

Speech by Kerstin Lundgren, Budapest the 27th of Sept 2013

Dear all,

I´m very pleased being invited to this conference, a very important and timely one. I myself, have been following the development in Hungary over the last 2,5 years as one of two raporteurs for the Council of Europes Monitoring Committé. We were just asked to follow and report back our findings. You and I know that many in Hungary asked why on earth we should do that. Hungary is an old and fantastic Country, a democratic country, a member in Council of Europe since 1990 and in EU since 1994. By that all should be proven OK some people may think and also said. But is that really the case? Could we lean back and relay on that in any country?

Council of Europe has been scrutinizing several EU-members and monitoring 14 out of 47 members of Council of Europe. So the alarm was on for Hungary, as it had been before for Greece, Latvia, Austria, Lichtenstein, UK and Italy. I and a colleague were asked to follow it up. All members have a responsibility to both being watchdogs as well as helping each other improve the values we all signed up for when becoming members.

Democracy is not an easy thing, not a quick fix or something given from heaven or by history. It is the every day struggle for each generation to develop our societies in a democratic way. The UN charter on Universal Human Rights declared the rights for everyone to take part in their countries government, directly or through freely chosen representatives. UN, the universal declaration on human rights and the Council of Europe are results of lessons learnt. So even the EU. The insight where there - at that time, the need of safeguarding human rights, to build

democratic institutions with checks and balances within our societies. We had seen what could be happening otherwise and we have seen it since and we do see that today.

Of course every country is unique. But in Europe we tried to set up some common standards to follow and also to build some institutions to safeguard us all if we are at risk. We formed a safeguard for HR for everyone individually, by agreeing on the European Convention on HR and by creating the court on HR as well as other conventions and protocols. By creating other independent bodies as the Venice Commission, the HR-Commissioner and different monitoring bodies we tried to make sure that we didn't get lost again. By that not saying that there is only one way of doing things, but acknowledge that there are some areas we have to be very cautious about. There are lessons learnt, we can sometimes hear the early-warning alarm. But will we, can we and if so how should we react? We can hear the bell in several countries in Europe. Shall we take notice or put a blind eye to it, hoping it will fade away? Do as the tree monkeys, hear no evil, see no evil and speak no evil?

One of the constant areas for disagreements in many emerging democracies is the basic rules, often laid down in a written Constitution. Agreeing on the rules for the society is of course a very crucial starting point for democratic development. If we look around we will find quite some countries with problems due to not being able to build at least a common ground for the society. It's not easy, by no means. It takes time and responsibility, a will from all parts - both to respect and listen to the others to reach those common rules. And as always the strongest part have the biggest responsibility.

Democracy is of course about electing representatives free and fair, but to be able to do that you need a lot more than a free and fair election-day. Free and fair elections are fully dependent on freedoms and rights of the people in every-days-life, of impartial institutions, of division of power between legislative and judicial branches, of checks and balances in our societies. Crucial indicator on the state of freedom - is freedom of expression, free press and media. How can you achieve free and fair elections if the society, the people are not really free, if media are not free and expression are not free?

Trust and not oppression, threat or fear is the basic ground for enhancing a democratic society. Be careful if you hear the bells and see the signs, you may be going down the road on a slippery slope towards an autocratic society?

I, as a parliamentarian in our Common European house – the Council of Europe, am one part in the system of checks and balances we have achieved. We together with civil society and free media must be the watchdogs, not to bark with our governments - but to guide and challenge them to go for higher standards on democracy, rule of law and Human rights. Those values all voluntarily signed up for when becoming members. We should strive for going up hill, not down hill. Usually many start to compare the situation in different countries. Are they all treated in the same way? But remember, every country is unique and must be treated as such, on its own merits. That's how I tried to work in my fact-finding-work on the development in Hungary. I can assure you that when I and my colleague asked for opening of a monitoring procedure in respect of Hungary it was due to our will to go uphill.

Me and my co-rapporteur invested considerable time and efforts to prepare our Opinion. A lot of paper, three fact-finding visits, more than 80 dialogues and of course we looked closely in to the 11 opinions prepared by our independent legal and Constitutional expert body – the Venice Commission. The latest Opinion on the Fourth amendment to the Constitution clearly vindicates the findings of ours and the Monitoring Committé.

If we follow the tracks from the past we can see that free media, freedom of expression is a key to developed democracies. Oppression of journalists, censorship, self-censorship, threats and detentions are signs to look for. Because we know – in countries where the free word is jailed or even murdered, that track is leading us away from democracy. The Media Acts in Hungary were heavily criticized by the OSCE Representative for Freedom of Media, from European Commissioner Kroes, The Council of Europe Human Rights Commissioner who expressed that he saw threats to the independence of the public broadcasters, infringements of the rights of journalists to protect sources as well as attempts of a prior content regulation. The Council of Europe has provided extensive expertise to the authorities on the media legislation. Regrettably, most of the fundamental concerns raised in these expert opinions were either not addressed or amendments were limited to technicalities. Independent and impartial media regulatory authorities are essential for the protection of the freedom of expression and the exercise of free speech, as guaranteed in article 10 of the ECHR.

Let me briefly sum up our findings in our report on Hungary:

Democracy

Since 2010 the current government has used its 2/3 majority to amend the old Constitution 12 times, and to push through in less than a year a completely new Constitution, which has already been amended on 4 occasions followed by us. Now we learnt about a 5th Amendment which will be in force from the 1st of October. The constant changing of the Constitution has turned it into an instrument of political power instead of a framework for the organization of state and government. It has been done in a political climate of mistrust and fight. This undermines its democratic legitimacy and may be a source of future problems.

Again in record time the ruling coalition has passed over 30 so-called cardinal laws that requires a 2/3 majority to be adopted or amended. Let me quote the Venice Commission: “the wide use of cardinal laws to cement the economic, social, fiscal, family, educational etc. policies of the current 2/3 majority is a serious threat to democracy”. The Venice Commission even stated that “elections would become meaningless if the legislator would not be able to change important aspects of legislation that should have been enacted with a simple majority”.

Rule of Law

There seems to be a wish of the current majority to exert control over Hungarian society far beyond the mandate it has received from the voters. The sheer number of institutions and regulatory bodies that were either newly established or thoroughly reformed by the ruling coalition underscores this intention. Let me just mention a few: the Ombudsman institution, the

Media Council and Media authority, the national Election Committee, the Authority for data protection and the Budget Council.

Since 2010, the administration of the judiciary has been completely overhauled and brought under control by the ruling majority. Over 300 judges were forced into retirement because of the sudden lowering of the retirement age from 70 to 62. The Supreme Court was replaced by the Curia and the mandate of its President was abruptly terminated before the end of his term. The newly created National Judicial Office gives its President, who is elected for 9 years an excessive number of competences. The Office has been confirmed in the Fundamental Law without any indication of the necessary limitations and the checks and balances. The 4th Amendment provided the Office with additional legitimacy without providing for additional accountability. The supreme body of judicial self-government was not even mentioned in the Fundamental Law. With the 5th Amendment there seem to be some changes done in an attempt to take care of some main concerns, which I do welcome but of course have not been able to study in detail. So I will not go in to them.

Nowhere has the erosion of the systems of checks and balances been more clear than in the systematic curtailing of the powers and competences of the Constitutional Court: the Constitutional Court no longer has jurisdiction over financial and economic matters regulated by cardinal laws, all its decisions from before 1 January 2012 have been declared null and void and its competence with regard to constitutional amendments is now expressly limited to procedural issues. Let me quote the Venice Commission again: “ the limitation of the role of the Constitutional court leads to a risk that it may negatively affect all 3 pillars of the Council of

Europe, separation of powers as an essential tenet of democracy, the protection of human rights and the rule of law”.

As noted by the Venice Commission, there is a consistent pattern of reacting with constitutional amendments to the rulings of the Constitutional Court. Provisions which were found unconstitutional and annulled by the Constitutional Court were re-introduced on the constitutional level to prevent the Court from reviewing them in the future.

The complete removal of the competence of the Constitutional Court to control provisions that should have remained at the level of ordinary legislation is an infringement of democratic checks and balances and the separation of powers, according to the Venice Commission. On top of that we took notice of the way the court has been renewed and composed.

Human Rights

In our opinion, the new constitutional and legal framework in Hungary is in several aspects at variance or contradicts European standards, and in particular the European Convention of Human Rights. Particularly we found that this was the case with regard to cardinal legislation on the judiciary, the elections and the recognition of churches. The European Court has already found a violation of the Convention in a number of cases, such as the 98% tax on severance pay for civil servants or their dismissal without any reasons given. 150 judges have applied to contest their early retirement and around 13 000 law enforcement or security personnel are complaining about the replacement of their early retirement pension by a taxable allowance. It seems as if

some notion has been taken in to account in the 5th amendment on the ruling of recognition of churches. But even here I would like to stress the fact that I have not been able to look closely to the 5th amendment.

Dear all,

Nobody contests that there were free and fair elections in 2010 and that the ruling coalition got a clear mandate for reform from the voters. But a 2/3 majority gives no government a free ride.

What we have witnessed in the last years is a consistent pattern of using the Constitution and the cardinal laws as political instruments to cement choices made by the present majority well beyond the mandate given by the voters, while considerably weakening at the same time the constitutional system of checks and balances.

This raises serious concerns.

The concerns raised are not some paragraphs or just technical remarks. If, as we did, you take them all together you will see a more holistic picture. Taken separately they would certainly raise concerns but the accumulation of reforms that aim at establishing political control of most key institutions while in parallel weakening the systems of checks and balances are indicators for something more serious. I heard in the debate in the Assembly of Council of Europe that Hungary had changed a one-party-constitution by a one-party-decision. My question is if that is a good or a warning sign?

What lessons have we learned from our history? Should we not strive to avoid the tyranny of the majority, because, as Lord Acton put it in the 19th century, power tends to corrupt, and absolute power corrupts absolutely? Decisions made by a majority may place its interests so far above those of an individual or minority group that it constitutes active oppression of their rights. Down that road it may be oppression of a disliked ethnic, religious or racial group, deliberately penalized by the majority element acting through the democratic process.

Constitutional limits on the powers of a legislative body, and the introduction of a bill of rights have in Europe been used to counter the perceived problem. A separation of powers has also been implemented to limit the force of the majority in a single legislative chamber.

The whole idea with the limits is to safeguard that the basic rules will remain common grounds. A 2/3 majority is in my view no excuse to use the Constitution or the cardinal laws as a political instrument to perpetuate choices made by the present majority while endangering the constitutional system of checks and balances. Remember the justification for a higher threshold when adopting constitutional framework is two. Firstly to protect it from frivolous changes by a ruling party for narrow partisan self-interest. Secondly to ensure an as wide as possible consensus between all political forces over the legal and democratic foundations of the State.

Well, taken together - we have been hopeful some times, but also seen several setbacks. The Council of Europe didn't follow our recommendation to open monitoring, but decided to closely follow the development. In the European parliament there was a clear wish to be able to do more for safeguarding that the development followed the values we signed up for, voluntary. We did it to build more robust democracies for the freedoms and rights of our people. Let's Go forward - not backwards. I thank You for listening.