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De vaste commissie voor Europese Zaken, de vaste commissie voor Buitenlandse Zaken, de vaste commissie voor Financiën en de vaste commissie voor Justitie en Veiligheid hebben op 14 februari 2019 gesprekken gevoerd over **Rule of Law/Rechtsstatelijkheid**.

Van deze gesprekken brengen de commissies bijgaand geredigeerd woordelijk verslag uit.

De voorzitter van de vaste commissie voor Europese Zaken,
Veldman

De voorzitter van de vaste commissie voor Buitenlandse Zaken,
Pia Dijkstra

De voorzitter van de vaste commissie voor Financiën,
Anne Mulder

De voorzitter van de vaste commissie voor Justitie en Veiligheid,
Van Meenen

De griffier van de vaste commissie voor Europese Zaken,
Van Haaster

Voorzitter: Van Oosten
Griffier: Van Haaster

Aanwezig zijn zes leden der Kamer, te weten: Buitenweg, Van der Graaf, Anne Mulder, Omtzigt, Van Oosten en Verhoeven.

Aanvang 15.07 uur.

De voorzitter:

Dear colleagues, ladies and gentlemen, welcome to these round-table talks on the rule of law. I extend a special welcome to the experts who participate in this afternoon's meeting.

Because we have guests from abroad, the language used in this meeting is English. We thank our guests for accepting our invitation and for making the journey to The Hague in order to be with us today. We also thank our guests for sending us their position papers in advance.

The House's standing committee on European Affairs has organized this meeting because the rule of law in the European Union is one of its chosen priorities for 2019. These round-table talks serve the purpose of gathering information and exchanging views. The standing committee will use all information in preparation for the debate on the rule of law with the Dutch Minister of Foreign Affairs scheduled for 14 March 2019. Today's round-table talks consist of three sessions: the first on academia, the second on the legal system and the third on civil society. In each session the invited speakers may deliver a brief introduction, to be followed by an exchange of views with all participants. I will «collect» the questions asked by my colleagues and, of course, invite our guests to answer them.

Unfortunately, I have to inform you that Mr Szánthó, one of our guests for the second session, is unable to participate due to personal circumstances.

Academia

- Dr Petra Bard, Associate Professor ELTE School of Law, Hungary, and Visiting Professor at Central European University
- Professor Rick Lawson, Professor of European Law, Leiden University
- Professor Laurent Pech, Professor of European Law, Middlesex University, London
- Dr Jonathan Price, Junior Research Fellow, Aquinas Institute, University of Oxford
- Dr Anikó Raisz, Associate Professor, University of Miskolc, Hungary

De voorzitter:

I suggest we start with the first session. Let me introduce our guests for this session. First of all, Dr Petra Bard, Associate Professor ELTE School of Law, Hungary, and Visiting Professor at Central European University. Professor Rick Lawson, Professor of European Law, Leiden University. Professor Laurent Pech, Professor of European Law, Middlesex University, London. Dr Jonathan Price, Junior Research Fellow, Aquinas Institute, University of Oxford. And Dr Anikó Raisz, Associate Professor, University of Miskolc, Hungary.

I give the floor to Dr Petra Bard for her brief introduction. A few minutes, please.

Ms Bard:

Thank you for your kind invitation and for introducing us.

Let me say a few words about the state of the art in the two respective countries under scrutiny here today and about EU values. Let me then say a few words defending EU action in cases of rule of law backsliding.

So often regimes change. Hungary and Poland were the first post-communist countries to join the Council of Europe and to abide by the European Convention on Human Rights. They started negotiations with NATO and the European Union rather early in the 1990s and joined these organizations back in 1999 and 2004 respectively. They had accession talks completing the transition to a democracy. Retrospectively, in case of these two countries there was just one presumption that proved to be wrong: once a democracy, always a democracy.

Fast forward to 2010 and the Fidesz government. The conservative Fidesz party and the smaller Christian Democratic People's Party got 53% of the vote in free and fair elections. This translated into two thirds of the seats in the Hungarian parliament, a unicameral parliament. They used this super majority to adopt a new constitution and some two thirds of the laws, which were used to create both the system of national cooperation and the state based on what was later labelled by the prime minister as a liberal democracy. In essence, they managed to curb all institutions and procedures that were supposed to be the checks and balances, that were supposed to oversee the use of powers by the government. Tools that were used were for example changes in the election laws. Some commentators tend to say that today, elections in Hungary are free, but no longer fair. If this is true, it means that Hungary does not even satisfy the thinnest understanding of the rule of law according to which, periodically at least, people should be able to change the government if they are dissatisfied.

Because of those attacks on the Hungarian constitutional core and judicial independence, the ombudsman system as we used to know it has ceased to exist. There were distortions of the media and media pluralism. Now, there is a lack of public information, which makes a meaningful public debate impossible and weakens the chances of a fair and liberal democracy. Traditionally disadvantaged groups were further oppressed and new enemies have been created such as NGOs, academia, Brussels or the United Nations.

In 2015, Poland followed suit when the Law and Justice Party got into the government. Both the tools employed and the outcomes were very similar to those in Hungary, but certain elements make the Polish case distinct. This proves that this is neither a central European phenomenon nor a Visegrád pattern. Just let me name one fundamental difference from a legal perspective. The Polish government does not have a constitution-making majority. This means that they have to curb the rule of law by amending ordinary laws using the back door, so to say. So the Polish situation is much more obvious.

The process is very well documented by renowned international organizations such as the OECD or the UN Venice Commission, but is also reflected in the Commission's recent proposal and the European Parliament's resolution triggering article-7 procedures against the two respective countries. But there is also an increasing number of influential cases with a rule-of-law element. All these facts prove the point that the countries under scrutiny do not respect and promote the values that they agreed to promote when they signed the Lisbon Treaty and that are enshrined in article 2 of the Treaty on the European Union. Among these values, the rule of law, democracy and fundamental rights stand out. In Hungary, this process has been going for a decade. But this year, a point has been reached where, according to the most recent Freedom House report, for the first time since the transition of Hungary to democracy in 1989-90 and for the first time in the history of European integration, an EU member state was downgraded from a free country to a partly free country. As a result, we face a situation today that was previously unimaginable, a situation in which the EU harbours member states that would probably not qualify for a European Union membership

if they were to apply today. It also means that the EU failed and failed big in addressing liberal development.

All I wish to say for the remaining half a minute or so is that we should acknowledge that violation of the rule of law, rule of law backsliding, is an EU matter. Beyond harming nationals of a given country, all EU citizens will be affected to some extent due to the EU's decision-making mechanism in which the rogue member states' representatives are participating. At the very minimum, the legitimacy of EU law making will be jeopardized.

Once article-2 values are not respected, the essential presumptions behind mutual recognition, for example recognition of judgements, do not hold. Especially in surrendered cases, we see immediate consequences. Most recently, a court of appeal in Karlsruhe abandoned the European Arrest Warrant model and returned to traditional usages of extradition making use of diplomatic channels. The court in Karlsruhe made the surrender of a Polish suspect dependent on the German embassy being allowed to take part in the trial in Poland and visit the defendant in custody to make sure that he would receive a fair trial and that prison conditions would be decent.

As far as I am informed, test cases are pending in the Netherlands. Of course, the European Arrest Warrant cases are not shattering in and of themselves, but surrendered cases may have spillover effects on civil cases. Traditionally, independence is equally important for the functioning of the single market and the euro zone, but also for EU legal concepts such as direct effect or the primacy of EU law. So I think I am not exaggerating when I say that the whole EU-law construct is at stake.

Professor Pech and professor Kim Lane Scheppele once said: «The «values crisis» may not seem to be the most urgent one among the crises the EU is currently facing, but it has the most far-reaching consequences and implications for the European project, because without values shared by the member states, there are fewer reasons for the EU to exist.»

Now is not the time to remain silent. Paraphrasing Albert Einstein: Europe is in greater peril from those who tolerate rule of law backsliding than from those who actually commit it. In this spirit, I very much appreciate and welcome the coming debate.

Thank you.

De voorzitter:

Thank you, Ms Bard. I give the floor to Mr Rick Lawson.

Mr Lawson:

Thank you, Mr chairman. Thank you for inviting me. Since time is limited, I do not intend to dwell on the facts. You have a lot of documentation at your disposal and my colleagues will no doubt further enlighten you on what is actually happening in the countries concerned.

Let me just mention two things in this respect. I would like to remind you of a policy paper issued in 2017 by the AIV, the Advisory Council on International Affairs in the Netherlands: *De wil van het volk? Erosie van de democratische rechtsstaat in Europa*. Of course, you are aware of this paper, but I think it contains a useful framework of analyses. When it comes to facts, there is another thing I would like to mention here. Of course, we are aware of the high-profile situations such as the reforms of the judiciary, which are well documented, but I would argue that there are many developments out of the spotlights and that it may be important for you to get the full picture of the situation in the countries concerned. Academic freedom, for instance. Quite apart from the Central European University leaving Budapest – many things have been said about that – there are also concerns about the position of the Hungarian Academy of Sciences. Changes take place in the bureaucracy, in the army and in independent supervisory bodies that we rarely see from the outside, but

sometimes we get a glimpse when the European Commission starts infringement procedures against countries such as Hungary or Poland because supervisors who were supposed to be independent are not. Then we realize that the political parties in charge may be tempted to post civil servants on positions where they operate not fully independently. This may have an impact on us as well. Sooner or later, somebody will raise the question whether it is safe to share data, intelligence, with services operating in certain countries, because the countries» mutual trust is not paramount. This may have a direct impact on our national security.

I will make a last note on these developments under the radar. Obviously I am not a diplomat, but I have the impression that diplomats in third countries who are used to having weekly meetings in order to exchange information, to coordinate positions and to adopt common approaches have started avoiding these meetings, have started avoiding sharing parts of information that they consider too sensitive and have started organizing parallel meetings in which not all EU members states participate. Again, I am not a diplomat, but if this is true, this is not only detrimental to the EU members» common external policies. It also suggests that Europe is actually falling apart.

I have only four minutes, so let me confine myself to making one real point. Quite apart from what is actually happening in Poland and Hungary, my great concern is that the post-war alarm bells we installed in Europe do not always seem to work. The Council of Europe, established in 1949 to defend democracy, human rights and the rule of law, is rather invisible in our discussions on for instance Hungary and Poland. Of course, the anticorruption agency GRECO is active in Poland. GRECO issued recommendations and Poland will need to reply to these by the end of March. And of course, in March, the Commissioner for Human Rights will visit Poland and talk about the independence of its judiciary and prosecuting services, but the jewel in the crown, the European Court of Human Rights, is actually absent. We have very few, if any, judgements of this Court on Hungary and Poland. To some extent, this has to do with the rights protected in the Convention. How to invoke rights in a meaningful way if academic freedom is under pressure? How to invoke rights if the irremovability of judges is under pressure? How can you frame a case before the European Court? Then, you will have to exhaust domestic remedies. Then, the European Court is overburdened and suffers from a lack of funding because of political developments in Russia and Turkey as well. This means that facts on the grounds are created. In the best of scenarios, the European Court of Human Rights would pass a judgement after five, six or seven years. Quite apart from whether violations actually occur or not – to be decided by the Court – we do not have a judgement. I think it is a matter of concern to reflect on the reasons why the European Court, which was set up to secure and safeguard our common values, is not in a position to have a meaningful impact these days.

Policy recommendations. It is tempting to outsource our concerns about the rule of law and human rights to European agencies and institutions: we do not have to address these in bilateral relationships, because we have professionals who have the authority, the resources and the procedures to do so. The Council of Europe does at least not meet all expectations.

This is why I would recommend that the Dutch authorities strengthen their knowledge base by strengthening the capacity of embassies and by strengthening the legal and political capacity of the Ministry of Foreign Affairs in order to be able to intervene in cases before the European Court of Human Rights in Strasbourg and the Court of Justice of the European Union in Luxembourg if the rule of law is at stake. I would recommend that the Ministry of Foreign Affairs have all the tools available to analyse developments and maintain contacts with these countries through

training programmes and budgets such as the programme Matra for European Cooperation. Make them also available for EU member states, support academic exchanges and support NGOs working in and with these countries. Maintain peer pressure if you feel that developments are not going well. And finally, let us actively, and perhaps more actively than today, build coalitions with like-minded countries. The Netherlands has been very active in this domain. I am proud of that, but we should avoid the situation in which our country is an exception or isolated in this respect.

Thank you very much.

De voorzitter:

Thank you, professor Lawson. Let us continue with professor Laurent Pech.

Mr Pech, the floor is yours.

Mr Pech:

Thank you very much. My time is limited, so let me get straight to business. I have four minutes. What I would like to do in my four minutes, is try to describe the nature of the problem we are facing from my point of view.

If I may say as much, I think that a lot of people are in denial about the nature of the problem we are facing. What we are facing in a number of countries – by «countries» I mean, here and today, essentially Hungary and Poland – is what I call in my scholarship «rule of law backsliding». What do I mean by rule of law backsliding? We are not talking about the shortcomings seen from a rule-of-law point of view, which you may encounter in many countries. It is always a matter of degree when it comes to compliance with the rule of law here. What do I mean by rule of law backsliding and why is this an existential threat to the EU legal system? Rule of law backsliding is a deliberate process of dismantling checks and balances on the basis of a blueprint. The deliberate aspect and the systemic aspect of rule of law backsliding make the rule of law backsliding in Poland and Hungary a true existential issue for the EU. And if it is an existential issue for the EU, it is by definition also an existential issue for the Netherlands. At least, it is in the national interest of the Netherlands, because if rule of law backsliding does continue, it will completely undermine the functioning of the EU legal system. And if the EU system does not work, you can forget about a well-functioning EU internal market.

If I were to advise a would-be dictator in the EU, this is the blueprint I would describe in a few steps. It always starts like this. What do you do? You are freshly elected on the basis of free and fair elections, but it is the last time you will see free and fair elections, because as soon as you have been elected, as a first step, you capture the constitutional court, if you have a constitutional court in the country, or you capture the supreme court. You do not have to do this legally or lawfully. As soon as you have captured the constitutional court in breach of the constitution, who is left to tell you that you have violated the constitution? As soon as you have done that, you adopt state broadcasting legislation. Why is this important? You need to shape the narrative while you are essentially violating the constitution in plain sight. Once you have done that, you have much more time to adopt unconstitutional legislation or legislation in breach of EU law. Why do you have more time? Because essentially, there is no effective constitutional or EU legislation anymore. What is the first piece of legislation you are going to adopt? This is very easy to guess. You are going to adopt the so-called judiciary reforms. What do I mean? Essentially, you are going to appoint your own friendly judges who are going to do the ruling party's bidding in ordinary courts. Obviously, the EU may react, but if you are lucky, it will take two to three years before

an infringement action is initiated or a preliminary ruling request is sent to the Luxembourg Court.

So once you are done with ordinary judges, what do you do? Well, you are going to adopt legislation regarding civil society groups. Before the next election, you are going to adopt legislation especially regarding electoral rules. It is absolutely crucial that you rig the game before the next legislative elections. So, you will have free elections, but they will be unfair, as was the case in Hungary in 2014 and 2018. Essentially, a peaceful rotation of power is virtually impossible because the entire electoral structure has been rigged against you. Should you lose the elections, what will you do? Well, you are going to challenge some votes in the key constituencies, because you have your friendly judges in the electoral courts. Then you have nothing to be afraid of. If you are very smart, you are going to call the state tax officers and you are going to fine opposition parties in order to weaken the opposition parties just six to twelve months before the next elections, so as not to make it too obvious that, essentially, you are undermining the elections just before the elections usually take place. The key is to rig the electoral framework ahead, six months before the EU does send an electoral observation. Because you have essentially captured all the checks and balances, you can always **a posteriori** use legal avenues to gain elections that you have de facto lost in the polls.

Now, I am afraid this is where we are. You may not agree with me, but this is my diagnosis. This is the situation in at least two countries. More worrying news is that I can see this blueprint being used in an additional number of countries. I want to mention two: Rumania and Bulgaria. In these two countries, the rule-of-law situation was not good. This is why they have been subject to rule-of-law mechanisms since 2007. But what we are seeing now is a deliberate intent to make things worse. This is rule of law backsliding: you had a relatively stable situation before, but now you deliberately undermine checks and balances. What do you want to achieve at the end of this process? You want to create a de facto one-party state. What people call illiberal democracies should not be called illiberal democracies, but electoral autocracies. Elections are held, but it is impossible for the opposition parties to win these elections because the entire system has been rigged.

The EU institutions should be commended for trying to do something about it. It is just too bad that they woke up about six years too late. Thank you very much.

De voorzitter:

Thank you, Mr Pech. Let us continue with Dr Jonathan Price.

Mr Price:

Let me declare my interest first, in case there is any conflict. I also hold an assistant professorship in philosophy of politics at the University of Warsaw. I have three Polish children, two Polish cars and one Polish wife. I am also wearing cufflinks that are from Poland, but that was not a deliberate choice; they were the ones I had with me today. I am a legal philosopher, so I am going to deal with some philosophical issues for you all.

The Max Planck Institute currently has a research area addressing «systemic deficiency in the rule of law». I will read a quick quote from it. «In the last decade, EU integration has been marked by a number of existential crises that challenge its constitutional structures and touch upon the founding values of the Union as set out in article 2 of the Treaty of the European Union. Among them, a value that is served as the cornerstone of European integration seems particularly threatened: the rule of law. The rule-of-law crisis has many facets. On some occasions it is due to undue extension of government power such as in cases of

interference with the judiciary or restrictions on media freedom, civil society organizations and academia.» Poland and Hungary are put in parenthesis there. The author goes on to talk about corruption; Bulgarians and some of the others that professor Pech has mentioned. He does not mention rule-of-law breaches at EU level, such as euro crisis, national debt and migration issues. Apparently, those are of no concern. Curiously for us though, the concept and practice of the rule of law itself I think are a contributing cause to the purported crisis. Whereas the positive assessment of the rule of law as a fundamental value in court principle of legal and political order is nearly universally upheld, what has actually been affirmed both doctrinally and in practice differs from land to land and from jurisdiction to jurisdiction. Professor Boudewijn Sirks RNL of All Souls College, Anna Budnik of the University of Bialystok and I wrote a chapter, which I can submit to you later, of a book that has been published entitled *Lost in translation: «rechtsstaat», «państwo prawne» and other false equivalents of «rule of law» (and what to do about them)*. I am quoting know from this book. «Signatories of the Treaty of the European Union affirm that the rule of law is a «principle and a universal value».» Well, actually, the Dutch speakers agree that *rechtsstaat* is both a principle and a universal value. Polish speakers agree that *państwo prawne* is and French speakers agree that *l'Etat de droit* is, and so on. The problem is that these terms are not actually direct equivalents even if they have at times a great overlap in meaning and usage, and even if they are routinely meant to serve as equivalents by those who deploy them. But nor are they translation errors. The EU documents do the same as local lawyers, judges, legislators and juries do in their respective linguistic legal communities. This needs to be taken seriously and needs discussions. The English sense of rule of law, as a formal or procedural rule by pre-existing law rather than the King's will or other arbitrate powers, is not necessarily the same as *rechtsstaat*, used in the Netherlands, which is a constitutional government and/or a state under law. For one, the rule of law is historically developed in the English language. Law does not formally require either a written constitution or a state, even if those are almost universally obtained in practice. Again, neither rule of law nor *rechtsstaat* are the same as *państwo prawne*, the Polish word that is said to be an equivalent, which can have elements of the formal substance of rule of law coupled with constitutional government and constitutional supremacy. Compare the fact that judicial review is present as part of this in Poland, which is explicitly forbidden by article 120 of the Dutch constitution. Neither is the German sense of *Rechtsstaat* the same as what we speak about in the Netherlands. There are problems here. In short, rule of law now means too much, conceptually and practically. And I have not even addressed how fundamental rights, democratic norms and others have been packed into it. It is thus rendered a poor tool for assessment of other nations» constitutional orders, or at times even for an assessment of one's own. The conversation thus often pretends to be about procedures, about means, when what is needed, is a discussion of substance, of ends. That is much more difficult. If one wants to condemn one's neighbour's sins, then one needs to know much more about them than merely that said neighbours are rumoured to have breached the rule of law, whatever that might mean in a given place on a given day.

Thank you.

De voorzitter:

Thank you, Mr Price. Finally, I give the floor to Ms Raisz.

Ms Raisz:

Thank you very much, Mr chairman. Members of the committee, ladies and gentlemen, first of all let me thank you for making it possible for me

to be here. If it had not been for your General De Ruyter, who freed one of my Protestant ancestors from galley slavery 350 to 400 years ago, I would surely not be sitting here today. We all have a long list of what we esteem in the Dutch people and I can assure you that we always keep that in mind. It is always a great pleasure to come to the Netherlands and we have always considered the Dutch people to be our friends. This is exactly why it is so hard to understand how it is possible that you have so much misinformation about us. The mere existence of this hearing or round-table discussion is raising red flags. Both as a member of a friendly nation and as a lawyer with regard to the principle of non-intervention in matters within the domestic jurisdiction of another state, I see that I am completely not in line with professor Lawson. I could see that in the past few minutes.

Of course, it is understandable that you would like to get a clear picture. To be honest, I do appreciate that you consider the picture you currently have as one to be clarified. And so, you are open to hear different opinions. Nevertheless, I hope that you understand that it may raise concerns and, as such, may hardly be considered a friendly move. When Hungary entered the European Union – I deliberately did not say «Europe», because as a state we have been part of that for the past thousand years – we thought it would be a community of states within which equal rights and a mutual respect would prevail. After 40 years of communism, we had in part a terrible heritage, but we had dreams and hopes concerning Europe. Even after having entered the European Union, we had visions in this regard. As the new Fundamental Law, in force since 2012, states in the so-called European article: «Hungary shall take an active part in establishing a European unity in the pursuit of freedom, well-being and security for the peoples of Europe». However, certain acts in the recent past seem to have put this European unity and community of values in danger. The EU is facing a crisis, but its problems are more of an economic nature. I think it is a bad path to measure each other's laws in order to avoid the real questions. I understand that European elections are coming up, but using the Hungarian's card is not really a good option. However, we still hope that what has happened a few times before – namely the western nations lecturing the eastern nations – is not going to happen again. I do not think that you would want this, because I know you are a polite nation.

What are we talking about? Many colleagues of mine have mentioned it before: there is no universally accepted definition for rule of law, but it is an apparently legal term used in a political context. You asked good questions and I will give you short answers. Is there rule of law in Hungary? Yes, there is. Do we have free elections? Yes, we do. Do we have an impartially functioning judicial system? Yes, we do. Are we a democracy? Putting aside the political markers, just democracy: Yes, indeed, we are a democracy. Do we have free press? Yes. A free civil society? Yes. Is there room for improvement in our legal system? Yes, there is. But it doesn't question whether we are a nation with a rule of law or not.

Looking back at your newspaper articles that have been published over the past few years, I am sorry to say that I am missing balance. When I am reading your articles, I hardly ever see the position of the present Hungarian government or the Hungarian right-wing parties mentioned. I know and admit we have a really complicated language that is hard to learn. Apparently, apart from the Hungarians, no one speaks Hungarian. This means that you are receiving all your information from secondary sources. Barely any of you has read our laws and acts in our own language. You receive them from somebody who has already interpreted them. I see a great, great concern there, because this inevitably means that you are not tapping into the right source. You are getting something that has already been interpreted.

I have but a few minutes left, so I cannot go over every part of the rule of law. You are believed to be an open nation. At least in Hungary, Dutch people are considered to have formed such a nation. So I hope you are going to listen and be receptive to other voices, other than those voices that, although really loud, are not necessarily reflecting things that are founded.

Our nations, our societies, differ significantly. We have different historical contexts, but several solutions may be good. In Europe we have different solutions for the same legal institutions. There are people in Europe who think we should be unified. I think that is a horrid mistake. The strengths of Europe and the European Union are to be found in their states» diversity. If we accept our differences peacefully and wisely, we are going to go strong. Otherwise, we will go down.

Let me mention one problem that we are facing. Actually, it has happened many times. Namely that solutions we have borrowed from western Europe start to raise concern when applied in our countries. This is called «double standard». It is a dangerous path. Apart from politicians – also Dutch politicians – even the Venice Commission dared to say something like that in some of its opinions. But I do not think it is fair when people are being judged on the basis of falsified, half-true or exaggerated information, on the basis of plain statements or, as I read in a EU country's report, on the basis of the perception of some actors.

I am a lawyer and thus striving for proof before judging something. I can only hope, and I truly do, that you are going to do the same. Thank you very much.

De voorzitter:

Thank you very much, Dr Raisz.

It is now time for my colleagues to ask you some questions. Let me first introduce them to you. From left to right: Ms Van der Graaf (Christian Union), Mr Anne Mulder (People's Party for Freedom and Democracy, VVD), Ms Buitenweg (GreenLeft), Mr Verhoeven (Democrats 66) and Mr Omtzigt (Christian Democratic Appeal). Sitting next to me is the clerk of this committee and I am Mr Van Oosten, acting Chairman of the committee. I will keep an eye on the clock.

I suggest the Members of Parliament start with two questions each. I would like to ask our guests to write down the questions put to them and I kindly ask my colleagues to point out to whom they are addressing their questions. Otherwise, we will run out of time.

Ms Van der Graaf. You have the floor.

Ms Van der Graaf (ChristenUnie):

Thank you, Mr chairman. I have one question that I would want to address to two speakers. That is my solution for this situation.

Thank you very much. Professor Pech, you described a blueprint, as you called it, or a path to undermine the rule of law. This is cause for considerable concern. The risk that this blueprint or path will be copied elsewhere is serious. Bearing this in mind, do you think that the current EU instruments on the rule of law are adequate to protect and promote rule of law in the European Union? Do we have enough instruments? I would like to address the same question to professor Lawson.

Mr Anne Mulder (VVD):

Thanks for the introductions. Two of the professors here are from Hungary. Could they please respond to each other's statements? Ms Raisz, could you please respond to the statements of Ms Bard? And Ms Bard, could you please respond to the statements of Ms Raisz?

Ms Buitenweg (GroenLinks):

I would like to ask Mr Pech a question. I believe Mr Pech makes a lot of requests to the Council in order to get documents published. He is doing important work in this field. I understand that the majority of the member states have to approve in order to proceed with the hearings in Hungary. But as I understood it, there is no such majority. How is this possible? Have you found out anything about the progress regarding these hearings?

Of course, I am a bit triggered by Mr Lawson's words. He said that the alarm bells do not work. He also mentioned the European Court of Human Rights and its current position. Is there anything we could do that would put this European Court in the right position immediately? Would this actually be helpful in the current situation? Will verdicts of this European Court actually make a difference in a country that is by now straying a bit off the path?

Mr Verhoeven (D66):

Please excuse me, Mr chairman, for arriving a little bit late. Because of that, I was only able to hear the last two speakers. It seems quite logical to me that I address my questions to them.

Mr Price, what should we do? We are all using severe words when stating the problems and making an analysis. I am sure that we all have heard a lot of these stories several times before. Should we for example work with conditionality? Would it help if European countries were to say that not doing the right thing concerning the rule of law will lead to consequences in the field of, say, financial resources? Or should we do something in the field of the EU Pact for democracy, rule of law and fundamental rights? The latter is one of the suggestions that our parties have put forward in the European Parliament.

My second question is meant for Ms Raisz. You surprised me a little bit with your point of view on the situation, but this is exactly why you are here. So, thank you very much for being here. What about the free press disappearing in your country? What about the university that had to leave your country and move to another? What about your country's banning civil society organizations? I thought I heard you talking about fake news. Could you please respond to these three occurrences? Because in my view, they are facts.

Thank you very much.

Mr Omtzigt (CDA):

I would like to take some extra time for the last questions put to Dr Raisz. I am a bit surprised by her introduction, but that is fine. We wanted this kind of dialogue, we are having this hearing and we did invite a mixed panel. This is not happening by chance, because we feel this is what we should be doing. We do want to talk to the Hungarian government. You feel people have the wrong impression of Hungary. According to your view, on what three points do these impressions stray furthest from the truth? Could you give us the facts we are missing in these three situations?

De voorzitter:

I see that Mr Pech wants to have the floor, but all of you have questions to answer. Perhaps it is easiest to start with Ms Bard. I hope you do not mind. Let us go ahead and see how it goes. Please, Ms Bard, go ahead.

Ms Bard:

Thank you very much for your questions, particularly for those specifically addressed to me and my fellow-countrywoman from Hungary, Dr Raisz. I would like to focus on the point of juncture and on the agreements we

have, because I feel that is more fruitful than focussing on the differences, which are perhaps more apparent in these talks.

First of all, I agree that the Hungarian language is an extremely difficult language and that it is super hard to process it properly. More importantly, I also agree that rule of law is a vague concept. In order to be true to the concept of the rule of law you cannot slice it down, you cannot have a one-size-fits-all solution. It should be kept vague, but the fact that the concept is vague does not mean it is not defined. It should not be an excuse for the European Union in action. There are fairly good descriptions of what the rule of law is. Just look at the Bingham Centre, look at the UN Venice Commission's rule of law checklist. It is simply not true that *Rechtsstaatlichkeit*, the rule of law, *l'Etat de droit* or *jogállamiság* are concepts so different that we do not share the same vocabulary at all. Although not specifically said, between the lines it was implicated that this is not a central European thing. Let us not have an east-west divide; I would very much agree with that. Rule of law backsliding and human rights violations are not typically or exclusively for central and eastern European states. I think it is very difficult to justify why the article-7 procedure and the pre-article-7 procedure concerning the rule of law framework was initiated against Poland first and against Hungary only afterwards. For this, there are no good explanations. The only explanation I can think of is that it puts European party families in a very bad light. In my opinion, what we need is a scrutiny that is objective, methodologically correct, contextual, based on academic scrutiny and conducted by a non-political organization – let us name it the Copenhagen Commission. This is how some refer to it in literature, but I think it is incorrect to call it Copenhagen, because not just the countries that acceded in 2004 might face these problems. We should rather call it the Rome Commission. Let us face the fact that all the tools we currently have within the Lisbon Treaty framework are only applicable ex post facto. Think about article 7, think about the infringement cases. They are slow and time is an important element in rule of law backsliding. If a country slides down, starts to slide down towards rule of law backsliding or is on the slope of rule of law backsliding, we need ex ante and immediate responses. Let me come up with my final thought in this respect and formulate a proposal. The DRF Pact that the European Parliament fairly recently proposed is a very promising attempt to have an objective, annual and regular scrutiny, applicable to all member states irrespective of their size, origin or geography. Were this to be realized, the European Union could signal in due time that one's presumptions behind EU legal concepts such a mutual trust do not hold. In this way, we do not shift the responsibility to the judiciary, to the Court of Justice of the European Union or even to national courts to prevent proliferation of rule of law abuses or human rights abuses. There would be an entity bearing the political responsibility to put a halt to such phenomena.

De voorzitter:

Thank you, Dr Bard. You referred to the introduction by Dr Raisz. Dr Raisz, would you like to respond? If so, I will give you the floor. If not, I will give the floor to professor Lawson, to whom my colleagues have asked three questions.

Ms Raisz:

No, thank you.

Mr Lawson:

Mr chairman, I will try to answer these questions in one go and be brief because of the time.

De voorzitter:

We have about one quarter of an hour extra.

Mr Lawson:

For me?

De voorzitter:

No, not only for you. For all of you and for my colleagues, of course. Please, go ahead.

Mr Lawson:

Sure. On the first of January 2012, András Baka lost his position as President of the Supreme Court of Hungary. Using the constitution as a base, he had anticipated to continue his presidency for another three and a half years. He disagreed with the fact that he had lost his position and filed a complaint with the European Court of Human Rights in Strasbourg in March 2012. The Court dealt with the case in a sense of urgency and delivered judgement in June 2016, four and a half years after he had lost his position. Mr Baka found favour in that the Court affirmed a violation of both the right to a fair trial and the right of freedom of expression, but Mr Baka did not get his position back. In a nutshell, this is the problem of the European Court of Human Rights. As far as I know, nobody questioned the substance of its judgement. The judgment was extensive, well-argued and thorough, but was passed very late.

Within the European Union, the dynamics are different. Although my colleague professor Pech and I have just agreed that he will focus on the European Union, which has different dynamics and a different toolbox, I would like to mention the position of the Central European University as another example. It was only in December 2017 that the European Commission launched an infringement procedure against Hungary with regard to the Central European University. This case is still pending and a hearing has yet to be scheduled. These delays prevent an effective early warning mechanism in Europe.

The obvious question that has been asked, is: what can we do? I do not think the Netherlands is in a position to change things on its own, but I can think of three things that could ideally be pursued in a coalition of like-minded countries. 1. The financial position of the Council of Europe and, more particularly, of the European Court of Human Rights is precarious. The Russian Federation stopped paying its contribution in violation of its obligations. Turkey has announced that it will cut its budget to earlier heights. As a result, there is quite an acute financial crisis in the Council of Europe which is also affecting the court. Vacancies are not being filled. An easy thing to do would be – well, it is not easy, but it might be an obvious solution – that like-minded countries, at least for the time being, provide the liquid assets necessary for the functioning of the Council of Europe, without dismissing the claim on the Russian Federation that they should pay what they owe. 2. Political support is crucial. A judgement or the findings of supervisory bodies such as GRECO or the Committee for the Prevention of Torture are very important, but need to be backed up by the Netherlands as well as by other countries in the Committee of Ministers. Let us say this is the day-to-day political support. 3. Then, there is the overarching political support. We have seen a long series of high-level summits: Interlaken, Izmir, Brighton and Copenhagen. No doubt, there will be another one somewhere next year. It would be wonderful if the contracting parties, the member states of the Council of Europe, would encourage the Court to rethink its *modus operandi*, the way in which it deals with cases. The Court seeks to prioritize. It is doing as much as it can do with the means it has at its disposal. I do not want to criticize the Court for the judgments it delivers, but I think it should prioritize those cases in which the rule of law and the

systemic underpinnings of democracy and human rights are at stake, because those cases deserve to be addressed immediately. I have been told that the previous speaker and I have very different points of view, but I am not so sure about that. If people argue that the European Court interferes with internal affairs or with the national sovereignty of member states, I would like to say that since the Second World War, states have agreed to and have been joined by their own free will to a treaty system, thus confirming to respect human rights and fundamental freedoms. As a result, these are no longer matters of national sovereignty. Thank you.

De voorzitter:

Thank you, Mr Lawson. I give the floor to Mr Pech.

Mr Pech:

Thank you very much. I have two questions and just a brief reaction regarding the meaning of the rule of law. This is a tired argument, as I have been working on rule-of-law issues for about twenty years. First of all, if you do not like the rule of law as a concept, then do not join the EU. If you want to join the EU, then you have to comply with the EU acquis and – surprise, surprise – in the EU acquis you actually have two chapters dedicated to the rule of law. So we are spending billions of euros on a non-existing concept, it would seem. Obviously, this is not true. The minimum core requirements of the rule of law are well known. You just have to read the caseload of the Court of Justice, the European Court of Human Rights. You can disagree; we can have long conceptual discussions, but at the end of the day, either you agree with the principals in effect, the legal remedies and judicial independence. If you do not agree, then activate article 50 TEU. It is there for if you wish no longer to comply with the values of article 2 TEU.

This is why we have rule-of-law instruments: to defend the rule of law. The core minimum requirements of the rule of law exist and are easy to find in the caseload of the Court of Justice and the European Court of Human Rights. The first question was whether what we have is sufficient. I would agree that yes, it is. You know the expression «a bad workman always blames his tools for the bad work he does». I would say that this is very much the situation of the EU. But to be fair to the EU: we never thought we would need to address the kind of issue that we are facing today. I call it «rule of law backsliding», because the pre-scrutiny, as part of the enlargement process, was supposed to solve these issues before they could arise post accession. So if you had asked me about rule of law backsliding twenty years ago, I would have said: it cannot exist, because of the pre-enlargement scrutiny. But we are seeing now that, once you are in, it is easy to undermine the rule of law and very difficult for EU institutions to do something about it.

Why is it difficult? Not because of the instruments, but because of the failure to understand what we were dealing with for so long. When Poland made insufficient progress, measured against the Rule of Law Framework, and the procedure was first activated in 2017, that happened, according to me, because we had learned from our mistakes and we knew about the new danger we were facing, which I call «rule of law backsliding».

Infringement actions can work, if you understand what you are dealing with. And what we are dealing with here – sorry to be blunt – are national governments violating, on an industrial scale, the principal of loyal cooperation. It is an EU obligation applying across the board, regardless of the limits on EU competence. It has been the EU's tradition to be struggling, because it always engages in good faith, assuming the good faith of the national authorities violating EU law. In the case of Hungary, we are learning that essentially the assumption of good faith is misplaced.

That is why we are not catching up. That is why we have seen the Court of Justice revising its previous caseload to address the new danger. So the rule-of-law instruments we have are sufficient from my point of view. This is not to say I would be against the adoption of the regulation proposed by the Commission in May 2018. If I had any advice to suggest and if you allow me to express this viewpoint, then I would say: if I were a Dutch taxpayer, I would certainly ask my Dutch representative to lend my support to the adoption of this Commission's regulation. For the first time we would have an explicit rule-of-law mechanism, which would allow for EU funding to be suspended in a situation where a country is facing systemic deficiencies as far as the rule of law is concerned. And you have actually a definition of this notion in the regulation. So you may not like it, but it is there. I would say that this would be a good additional instrument to have, but infringement actions, provided that they are used effectively, are sufficient to address the situation. The problem is that the Commission sometimes, for a number of reasons, may be slow. By the time we get to the Court of Justice and we get a ruling, we already have irreversible facts on the ground. So then it becomes a struggle to change the facts on the ground.

There is something the Dutch government could do, based on the possible advice of the Dutch parliament. It could initiate infringement actions, article 259 of the TFEU, which is essentially no longer used actively. So essentially, the Dutch authority can initiate an infringement action in situations of violations of the rule of law, should the Commission fail to do so. The Commission has a discretion to do that. It does not have to do it, even though there might be good reasons to do it. So the answer is: yes, it is sufficient.

Then I was asked an interesting question regarding article 7. However, it is a difficult question, because what I know may not be possibly in the public domain. We do not quite know officially what is happening in the Council regarding article 7. What we do know, is that we have had three hearings organized under article 7, paragraph 1 as far as Poland is concerned. But you are right, to get a hearing, we would need to have a majority for it, as far as I know, in the Council. Apparently, from what I can read in the newspapers, it was a struggle just to get article 7 on the next edition of the General Affairs Council, because the Romanian presidency forgot that the rule of law is part of article 2 TEU and therefore they forgot to add it as an item of discussion. But now it has been added, I think, from what I read. Again, this is in the public domain. I think sixteen member states have asked for article 7 regarding both Poland and Hungary to be added as an item of discussion. But we have no formal hearing organized yet, as far as Hungary is concerned. I say this to the best of my knowledge as of today, based on publicly available information.

De voorzitter:

Thank you so far. Dr Price, please.

Mr Price:

Thank you. Just in passing, so that I am not misunderstood. I did not mean to say that the rule of law has no meaning. I meant to say that it is a bit of an obese concept: there is too much packed into it. What should we do, you asked. I would appeal to the two great traditions in the Netherlands, and I assume that as members of the Dutch legislature, with «we», you refer to «we, the Netherlands», rather than «we, Europeans» or «we, citizens of the world» or whatever. What we should do, is either resort to pragmatism or to moralism. I think these are your two great traditions. Pragmatism. After Brexit, Poland is a rather big nation. Poland will also be the last member ever to leave the EU, because the EU provides it with a soft guarantee of its external and internal security. So Poland is not going anywhere. I cannot speak for Hungary, but Poland is not going anywhere.

You also will not have Polish opposition permanently installed in Brussels, because the former Prime Minister Donald Tusk at some point will have to go home. Now I would travel there, if you have not already done so. I would meet your peers and I would speak to people who, when they do publish in the Western press, betray their conflicts of interest. Okay, the moralistic side. As we have learned from professor Pech, the rule of law is what we say it is...

Mr Pech:
That is not what I said.

Mr Price:
... so get used to it.

Mr Pech:
Do not misrepresent me, please.

Mr Price:
I do not want to, but it did sound like that is what you were suggesting.

Mr Pech:
No, I was misrepresented. I said: if you want to know what the minimum requirements of the rule of law are – I did not say «in my mind» – then have a look at the caseload of the Court of Justice and the caseload of the Court of Human Rights.

Mr Price:
Okay, I am sorry. In that case, some sort of auto roll-in of content might be wise to push for, if that is the end you want, openly declaring it and limiting the concept. Perhaps this would also have to do with a sort of clarification of and doubling down on what the interpretation of European values is going to be, going forward, and who is going to get to interpret it. There is broad agreement I think on most core European values. The difficulties right now are about authority, about who gets to say what they mean in practice, so the practical reason that needs to be applied. This is especially contentious not only in Central Europe and in Eastern Europe, but increasingly you see a convergence of the North and South, up through the Baltics and into Northern Italy, of persons who are finding it difficult to accept interpretation of European values, ostensibly coming only from Brussels and Strasbourg. Those are of course bywords for «mostly influenced by Western Europe». I think moralism or pragmatism are your two options.

De voorzitter:
Thank you. Dr Raisz, please.

Ms Raisz:
Thank you very much. First of all, I was asked to react to my colleague Petra Bard's first speech. Yes, we have some common points, as Petra already stated, but we differ as well. She says that the election system is not working. Actually, professor Pech said the same: they were not free elections, or «fair and free elections»; those two come together. These are allegations which have never been founded. It is only the perception of some actors or it may be due to the fact that the opposition in Hungary today is not very strong. I admit that, but it is not the fault of the electoral system. Yes, we wish for a much more comprehensive opposition, but that is not the fault of the electoral system. For example in the second term, in 2015 or 2016 – I am not sure in which year it was – the two-thirds majority was lost within a few months after the elections, under the very same electoral rules. To blame the electoral system is a very dangerous

path. I would recommend not to go with it. In the Netherlands I can see that you have many parties in your parliament. You have – I am guessing – at least eight different parties in your parliament at present. In Hungary that is not the case, simply because we have different traditions. Even Germany had its problems with having many parties. It is working in the Netherlands, but it does not work in Britain, even though they are a democracy. It does not work in Hungary either. We are different... It is not a matter of the electoral systems. We have free and fair elections; that is not the point. It is only that as a state we have another type of political organisation. That is okay. You cannot say that because we do not have eight parties in parliament, we do not have a good electoral system. Everybody can be elected. I have to reject your argument, because it is a hard argument and it has never been founded.

The second thing in Petra's speech I would like to react to, are the checks and balances. That is an American notion. In Europa we have a different system, but we have a constitutional court. We have a constitutional system. The president of the state is sending back many laws, either to parliament or to the constitutional court and they are getting abolished. So in many cases, we do talk about a bill, but it never becomes an act in force, because it is cancelled or reversed by the constitutional court, for instance. So I had to react to that also.

I love the notion of the backsliding of democracy. But at EU level I would like to state: let us skip this new Poland and new Hungary part and let us keep to the real questions. Yes, backsliding. What we are dealing with here, is human rights versus terrorism, and what we have to do, what the state has to do, to actually keep us safe, to deal with problems like terrorism. That is the real question and not whether Mr Baka has received a compensation for the illegal act that has happened to him. Petra said something like: the EU legal system is at stake. I would go further. I would say: the EU is at stake now. So if we are only judging by loud sentences and without looking at the core of the issues, I think it is really a dangerous path we walk on, especially now that Petra was actually pushing for a mechanism that is based on perception.

I am sorry, but I have to address the other questions. I was asked about free press. That is a concern, but I have to say: that is why you should read in Hungarian. I am sorry, but it is difficult if you cannot read Hungarian, because the best-read paper or the best-read internet journal can hardly be called a government-friendly journal. It is flourishing and it is among the most popular ones. It has no problems whatsoever. Yes, there was a change in the people who are behind these media, but let me tell you: for twenty something years now, we have seen an overwhelming majority and now it is shifting back. We are not even at fifty-fifty now. So I would say: free press. You can read, you can say whatever you want, you are not persecuted, no journalist is in prison. There is no chilling effect, it is actually a fairy tale. Nothing like that happens. You can read anything you want in Hungary. But yes, I know, it is in Hungarian, so it is really hard to do that, but you can do that in the journals, in the news, whatever.

The CEU. My colleague is teaching there, so do not ask her to be impartial in that part. I am going to be...

Mr Pech:

How dare you question the impartiality of a colleague of yours? I mean we are all academic colleagues. I would never dare questioning your legitimacy as an academic because you work in a...

De voorzitter:

It is very interesting to hear a conversation between you all, but we have to stick to the rules. You have to ask the chair to give you the floor. It will not take long. It is perhaps best if Dr Raisz gets the opportunity to answer all three questions she was asked. She has answered two questions so far.

Ms Bard:

Could you just repeat it, because I missed that part.

Ms Raisz:

I did not want to hurt my friend and I did not. She is teaching at the CEU. That is why I am saying that when I am talking about the CEU in a different manner than she would like me to, you have to understand why she is in a different position than I am. You have not heard yet what I was going to say, but that was what I am saying.

I continue with the CEU. It was asked what the truth is. The truth is that you actually... Maybe she can help you further with it, but it is a complicated question. The CEU itself is a complicated institution. Actually, it is a double institution. First there is the Hungarian university, which is called Central European University in Hungarian. And there is an American university called Central European University. These are two different things under the same name. I have to tell you that I did some research and in the Netherlands, it could never have existed like it did in Hungary. But the CEU is not leaving Budapest. One of the parts, some of the... I have never seen that in person, but according to the news, some of the faculties or some of the parts of CEU are leaving. But actually, the CEU is staying there. You can go there. You can see it. The university is there and functioning. So it is not true that the university is banned. It is working. It is functioning there. Ask her, she is teaching there. So it is not that the university was banned from Hungary. It is not like that.

As for civil society, we have over 60.000 organisations working normally. And yes, there is a handful of organisations, many of whom are present here today – you can hear their opinions later today – that do not agree with what is happening here and they are loud and they are professional and I duely have to respect that. But it does not mean that it is not functioning. Civil society is thriving. They are having more money from the state than beforehand. Yes, there is a problem with the transparency question, with the international money coming in. Indeed, but that is not concern for the 60.000. That is a concern for only twelve or fifteen or something like that. So you hear the opinion of some of them and you cannot get to hear the others.

I proceed to the third question. You said I should name three points where you have the wrong impressions. It is hard to stick to three. We have many others. The constitutional court was questioned. The constitutional court has in many cases much more and much larger competences now than it had earlier, but it is still labelled as being something anti-democratic. We have switched to the German system. Beforehand we had a different path.

I give you one example, maybe then you will understand what I am talking about. It is about secondary information on migration. I do not know if you remember, but in 2015 there was also in your newspapers a picture of a Hungarian policeman with migrants on the train tracks. It was about how a bad Hungarian policeman treated migrants – sorry: refugees – like that. Then the video came up, which showed that the person, the guy himself pushed his wife and his child onto the tracks. Still, in the news it appeared as if the policeman was maltreating the refugees. In fact, the policeman was the one picking up the woman and the child from the tracks, which they were pushed onto by their husband and father. This is just something like that. I mean to say: you are getting an impression, but that is not necessarily the objective truth. You can check it out on YouTube. It is there.

I could talk about many more things, but we are out of time. Did I miss something?

De voorzitter:

Thank you for answering the questions asked so far. I feel that some colleagues have a pressing need to ask another short question. You have to be very brief, though, and I will be very strict. Ms Van der Graaf.

Ms Van der Graaf (ChristenUnie):

My question will be addressed to professor Lawson again. You welcomed the Netherlands to build coalitions with like-minded states, but you also warned us to watch out that the Netherlands will not get isolated. What should we do to avoid that?

Ms Buitenweg (GroenLinks):

I want to ask a question to Ms Raisz. She said that we cannot read Hungarian. That is true, but we can see for example posters. On posters on the wall in Hungary – partly financed by the government – my colleague Ms Judith Sargentini is bashed as an unwanted person. As an academic, I see quite little overall reflection on the things that may be going well – it is very right to also state that – and the things that may be problematic. I would like to hear your opinion on particularly this aspect. Is this seen as a problem or is this all okay in terms of chilling effect?

Mr Lawson:

I am trying to be an academic. I find it difficult to go into the details of diplomacy or political relationships between nations. Is there a sense of urgency with regard to this topic? The mere fact that this standing committee on European Affairs has decided to pinpoint the rule of law in Europe as one of its priorities for this year suggests that there is a sense of urgency. I can very well imagine that the Netherlands as a member state doubles its efforts to harmonize its position, both within the European Union when it comes to the article-7 procedure and in the event court cases are being prepared: shall we or shall we not intervene and present our views? In a number of cases brought before the Court of Justice of the European Union the Netherlands has intervened. In the famous Celmer case, the Netherlands was the only non-involved state to intervene. It presented the Court with arguments thus enabling the Court to define its own position. It was very good for the Netherlands to intervene, but there may be examples of cases in which other states, too, could intervene. The Netherlands very rarely intervenes in cases before the Court of Strasbourg. Some countries do this much more often than the Netherlands. If I were a Member of Parliament, I would be interested to know what my government is actually saying in cases in which the rule of law is at stake. And sooner or later, there will be cases involving Hungary, involving Poland, involving other countries in which the foundations of a democratic society governed by the rule of law are at stake. I can very well imagine that the Members of Parliament encourage the State of the Netherlands to intervene. However, in order to do this, capacity behind the scenes is needed as well.

De voorzitter:

Thank you, Mr Lawson. Dr Raisz, would you like to respond as well? Please, go ahead.

Ms Raisz:

Well, if you wish me to, I will. I am not the government, so I am not going to justify anything what may or may not have been done. The *acquis* mentioned by professor Pech is something that is applied. It was exactly my colleague who said that we should not single out certain things but look at the overall picture. So, let us now refer to the overall picture. I hope that you are not going to say that you have seen something that you do not like or something that you do not like from a legal point of view

– that is another question – without judgment. Because that is the point where I am going to ask: is it legitimate to say that there is no rule of law here? I was just trying to tell you that I hope I can make you raise at least some questions: do we have all the information we need, do we have the correct information? If you think you have, fine, then that is your decision. I am just asking you to look at the other side. The other side may not be that loud, but has won a two-thirds majority in free and fair elections. This means that they have the support of the majority of the people. This may not hold true for every single thing, because that is never possible, but it does for the great wave in which the country is going. I hope that you are going to respect that.
Thank you very much.

De voorzitter:

Ms Bard, the floor is yours for a very brief response.

Ms Bard:

A very brief comment. I find it somewhat disturbing that you can kill someone's character just by saying that she lectures at a particular university. I deliberately did not want to enter into the CEU discussions so as not to give the slightest impression that this is the place for complaining about the institution I am affiliated with. But I must tell you that I am a researcher at the RECONNECT Europe Project led by the Catholic University of Leuven. Today, I had a piece published in which I use three pages to explain why it is not true that CEU left the country voluntarily.
Thank you.

De voorzitter:

Thank you so much for participating. Mr Omtzigt, final words?

Mr Omtzigt (CDA):

I only miss the answer to the last question. You do not have to be the government to have a view on a poster campaign. You have a view on private universities, which I genuinely respect, but I would be interested to know what you think of such a campaign.

Ms Raisz:

I have to admit I have never seen a poster like the one you mentioned. I am terribly sorry, but I have not. But if you say so, it must be there. I mean, look at the posters: today, there are many posters you do not like. That is not the question. That is not my position. I am a lawyer. Do not ask me about things that have to do with politics; I am not sure whether it has something to do with law. If you want to ask me this as a politician, I have to skip. I am not a politician, but I am honoured that you think I could give you an answer. My personal opinion? I did not see it, but show it to me and I am going to tell you what my opinion is. I have to tell you I did not see it. Just show it to me; I do not know what it looks like.
You mentioned your colleague Sargentini. I hope Hungarians are not going to picture Ms. Sargentini as a typical Dutch politician, because she has made many mistakes in her report. And she was not really ready to correct them. This was also mentioned by some universities in Hungary, who said their role was not quite as she said it was. You can say whatever you want about what has been reported in the media, but that is not my job. We would also like other Dutch politicians to be in the news, not only Ms Sargentini.
Thank you.

De voorzitter:

Thank you so much. Our time for discussion has ended. There are two more sessions to go. I thank you all for participating. If you would like to, you can meet my dear colleagues afterwards. I will suspend the meeting for two minutes so there can be a small *change ment*.

De vergadering wordt enkele ogenblikken geschorst.

De voorzitter:

Let us resume our round table conference on the rule of law with part 2.

Judiciary

- Professor Geert Corstens, Former President of the Supreme Court of the Netherlands
- Kees Sterk, Deputy Chair, Netherlands Council for the Judiciary

De voorzitter:

We have two special guest: professor Geert Corstens, former President of the Supreme Court of the Netherlands and Mr Kees Sterk, Deputy Chair of the Netherlands Council for the Judiciary.

I would like to invite you to give a short introduction of about five minutes. Subsequently, I will collect the questions from my colleagues. I first give the floor to professor Corstens.

Mr Corstens:

Thank you very much, Mr chairman. I would like to start by telling you about a bus trip. This is perhaps not a very usual way of starting an introductory speech, but in spring 2011, I sat on a bus from the European University in Fiesole near Florence back to my hotel in Florence, next to my friend András Baka. His name has already been mentioned here. He told me that he was in a difficult position: «It is not excluded that at the end of the year I will no longer be President of the Hungarian Supreme Court.» I had a good friend whose mother was Hungarian and she was very emotional, so I thought this story would be aggerated. But I was shocked that it turned out to become true. As of 1 January 2012, he was dismissed. Some time after that, I spoke about it with two Dutch Ministers. The Minister of Foreign Affairs said: this is a case not for me but for my colleague the Minister of Security and Justice. So I went to the Minister of Security and Justice, who said: I will talk about it. I never heard anything about these two interventions since.

At that time, in my capacity as President of the Supreme Court, I received the result of research into the Supreme Court of the Netherlands during World War II. I would like to mention three elements from that comprehensive report. What the Nazis did in this country with regard to the judiciary was (1) lowering the pension age of judges, (2) dismissing the President of the Supreme Court and (3) creating special tribunals. This was exactly what happened in Hungary, as far as the first two measures are concerned, and in Poland, where the third measure was taken as well. As of 2015, after I had served as president of the network of Presidents of Supreme Courts in the EU, I became involved in the EU actions with regard to the reform of the Polish judiciary and the Polish Constitutional Court. It was in the middle of the government-led action against the Polish Constitutional Court that I held the Mazowiecki Chair at the University of Warsaw as visiting professor.

If you lower the pension age, your enemies go out and your friends are appointed. That is exactly what happens when lowering the pension age. This measure affects supreme courts in particular, because in general, judges in supreme courts are older than judges in other courts. This

means that you get control over the supreme court. When you get control over the supreme court, you will get control over lower courts as well. As far as the second measure is concerned, I already mentioned my friend András Baka. The European Court of Human Rights in Strasbourg concluded that the reason for his dismissal was his critical attitude towards the reform of the Hungarian judiciary, which did not please the Hungarian government. That was the reason for his dismissal. In Poland, Malgorzata Gersdorf was dismissed because of the lowering of the pension age of judges. She could have applied for continuation, but refused to do this, for good reasons. She did not want to apply for a favour of the executive. As you know, in the end she held her position, following a ruling by the European Court of Justice last year. I am very happy with the interventions by the European Commission. I applaud as well that the Polish government complied with this ruling. I think that this is very important. If this had not happened, the whole system of the European Court of Justice would have been endangered, I fear. It is not excluded that the European Commission will also propose measures with regard to the suspension of EU subsidies if a member state does not respect fundamental values of the EU.

In Poland, a third measure was taken that affects the judiciary. A measure that was also applied in this country during World War II, i.e. the introduction of new tribunals. This is now the case in Poland, where two new chambers of the Supreme Court were set up, which get extra power. First, there will be a chamber charged with extraordinary control over public affairs. Second, a chamber dealing with disciplinary proceedings against judges. The composition of these two chambers will be new, and indirectly in the hands of the ruling party. I think that this is very important. It means that one of these chambers can perhaps indirectly overrule decisions of other chambers, of which the composition is, let us say, more old-fashioned. The Nazis introduced in this country the so-called peace judges. They got competence over cases that had to do with Nazi-supporting people falling victim to behaviour of normal citizens. It is not necessary to emphasize that all these measures are not in accordance with the ideals expressed in the EU Treaty and the European Convention on Human Rights. They undermine the European Union. As was mentioned in the previous part of this round table, national judges have become reserved when it comes to issuing arrest warrants on the request of Polish authorities.

Furthermore, we should not deny the fact that civil judges will increasingly become reluctant to recognise judgements by Polish civil judges. So, the system of mutual judicial cooperation, an essential element of the European Union, is in danger. Our judges will have to protect people from measures taken by foreign authorities, if they do not trust these authorities because they fear that their independence and impartiality are not guaranteed.

I would like to add some remarks. First: in other countries, such as mine, the structures with regard to the balance of powers are not as strong as we would desire. In this country, we do not even have constitutional review. In this respect, in 2016, the question was put to me in Poland how the appointment of judges was organised in my country. I could only answer that the legal structures in this respect are weak. The executive has very much power over judges. They appoint judges and member of the Council for the Judiciary. Presidents of lower courts have to comply with the orders of the Council for the Judiciary, whilst the Minister of Justice is competent to give general orders to the Council for the Judiciary. However, the culture of respect for the independence of judges is firm. No Minister in this country will try to appoint friends or to give orders that undermine the independence of the judiciary. This means that our culture is strong, but our structure is weak. I now come back to Poland

and Hungary. Combining a weak culture with a structure that is weak as well is not very promising.

My second and last remark has to do with dialogue. In a dialogue, you try to understand each other. This means: trying to get acquainted with the other's position and views and to discover the underlying motives, feelings and traditions. Therefore, it is very important to know those underlying motives, feelings and traditions. I suppose that outsiders in Western Europe – this is also an advice to you – will have to make clear that in their countries the rule of law was not established overnight. We have to demonstrate how we cope with criticisms and how we enhance the knowledge and insight of the people in the rule of law and how the rule of law functions in enhancing the liberty of all of us. We have to do this without feelings of superiority, understanding the problems that societies in Eastern Europe are facing. We will have to recognise that we as well have difficulties in understanding our people in their desire to be acknowledged. We will have to show that we are willing to strive for better living conditions for everyone, not only for those who are well educated. What matters is solidarity, cohesion between all layers of society, promoting social contacts between different people, between intellectuals, administrative employees, rich and poor people, rulers and governed people. But we have to be firm and remain firm with regard to the rule of law. By doing so, we support those people, in Poland and in Hungary, who for good reasons plead for returning to the spirit of the rule of law. In these circumstances, moral support is what we can and must give.

I have three recommendations:

1. Support those who enhance the rule of law. So, give them moral support.
2. Support the EU Commission in the pending procedures.
3. Think about introducing criteria for the rule of law in the EU directives about the various European funds.

That was my contribution.

De voorzitter:

Thank you, professor Corstens. I now give the floor to Mr Sterk.

Mr Sterk:

Thank you, Mr chairman. Dear Members of Parliament, let me start by thanking you for the invitation to participate in this round table. It is an honour and a privilege for me. I will gladly share my views and experiences on the subject of the rule of law with you today.

I am not only the deputy chair of the Dutch Council for the Judiciary, but also the President of the European Network of Councils for the Judiciary (ENCJ). In that capacity, I very closely follow the events concerning the state of the rule of law in the European Union, especially in Poland and Hungary.

I very often visit Poland, where I talk to the council, to the President of the Supreme Court, the associations of judges and the Polish Ombudsman. In Hungary, the contacts are primarily with the council and the Minister of Justice.

Let me first give you a short introduction to the ENCJ. The ENCJ works on the basis of cooperation between councils, in order to ameliorate the quality and effectiveness of judiciaries. For years now, we have been developing standards in the field of independence and accountability, which are accepted by all members of the ENCJ. The European Commission, the Venice Commission and the European Court in Luxemburg refer to our standards. We assess the independence of the judiciary in a country on the basis of these standards.

Let me come to the situation in Poland. The ENCJ welcomes reforms of the judiciary in case the reforms are an addition to the independence,

accountability and effectiveness of judiciaries. These reforms should be made in cooperation with the judiciary, and uphold the independence of the judiciary from the executive and the legislature.

The Polish reforms were enacted without a dialogue with the Polish judiciary. To a great extent, they resulted in the abolishment of the independence of the judiciary. For example: the Constitutional Court is now under the direct control of the government. The current Polish Council for the Judiciary (KRS) is just an instrument of the executive, and not the guardian of the independence of judges. They appoint political PIS-friends in senior posts in the judiciary, and start disciplinary actions against judges who publicly oppose the reforms. That is why the network suspended, for the first time, the KRS in September 2018, with only the votes of the Polish Council against.

Next month, I will lead a delegation of the members of the ENCJ on a visit to Warsaw to look at the practice of these disciplinary proceedings. We will talk to the KRS, to associations of judges, to individual judges, to the President of the Supreme Court, and to the Ombudsman.

In Poland, the independence of the Constitutional Court and the KRS is already lost. As far as the Supreme Court, the courts of appeal and district courts are concerned, the fight over independence is not over yet. The European Court of Justice has blocked the forced retirement of members of the Supreme Court and the government has accepted this decision. But within one or two years, vacancies in the Supreme Court will be filled by appointments by the KRS, which has a record of appointing friends of the regime.

And the new disciplinary chamber in the Supreme Court, which is not under the authority of the president of the Supreme Court, and is appointed by the KRS, is in place and will soon give judgements against judges who are opposed to the reforms.

The KRS tries to get a grip on the courts of appeal and the district courts by appointing presidents who are loyal to the PIS-party. These appointments encounter fierce resistance from the judges in these courts, who mostly unanimously make this clear in public statements.

The Polish government is of the opinion that by compliance with the order of the Court in Luxembourg there are no problems left as to the independence of the judiciary. I hope that I made it clear that this is obviously not the case. The attacks on the independence of the judiciary continue.

Let me turn to the situation in Hungary. A few years ago, the Hungarian government was successful in the forced retirement of judges and the reformation of the governance of the judiciary. At present, two recent developments concern the ENCJ. Firstly, the Hungarian Minister of Justice has the ambition to set up a new administrative court system. He claims that the proposed reforms follow the French administrative court model. In this model, administrative law is in courts separate from the civil, family and criminal law courts. In a sense he is right. However, there are some serious issues with this reform that are not in line with European standards and especially pose a threat to the independent delivery of administrative justice.

One issue is that the administration of administrative justice is integrated in the common courts. The tendency in most countries in Europe is to further this integration because of the ever closer connection between administrative law on the one hand, and the civil law and criminal law on the other hand. So why separate administrative law from the rest? I have not yet heard a convincing reason from the Hungarian government. Furthermore, I do not know of an example where administrative law was first integrated and thereafter separated. Perhaps, the separation is just a pretext for the Minister to be able to appoint new administrative judges, because the reforms do not entail that the current administrative judges will automatically be transferred to the new court. And the procedure for appointment of the new administrative judges has changed. Instead of an

exam and appointment by the judiciary on the basis of objective criteria, new administrative judges will be appointed by the Minister of Justice directly upon his own discretion.

Secondly, the Hungarian Minister of Justice is about to propose a reform, again, of the governance of the judiciary. Presently, the judiciary is governed by the National Judicial Office. Its Director, Ms Tünde Handó, is appointed by Parliament and holds close ties with the political party of Prime Minister Orbán.

The Council for the Judiciary can veto certain decisions taken by the National Judicial Office. The relation between Ms Handó and the Council is not good. Ms Handó refuses to give information to the Council which it needs to fulfil its supervisory duties.

Following these events, the Council is about to request her dismissal by Parliament. This is the context in which the Minister of Justice proposes to change the governance of the judiciary. It is unclear in which directions the reforms will go.

Upon request of the Minister of Justice, the ENCJ has shared information on the European standards on the administration of justice and the reform of the judicial system. Until today, we have not received any response.

Visits have also taken place and I will visit Budapest again in March.

May I conclude? Judiciaries must try to deliver effective and high quality justice, and they are willing to reform to that end. However, there is a limit to reforms and that is when the independence of the judiciary is at stake.

In Poland and Hungary, the governments overstep this important line and thus make the judiciary an instrument of the executive.

The EU cannot function without the rule of law: it is one of the fundamental values of the European Union and the independence of the judiciary forms a crucial part of the rule of law. The Netherlands, as every other member of the EU, should be active in protecting the rule of law in the European Union, especially in Poland and Hungary, and in doing so protect its own interests.

Thank you very much.

De voorzitter:

Thank you, Mr Sterk. I give the floor to Ms Van der Graaf to ask questions.

Ms Van der Graaf (ChristenUnie):

Thank you for your clear introductions. My question is for Mr Sterk. What is the importance given by countries in general to the opinions of the ENCJ? You suspended the Polish Council for the Judiciary. What was the response from the Polish authorities to that decision? Which other countries are being monitored, by the Dutch council, but also by the European council?

Mr Anne Mulder (VVD):

I have a question for Mr Sterk about extraditing suspects to Poland. I understand that the Dutch judges do not consider the judges in Poland to be independent enough, so they do not extradite suspects to Poland. Is this still the case and if so, why? Is Hungary heading the same way? Could you comment on that?

Ms Buitenweg (GroenLinks):

I had exactly the same question, so I will not ask that. I have a question for Mr Corstens about his assessment that in the Netherlands we do not have a constitutional court either, and that there is strong involvement of the executive in the appointment of judges. The budget of the judiciary is part of the budget of the ministry of Justice. We had discussions about that here in the Netherlands, but the question is whether this is something worrying. Or is it really against, for example, the checklist developed by

the Venice Commission of the Council of Europe? Is it just something that you notice, or is it in contradiction to the principles of the rule of law?

Mr **Verhoeven** (D66):

Mr Corstens, you stated that we, as a country, and the European Union or other organisations that are looking at the rule of law and the judicial situation in other countries, should talk about it and discuss the matter without being arrogant. I found that a very interesting remark, because even if you are not arrogant, it is very difficult to discuss the matter without getting the response that you are arrogant. Could you give an example from your experience of a way of communication that works? I think it is very difficult to raise the matter without being considered arrogant.

Mr **Omtzigt** (CDA):

That was a question very similar to the one I was going to ask. We just noticed that this dialogue is very difficult. Hungary has ended the cooperation with the Venice Commission. It was mentioned that we were not very welcome on our visit, even though we do try today to have a diverse set of opinions about who we invite. We would like to talk with the Hungarian government as well. Mr Corstens, you have some political experience, even though your job was very non-political, and you know how to deal with political pressure in the job. Even in a democracy as the Netherlands you may sometimes feel it. What is the best way to have checks and balances? Personally, I do believe that it might actually backfire if foreign countries are being seen as dictating to another country what they should do. You then usually get the opposite reaction of what you are aiming at.

De **voorzitter**:

Mr Corstens, let me give you the floor first.

Mr **Corstens**:

Let me first comment on Ms Buitenweg's question about what worries me in this country. I am glad to hear that some of you are also members of the standing committee on Justice and Security. What really worries me is that one day in this country there will be a ruling party or a majority of parties that do not want to continue the culture of distance to the judiciary which I mentioned in my speech. Once these people are in power, they have all the possibilities to really politicise the nomination of judges in this country. I am very happy that never when presenting lists of candidates to the justice committee of this parliament the question was put to me what my or the candidates' political colour was. I have to admit that I always listened carefully whether such a question was asked. Only once did I get a positive answer, namely when there was a candidate who had been a member of a municipal council for one of the political parties, one that is very much associated with the judiciary, unfortunately. But that was the only time this happened. So, the only worry I have is that we have to reinforce the system of appointing judges. The structure is too weak, but the culture is really perfect, no problem. But we have to improve the legal structure.

We are one of the few countries, with Israel and some other countries, that have no constitutional review. I think this is a bad thing. But, fortunately, we can cope with this, because of the possibility of our judges to check the conventionality of national laws, even of the Constitution. Even if we are of the opinion that the national law, including the Constitution, is not in conformity with an international treaty or a specific article thereof, we can annihilate the national law. Therefore, it is not a very pressing problem.

Let me now answer the question about arrogance, put forward by Mr Verhoeven and Mr Omtzigt. As president of this Network of Presidents of the Supreme Courts I also had to deal with the successor of Mr Baka, Péter Darák, who is still the current president of the Hungarian Supreme Court. Always remain in, let me say, friendly contact. Please, always treat a man or woman who really does not respect the rule of law and behaves in a way we do not like in a friendly way. Never treat them as enemies. Then you can remain in contact and remain in dialogue. That is very important, but in the end you must be clear. What I also emphasized in my talk was that you also have to be clear about the rule of law. In all those countries there are also people who do not agree with the plans of the government. So you have to give them support and encourage them. That is my answer. Circumventing arrogance is a matter of remaining in dialogue.

Mr **Verhoeven** (D66):

What you actually say is: hard on the matter, soft on the relation. Is that the way to...

Mr **Corstens**:

And that is very non-Dutch.

Mr **Verhoeven** (D66):

Perhaps we should train ourselves in such pragmatism. Sometimes we go to other countries and have discussions with parliamentarians and organisations there in a certain tone or voice that is not always appreciated.

Mr **Corstens**:

This does not hold true for the Dutch only, but also for Scandinavian people. I would say to the peoples of the North and to us: please, always try to treat others as your friends.

De **voorzitter**:

I now give the floor to Mr Sterk.

Mr **Sterk**:

I would like to start by answering the question of Ms Van der Graaf about the importance of the actions of the ENCJ. Let me focus on the suspension of the Polish Council for the Judiciary. The process starts of course as an internal affair. We are an association. We said: one of our members does not comply with our articles of association, because they are not independent. That is the first layer, so to speak. The more interesting thing is that outside our association, governments react. So did the Polish government. The Minister of Justice reacted. They were not pleased, because it was the first time that a European organisation put its money where its mouth is, to put it that way. They do not like that. Of course, it is soft law. The suspension of the Polish council is based on our own standards. But as I said in my introduction, these standards are referred to by the Venice Commission and the Court of Justice in Luxembourg. There are cases pending in Luxembourg against the Polish government concerning the Polish council. If I am right, it could be that in these judgements of the Court in Luxembourg this judgement of the association could be of importance. But we have to wait until April to see whether I am right. But we in the network were rather surprised to see that it had such a big impact.

As far as the response of the Polish government is concerned, we had this meeting in Bucharest, where they were suspended. Of course, they were allowed to plead their case and they did so very fiercely. They took quite a lot of time to do so. They were very eager not to get out. After the

suspension had been pronounced, they were very angry and said: okay, you suspended us, so we do not want to be a member anymore. But after a week they said they wanted to remain a member. They wanted to keep in contact and have a dialogue. That is why I am going to visit them next month. The dialogue is very difficult, not because of the arrogance of anyone, but because of the totally different concepts we are talking about. But I think it is very important to do that. I think we are one of the few organisations in Europe that have been in close contact to the core of the judicial system in Poland and Hungary. So I think we have some influence. Mr Mulder asked me whether Hungary is treated the same way as Poland as to the extraditions. I have two observations here. First, Hungary started earlier with the reforms than Poland. They do it more gradually and with more grace, if I may put it like that. Poland is doing it in a more systematic and more forceful way. At this moment, in Poland, the grip of the government on the individual judge is tighter than in Hungary. When I talk to Hungarian colleagues, they say: at the level of the Supreme Court and the courts of appeal the situation is not okay. At the district courts, they are replacing the presidents, but it takes a while before the presidents get a grip on the judges. At this moment, I would say that extradition is not a problem, but in the near future, within a couple of years, there could be a problem, depending on how quickly this process continues.

De voorzitter:

I just saw that Mr Corstens wants to react to a remark made by Mr Sterk. You have the floor, Mr Corstens, but please, keep it brief.

Mr Corstens:

In our network, we opted for continuing the dialogue in response to the problems in Hungary. We did not exclude Hungary from our Network of Presidents. We did this in a well-considered way. We even went further. We wanted to support the Hungarian people of good will. What did we do? We appointed András Baka Honorary President of our network, to give a signal to the Hungarians: we appreciate this colleague very, very much. At the same time, we continued the dialogue by not excluding the Hungarians.

De voorzitter:

Mr Sterk, there was a question from Ms Van der Graaf about whether your committee also monitors other countries. Could you please answer that question?

Mr Sterk:

There are problems in a number of other countries as to the independence of the judiciary. I visited Bulgaria on the invitation of the Bulgarian judges» association. They are very much afraid that they are heading in the same direction. Mr Pech said so as well. The situation in Romania is also somewhat troublesome. I also mention Malta, where it is very difficult to get a grip on what is going on. There are also problems in Spain, I would say, to name a country in the West.

De voorzitter:

I now invite one or two colleagues who still have urgent questions. Mr Omtzigt, please.

Mr Omtzigt (CDA):

Could you please give us a short overview of your findings in Malta?

Ms Buitenweg (GroenLinks):

I am still puzzled by the question why it is still possible to extradite people to Hungary or to carry out the European Arrest Warrant if it is only a

partly-free state and no longer a free state. I find it difficult to understand that. Why is this no longer possible in the case of Poland, following the ruling by the European Court, whereas it is still possible in the case of Hungary, given this qualification?

Mr Corstens:

We now have a ruling. There was an Irish Court that put a preliminary question to the Luxembourg Court. The Irish Court then asked itself: are we still in a position to issue an arrest warrant on the request of a Polish judge? The answer was – I summarize: you need to have good reasons not to do this. In general and in principle, you issue an arrest warrant. This has been done quite automatically since this system was introduced, replacing the old system of extradition. But you are entitled not to issue an arrest warrant. However, there have to be concrete circumstances providing a ground for not issuing the arrest warrant. That is the position now.

De voorzitter:

Finally, the question about Malta, asked by Mr Omtzigt.

Mr Sterk:

I spoke two times to the President of the Supreme Court of Malta. He is a member of the network, and I know him very well. He says that there is no problem with the judiciary or its independence. There are some troubles, but he is very vague when it comes to the position of the government. I said to him: this is too vague for me; I want to come to you and to talk to quite a lot of people. He invited me, and I will go there sometime next April or May. If there is anything to share with you, I will be very happy to do so.

De voorzitter:

Thank you. Thank you very much, professor Corstens and Mr Sterk for participating in this meeting.

It is time to continue with part three of this round-table.

De vergadering wordt enkele ogenblikken geschorst.

De voorzitter:

Dear colleagues, if you would all take your seats, then we can continue with part 3 of this round-table conference.

Civil Society

- Ms Clare Algar, Director Global Operations, Amnesty International
- Ms Marta Pardavi, Co-chair, Hungarian Helsinki Committee
- Dr Israel Butler, Head of Advocacy, Civil Liberties Union for Europe
- Dr László Marác, Senior Lecturer East European Studies, University of Amsterdam

De voorzitter:

We have four special guests. First of all Ms Algar, she is the Director Global Operations of Amnesty International; welcome. Ms Pardavi is Co-chair of the Hungarian Helsinki Committee. Dr Butler is Head of the Advocacy of the Civil Liberties Union for Europe and, finally, Dr Marác is Senior Lecturer East European Studies at the University of Amsterdam. You all know the drill. You each have five to six minutes to give a brief presentation to the colleagues. Afterwards, I will collect the questions my colleagues want to ask you and hopefully you will be able to answer them.

First of all Ms Algar, please. You have the floor.

Ms Algar:

Thank you. My name is Clare Algar, I am the Director of the Europe regional office of Amnesty International. Thank you for inviting me here today. Thank you also for the work that you are doing on these rule-of-law issues. It feels important and specifically as a person from the United Kingdom, it feels as though you as members of parliament are doing something more positive than the members of parliament in my country are currently doing. Thank you.

Inevitably I am coming to this matter with a human rights perspective. Let me start by stating what you already know. This is a tough time for human rights around the world. We have an unhelpful US president, an interventionist Russia and a China working to create the most sophisticated surveillance state we could imagine. At Amnesty, we would ideally like our work to be as boring as possible. We dream of making ourselves redundant. I regret to tell you that at the moment, in 2019, I work in a growth industry. So with that preamble, I am moving on to Hungary. As one of your panellists said earlier, Freedom House last week released its annual Freedom in the World report, which stated that Hungary had dropped back into the partly-free category and was last among the European Union countries. This is because the Orbán government has launched a sustained attack on the country's democratic institutions. The report specifically says that the government seeks to impose restrictions on or assert control over the opposition, the media, religious groups, academia, NGOs, the courts, asylum seekers and the private sector. Maybe unsurprisingly, I am going to talk specifically about NGOs. Amnesty is present in Hungary and this is Amnesty's direct experience in Hungary. In June of last year, Amnesty was accused by a government representative of facilitating illegal immigration and wanting to flood Europe, and Hungary specifically, with migrants. At around the same time, a pro-government magazine published a list of 200 people whom it referred to as «part of the George Soros mercenary army». On that list were members of Amnesty International, of the Central European University and of Transparency International. As you know, the Open Society Foundation and CEU have both now left Hungary for other locations.

Amnesty is still in the country, but it is at risk of prosecution and generally at risk under one of a suite of new laws. I am just briefly going to go through those laws. Apologies if you are already really familiar with them, but I think they do bear repetition. There is Lex NGO 2018, which is known as the «Stop Soros Package». It creates the criminal offence of «facilitating illegal migration», a pretty broadly defined offence. It can apply to individuals or organisations and it is punishable with a year in prison. This criminalization is a direct assault on the work of civil society actors who support or campaign on behalf of refugees, asylum seekers and migrants. Of the other two laws worth mentioning, the first requires NGOs receiving foreign funding to register as such and to report donations and donor details. Then there is a special tax law, which imposes a tax of 25% on any funds received by civil society organisations that are conducting activities deemed to be supporting migration, again broadly defined. So as I say, Amnesty remains in Hungary, but the risks it faces are real and I have pored over quite a lot of risk register documents in order to work on that. The other point that I would make on Hungary was made by one of the previous panellists, one of your judges. Amnesty is also deeply concerned that the Hungarian government has taken steps to create a new administrative court system. Within that system, judges will be appointed and promoted by the Minister of Justice, and that court will deal with cases on human rights taxation and the economy. Obviously, this is problematic in terms of the executive appointing the judiciary.

I am now turning to Poland. I was going to talk about the judiciary in relation to Poland. This was, however, covered quite a bit in the previous

session, but something I would like to add to that is the hostile environment in which judges are operating in Poland. Amnesty has done quite a bit of research on this and I will circulate our most recent report on this. As part of the attempt to reform the judiciary, there was a sort of campaign in which judges were portrayed in a negative light. They were said to be from a certain class and it was suggested that they could act with impunity. This has resulted in a very toxic environment in which many judges are working.

For example, one of the judges to whom we spoke, said that since 2016 he had been receiving threats from members of the public. At some point in 2017, he was receiving up to 50 text messages a day. One of those messages threatened that he would be shot in a shopping mall with his family. He tried to start an investigation into this in January 2017. As of last month, January 2019, it has not been taken forward. So I guess what I am saying is: the government is not making an attempt to remove that hostile environment.

The previous panel also spoke about the disciplinary proceedings which judges who have been speaking out on the importance of judicial independence and even judges who have been referring matters to the European Court have found themselves on the other end of. I may be able to talk about this a little bit more in answering questions.

We have also done quite a lot of work around steps taken to curtail freedom of assembly and freedom of protest. We have had the specific cases of fourteen women protesters who attended the Independence Day march in 2017. Those women were attacked by the marchers. They were holding a banner saying Stop Fascism. Not only did the police not assist those women, the authorities then prosecuted them for «interference with a lawful assembly». When the women tried to prosecute the people who attacked them, the prosecutor chose not to prosecute on the basis that the attackers were simply «expressing their displeasure» that the women had joined the march. Now we got actually very good news yesterday: that decision was overturned and the prosecution is going to go ahead, but it is a good illustration of the situation where freedom of protest and freedom of assembly are being curtailed.

My final point is what Amnesty is asking you to do. The main sort of headline point is around affirming human rights. I spoke to the vice-President of the European Commission about this as well, and he was saying he felt that the European institutions were very much bearing the brunt of affirming human rights. I was saying that we as Amnesty were affirming human rights and he was saying: what needs to happen is that states and governments and so forth need to take that on as well, so that it is not just the obvious candidates who are easy to vilify.

The second very brief point I want to make, because I know that others are going to speak about this as well, is article 7. Please urge the Dutch Ministry of Foreign Affairs to use their presence in the EU General Affairs Council to advance the article 7 proceedings in both Hungary and Poland. Thank you.

De voorzitter:

Thank you, Ms Algar. Let us continue with Ms Pardavi.

Ms Pardavi:

Thank you very much. My name is Marta Pardavi and I am the Co-chair of the Hungarian Helsinki Committee, which is a national human rights NGO, but it has a very strong bond to its sister organisation, the Netherlands Helsinki Committee. We focus on the areas rule of law, criminal justice and refugee protection in general. I would like to thank you very much for the invitation. As a Hungarian, and as a Hungarian NGO representative, I must say that I find it very upsetting that the visit of the committee's delegation to Hungary could not materialize, even though the invitation

was, as I understand it, originally extended, but then revoked later. Also, I find it a very strong signal that the Hungarian government decided not to meet. We, the human rights NGOs in Hungary, have recently said that the Hungarian government is moving beyond the red lines. I think that this is an indication of that.

Dialogue is, as has been highlighted, extremely important. So far, the Hungarian government has engaged in dialogue, but more recently we have seen that declining. It was not only the Dutch parliamentary committee's visit that ended this way; during a visit to the border transit zones, the detention facilities for asylum seekers and migrants, the UN experts of the Working Group on Arbitrary Detention were shown the door. In fact, they were not even allowed to enter through that door. That is certainly something unprecedented and we find it a worrying indication of worse things to come.

Therefore, it is all the more important to have this opportunity to talk to you today. It is very obvious that the Netherlands is very committed to respecting and upholding the rule of law, and this message is clearly reaching Hungarian society, even if you have not had the opportunity to come and explain and be present in person, which we find very important otherwise. As human rights groups we also benefit from this commitment in Budapest, where we feel a strong support from the embassy. We work closely with the embassy. The embassy is very supportive of our work in the field of rule of law and human rights protection. Just recently, the embassy supported a conference we organized on the independence of the judiciary, drawing many foreign experts and their insight to Budapest. We also work closely with Dutch NGOs such as the Netherlands Helsinki Committee or the Dutch Council for Refugees and also the Dutch section of Amnesty.

I would like to give you a typical, though very alarming, recent example of why rule of law is so important in Hungary. Just yesterday the European Court of Human Rights in Strasbourg had to order the Hungarian government to stop starving people in detention in the transit zone. This was not the first such interim measure by the Court. This followed several cases, five cases, that had happened in August. At that time, we warned that the rules needed to be changed to ensure that this could not happen again. But the rules have not been changed and it did happen again. It took the court in Strasbourg to ensure that two parents of three small kids, an Iraqi family, would be given food after six and a half days. The children were receiving food, because they are minors. They were given the option to either eat all the food that they were given, or to offer some of their portions to their parents.

This is not necessarily only a question of rule of law. It is a question of humanity. When it comes to refugees, I must say that many times the migration policy debates taking place in Europe are nothing compared to the harshness and cruelty taking place in Hungary. This is beyond migration policy debates. We had to turn to Strasbourg and it is very likely that we will have to do that again today, as we have heard of similar cases arising.

Now, as my colleague from Amnesty said, lawyers and human rights NGOs helping people to go to court so that they can get food, not only leads to smear campaigns in the propaganda media or to slanderous statements by government officials. It could even lead to the threat of criminal prosecution under the law that came into force in July: people who help asylum seekers and migrants now face the risk of going to prison. It is not clear whether this applies to lawyers as well, but according to the text of the criminal provision, it seems to. Can you imagine that lawyers helping a family to get food, need to think about prosecution risks as well? I think this is unacceptable in Europe. Since late August, if my organisation talks publicly about how inhumane this starvation policy is, we could be facing a tax of 25% on the funding

our organisation receives. It is a tax on free speech, because we could be, allegedly, «promoting migration». There are several other extremely alarming developments that have been happening since the article 7 vote in the European Parliament in September. These developments are summarized in the document that I have submitted as background. To come back to the more abstract but still very important level: any ongoing or future assessment of rule of law, its protection, the respect for it or article 2 values, will need to be based on objective evidence. I think we have heard very good discussions about that. We have already seen what sources could be drawn on for such evidence. It could come from international or European human rights mechanisms. It could come from the UN or the Council of Europe human rights system. It could come from the Human Rights Commissioner, who just paid a visit to Hungary last week. It could come from the Strasbourg Court or from infringement procedures that are taken forward by the European Commission and reach the European Court of Justice. But if there were no NGOs available to take cases, to launch litigation, to collect the respective information in an unhindered manner, there would be much less of that evidence. This is true not only for Hungary. Everywhere in Europe you need civil society, among its many roles, to document and monitor human rights. Another essential role that civil society can play, and which is really crucial, is to strengthen the support for democratic values on the ground. That is what is really necessary to prop up the institutional legal structures and processes. So we need support for that. Clearly that is partly financial support. We must start investing in the rule-of-law infrastructure much more as European Union, but we also need to support independent media and we also need support in taking political steps. This is something that is happening here and I think that is a great example. I hope you do encourage other parliamentarians in other member states to follow your example. We also need to think of coordinated or joint actions that use existing tools as well. One of them is to intervene in infringement procedures, in rights-based infringement procedures going on at the Court of Justice.

Thank you.

De voorzitter:

Thank you. Then I give the floor to Mr Butler. Please go ahead.

Mr Butler:

Thank you very much, and thank you for the invitation. I work for Liberties, we work to promote civil liberties inside the EU. We are based on national members that we have, spread across most EU countries. Today I will make three points about the tools that the EU has available to protect the rule of law in the member states. You will see that I have summarized these for you already in a paper that I sent beforehand. First, I do not think that the EU has made full use of the tools that are already available to it. That is partly because the Commission has been cautious over using legal arguments that have not yet been tested before the Court of Justice to protect the rule of law. We have seen the Commission become a bit braver in its legal arguments more recently, using some internal market legislation to promote the rule of law. But it has been quite a slow change in thinking. Another reason why existing tools have been underused, is political selectivity. For example, the Commission has used its Rule of Law Framework, this dialogue that it opened with Poland, but it has not used it in relation to Hungary, even though the situation in Hungary is arguably more serious. Likewise, it has been very difficult for the European Parliament to pass strong resolutions on Hungary, but not on Poland. And again, that is because the Hungarian government is a part of the centre-

right European People's Party group, which is the biggest in the EP and therefore has managed to shield it from strong criticism in the past. My second point is that the tools that do exist, are not ideally designed to deal with governments that are intentionally and systematically dismantling the rule of law. So infringement procedures are ideal for tackling specific legal problems. The Court of Justice has been able to block specific laws that violate pieces of EU legislation, but this has not for example stopped the Hungarian government from finding alternative paths to pursue those reforms. And it has not been able to stop the broader pattern of damaging changes.

Similarly, if you look at the Commission's Rule of Law Framework, unfortunately that system of dialogue does not have any teeth and that has allowed for example Poland to completely ignore the Commission's recommendations. When we look at the article 7 procedure, yes, it can eventually lead to sanctions and it is a very big achievement that it has been activated, because it does provide important political pressure. But ultimately, it is very difficult to get to the point where the Council can actually take sanctions.

So my third and final point would be that the EU needs to keep using these existing tools to maintain pressure, but that we also need new tools, and those new tools need to do three things. First, we need tools that will remove the problem of political selectivity. I think that, as has been mentioned before, there is this idea that has been on the table in Brussels to establish a regular monitoring procedure, where governments are automatically reviewed and engaged in dialogue for their rights records. Second, I think we need a tool that acts as a credible deterrent and that can be used relatively easily, something that is much easier than article 7. Someone earlier mentioned the idea of funding conditionality or linking access to EU funds to respect for the rule of law. As you know, a proposal is under negotiation that would allow funding to be suspended when a government engages in serious interference with the judiciary. This tool would also help make sure that the taxes of your constituents are not being wasted through corruption.

Finally, I want to mention a third potential tool. We have tended to focus mostly on top-down political pressure and on sanctions, and this is necessary, but by itself it is not enough, because we see that governments, often with the help of friendly or captured media, are able to convince their voters that the rule of law, pluralist democracy and basic liberties are bad things. So the EU also has to engage in building grass-roots support for these fundamental values, and to do that, it should be providing financial support to rights and democracy groups inside Europe. Now your government and the EU practice this routinely by delivering financial assistance to civil society in countries outside Europe. You know that it is important to create support among the public for the rule of law or democracy if you want these principles to take root and if you want there to be resilience among these institutions.

Now there is a legislative proposal at the moment for something called «a rights and values programme» that is being negotiated at EU level. The problem is that the proposal put on the table by the Commission will not allow the EU to fund rights and democracy groups to protect and promote these values. The funding is designed to fund NGOs mostly to do research, training, awareness raising on EU law. It treats NGOs as subcontractors instead of treating them as an essential pillar supporting the rule of law and pluralist democracy.

The European Parliament is pushing for amendments to that proposal, to give true financial support to NGOs, so they can engage in public education, campaigning, monitoring and litigation. Unfortunately, the position of governments in the Council has so far been just to support the Commission's original proposal. Perhaps I could suggest that this committee might enlighten the Dutch government that, if it wishes to

protect the rule of law, it should support the changes that are coming from the European Parliament. It is not going to be possible to protect the rule of law with top-down measures alone. These have to be accompanied by bottom-up support as well.
Thank you.

De voorzitter:

Thank you. And finally, mister Dr Marác. You have got the floor.

Mr Marác:

Thank you, Mr chairman. Thank you for inviting me to make a statement on the rule of law, civil society and other issues concerning Europe. First of all, I would like to point out that I think it is extremely hard working for a committee like this one, because I have no idea how it is possible without knowledge of the Hungarian language and the context of Hungary to get the facts of Hungary straight. I think that is a big problem.

I have been affiliated to this institute in Amsterdam, at Amsterdam University, since 1992. I started to work on Eastern European affairs in 1978, when I enrolled as a student at Groningen University, where I did my studies and also defended my PhD. So I have been in the business for a pretty long time, I would say, and I have been following the countries that are on the table today. I followed them day by day, or hour by hour, I must honestly say. But sometimes I have the feeling that I am on a different planet or these countries are on a different planet. A lot of information on these countries is one-sided, manipulated or defective. With respect to Orbán and his Fidesz government, this started as early as 2011. The Hungarian constitution was not redrafted then; it was only announced that they would redraft it. NRC Handelsblad approached me and asked: what do you think; is Hungary a dictatorship? I replied: «What do you mean? They just had elections and the outcome of the election brought on a coalition, which is planning to rewrite the constitution».

«Yes, but...», they replied. Okay, okay. I read the article and my interview, and it spoke about «Fictator», «Orbanistan» and that sort of very cleverly designed sound bites. Press reports on Hungary have been on this level, from the first or second Orbán government on, since 2011. So I think it is extremely difficult to get the facts straight from Hungary.

In 2012, there was a sound bite by the Financial Times, calling the success of the improvement of the Hungarian economy «Orbanomics». It has never been quoted and appeared only in The Financial Times, which I must admit is an excellent newspaper. There are other sound bites we have heard all the time and I think it is extremely difficult to get to know what is going on in Hungary. For example in the constitution – and I mean the constitution rewritten by Orbán and his Fidesz party – we have a fundamental paragraph, namely paragraph E. It says that European integration will always be driven forward by the Hungarian government. How interesting: a government that is called «anti-European» has a paragraph in its constitution, guaranteeing the European project! Please let me know whether there is any other constitution in Europe that has such an obligation. I am not aware of any, but maybe you would know of one.

This is just to show you that there is a misbalance in information. Why is it never mentioned by the critics of the present Hungarian government that in its constitution, it guarantees European integration? It also says that to get out of the Union, a majority of more than two thirds is needed. That is not as in the case of Brexit, where a simple majority was enough to push Brexit forward.

Then we have the report of Ms Sargentini, which was mentioned before. I think it is a missed opportunity. The European Parliament could have given itself a higher stature and more prestige. Instead of doing that, the report does not meet what I would call scientific standards. And I should

know, because I am the author of almost 400 scientific publications, some of them in very high-ranking peer-reviewed journals. When studying the Sargentini report, one third of the cases proved to be outdated. One third of the cases is open, infringement procedures, but that is quite normal: Hungary has 41 open cases with the European Commission. The same is true for brave Sweden, but Hungary has much less than pro-European Belgium, which has 81 cases. In one third of the cases mentioned by Sargentini, there are a lot of factual mistakes. So yes, we need to get the straight facts. That is why I am very glad that this committee is doing its homework and is trying to get the facts straight on what is going on in Hungary and in Poland.

For the context, I brought you a copy of my book. It discusses the 20th century, the history of Hungary. If you want to work on Hungary, I think you need to read my book. It is a collector's item nowadays. Yes, it was written in the nineties, but I think the history part is still relevant today. Before I close, I want to make two points. First of all, the Central European University. I also have a question for you, my highly respected European Affairs committee members. Of course the Central European University is functioning in Hungary. Recently I was at a conference. I was a speaker at the Central European University. It was a conference on the Habsburg monarchy. It was extremely interesting. There were fine colleagues present, but I read in the newspaper that the university was no longer there. So you can see how misinformation works. But of course the Central European University is functioning in a legal context, and that legal context says that foreign universities cannot certify foreign diploma's without having an accredited mother campus. Now the CEU does not comply with this requirement. On the same basis, the CEU could not function in the Netherlands. So please do your best: if the CEU cannot function in Hungary, then bring the CEU over to the Netherlands. I can guarantee you that on the basis of the Dutch educational law, it is not possible to open a foreign campus without a mother campus, nor to certify American diploma's in this case. So on this point, Hungary has precisely the same law as the Netherlands.

I will now tell you why it is that we have these fundamental outcries all the time. It has to do with the geopolitics of Hungary, from the year 1000 on. Saint Stephen I, the wise king and state founder of Hungary, advised his successors to balance between the east and the west, but to always have a close eye on the west. So Hungarian law making will always take this into account, even today. Also, Mr Orbán and his law makers will first study the law of Germany, of France, of Britain and then they will look to smaller countries. So anytime a new law is drafted, there will be Western-European elements in it. You need not be surprised if you find that law after law, Hungarian law making is almost the same as in other Western-European nations. So yes, the Hungarians are more Europeanized than they think. And they are more Europeanized than is perceived by those on the outside.

I come to my final remark, very briefly, about the solution, where to go. Well, most of the time I do not agree with Mr Timmermans as Spitzenkandidat, but last week in this forum, he made a good point. He said there should be a peer review among European countries, in order to follow the process of the rule of law. I fundamentally support this idea, and I think it is a missed opportunity that this committee is not visiting Hungary. But there is only one condition, namely that also Hungary has the possibility to study the rule of law in this country.

Thanks for your attention.

De voorzitter:

Thank you, Mr Marác. Let me first collect the questions from my colleagues, to start with Ms Van der Graaf. We ask a maximum of two

questions and Mr Verhoeven lets us know that he has to leave this meeting, unfortunately. Ms Van der Graaf, please go ahead.

Ms Van der Graaf (ChristenUnie):

Thank you very much for your introductions. My first question will be addressed to Mr Butler and concerns the peer-review system. This parliament adopted a resolution last year to ask our government to promote a peer-review system in Europe. Earlier this afternoon it was said that the European toolbox on the Rule of Law Framework is sufficient. You disagreed with that and proposed some extra measures. I was wondering what is really essential or really key if you want to have an effectively functioning peer-review system within the European Union. I know the one of the UN Human Rights Council, which is quite a loaded instrument. Can you elaborate on this?

And my second question will be to Dr Marác. Thank you for your introduction. You are really concerned about this committee, that we do not have our facts straight. Then I guess it is good to have you at the table this afternoon. I want to ask you what you think about the reports of the Venice Commission and GRECO and the facts they present to us.

Mr Anne Mulder (VVD):

Twenty years ago, the then leader of my political party VVD came back from Hungary and said: well, now I found a true liberal in Hungary. That former VVD-leader was Mr Frits Bolkestein and he referred to Mr Viktor Orbán, twenty years ago. So I have two questions. What happened along the way that we now call your country an illiberal democracy? Also, we understand that Freedom House called Hungary «partly free» and we had a Dutch judge expressing concern about the independence of the Hungarian judiciary. Why does the Orbán government attract so many people? Can somebody say something about that and explain it to me?

Mr Marác:

Sorry, I do not understand the last part of the question precisely.

Mr Anne Mulder (VVD):

Why does this government appeal to so many people?

Mr Marác:

Who do you mean by «people»?

Mr Anne Mulder (VVD):

The majority of the voters.

Mr Anne Mulder (VVD):

The majority of the voters that is in favour of the Fidesz party.

De voorzitter:

The voters.

Mr Marác:

O, you mean why Fidesz attracts voters? That I can explain to you.

De voorzitter:

Okay, but first I want to collect the other questions as well. Ms Buitenweg.

Ms Buitenweg (GroenLinks):

Thank you very much. We heard a lot about legal systems and the problems occurring there, but I also worry about something else that I have not heard about here so far. Maybe it is not a problem; in that case, I would like to hear that. To what extent are there cultural changes in the

social setting of society? Is there an increase in violence or a difference in how women are treated? Because normally, women are among the first victims of such changes. I would like to hear a bit more about whether there is a cultural change ongoing, which also results in e.g. an increase in violence, other than the one we know of towards migrants, as you rightly stated here.

De voorzitter:

And to whom do you address this question?

Ms Buitenweg (GroenLinks):

I do not know who can answer it, so can I say: to whom it may concern?

De voorzitter:

Just say a name. Otherwise everybody is going to want to answer it. You know how it works, Ms Buitenweg.

Ms Buitenweg (GroenLinks):

But I do not know who can answer it.

De voorzitter:

Make a guess.

Ms Buitenweg (GroenLinks):

Maybe Ms Algar or Ms Pardavi.

De voorzitter:

Okay, well noted. Do you have another question?

Ms Buitenweg (GroenLinks):

About what Mr Marác z said. He said that a lot of things are being mistaken. That may be true, but I have not heard him say anything about some of the very fundamental issues, which were raised by e.g. Amnesty International or the Helsinki Committee. So while some things may indeed not be correct, I think there still are a lot of really fundamental breaches of human rights left and I expect you, as an academic, to also be very analytical and objective about that.

De voorzitter:

This is a question to Mr. Marác z. Well, Mr Omtzigt next.

Mr Omtzigt (CDA):

Thank you, chairman, and thank you all for your introductions and the papers we received from you beforehand. I would like to ask Ms Algar a question. I basically ask her to react to the points raised by Mr Marác z, because this is a round table and we also find it interesting to see what people think about the comments made here on each other. I would like to invite Mr Marác z to do the same, mostly on the questions raised by Ms Algar or the points raised in the Amnesty report. I also ask you to critically reflect on the report by the Venice Commission and the fact that Hungary refuses to cooperate any longer.

The last question I would like to ask you is: it is one thing to have a rule not to open a university or to have certain rules for starting up such an institution. Many of us have such rules: you need to submit an application and then you are either allowed to start or you are not. However, it is another matter if, once you have allowed an institution to open, you severely curtail it. What happened, in your view, at the CEU and how do you look at e.g. the points made by Amnesty International on the list of 200 names that was published? How should we value that?

De voorzitter:

Let me start with Ms Algar.

Ms Algar:

I will start with my response to that question. It is difficult, really. It feels like some sort of Alice in Wonderland situation. You have got one panellist saying that the CEU has left Budapest, while another one says that it is still there. I guess that the best response I can give you is to refer to the previous panellist who made the point, in the first session this morning, that the CEU did not leave Budapest willingly. I think that is probably the best I can say on that matter.

Also, reference was made to the civil society that is there, but I think it is inescapable that the laws I referred to earlier make the existence of that civil society extremely difficult and have indeed had a significant chilling effect on civil society in Hungary. It feels to me that there is not really an answer to that. Again, the previous panel spoke about the setting up of administrative courts, whereby the judges who are to serve on these courts are appointed and promoted by the Minister of Justice. It is quite clear that this is not how a court system can best function and I do not think that that has been answered.

I will defer the question on women's rights, if that is alright with you, because I do not feel that I can give a perfect answer to that. It is something that Amnesty is looking into in terms of research, but I do not have a proper answer to it, so I will leave it to someone else.

De voorzitter:

Let us continue with Ms Pardavi.

Ms Pardavi:

Just to add on to my colleague's remarks: when it comes to women's rights, of course in every society more can be done to ensure that there is inclusion and that there is also a culture that fosters public participation from early on. This is very much lacking in Hungary. The Hungarian government has just announced a very ambitious package of social policy measures that are basically aimed at addressing the demographic issues in Hungary. The policy is certainly meant to boost child birth. We have yet to see the effects of those policies and obviously, they have not even been enacted yet, just announced. Whatever effects they might have, would be long-term effects.

However, there is a serious concern. In and of themselves, these policies might be quite legitimate and useful to address certain aspects of society on which a government has to take action. But if these policies are not accompanied by other measures, they will not really remedy the problem. Such measures are now certainly lacking from the toolbox. They would call for ensuring equal participation in every aspect of life. The Hungarian parliament sadly has only 11% female MPs. Of all its 199 MPs, 11% are women. The cabinet has only one female member. If you look at these images, it is very much a male-dominated society and I think it is very important to start sending a signal to Hungarian women and men, that women need to be just as active, and that men's participation is needed in that. The government should certainly be taking a lead in this. On the contrary, we see a lot of discussion and messaging about where the place of women is in society, which concentrates very much on being a mother and staying at home. That is certainly not conducive to ensuring that the social policies designed to address demographic declines will succeed. Thank you.

De voorzitter:

Thank you. We continue with Mr Butler.

Mr Butler:

If you look at the monitoring systems that exist at an international level and the degree to which their recommendations get implemented by member states, you will find that the most effective ones are those that have a follow-up phase that includes some kind of peer review by governments, where they talk to each other about the recommendations or the judgements, and they have to tell each other what they are doing to implement them. So if you look at the system with the ECHR for example, you have the Committee of Ministers that meets regularly to see what governments are doing to implement judgements. With the system of the UN, the universal periodic review, it is the same thing: governments talking to each other. Those two systems secure a much higher level of compliance compared to other monitoring bodies where there is no such follow-up stage. So they are not perfect, but they are a lot better than systems that do not have a follow-up stage in which governments have to justify to each other what they are doing and what they have not done. If you are going to put this in place at EU level, there is no need for the EU to repeat the fact-checking exercises or to even formulate new recommendations. You asked earlier how on earth you can know what is going on in Hungary. Well, you have bodies at the United Nations, the Council of Europe, the OSCE and within the EU, to which all of your governments have signed up and which have procedures that all governments participate in, that eventually produce reports. So there is a wealth of evidence that can tell you what the human rights or rule of law situation is in any EU member state, evidence that has been produced by a body to which all governments have said: we are okay with this. So there is authoritative information.

What you can add at EU level, is to distil all of that information and use it as the basis for a dialogue among member states and the Council, between the Commission and governments, but also between the European Parliament and national parliaments. There is no reason why the European Parliament could not send a delegation here to talk to the EU Committee about a review on the Netherlands for example. So I think that could be how that would work.

The advantage of it is that you have early warning, so you get to see what is going on. There is a kind of explanation, periodically, by the EU of what it sees as the problems. You do not have to wait for there to be enough political will at a late stage in the game, when things have gone too far to remedy. And you also get governments comfortable with talking to each other about human rights in their countries, which they do at the UN, but which they do not or have never done, until recently, at EU level. There was an absolute taboo in the Council on governments talking about each other's human rights records, which was first broken when Poland was put on the agenda.

De voorzitter:

Thank you. Finally the questions posed to Mr Marác.

Mr Marác:

Thank you, Mr chairman. Yes, I have some questions here. The Venice reports and the GRECO reports: I do not see a reason why Hungary should not operate or cooperate with these European fora. As far as I know, there has been a lot of consultation with the Venice Commission in connection with the Hungarian constitution. Most of these cases have been modified or closed. This was, by the way, also confirmed by Mr Timmermans last week in the same forum. I do not know whether you were there, but he said – I have seen it and heard it with my own ears – that with Hungary, the Commission could work together very well, first by correspondence and later on, if there was a court case, Hungary was willing to modify it. So yes, it is a pity, I think, when European bodies, advisory or whatever,

are not hosted anymore in Hungary. In this respect, my opinion differs from that of the Hungarian government, as I outlined before. I think it could make the European project stronger if we had peer review and if we were in constant consultation.

Frits Bolkestein. Yes, I remember very well that Mr Bolkestein visited Hungary. His book was also translated into Hungarian. At the time I think it was a bestseller. Later on it did not sell too good anymore, I think. The «illiberal democracy» was mentioned in a very specific context. I think Mr Orbán targeted the economy in the first place and then this whole phrase of the «illiberal democracy» was taken out of its context and mingled up with political issues. So we should go back to the original text. If you do, you will see that it was in fact the economy and not politics that Mr Orbán referred to with his term «illiberal» or «illiberalism».

The electorate, well, I think everything has a context. Hungary has faced a financial meltdown in 2008. It had to go to the IMF and knock on the door for financial support, because it could not pay its debts any longer. In 2006, I was there, at Kossuth Square, among the protesters, be it not to protest, but to do my work as a researcher. It was interesting because the Hungarian government had just admitted that the deficit was minus 10 of the GNP, although half a year before the elections they had announced that the economy was booming and grew by more than 3% of the GNP. Actually, it was covered up by Mr Almunia, who was EU Commissioner at the time. People who had to face a bank run or a financial meltdown will think very carefully, I think, before giving their votes to the left liberals who caused this situation in 2006 and 2008. You should therefore not be surprised that people do not trust these people, because they have put Hungary in a very difficult financial position. I hope I will never have to encounter a bank run in my own country, the Netherlands.

So in 2010, when Orbán won the elections for the second time – as you know he was Prime Minister between 1998 and 2002 – I think he was surprised himself by the outcome, which was more than two thirds of the votes for him. They expected to win, but not with such a majority. The explanation was not the brilliance of the Fidesz programme, but the complete failure of the previous government team, consisting of left liberals that had pushed Hungary into a financial meltdown. Thanks to Orbán and his team, Hungary escaped the fate of Greece. We know that Greece faced and faces a financial meltdown.

I also react to the question about the gender issue. I am a bit surprised, because Hungary has lost a lot of men in the Second World War, as you know. Women therefore played an extremely important role in building up Hungarian society after the Second World War. I think that even today, Hungary would be a completely different country if the strong women of Hungary would not be engaged in society. So I do not have the impression that in the recent history of Hungary, women were or are suppressed. I think they were there to build up the country when Hungary faced a very difficult time after the Second World War.

Amnesty, Helsinki, 200 names. Even the poster of Ms Sargentini was referred to. I am willing to answer that also. I think Amnesty and other organisations are going more deeply into the political domain. If you go into the political domain, you can expect that people will counterattack you. That is not nice. It is unfriendly, but the whole atmosphere towards Hungary gets unfriendly, even today, if I hear what kind of words people use in this forum. Take e.g. «constitutional grab»; as if some pirates were stealing the Hungarian constitution. Come on! In Hungary, the Orbán government finally had a more than two-thirds majority! According to the Hungarian rule of law – as it was decided in 1989, when the communists had to hand over the power to the democratic forces – the Hungarian parliament only has the right to redraft the constitution with a majority of more than two thirds.

The redrafting did not happen until 2010, I think by accident and because of the clumsiness of the left liberal government team. But it did happen in 2010. And yet, now you are saying: well, okay, the government has a majority of two thirds, but it cannot use it for redrafting the constitution? The decision was made by the round table in 1989–90! You did not want to kill and hang people in Hungary, the Czech Republic and Poland. You wanted to save the communists. That is fine with me. It was called the Velvet Revolution. You called it the Velvet Revolution. You did not want to persecute people who committed massive human rights violations against ordinary citizens in Hungary... I hear some comments from across the table, but yes, there were concentration camps in Hungary in the fifties.

You called it a Velvet Revolution. That is fine with me, but then there was a deal made among the democratic forces in 89–90 and most of the people were there, at that round table. We have the same players in the Hungarian political scene as then. Orbán was a bit younger, but the same goes for Gyurcsány and those people. So you should not be surprised that when there is a majority of two thirds, it will be used by parliament. And then of course there is this procedure, by the Court of Justice, by the Venice Commission, that has taken place. One third of the cases against Hungary are closed. Mr Timmermans just said it last week. I have heard it myself. You must have heard it, too. You are members of this committee. Thank you.

De voorzitter:

Finally, the question from Mr Omtzigt about the university. Could you answer that?

Mr Marác:

Yes. I do not think the university is curtailed. Mr Omtzigt, we also have an accreditation, every five years, in our country. We have it at my Amsterdam university as well. Our programme is checked by an independent committee and also by the law. The university was curtailed for its English language accreditation, because it had no English language accreditation. It is the same in the Netherlands. You should know that, you are a member of parliament. The Dutch educational law tells you that you need to have a modern campus in foreign countries if you want to issue foreign certificates on the territory of our country. So I do not think it is a surprise. It is not a curtailment.

I also think that the CEU will stay in Budapest. It has its Hungarian accreditation. I do not think students will go to Vienna or wherever. It will function. There are good colleagues working there, fine colleagues. There are specialized people working there who know their job and I do not think that there will be any reason, under the present Hungarian law, for the CEU to leave the country, contrary to what I am reading in the Dutch press every day.

De voorzitter:

Thank you. Final round of questions, if there is a need to do so. Keep it brief, please, so we can give our guests the opportunity to answer. Ms Van der Graaf, one question.

Ms Van der Graaf (ChristenUnie):

Again, my question is to Mr Butler and it is about the article 7 procedure. You are very critical about the functioning of this article and this procedure in practice. We are still in the middle of the procedure, I would say. Poland had three hearings and Hungary is waiting for the first hearing. Is it not too soon for your conclusion and for you to be so very critical about the non-functioning of this article?

Mr Anne Mulder (VVD):

Thanks for your explanation. I am still wondering why people vote for Orbán, even though we heard that there are concerns about independent judges, whom I see as a fundamental right of people. There are also concerns about the media freedom, so why should people sacrifice these rights for something else? That is my question. It puzzles me. I try to understand it. I had a discussion with Mr Ivan Krastev, who wrote the book *After Europe*. He said that in Central Europe, people feel a little bit humiliated. They have to copy the Western model, but they want to have their own model. They want to have a Christian Europe and they want the West to copy that model. So my question is: is there a feeling, like after the Treaty of Trianon in 1920, that Hungarians feel humiliated, that Hungary wants to have its own place in Europe, with its own concept of democracy? Is that the case?

Ms Buitenweg (GroenLinks):

I feel that my question has not been answered. I asked specifically for some reflection on e.g. the criticism that there is a law now which imposes a special taxation of 25% on civil society actors engaging in propaganda activity and portray migration in a positive light or inform about the maltreatment of migrants. The only answer I got to that is that Amnesty International is getting more political these days, so that they can also expect people to criticize them. My question to you was directly: is there some truth to it that these acts, these laws are against human rights?

De voorzitter:

I will now give the floor to our guests for answering the questions. Ms Algar, there were no questions for you to answer, but perhaps you want to react. If so, please be brief.

Ms Algar:

No, I think I rather leave the only question I might be able to respond to to the Hungarian colleagues in the room, because I think that would be more appropriate.

Ms Pardavi:

Just one small point about human rights organisations becoming political. Politics is not only about party politics, it is about public life. Everybody has the right to participate in that. It is part of our freedom of expression and our freedom of association. Every civil society organisation, every citizen and every non-formal unregistered group has the right to make their views known and to be concerned about human rights. It should be welcomed if there were more of these organisations in Hungary. In a way, I think it is political in the sense of our public society and our public affairs. We have the right to make our views known and to help people who are victims of human rights abuses. Every single one of my colleagues on the financial and administrative staff as well as just graduated law students who joined our organisation a few months ago, was featured in an article about the infamous 200 list as Soros» mercenaries whose only reason for their concern for human rights in Hungary is that there is some sinister plan by an international financial speculator. I think that is absolutely unacceptable. It stigmatises the people who are on the list and it sends a very clear signal to others who have not yet been on the list that they could be put on that list. This has happened. After that list had been drawn up, there were others stigmatising researchers and academics. That certainly sent out a very strong chilling message. I just wanted to make that point.

Mr Butler:

Article 7 is good and it is necessary. But it depends on a big enough number of Member States being in favour of moving on. We have not even got past the first stage, because you cannot get a sufficient majority to adopt a statement saying that there is a risk posing an actual threat to EU-values. To get to the point where you can impose sanctions you have to reach unanimity. If Hungary and Poland are going to back up each other and if they are possibly joined by Romania, it all becomes very difficult. What I am saying is that you need to carry on with article 7. Peer pressure is very important in view of the possibility that you might get there. The weakness here is that the sanctions are too remote. I think you need to complement that with a deterrent that is much more easy to activate.

Mr Marác:

Yes, I think human rights issues occur in Hungary. There are a lot of them. Think for instance of the conditions in prisons. I think you can better be a prisoner here in the Netherlands than in Hungary. So there is a lot of work to do. If human rights activists» organisations like Amnesty raise these issues, I would support that. But that is not what they are doing. They are entering the political arena.

Ms Buitenweg (GroenLinks):

Could you please further elaborate on what you mean by that?

Mr Marác:

I can be very clear about that. The rule of law in Europe was violated by Chancellor Angela Merkel in 2015, when she rendered the Schengen Agreement inoperative. You must have heard of that. «Wir schaffen das» she said. I am in favour of opening the borders, enabling us to travel throughout Europe. But that does not mean that you can allow masses of people wandering around in Europe. I do not think this is a good thing for these people themselves in the first place. In the second place, it can be dangerous for others. The moment I came to realise, in 2015, that something was going completely wrong in this field, was when one evening, I was watching Hungarian satellite television. They were interviewing an elderly woman aged 80. This is relevant for the answer to your question. She told the Hungarian reporter that migrants were taking possession of her house although uninvited to do so, using her shower facility and uploading their iPods. She felt scared. That was my television moment. You had yours, but this was my moment, and I thought: hey, this is going to be dangerous, for the citizens of Hungary too. Yes, Hungary should take care of the safety of its own citizens. That is the duty of the Hungarian government. Of course, human rights activists can assume a position against that, but they should have very good reasons to do so. You can take action in favour of human rights, but it becomes extremely difficult when you assume positions in the political area which undermine the Schengen treaty, with all the risks this entails.

De voorzitter:

Ms Algar would like to react. Please keep it brief.

Ms Algar:

I will be very quick, because I know that we are out of time. I think we have very good reasons to have taken the positions that we have taken. We have done research around the laws that have been passed. I do not actually think that this is a particularly political position to hold. What we are saying is that those laws stifle civil society in Hungary at the moment.

De voorzitter:

Time is almost up, dear colleagues. We have still got one minute. Mr Omtzigt would like to ask a last question.

Mr Omtzigt (CDA):

I was a little surprised by the last comment, because we had a clear case presented by our second speaker, who spoke about refugees. Whatever you think of refugees or about admitting them – that is obviously up to the Hungarians – the case was about starving them and getting an interim measure from the European Court of Human Rights. Do you think it is admissible for civil society organisations to have an opinion about that, or is that immediately politics? This is a question to Mr Marác.

Mr Marác:

Yes, of course people can make an issue of that. But in 2015, when all these illegal migrants without documents entered Hungarian territory and caused the scenes I just sketched, there were a number of government facilities in place. But human rights organisations, too, provided these people with food and water. I think this is a very normal thing to do. I do not think it is prohibited. But, when refugees in Hungary are allowed to start a procedure, I cannot imagine that the Hungarian State does not care about food and water. That seems extremely unlikely to me on the basis of what I know after having done research into the situation in Hungary over the past 40 years. I cannot imagine that, when a refugee enters the procedure in Hungary, he will be denied food and water. I cannot imagine that, so I want to get the hard facts. I started my contribution by claiming that the hard facts are missing. That is the problem and that makes the allegations weak.

De voorzitter:

Dear colleagues, we have reached the end of this meeting, because time is up. As I mentioned before, this committee will use the information provided today in the preparation of its debate about the rule of law on 14 March, which will be held in Dutch.

For now, I would like to thank all our invited guests for participating and the members of the committee for their questions.

Sluiting 18.32 uur.