

Position paper prepared for the public roundtable discussion on the rule of law in Poland and Hungary in the Standing Committee on European Affairs of the Netherlands House of Representatives (Tweede Kamer). Thursday, 14 February 2019. The Hague.

Prof. Dr. László Marác

Is Hungary on a different planet?

I read in European press articles and hear European politicians claiming that Hungary and its government led by Prime Minister Viktor Orbán is 'anti-Semitic'. These are surprising statements, when one watches the live coverage of the state visit of the Israeli Prime Minister Benjamin Netanyahu to Budapest. The visit of both PMs to the Jewish community in the beautifully restored synagogue of Budapest in the *Dohány utca* on July 20, 2017 is one of the most dramatic but also one of the most hopeful events of recent European and Hungarian history. The synagogue of Budapest and the Jewish community which suffered enormously in the Second World War due to the murderous violence of the Nazis and their Hungary supporters of the Arrow Cross Party is blossoming again in the heart of Europe.

I read in European press articles and hear European politicians claiming that Hungary and its government led by PM Viktor Orbán is restricting freedom of press. True, Hungarian press does not always apply the principle of *audiatur et altera pars* but let us be fair is this principle always respected in our own Dutch press. Especially the Hungarian case clearly demonstrates that this is not always the case. Hungarian government policy is branded without offering the possibility of a fair reply. This is a clear case of exclusion.

In Hungary itself all political positions are represented in the media. It is sufficient to refer to television channels, like *RTL Club*, or *ATV* but also other media like *Klubrádió*, the former newspaper of the communist trade union *Népszava*, and a number of weeklies, like *HVG*, *Magyar Narancs*, *Élet és Irodalom*, and *168 Óra*, and many other online blogs, portals and media outlets that are in close connection to the opposition and do not represent government views. I observe that these media channels are mobilizing their supporters on an inciting tone to participate in rallies against the Orbán government. I am not aware of any government measures banning these media channels.

True, the number of oppositional media channels have been narrowing down somewhat under the Orbán government. There was much dramatic sentiment in Western Europe for the collapse of the former communist party newspaper *Népszabadság*. However, it is unfounded to suppose a government conspiracy behind this fact. As is well-known Hungary is a market economy where the four freedoms of the Union are legally in force and respected. Newspapers should have enough subscribers to keep up in the market race. *Népszabadság* simply could not keep up with this race. Obviously, there is no market for the voices of outdated ideologies in Hungary.

I read in European media and hear European politicians claim that the freedom of demonstration is curtailed under the Orbán government. It is puzzling how to account for the fact of the continuous rallies of oppositional movements at the streets of Budapest, almost in a continuous 24 hours mobilization of their small circles of activists. Since the coming of the Orbán government to power in 2010 these demonstrations are culminating each year in the week before Christmas. In a time of the year most Hungarians preparing their most precious national holiday, i.e. Christmas. This year it was not different and I do think the timing is not accidental.

The tone of some Western media and politicians is getting with each election more unfriendly towards Hungarians. We can read and hear that 'Hungarians are unfit for democracy because a substantial part of the electorate is voting for Mr. Orbán and his *Fidesz* party'. These intolerant claims against Hungarians are typical for pseudo anthropological sciences we know from the dark European past. Therefore, I have to reject them rigorously.

It is a fact that Mr. Orbán and his *Fidesz* party have won six elections in succession with a unique popular majority. It is obvious that his critics have a hard time to cope with this political fact. The Hungarian electorate has voted in the past for left and right wing coalitions and Hungarian citizens know very well what their interest and preferences are, just like any other voters in Europe.

The Hungary case constitutes a typical Orwellian puzzle. Although there is overwhelming empirical evidence to the contrary the conclusions of European media outlets and politicians is that civil rights in Hungary are violated on a massive scale by the Hungarian government. "It is in fact a brutal dictatorship led by an arrogant dictator called Viktor Orbán", reads the accusation. Judging from these opinions Hungary must be the most terrible place on earth. I do not agree.

The political campaigns to demonize Hungary and its government are accompanied by cleverly engineered media campaigns. However, Hungarian legal and political culture cannot be grasped by oversimplifications and distortion of realities. In the remainder of my position paper I will bring back Hungarian realities to earth but I cannot guarantee you will have a safe landing.

Let us set the emotions governing the discussion concerning Hungary aside and put political, and legal events into context in which history and culture are playing a prominent role. I brought the Standing Committee on European Affairs a copy of my book *Hongaarse kentering* (Nieuwegein: Aspekt Publishers 1995) written in the nineties about the Hungarian history, especially on the long twentieth century, when Western imperialism, German fascisms, and Soviet communism decided on the faith of the small nations in Central Europe, including the one of the Hungarians. If you read my book you will understand why Hungarians are tired of all sorts of projects referring to the 'New Man'. They simply had too much. It is my firm conviction that the state of the rule of law in Hungary cannot be discussed without its context.

I was a member of a team of experts studying legal culture in Central Europe in the preparation of Hungary's and other Central European countries accession to the EU. The team did its research in the framework of the Netherlands Scientific Council for Government Policy (WRR) (Legal Culture in five Central European Countries, WRR 111, The Hague, December 2000). I was responsible for the chapter on Hungary (p. 119-136). We concluded that successive Hungarian governments developed fundamental structures for legal education, legal profession, civil and criminal justice, and institutions of administrative and institutional review. I am not aware of the fact that all of these fundamental legal structures are not functioning anymore in today's Hungary.

I was member of the research team that studied the functioning of civil society organizations in twelve European countries, including Hungary against the norms and standards of the European Union. The research team concluded that there is much diversity in Europe with respect to the functioning of these organizations and that Hungary is no exception in the spectrum of European diversity. That the Orbán government has drafted an NGO law requiring financial transparency with respect to the gifts and other financial data of non-profit organizations is not unique in the EU. It belongs to the normal practice of financial accountability for such organizations in a number of European countries (Van Veen, W.J.M., Van der Ploeg, T.J. & Versteegh C.R.M., *Civil Society in Europe: Minimum Norms and Optimum Conditions of its Regulation*, 2017, Cambridge (UK), Cambridge University Press). According to a recent press statement of the Dutch Minister of Interior of the Netherlands financial accountability will even be extended to the sponsoring of political parties, i.e. civil society organizations par excellence (cf. <https://nos.nl/artikel/2269013-giften-van-buiten-de-eu-aan-politieke-partijen-verboden>).

Hungary is neither an exceptional case, if we take into account data provided by the European Commission itself concerning the open cases of infringements procedures. If put into context, the figures actually show a positive balance for Hungary. Hungary had 48 open infringement cases with the European Commission on December 31, 2017. Note that this is the same number as brave

Sweden has but much better than 19 other European Member States, including pro-European Belgium which had 81 open infringement cases with the European Commission on that date.

In sum, to understand the misplaced outcries after each instance of Hungarian law-making it is relevant to discuss briefly the philosophy of Hungarian law-making spelled out in a pattern. When Hungarians regain their sovereignty they always follow the guiding principle of their first king-state founder, Saint Stephen of Hungary who was crowned in 1000 AD. The wise king advised his successors to balance between the East and West but to stay always closer to the West than to the East. Highly respected MPs you might not know anything of the Hungarian king Saint Stephen and his merits for Europe but the famous German composer Beethoven rightly devoted an Overture (Op. 117, 1/3) to celebrate the European heritage of the Hungarian state founder. Since the collapse of communism in 1989 Hungarian law makers have indeed always been looking with one eye to the West.

Saint Stephen has his hand in the modification of the Hungarian Constitution in 2010, when Hungary received a modern constitution and the old communist constitution was finally replaced. In the Foundation part of this much criticized Constitution that was accepted under the Orbán government II in 2011 under paragraph E we can read that Hungary will drive forward the process of European integration with the other nations in Europe. Interestingly, a government accused of 'anti-European policy' has committed itself and other, successive Hungarian governments to the European project. As far as I know this is the only constitution in Europe that has integrated this clause into its own national constitution. You are invited to correct me, if I am wrong. It is puzzling why this is never mentioned by the critics of Hungary. Note further that for an eventual Hungarian leave a constitutional majority of 2/3 is necessary and a simple majority like in the case of Brexit will not be sufficient for a Hexit.

We see the hand of Saint Stephen also in the Hungarian electoral law. The Hungarian electoral law is a hybrid legal construct consisting of elements from on the one hand the British, French, and German electoral system and on the other hand items from the Hungarian one. The Hungarian electoral system is in fact a combination of an electoral party list and a district system. The system is so complex that I need several seminars to explain it in detail. Time prevent me to undertake this today. The Fidesz led government has simplified the electoral law but the essence of it being of hybrid type was not affected. Commentators claiming that Mr. Orbán and his Fidesz have won the election due to the manipulations of the electoral system simply have not read the text of the electoral law, or are manipulating their own readers at purpose. They should have known that there is next to the district's winner-takes-it-all principle an electoral party list involved guaranteeing a fair competition between the political parties participating in the Hungarian elections. If these commentators were right there should have been a substantial difference between the results of the electoral party list and the district elections but that is not the case. Both the list and district show a landslide victory for Mr. Orbán's Fidesz in the national elections both in 2010, 2014 and 2018.

In the light of a few illuminating facts discussed so far and I could easily make the list much longer, my last point is to track down on the status and the impact of the so-called Sargentini-report compiled by rapporteur Judith Sargentini, a Dutch MEP for the Left Green Party on behalf of the EPs Committee on Civil Liberties, Justice and Home Affairs. The political goal of the Sargentini-report is to suspend Hungary's voting rights in the European Council, the initiation of the so-called article 7 procedure, also called the nuclear option.

Discussing the status of this report we have to nail down that it cannot be qualified - by any means - as a scientific report, neither in its method of research which violates the *audiatur et altera pars* principle and other fundamental scientific principles, nor its fact finding mission can be called objective. It is rather a selective list of snapshots targeting Hungary but the cases are presented one-sidedly on a biased tone, there is a mixing up of time, places and events, incorrect information and

data, outdated and anachronistic cases, factual mistakes, etc, etc, etc. It is also telling that not the European Commission launched the article 7 procedure against Hungary but this so-called LIBE committee of the EP. We have to conclude that Saint Stephen's guidelines have turned out to withstand the test of time. Of course, the EP and its rapporteur have the full right to publish a political declaration on Hungary and criticize the Hungarian government on the basis of political opinions. The Orbán government has in its turn the full right to defend its political positions.

In sum, I am skeptical about the truth value of the Sargentini-report on scientific grounds. Rather with all my experience of forty years researching European affairs I am convinced it will backfire and lead to a questioning of the European project in Hungary and other countries in Central and Eastern Europe. It will have an impact on the deepening of the fault lines between Western Europe on the one hand and Central and Eastern Europe on the other hand. In the end the very existence of the Union itself might be at stake and everything that we have built up in Europe since the Treaty of Rome might get lost. Last but not least the Dutch-Hungarian good relations and mutual understanding for which I have elaborated my whole life have come under severe pressure.

So, it is to be applauded that this highly respected House has taken the initiative to do its home work. However, the stakes and responsibilities are high and it remains to be seen what the outcome of these meetings will be. If it will be a bolt-on extra it will contribute to a further deepening of the crises of confidence in Europe instead of offering a tool for mediation. The rule of law in the Member States is not only affecting Hungary but all Member States in the Union in fact. The state of the rule of law is at the heart of the European project and should refer to all parties involved. The case against Hungary is only convincing, when rule of law monitoring would be applied to all the European Member States independently of political maneuvering and based on parity of esteem. My conclusion to the opening question is that there is no *a priori* reason to assume that Hungary is on a different planet. The hard facts show that it is a normal European country which deserves more respect for its contributions to peace, safety, security and prosperity in Europe.

bibliographical notes László Marác (May 19, 1960, Utrecht):

I was born and raised in a Hungarian refugee family in the Netherlands. My parents left Hungary during the 1956 uprising against communism, a terrible political system and found refuge in the Netherlands. I would like to thank the grandparents of our King Willem-Alexander of the Netherlands, Queen Juliana of the Netherlands and the consort of the Queen Prince Bernhard of the Netherlands for their personal efforts to help to invite 3000 Hungarians refugees to the Kingdom of the Netherlands. I am grateful that my parents were adopted in the Netherlands as their new home provided me the opportunity to be educated in a liberal academic climate which I could never have enjoyed in communist Hungary. In the past forty years since I am in academic life I could intensively study without emotions and in objectivity - because there is hardly any country in Europe triggering so much emotions as Hungary - the culture and language of my ancestors. I am the author of more than 350 publications. A large number of them are matching high scientific standards and are reflecting on different aspects of Hungary. I have received a honorary professorship at the Eurasian University in Astana for my work on European linguistic diversity and the relation between Hungarian and Turkic early history. I have participated in a number of scholarly projects in Europe and I have cooperated all over the world with a number of distinguished scholars for which I consider myself privileged. In my daily affiliation, I am senior lecturer and researcher at the University of Amsterdam. Today in this roundtable, I am representing none of these institutions but express my own point of views solely.