she would have expected Mr ORBÁN to address the specific issues in the Tavares report. As some previous speakers, she emphasised that this report was a criticism of the government and not of the Hungarian people. She considered that the government had created an environment hostile to minorities and was preparing the ground for growing anti-Semitism, homophobia and anti-Roma sentiments. She felt there was a strong need for new mechanisms to safeguard EU values.
- Mr BOKROS (ECR, HU) supported the Tavares report as a very good summary of the distortions to democracy made by the Hungarian government. He thought that the Commission needed a greater range of powers to sanction EU Member States.
- Ms VERGIAT (GUE/NGL, FR) agreed with the proposals made in the Tavares report since Article 7 was an atomic bomb whose triggering was impossible.
- Mr PAŠKA (EFD, SK) felt that the basic functioning of democratic mechanisms had been gradually destroyed in Hungary and should now be restored.
- Ms MORVAI (NI, HU) took the view that the Tavares report would only increase euroscepticism and patriotism in Hungary.

During individual interventions, several EPP MEPs (Mr ENGEL, MS MATHIEU HOUILLON, Mr SZÁJER, Ms GÁL, Mr MAYOR OREJA, Mr PROTASIEWICZ, Mr AUDY, Ms ZABORSKA) strongly spoke against the Tavares report as disproportionate and going beyond EU powers. Some added that only the Commission had the competence to make an objective assessment of the compatibility of national legislation with EU laws. Some also underlined that the Orban government was legitimate and that the current debate was more political than factual. Mr COELHO (EPP, PT) said that there were problems on many aspects in Hungary, but considered that no double standards should be applied and that the report could be used to look at the situation of other Member States.

Several MEPs from the S&D, ALDE and Greens (Mr LÓPEZ AGUILAR, Mr MORAES, Ms GUILLAUME, Mr TABAJDI, Mr TARABELLA, Ms WEBER, Ms IN 'T VELD, Mr COHN-BENDIT, Ms SARGENTINI) supported the Tavares report, expressing strong criticisms of the

constitutional and legal changes introduced by the current government in Hungary. They stressed that the report was not against Hungary itself and that Copenhagen criteria had to continue to be respected by all Member States, not simply before joining the EU. Ms GÖNCZ (S&D, HU) considered that the constitution had been used as a political instrument. Mr CASHMAN (S&D, UK) considered that the 4th amendment was against the rights of minorities, including LGBT people.

Some MEPs from the ECR (Mr LEGUTKO, Ms MCINTYRE) considered that the Commission was the guardian of the Treaty, not the EP, and that laws in Hungary were less discriminatory than other laws in other Member States, arguing against any EU interference.

On behalf of the Commission, Ms REDING concluded that the Commission had actively played its role as guardian of the Treaties and would continue to do so. As regards the debate on how best to preserve and defend the rule of law in the EU as a whole, she mentioned some ongoing initiatives and said that the Commission would in due course present its position on further instruments to take forward the debate on the rule of law.

Mr ORBÁN replied that he had sent a memorandum to the European Parliament replying to all the specific questions in the report. He strongly defended his government's policies, making it clear that they were not directed against anyone. He then quoted a Council of Europe Resolution stating that the 2010 elections had resulted in a coalition of a two-thirds majority in the Parliament, which was in line with European standards and provided adequate legitimacy to change the constitution. He concluded that the Tavares report was unfair and deeply offensive to Hungary and that his country could not accept being placed under the surveillance of the European Parliament.

EP political groups leaders concluded the debate. Mr WEBER felt the debate had been led by political considerations. Mr SWOBODA and Ms ZIMMER (GUE/NGL, DE) considered that Mr ORBÁN had not responded to the specific concerns expressed in the Tavares report. Mr VERHOFSTADT and Mr COHN-BENDIT believed that they had a different conception of democracy to that of Mr ORBÁN and that a majority government still had to respect fundamental rights. Mr KIRKHOPE (ECR, UK) considered that the Commission had to play its role and that the European Parliament should make room for democracy to operate in the Member States.

The rapporteur assured the Parliament that his report attempted to address the "Copenhagen dilemma" in a neutral way and that the European Parliament did not intend to acquire new powers in this area.

On 3 July, the report was adopted as amended, with 370 votes in favour, 249 against and 80 abstentions.

Speech delivered by José Manuel Barroso, President of the European Commission

Mr President, Prime Minister Orbán, honourable Members, today we are discussing a parliamentary report on a subject which the Commission is following with the utmost attention. Let me then start by thanking the rapporteur, Rui Tavares. Protecting the values and principles on which the European Union is founded is a matter of fundamental importance. In April the Commission explained to this House the approach that we have taken as regards the recent developments in the Hungarian constitutional system. I would like to start by providing you with an update on the Commission's actions in this respect.

The Commission expressed concerns about the conformity of the fourth amendment to the Hungarian Fundamental Law – which was adopted on 11 March – both with European law and with the principle of the rule of law. I have raised these concerns repeatedly with the Prime Minister, Viktor Orbán, in my contacts with him and in formal letters sent to him. I have also worked closely – very closely indeed – with Secretary-General Jagland of the Council of Europe. We have together identified, from the beginning of the process, the main concerns, and we fully share them. We have worked together smoothly, each of us within the remit of our competences, and ensured close cooperation and exchange of information.

In this context, the Commission has played a very active role as the Guardian of the Treaties. After a detailed analysis of the fourth amendment to the Hungarian Fundamental Law, the Commission identified three issues where compatibility with European Union law is at stake. Firstly, there is an ad hoc tax for the European Court of Justice's judgments, entailing payment obligations. Secondly, there is the regime for transferring cases between courts. Thirdly, there are the restrictions on the publication of political advertisements, specifically during European Parliament election campaigns.

In order to address these concerns, the Hungarian authorities have offered solutions for the first two issues by proposing changes to the Fundamental Law and implementing legislation. In particular, the Hungarian authorities propose to remove the current clause on the European Court of Justice's judgments entailing payment obligations from the Fundamental Law and to eliminate the system of transferring cases between courts from the Hungarian legal system, including from the Fundamental Law. The Commission welcomes these announcements from the Hungarian authorities. We will monitor the specific implementing steps which must be taken by the Hungarian Parliament in order to effectively dispel the existing concerns on these two points, including the necessary changes at constitutional level which are expected to be voted upon after this summer.

On the restrictions of political advertisements, specifically during European Parliament election campaigns, the Commission and the Hungarian authorities are still in contact with a view to finding a satisfactory solution in line with EU law before the start of the next electoral campaign.

On 28 June 2013 – last Friday – Prime Minister Orbán sent me a letter indicating the Hungarian Government’s readiness to address the Commission’s concerns. I welcome this recent information. Let me assure this House that the Commission, as Guardian of the Treaties, will continue to ensure that legislation – and in the Hungarian case the Fundamental Law of the state – is made compatible with EU law where necessary. We have showed all our diligence just as we did last year, when we launched two infringement cases against Hungary. One of them, concerning the early retirement age for judges, was confirmed in November 2012 by the European Court of Justice declaring the related Hungarian legislation incompatible with European Union law. The Commission is currently monitoring the application of the new law and is verifying that the reinstatement of dismissed judges is being carried out as announced.

A second case concerns the violation of the independence of the data protection authority and is pending before the court. Here again, the Hungarian authorities and Prime Minister Orbán personally, have committed to respecting the ruling of the European Court of Justice. All these actions have borne out the validity of the Commission’s actions and of the priority that we have given to our role as Guardian of the Treaties. These decisions are part of a determined effort on the part of the Commission to ensure full respect for European Union law by all Member States, and they have been efficient.

The Hungarian authorities have committed to changing their Fundamental Law in order to make it fully compatible with European Union law, but we all know that other issues are at stake which go beyond European Union law. This is why the Commission has always made clear to the Hungarian authorities the need to work and give appropriate answers to these other issues.

On 17 June 2013, the Venice Commission issued its opinion on the fourth amendment to the Hungarian Fundamental Law. The opinion of the Venice Commission confirmed our concerns as regards the compatibility of the fourth amendment with the rule of law. We expect the Hungarian authorities to take due account of this important opinion and to address it in full accordance with both European Union and Council of Europe principles, rules and values.

The Commission has also taken note of the fact that the Parliamentary Assembly of the Council of Europe decided, on 25 June 2013, not to launch a so-called monitoring procedure against Hungary. It has adopted a resolution urging the Hungarian authorities, in close cooperation with the Venice Commission, to fully address the concerns and implement recommendations contained in the Venice Commission’s opinion.

The Commission has been following with great interest the work of the Parliament in the Tavares report, as adopted by the Committee on Civil Liberties, Justice and Home Affairs. From the beginning, I have asked the Hungarian authorities to engage in a political dialogue with Parliament in order to address the recommendations of the resolution you will vote on tomorrow. I think the presence among us today of Prime Minister Orbán is clearly a sign of their willingness to engage in such a dialogue with Parliament.

Parliament’s resolution touches on issues concerning the rule of law in the European Union, and this is an issue of high importance to the Commission. This is a fundamental question for the Union, which requires that all European Union institutions, Member States and other stakeholders engage in a constructive dialogue on this matter. In my State of the Union speech here in the Parliament in September 2012, I explicitly called for a better-developed set of instruments to address threats to our fundamental values, the rule of law and democracy.

The Commission will perform its reflection in the months to come, and we will inform and discuss it with this House in good time before the European elections. It already seems clear at this stage that any initiative in this matter should bring real added value and be able to effectively address systemic and significant threats to the legal and democratic fabric in Member States which go against the common European values referred to in Article 2 of the Treaty on European Union.

We also feel that we need to share with each other the experiences we are gaining from a number of initiatives that are already ongoing. These initiatives include, first of all, the European Union Justice Scoreboard. Presented in March, this is a tool designed as part of the European Semester process to promote effective, independent and high-quality justice systems in Europe. In addition to this, the cooperation and verification mechanism for Romania and Bulgaria is another instrument from which general lessons can be drawn. The upcoming anti-corruption report will also need to be taken into account in this reflection. Finally, the Commission is also following the situation of freedom of speech and media in Member States closely.

We should not forget that an independent and well-performing judiciary is also of the greatest economic relevance in terms of legal certainty and investor confidence. This is why the country-specific recommendations in the context of the European Semester also included recommendations for certain Member States to take measures to improve and strengthen their justice systems. Besides the European Semester process, judicial reforms are also part of the economic adjustment programmes. We need to establish how to enforce our capacity to better address concerns about the rule of law in Member States. We should also think about ways to prevent situations which raise concerns from occurring at all.

The Commission is convinced that respect for the rule of law is a matter which requires all European institutions to work together closely. The Commission is determined to ensure a proper and constructive follow-up and contribution to this debate with its future reflection. I ask all Member States to demonstrate their commitment to the European Union's values and principles, notably by addressing the concerns of the Parliament. We expect determination and unambiguity in doing so in the best interests of the whole European Union and of all our citizens who want to see their rights and freedoms protected in respect of the rule of law and our common European values.
