



MINISTRY OF FOREIGN AFFAIRS OF HUNGARY

MINISTER OF STATE

Mr Michael Georg LINK
Staatsminister

Budapest, 6th March, 2013
KÜM/5708/2013/Adm
655/EUÁT/2013

Auswärtiges Amt
Werderscher Markt 1
10117 Berlin

Dear Michael,

I believe that while your leader published in the Frankfurter Allgemeine Zeitung on 5 March 2013 (“Ungarn muss Rechtsstaat bleiben”) is a token of your personal commitment to Hungary, its factual basis and conclusions deserve a closer look.

The concerns that you voice in your article in relation to the state of Hungarian democracy appear to be triggered by the upcoming amendment of the Fundamental Law of Hungary. To dispel such concerns let me first briefly outline the main motives and elements of the proposed constitutional changes.

The actual (fourth) amendment to the Fundamental Law has been tabled in response to a decision by the Constitutional Court quashing a significant part of the Act on the Transitional Provisions of the Fundamental Law in December 2012. The grounds for such a decision by the Constitutional Court were purely formal in nature. In the opinion of the Court the provisions at issue are not “transitional”, as the title of the challenged Act suggests, but instead, they are of permanent character that can only be laid down in the Fundamental Law itself. Consequently, the fourth amendment, to an overwhelming extent, is merely a transplantation of already existing legal norms to their proper place. To a lesser extent, the amendment contains new legal provisions, as outlined below.

The changes with regard to the Constitutional Court referred to in your letter are confined to a few areas. First, the amendment makes it clear that the Constitutional Court cannot overrule the constitution itself. *I.e.* its review of the Fundamental Law and its amendments is limited to the procedural legality of their enactment. The Constitutional Court itself made it clear in one



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of its previous decisions (*Order of 23/1994. (IV. 29.)*), that it may not examine the constitutionality of a legal disposition which became part of the Constitution. It is therefore evident that this has always been the case in Hungary, as the Constitutional Court operates within the frame of the constitution and not beyond it. Any other solution would mean that the Court makes the constitution, rather than interpreting or applying it. Moreover, the fourth amendment explicitly provides that under the new Fundamental Law of Hungary, effective as of 1 January 2012, the decisions of the Constitutional Court under the previous constitution are no longer binding upon the Court itself but the legal effects of previous decisions remain intact. Therefore, this amendment does not exclude that the Constitutional Court takes into consideration its previous decisions and consequently arrives at identical conclusions under the new Fundamental Law as under the previous constitution.

You also make a reference to a proposed amendment with regard to the “dignity of nation” as a limitation to the freedom of speech. The text of the amendment indeed provides that “freedom of expression cannot be used to hurt the human dignity of other persons”. Moreover, “freedom of expression cannot be used against the dignity of the Hungarian nation and of national, ethnic, racial or religious communities.” Persons belonging to such communities must have recourse to legal protection before a court of law.

The fundamental goal of this amendment is to provide effective legal grounds to limit hate speech and to ensure appropriate legal remedies. And it is a commonplace in many modern democracies, especially in those countries that experienced systematic maltreatment of their minorities. Therefore, this amendment does not in any way serve, as you suggest, “to subvert previous decisions of the Supreme Court”. Proliferation of hate speech in our continent is a difficult challenge for any government to tackle. The fact that you display this amendment as a token of my Government’s undemocratic tendencies makes me all the more surprised as in the same article you also call for the containment of Jobbik’s anti-Semitic public appearances.

May I only add that the Jewish organisations in Hungary welcomed the amendment which has long time been advocated by them as a necessary tool to curb racial incitement in the country.

Finally, let me reiterate that Hungary has closely cooperated with all European – EU and pan-European – institutions in the past year and continues to do so. This has been repeatedly confirmed by the European Commission and the Council of Europe. Hungary is a stable democracy with a mature and well-functioning system of constitutional checks and balances and will remain committed to the fundamental values of democracy and the rule of law.



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Questioning my Government's democratic belief in public on the basis of sporadic or incomplete information, however, falls short of a universal expectation under the rule law: due process and a right to a "fair go".

I hope that this clarification will convince you – as you yourself wish in your article – that Hungary is and continues to be governed under the rule of law.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Enikő Győri".

Enikő Győri