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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**POSITION OF THE GOVERNMENT OF HUNGARY**

**ON THE OPINION**  
**ON THE NEW CONSTITUTION OF HUNGARY**  
adopted by the Venice Commission  
at its 87<sup>th</sup> Plenary Session  
(Venice, 17-18 June 2011)

**Transmitted**  
**by the Minister for Foreign Affairs**  
**of the Republic of Hungary**

**on 6 July 2011**

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**Comments  
on selected remarks by the Venice Commission  
contained in its Opinion on the Fundamental Law of Hungary**

Hungary welcomes the acknowledgment by the Venice Commission of the fact that:

- The new Constitution establishes a constitutional order based on democracy, the rule of law and the protection of fundamental rights as underlying principles. (para 18)
- The new Constitution aims to consolidate Hungary as democratic state based on the principles of separation of powers, protection of fundamental rights and the rule of law. (para 141)
- Hungary's new Constitution aims to meet the general features of a modern Constitution within the framework of the Council of Europe. (para 18)
- Constitutions of other European States, such as Poland, Finland, Switzerland or Austria, have been used as a source of inspiration. (para 18)
- An effort has been made to follow closely the technique and the contents of the ECHR and to some extent the EU Charter. (para 18)
- The Chapter "Freedom and Responsibility" (Articles I to XXXI) has been partly built drawing on the structure of the EU Charter of Fundamental Rights and Freedoms. (para 56)
- The individual constitutional complaint has been introduced into the constitutional review system. (para 97, para 142)
- Article 29 reflects an evolution in the approach of the role of the prosecutor's office: it focuses on the contribution of the Supreme Prosecutor and prosecution services to the administration of justice which is in line with the findings of the Venice Commission in its Report on European Standards as regards the Independence of the Judicial System. (paras 111, 112)
- Efforts have been made to establish a constitutional order in line with the common European democratic values and standards and to regulate fundamental rights and freedoms in compliance with the international instruments which are binding for Hungary, including the ECHR and the recent EU Charter. (para 142)
- The current parliamentary system and the country's form of government – the republic – have been maintained. (para 142)
- The Commission's previous recommendations have been partly taken into account in the course of the drafting of the new Constitution. (para 143)

The Commission notes that the dialogue between the majority and the opposition was inadequate. It hopes there will be adequate co-operation between the parliamentary majority coalition and the opposition during the preparation of the implementing legislation of the Constitution, notably during the drafting of the cardinal laws.

*That is a recommendation by the Venice Commission to which we can fully subscribe.*

**I. GENERAL REMARKS**

**A. Cardinal laws**

The Commission argues that the exaggerated number of cardinal laws weakens the parliamentary majority's powers and cements the cultural, religious, moral, socio-economic and financial policies.

*While it is true that the new Constitution contains 50 references to cardinal laws, the actual number of subjects to be regulated by cardinal laws (adopted by two-third majority) has been reduced from 28 to 26 subjects in the new Constitution. In consequence, the scope of cardinal laws has been narrowed. The scope of cardinal laws is unique in every country; the new Constitution follows in this regard a specific Hungarian legal tradition.*

## **B. Rules of interpretation**

The Commission argues that the concept of “historical constitution” used both in the Preamble and in Article R, brings with it certain vagueness into constitutional interpretation; there is no clear definition what the “achievements of the historical constitution” are.

*The reference to the historical constitution as a source for interpreting the new Constitution has a merely symbolic character and it is obvious for the legislator that only those “achievements of the historical constitution” can ever be taken into consideration that are compatible with the existing legal order. It is going to be the duty of the Constitutional Court to find the exact content of the “achievements of the historical constitution”; moreover, there are other sources relevant to the interpretation of the fundamental law, i.e. international treaties, e.g. the ECHR.*

## **II. SPECIFIC REMARKS**

### **A. Preamble**

The Venice Commission points out that problems of legal nature may arise in case the paragraph on **the old 1949 Constitution** is understood strictly in a technical way: “We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; therefore we proclaim it to be invalid.”

*That statement should be seen as a political one intended to reflect Hungary’s rejection of totalitarianism and a de facto limitation of its sovereignty at the time of the adoption of the previous Constitution. It should be seen as drawing a clear line between the democratic system in place and the former communist regime. It does not affect the validity of any legal act currently in force. This interpretation is confirmed also by the fact that the new Constitution in its Closing provisions refers to the provisions of the present Constitution as the legal basis for the adoption of the Fundamental Law.*

### **B. Foundation**

#### **Article D – Hungarians living beyond its borders**

The Commission puts forward the argument that the lack of precision of the statement in Article D that “Hungary shall bear responsibility for the fate of Hungarians living beyond its borders” might give reason to concerns.

*Hungary considers that*

- *Article D provides a detailed definition of what it means that Hungary bears responsibility for the fate of Hungarians living beyond its borders. Whereas the relevant article in the former Constitution did not elaborate on what feeling responsibility for the fate of Hungarians living beyond Hungary’s borders means exactly, Article D in the new Constitution gives a description in detail of the content of bearing such responsibility, thereby also enhancing transparency and legal certainty.*
- *Hungary fully accepts the principle that primary responsibility for national minorities should be assumed by the State on whose territory the given minority lives. In no way does Article D question that principle, and its provisions do not diminish or remove primary responsibility of the States where the Hungarian minorities reside. However, we believe that there should be room for Hungary too, as the kin-State, to bear responsibility for its kin minority. As the Venice Commission noted in its 2001 Report on the Preferential Treatment of National Minorities by Their Kin-States, the emergence of new and original forms of minority protection, particularly by the kin-States, constitutes a positive trend insofar as they can contribute to the realisation of the goal of ensuring an adequate and effective protection of national minorities.*
- *As the wording of Article D suggests, Hungary assumes a facilitator role vis-à-vis the Hungarians living beyond its borders by facilitating, supporting and promoting their legitimate ambitions aimed at realizing their individual and collective rights. In particular, the bearing of*

*responsibility by Hungary for the fate of Hungarians living beyond its borders comprises facilitating the survival and development of their communities, supporting their ambitions aimed at preserving their Hungarian identity, the assertion of their individual and collective rights, the establishment of their community self-governments as well as their well-being on their native land, and promoting their cooperation with each other and Hungary. Such a facilitator role cannot be construed as an attempt to intrude in the internal affairs of the States where Hungarians reside. It is noteworthy hereby that Hungary only supports already existing and guaranteed individual and collective rights; it cannot provide such rights, given the sovereignty of neighbouring states in these matters.*

- *Article D must be read in conjunction with Article Q which clearly sets out that Hungary strives for a cooperation with all peoples and countries in the world in order to create and preserve peace and security, that Hungary ensures harmony between international law and Hungarian law in order to fulfil its international law obligations and that Hungary accepts the generally recognised rules of international law. Those undertakings by Hungary provide a clear framework within which our foreign policy and our policy concerning Hungarians living beyond our borders are conducted in all aspects.*

### **Article H – Protection of Hungarian language**

The Commission points out that Article H which regulates the protection of Hungarian language does not include a constitutional guarantee for the protection of the languages of national minorities.

*Article XXIX of the new Constitution dealing specifically with the rights of nationalities states that nationalities living in Hungary shall have the right to use their native languages and to the individual and collective use of names in their own languages, to promote their own cultures, and to be educated in their native languages.*

### **Article L – Marriage**

Hungary welcomes the acknowledgement by the Venice Commission that the right to define what constitutes marriage belongs to the Hungarian state and its constitutional legislator. The definition put forward in the Constitution does not prohibit unions between same sex persons. It should be also pointed out that registered same-sex civil partnerships enjoy legal protection in Hungary since 2009.

### **Article N – The Constitutional Court and budget management**

The Commission finds that the provision stating that the Constitutional Court is obliged to respect the “principle of balanced, transparent and sustainable budget management” seems to give the budget management priority with respect to a weighing of interests in cases of infringements of fundamental rights.

*The provision of the new Constitution stating that „in the course of performing their duties, the Constitutional Court, courts, local governments shall be obliged to respect the principle of balanced, transparent and sustainable budget management” is strictly applicable to their administrative management as public institutions, and it cannot be understood as an interpretation principle to be applied in the context of carrying out their genuine tasks (in the case of the Constitutional Court: in the context of its constitutional review task).*

### **Article O – Obligation to contribute**

The Commission argues that the provisions of Article O – including an obligation for every person “to contribute to the performance of state and community tasks to the best of his or her abilities and potential” – lack clarity, are too wide and may be difficult to apply. (para 52)

*The Inclusion of an unambiguous statement in the Constitution that Hungarian citizens have both rights and obligations has been a clear preference of the Hungarian electorate expressed during the national consultation on the new Constitution. These obligations are in no way in*

*contradiction with international human rights treaties binding for Hungary. The detailed rules of citizens' obligations will be defined by the respective cardinal laws.*

### **Article T – Legislative acts**

The Commission notes that in Article T, the hierarchy of the enlisted legislative acts remains open in many respects and the hierarchical relations between legislative acts are complicated by the provisions on “special legal orders” empowering the National Defence Council (Art. 49(4)), the President (Art. 50(3)) and the Government (Art. 51(4), 52(3), 53(2)) to “suspend the application of particular laws and to deviate from any statutory provision”. (paras 53, 54)

*The hierarchy of legislative acts is clear, the order of precedence is as follows: Acts of Parliament, Government decrees, orders by the Prime Minister, ministerial decrees, orders by the Governor of the National Bank of Hungary, orders by autonomous regulatory bodies and local ordinances Legislation shall also include orders issued by the National Defence Council and the President of the Republic during any state of national crisis or state of emergency. There is no ambiguity whatsoever in the Hungarian legal system and the above-mentioned list reflects the traditional hierarchy of legal norms. The legal value of cardinal laws is equal to that of other laws. Their special nature stems from the special requirements relative to their adoption, at the same time, their implementation and scrutiny take place the same way as in the case of ordinary laws adopted by simple majority. Special legal orders are applicable only in a state of emergency as defined in Article 48.*

## **C. FREEDOM AND RESPONSIBILITY**

### **General remarks**

Hungary welcomes the acknowledgement by the Venice Commission that a particular effort has been made to follow closely the technique and the contents of the European Convention on Human Rights and the EU's Charter of Fundamental Rights. (para 18)

*Hungary considers that as a result of having taken into account the previous recommendations of the Venice Commission, the provisions of the new Constitution dealing with human rights are in line with the structure, philosophy and wording of the significant international treaties on human rights that are binding for Hungary. Special acts will provide a more detailed description of those rights.*

The Commission is concerned, however, that there is a risk that **the constitutional provisions on freedom and responsibility might be eroded by special acts.** (para 59)

*That concern may be based on a misunderstanding due to inadequate translation. The special acts referred to above are in fact ordinary laws: the rules relative to fundamental rights and obligations shall be established by Acts of Parliament (ordinary laws). The Constitution lays down the basic guarantees of individual rights and responsibilities, while the regulation of the exercise of those rights and responsibilities in different fields of life is left to laws dealing specifically with that particular subject, i.e. the Media Law elaborates the detailed rules pertinent to the Constitutional provision on freedom of the press. The concern raised by the Commission concerns thus an issue that appears in every European constitution in a certain way.*

### **Specific remarks**

#### **Article II – Protection of embryonic and foetal life**

Hungary welcomes the conclusion by the Venice Commission that Article II of the Constitution cannot be read as considering the life of the unborn child to be of higher value than the life of the mother and does not necessarily imply an obligation for the Hungarian State to penalise abortion.

*Hungary considers that providing constitutional protection for embryonic and foetal life from the moment of conception does not run counter to the possibility of allowing abortion under well-defined circumstances set out by law. Currently the issue of abortion is regulated by Act LXXIX of 1992, which is still in force and there is no intention of abolishing or amending it.*

#### **Article IV – Death penalty, life imprisonment without parole**

The Commission finds that by admitting life imprisonment without parole, Article IV of the new Constitution fails to comply with the European human rights standards if it is understood as excluding the possibility to reduce, de facto and de jure, a life sentence. (para 69)

*Although the Constitution omits a specific reference to the abolition of death penalty, already in 1990, the Constitutional Court declared – on the basis of the constitutional protection of human life and dignity, as well as the relevant international treaty obligations of Hungary – this form of punishment unconstitutional. Hungary is a Contracting Party to Protocol No. 6. to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, and is committed to uphold its treaty obligations. There is no legal requirement to explicitly declare the abolition of death penalty in the Constitution, since there is no constitutional way to introduce death penalty in the Hungarian legal system.*

*As regards life imprisonment without parole, it was introduced in the Constitution upon the clear wish of the Hungarian electorate, as expressed during the national consultation on the new Constitution. The Constitution merely contains a strict restriction of its usage: such a grave punishment may only be imposed for committing wilful and violent offences. The President may grant pardon to any condemned person. Such a system could be regulated on the level of legislative acts, taking into consideration the samples of the systems that are already in place in the United Kingdom and the Netherlands.*

#### **Article VII – Right of freedom of thought, conscience and religion**

Hungary welcomes the Commission's finding that simply mentioning the co-operation between churches and the State for community goals does not constitute a State Church, because it is explicitly stipulated that churches shall be autonomous and separated from the state. Moreover, as the Commission also points out, the cooperation between state and churches can even be seen as an additional value for the overall State policy in this field and may strengthen the State's role as a neutral and impartial arbitrator and organiser.

#### **Article IX – Freedom of the press**

The Commission finds it problematic that in Article IX freedom of the press is not formulated as an individual's right, but as an obligation of the state. (para 74)

*The Constitution – in its Article IX – declares that every person has the right to express his or her opinion. Such a formulation of the freedom of expression is fully in line with the relevant Article of the ECHR (Article X). At the same time, Article IX makes it an obligation for the State to recognise and defend the freedom and diversity of the press, and to ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion. That formulation, too, can be considered as being in line with Article X of the ECHR which prohibits any interference by public authorities into the exercise of the freedom to hold opinions and to receive and impart information and ideas. There is no explicit formulation of an individual's right to freedom of the press in the ECHR either – such a right is to be drawn from the individual right to freedom of expression.*

The Commission finds it even more problematic that the detailed rules for this freedom and its supervision are left to be set out in a cardinal act without outlining the purposes, contents and restrictions of such a law. Once enacted, there will be no practical way for any further (simple) majority to change the act. (para 74)

*It is not uncommon for Constitutions to set out only the basic constitutional guarantees in relation to a certain individual right and to leave for ordinary laws the definition of the detailed rules concerning its exercise. The Constitution still in force does not contain any more detailed rules on the freedom of expression and freedom of the press than the new Constitution does, and its relevant provision [Article 61 (2)] formulates freedom of the press literally the same way as the new Constitution does. Moreover, it should be pointed out that the Constitutional Court has, in the past two decades, developed an extensive case-law concerning both freedoms which remains valid and will serve as guidance in the course of drafting the relevant cardinal act setting out the detailed rules of aforesaid individual right.*

#### **Article XV – Equal treatment**

The Venice Commission points out that Article XV lacks any mention of the prohibition of discrimination on the ground of sexual orientation. (para 75)

*As the Commission itself admits this is in fact common to the majority of European Constitutions. As it is noted also by the Commission, Article XV is an open-ended provision (“or other circumstances”) implying that discrimination on sexual ground is considered just as reprehensible as the other specifically mentioned forms of discrimination. It is to be assumed that the Hungarian Constitutional Court will interpret the grounds for discrimination in a manner according to which Article XV prohibits also discrimination on grounds of “sexual orientation” in the same vein as the ECtHR regards “sexual orientation” as a prohibited distinctive feature under Article 14 ECHR, although the wording of Article 14 ECHR does not include this particular ground of discrimination.*

#### **Article XXIII – Disenfranchisement**

*Hungary points out that deprivation of suffrage can only be executed upon a specific court judgement and the deprivation is strictly limited to the period of the specific penalty.*

#### **Article XXIX – National and ethnic minorities**

The Venice Commission regrets that the basic provisions of the new Constitution dealing with the protection of Hungary’s “nationalities” only make reference to the “respect” of the rights of citizens belonging to national minorities, without establishing any positive obligation on behalf of the State. The term “protect” is not used in relation to minority rights and the term “promote” is only mentioned in the Preamble in reference to “the cultures and languages of nationalities living in Hungary”

*Article XXIX, read in conjunction with the relevant preambular provisions, includes a broad commitment of the State for the protection of its nationalities. The Preamble states that nationalities living with us form part of the Hungarian political community and are constituent parts of the State and that the members of the Hungarian nation undertake to protect and safeguard the languages and cultures of nationalities living in Hungary. Article XXIX repeats the axiom that nationalities living in Hungary shall be constituent parts of the State and then enumerates the most fundamental rights that nationalities living in Hungary or Hungarian citizens belonging to any nationality shall have: the right to freely express and preserve their identity; the right to use their native languages and to the individual and collective use of names in their own languages; the right to promote their own cultures and to be educated in their native languages; and the right to establish local and national self-governments. Definition of the detailed rules for the rights of nationalities living in Hungary and the rules for the elections of their local and national self-governments is delegated to a cardinal Act.*

### **Article XXXI – Military service**

The Commission notes that the Constitution clearly states the main aim of the military defence of the country, namely preserving Hungary's independence, territorial integrity and state borders. It is commendable that the constitutional provisions also open the way for common defence, peacekeeping tasks arising from international agreements.

*It is only during extreme situations, such as a state of national crisis or a state of preventive defence that every adult male Hungarian citizen living in Hungary shall perform military service, and if armed service is incompatible with the conscience of any person obliged to perform military service, he shall perform unarmed service. The forms and detailed rules for military service will be defined by cardinal law, while respecting Hungary's international obligations in this field. We fully subscribe to the Venice Commission's assessment that, in view of the relevant provision of the ECHR (Article 4), the compulsory performance of work for national defence purposes during a state of national crisis is in line with human rights standards. The duty of Hungarians to engage in civil protection for the purposes of national defence and disaster management lies within the scope of Article 4 ECHR as well.*

## **D. THE STATE**

### **Article 23 – Autonomous regulatory bodies**

*The Commission is concerned that the power for the Parliament to establish autonomous regulatory bodies through a cardinal law could be misused in a way as to curtail the parliament's powers. (para 90)*

*The Parliament may – in order to perform and exercise particular responsibilities and competences of the executive branch – establish autonomous regulatory bodies by virtue of a cardinal law. Such autonomous bodies need to report to the Parliament on an annual basis and in consequence, their activity, i.e. the exercise of delegated powers, remains subject to proper scrutiny by the legislature. Moreover, Article 23 explicitly states that the decrees issued by the heads of autonomous regulatory bodies may not conflict with any higher ranking legal norm, including Acts of Parliament. It shall be pointed out, therefore, it is clear that these bodies are dependent on the actions of the legislative and assist its activities on the lower levels.*

### **Article 24 – The Constitutional Court**

Hungary welcomes that according to the Venice Commission the introduction of the possibility of an individual constitutional complaint into the constitutional review system is a commendable development.

However, the Venice Commission also raises several concerns in relation to the provisions of the new Constitution relating to the Constitutional Court:

- **Further constitutional amendments to the Constitution** still in force in Hungary – **aiming to** already introduce the changes to the number of judges of the Constitutional Court, their term of office and the election of the Court's president – are currently under discussion. In the Commission's view, the changes in the composition and mode of election of the Constitutional Court must also be assessed in conjunction with the competences of the Court. In the light of the 2010 curtailment of the Court's powers, confirmed by the new Constitution and of the recent developments mentioned in the previous paragraphs, the Commission is concerned that a number of provisions of the new Constitution may undermine further the authority of the Constitutional Court as a guarantor of constitutionality of the Hungarian legal order. (paras 96, 97)
- In relation to the provisions on Public Finances, serious concern has to be expressed as to Article 37 (4) which openly leaves breaches of the Constitution without a sanction by stating that the Constitutional Court's power to review is limited to the fields explicitly listed. This



serious limitation of the competences of the Constitutional Court introduced in November 2010 by constitutional amendment creates the impression that capping the national budget at 50 % of the GDP may be considered to be such an important aim that it may even be reached by unconstitutional laws. (paras 122, 123)

- The establishment and the competences of the Budget Council, as well as its composition and the way it is established (Article 44) has a significant impact on the adoption of the State Budget and the Parliament's related power. Article 44, interpreted in conjunction with Article 36, seems to grant the non-parliamentary Budget Council a "veto" power over Parliament's decision for the foreseeable future. Making the Parliament's decision dependent on the consent of another authority – with limited democratic legitimacy – is problematic and might have a negative impact on the democratic legitimacy of budgetary decisions. Moreover, the Council's composition will consist of members appointed by a previous majority, and, apart from the general requirements stipulated in Article 36, the Constitution does not fix any condition for the "prior consent" of the Budgetary Council. (paras 128, 129)
- Restricting the Constitutional Court's competence in such a way that it would review certain state Acts only with regard to a limited part of the Constitution runs counter to the obvious aim of the constitutional legislature in the Hungarian parliament to enhance the protection of fundamental rights in Hungary". (para 99)

*The new Constitution defines the Constitutional Court as the main institution responsible for the protection of the Fundamental law and constitutionality. The competences attributed to the CC by the Constitution allow the Court (i) to prevent the entry into force of any unconstitutional legislative act and (ii) to remedy any legal harm arising from the application of an unconstitutional legislative act. In defining the scope of those who may initiate proceedings before the Constitutional Court, the consideration of the Court's efficient functioning was taken into account as well.*

*Moreover, it should be pointed out that the competence of the previous Constitutional Court was by far the widest in Europe. The competences, procedures, organisation and operation of the Constitutional Court will be regulated in detail by cardinal law, giving further clarification to the matters raised by the Venice Commission. Introducing a two-third majority requirement for the adoption of laws regulating issues, such as social and taxation policy, and the establishment of the Budget Council reflect a firm ambition to stabilize public finances. Stable public finances and a predictable tax and social security system are the cornerstones of a modern sustainable national economy.*

*Members of the Constitutional Court receive their mandate directly from the Parliament which elects the Court members on the basis of a broad consensus, i.e. by a two-third majority of the votes cast. The 12-year long mandate and the prohibition of any party affiliation or political activity constitute important constitutional guarantees for the independence of the members of the CC. The election of the President of the CC by the Parliament should strengthen the independence of the President from any eventual play of interests within the body itself.*

## **Article 25 to 28 – Courts**

### **Independence of the judiciary**

#### **Reorganization pretext for replacing judges**

The Venice Commission raises a number of concerns:

- Articles 25 to 28 on Courts contains rather vague and general provisions; this entails a significant degree of uncertainty with regard to the content of the planned reform on the judiciary and gives reason for concern as it leaves scope for any radical changes. (para 104)
- Provisions concerning the system of courts are of very general nature: Article 25 (4) only states that "the judiciary shall have a multi-level organization" and their detailed regulation is relegated to a cardinal law. In the absence of transitional provisions in the new Constitution, it is difficult to understand not only what "multi-level organization" means, but also whether all

existing courts will be maintained and how the future structure will affect the status of judges. (para 105)

- According to Article 25 (1) the “Curia” will be highest justice authority of Hungary. In the absence of transitional provisions, a question arises: Will this change of the judicial body’s name result in replacement of the Supreme Court’s president by a new president of the Curia? (para 107)

- The judges “shall be appointed by the President of the Republic as defined by a cardinal Act” (Article 26 (2)). This also leaves a margin of interpretation as to the need to change (or not) the composition of the supreme body. (para 107)

- As stipulated by Article 26 (2), the general retirement age will also be applied to judges. This measure is questionable in light of the core principles and rules pertaining to the independence, the status and immovability of judges. Around 300 of the most experienced judges will be obliged to retire within a year, correspondingly, around 300 vacancies will need to be filled: this may undermine the operational capacity of the courts and affect continuity and legal security and might also open the way for undue influence on the composition of the judiciary. (para 108)

*The independence of the judiciary directly results from the general principle of separation of powers enshrined in Article C of the “Foundation” Chapter. In addition, the new Constitution fixes the basic constitutional guarantees of judiciary independence: judges are only subject to the law; judges may not be instructed in their judicial activity; they may be removed from office only for statutory reasons and in a procedure set out by law; judges may not be members of a political party and may not pursue any political activity. Their independence is further assured by the fact that they are nominated by the President of the Republic. In order to increase stability and independence in the case of the President of the Curia, he or she will be elected – upon the proposal of the President of the Republic – by a two-third majority vote of the members of the Parliament for nine years.*

### **Court secretaries acting as judges**

The Venice Commission points out that Article 27 (3), stipulating that “in cases defined by law, court secretaries may also act within the competence of sole judges subject to Article 26(1)”, also lacks precision and creates ground for questions: Can the court secretary, who is not a judge, act as a judge? If this will be the case, this provision seems questionable from the perspective of the European standards relating to the status of judges. (para 109)

*The original underlying intention with the introduction of this regulation was to alleviate the workload of the otherwise overloaded Hungarian justice system. It shall be pointed out that court secretaries did not have full judicial powers preceding the adoption of the new Constitution, following a modification of the present one, i.e. they acted with full signature rights in lieu of judges but only in courts of first instance and outside of trial. Further guarantees and provisions regarding this regulation will be set out in the relevant cardinal laws regulating the Hungarian justice system, in spite of the fact that the Constitutional Court has formerly (e.g. in 2008 and in 2010) regarded the expansion of the court secretaries’ rights to give grounds for concerns. It shall be noted that the extensive reform of the Hungarian justice system in line with the new constitutional order is not yet finalized and the relevant cardinal laws to be created shall and will contain further guarantees that would render the Commission’s concerns unsubstantiated.*

### **Article 29 – Prosecution Services**

*Hungary welcomes the acknowledgment by the Venice Commission of the fact that the Supreme Prosecutor’s and prosecution services’ responsibilities and competences are in line with the findings of the Venice Commission in its Report on European Standards as regards the Independence of the Judicial System.*

### **Article 30 – The Commissioner for Fundamental Rights**

The Venice Commission notes the changes to the institutional arrangements concerning the Ombudspersons. The Commission is concerned, however, that while the detailed rules for the Commissioner for Fundamental Rights shall be established by separate act, no information is provided with regard to the future competences neither the functioning of the newly set-up data protection authority, nor any reference is made to any related subsequent legislation.

Hungary welcomes the acknowledgement by the Venice Commission that States enjoy a wide margin of appreciation with regard to the specific institutional arrangements, which depend to a large extent on the domestic specific situation. The Commission even suggests that one single ombudsperson or multiple ombudspersons may be more appropriate at different stages of the democratic evolution of states.

*The new approach followed by the new Constitution – in comparison to the present system – consists of having no separate Commissioners, but a single one who carries out his duties in division of tasks with his deputies responsible for the protection of the interests of future generations, and of the rights of nationalities living in Hungary, respectively. These latter are nominated by the Commissioner for Fundamental Rights. The mandate of the Commissioner and his deputies remains to be fixed for 6 years.*

### **Articles 31-35 – Local Governments**

*The detailed rights and functioning of the local authorities will be regulated by a cardinal law. The establishment of a clear distinction, as requested by the Commission, between (i) the local authorities' own competences and those delegated by the central government and (ii) between the control of the local authorities' activities' legality and supervision of their decision's expediency will be taken into account.*

*With regard to their supervision it shall be noted that according to the Constitution any measure taken in the context of the supervision authority of the Parliament or the county government offices shall be based upon a decision of the Constitutional Court or an ordinary court.*

### **Articles 36 to 45 – Public Finances**

*Hungary welcomes the acknowledgement by the Venice Commission that the adoption of constitutional provisions which impose to maintain the state deficit below 50 % of GDP, responds to a legitimate aim. Thus, it cannot be criticized in light of international and European standards of democracy, human rights and the rule of law.*

### **Articles 48 to 54 – Special legal orders**

*Hungary welcomes the findings of the Venice Commission considering the special legal orders. The Commission notes that the Hungarian Constitution is not unique in regulating special legal orders in such a detailed way. It further notes that the new Constitution sets out the conditions for the establishment of different types of special legal orders (the state of national crisis, the state of emergency; the state of preventive defence; unexpected attacks; the state of extreme danger) as well as specific conditions for the adoption of related extraordinary measures. In the light of its previous opinions relevant to this field, the Commission finds that this Chapter of the new Constitution is generally in line with the European standards.*

***Closing provisions***

The Commission noted that the adoption of transitional provisions is of particular importance in the light of the existence of possibly diverging interpretations for certain provisions of the new Constitution. It could be used as an excellent opportunity for providing the necessary clarifications. This should, however, not be used as a means to put an end to the term of office of persons elected or appointed under the previous Constitution. (para 140)

*Hungary fully subscribes to this suggestion and assures the Commission that the drafting of transitional provisions will not be used to unduly put an end to the terms of office of persons elected under the previous legal regime.*