

Testimony of the Hon. József Szájer
Member of the European Parliament (HU-EPP)
before the Commission on Security and Cooperation in Europe
Hearing on 'Trajectory of Democracy: Why Hungary Matters'
Washington D.C., March 19, 2013

Chairman Cardin, Co-Chairman Smith and distinguished members of the U.S. Helsinki Commission, Distinguished Members, Ladies and Gentlemen:

It is an honor for me to appear here to share my views on the state of Hungarian democracy. I am a founding member of Fidesz. I was fighting against communism, and later in my capacity as member of the first freely elected Hungarian Parliament I had participated in the preparation of almost every major constitutional change. Recently, I had the great honor of being the Chairman of the Drafting Committee on the Fundamental Law of Hungary.

Today 69 years ago Hungary was occupied by the Nazi troops taking off the final bits of our nation's independence.

Hungary has been a constitutional democracy, respecting the rule of law and the rights of the citizen ever since the transition to democracy.

Hungary is a nation with one of the longest, one thousand years old constitutional tradition, which my country is very proud of. One of the finest pieces of our historic constitution, the Bulla Aurea (our Magna Charta) dates back to 1222. Hungary boasts one of the first constitutional document on religious tolerance, the Torda Declaration from the sixteenth century. Our new constitution follows the steps of these historic achievements. It aims also to restore one thousand years of historic constitutional continuity which was lost in 1944 as a consequence of the Nazi, and the subsequent Soviet occupation of my country.

As a legislator myself, I would like to express my appreciation for your interest in the sovereign act of the Hungarian nation's historic constitution making enterprise. I admire your great Constitution and we held it as a compass in creating our new one. Elected representatives of our great, freedom loving nations, the American and the Hungarian should always find appropriate occasions to exchange, on equal grounds, views and experiences on matters of great importance. And what could be more important than a nation's constitution? And what could be a more significant part of a nation's sovereignty than creating her own constitution? You in America gained your independence more than two hundred years ago. In the course of our history thousands of Hungarians died for Hungary's independence, but finally we won it only a little more than twenty years ago when the Soviet occupation ended. I was there, I was part of that generation, which achieved it, and now our task is to consolidate it! Hence, you should be aware of the high sensitivity of our nation towards questions of independence and self-determination. We Hungarians, like you Americans, consider that our nation's own constitution is an exercise in democracy that we should conduct ourselves. We listen to advice given in good faith, we learn from the experience of others. This is the very reason I am here now, but we insist on our right to decide. This is democracy and self-determination that we had been fighting for so long.

In the 2010 elections, FIDESZ, my party won a victory of rare magnitude, obtaining a constitutional majority, more than two-thirds of the seats in the National Assembly. The choice of the Hungarian people was a response to a deep economic, social and political crisis. The mismanagement of public finances, public debt slipping out of control, the collapse of public security were among its symptoms. We also witnessed serious violations of basic human rights by the authorities: the most serious ones concerning the freedom of assembly in the autumn of 2006. At those difficult times we were expecting the support of the democratic community of the world to speak out against state oppression of the citizens' freedoms. Unfortunately, the international community turned a blind eye. For your information, Mr. Chairman, I brought a book on those events.

Public order was seriously challenged also by shocking events like the serial killings of our Roma compatriots with clear racist motivations and with the public authorities standing by crippled.

In 2010 we received the mandate and the corresponding responsibility to put an end to all that.

A new constitution was long overdue. All Central and Eastern European countries except Hungary had adopted their new, democratic constitutions long before.

The Venice Commission welcomed the “efforts made to establish a constitutional order in line with the common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with the international instruments...”

A few words on the recent amendment: 95 percent of the provisions of the so-called Fourth Amendment, adopted last week, had been in effect ever since the entry into force of the new Constitution in the form of the so called Transitory Provisions of the Fundamental Law. We did not intend to change our Fundamental Law so soon after its adoption but the Constitutional Court annulled some of the Transitory Provisions. The position of the Court, based on the German constitutional doctrine of 'obligation to incorporation' is that the Constitution should be one single act: therefore, what had to be done was basically a copy-paste exercise, to incorporate the Transitory Provisions to the main text. Hence the length of the new amendment! But not much new text. The Fourth Amendment was based on the request of the Court, and not against it, as some critics misleadingly claim. In fact we do not understand what could be here the problem. The recent bombastic headlines and judging editorials of certain newspapers failed to underpin their argument till now and they are misleading the public.

There are some new elements as well in the Fourth Amendment:

All assertions to the contrary notwithstanding, the Fourth Amendment does not reduce the powers of the Constitutional Court. In fact, it does the opposite. It adds additional authorities, to those having the right to turn to the Constitutional Court. It repeals the rulings of the Court passed under the previous Constitution, but – as specified by an additional amendment - the Court shall remain free to refer to its own previous case-law in its future jurisdiction. Contrary to noisy criticism, the Amendment does not strip the Court of a power to review and annul the Constitution text itself or its amendments, since in Hungary during its existence for two decades the Constitutional Court never had that power. My definition of the separation of the powers is that the Court interprets but does not legislates the text of the constitution. In fact the Fourth Amendment extended the power of the Court explicitly giving the right to scrutinize the constitutionality of the procedure of amending the constitution.

The Fourth Amendment also makes a big step forward in making the procedures of the Constitutional Court transparent, by opening it to public access. It also adds - following several European examples - that the parties concerned in the proceedings should have the right to express their views in the procedure, changing the annoying and much criticized 'black box' nature of the Court.

Expressions of anti-Semitism and of racism are, and should be the cause for our concern for every democrat. Even though the phenomenon is not new and unfortunately widespread all over Europe, and Hungary is not exceptional in this respect, each and every such incident is deplorable and calls for more determination to eliminate them. Prime Minister Orbán has confirmed in Parliament that the Government shall protect every citizen equally, including those belonging to minorities. The only Roma member of the 750 odd members' European Parliament Livia Járóka, citizen of my home city, Sopron, was elected on the list of Fidesz. The only one of an ethnic community numbering about ten million in Europe! It was under the Hungarian presidency of the European Union, when the first European Roma Strategy was adopted.

In the Fourth Amendment, we chose to lay the constitutional grounds for civil procedure open for any person in case his or her religious, ethnic or national community should be seriously offended in its dignity. Jewish communities in Hungary, which had been waiting for stronger legal instruments against hate speech for decades, welcomed the move. Rabbi Köves, leader of the Unified Hungarian Jewish Congregation and the Action and Protection Foundation called the relevant article of the Draft Fourth Amendment as an 'historic step forward in defense of the dignity of the communities'.

Our policy is consistent with our unambiguous relationship with the past. It was the first Orbán Government which founded the Holocaust Memorial Center in Budapest and included a special Holocaust Remembrance Day for the first time in the curriculum of high schools. Yet the latest shining evidence is the international Wallenberg memorial year in 2012, launched by the second Orbán cabinet to commemorate the centenary of the birth of the Swedish diplomat who rescued thousands of Jewish lives in Budapest at the end of World War II. The Wallenberg year has earned universal acclaim. It gave an opportunity to admit Hungarian co-responsibility in the Shoah, which Mr. János Áder, President of Hungary, solemnly did in his speech before the Israeli Knesset.

The time allotted for my testimony may not be long enough to address all your points raised but I encourage to look at the amendments closely. We could dismiss your worries in the past in the case of the Media Law, the Law on the Judiciary, and I can cite many other examples... We welcome your criticism if based on facts and arguments. Foreign Minister Martonyi has requested the Venice Commission to give its opinion on the Fourth Amendment. We abide by the rules of the European institutions and expect the same from all others. However, there should not be double standards. I am deeply convinced that in a constructive dialogue we can enrich each other's constitutional experience, and thus avoid unfounded accusations and disagreements arising from misunderstandings. For more detailed information to make your judgement I brought you another book in English, created by Gulyás Gergely, MP and myself to give you account of the background and making of the Basic Law. We also opened a Hungarian Constitutional Library on amazon.com in English language.

Let me close my remarks with the first line of our national anthem, hence the first line of our new constitution: God bless Hungarians! Isten, áldd meg a magyart.