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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

THE TRANSITIONAL PROVISIONS TO THE FUNDAMENTAL LAW
(31 DECEMBER 2011)

OF HUNGARY

THE TRANSITION FROM COMMUNIST DICTATORSHIP TO DEMOCRACY

We, the Members of Parliament – being aware that no solid foundations can be laid for the safe functioning of the constitutional order without revealing the past and drawing the conclusions therefrom; on the one hand naming and denouncing the crimes committed under the rule of the communists against people, certain groups of people and the whole of society, holding the perpetrators legally responsible where possible, and emphasizing the responsibility of the leaders of the communist regime; on the other hand giving satisfaction to those who suffered such crimes; making a clear distinction between democracy and dictatorship, right and wrong, good and evil –, in the interest of enforcing the first Fundamental Law of Hungary, adopted according to the requirements of the rule of law, hereby proclaim the following:

1. The form of government based on the rule of law, established in accordance with the will of the nation through the first free elections held in 1990, and the previous communist dictatorship are incompatible. Hungary's current rule of law cannot be built on the crimes of the communist regime.

2. The Hungarian Socialist Workers' Party and its legal predecessors (the state-party) are responsible for

a) thwarting with Soviet military assistance the democratic attempt built on a multi-party system in the years after World War II;

b) establishing an exclusive exercise of power and a legal order built on unlawfulness;

c) putting an end to the economy based on the freedom of property, indebting the country and dramatically deteriorating its competitiveness;

d) subordinating Hungary's economy, national defence, diplomacy and human resources to foreign interests;

e) systematically devastating the traditional values of European civilisation and undermining national identity;

f) depriving citizens or certain groups of citizens of their fundamental human rights or seriously restricting such rights, in particular

- murdering people, delivering them to a foreign power, unlawfully imprisoning them, deporting them to forced labour camps, torturing them, and subjecting them to inhuman treatment;

- arbitrarily depriving citizens of their assets and restricting their rights to property;

- totally depriving citizens of their liberties and subjecting those who expressed their political views and will to coercion by the State;

- discriminating against people on the grounds of origin, world view or political opinion, and obstructing their professional advancement and success based on knowledge, diligence and talent;

- intervening in an abusive way in general and cultural education, scientific life and culture for political and ideological purposes;

- setting up and operating a secret police to unlawfully observe and influence the private lives of people;

g) suppressing with bloodshed the Revolution and War of Independence, which broke out on 23 October 1956, in cooperation with the Soviet occupiers, for the ensuing reign of terror and retaliation, and for the forced escape of two hundred thousand Hungarian people from their native country;

h) for the fact that during the given period of its history Hungary lost its standing among the nations of Europe and the world;

i) for all ordinary crimes committed for political motives and left unprosecuted by the justice system for political motives.

3. The Hungarian Socialist Workers' Party, its legal predecessors and the other political organisations established to serve them in the spirit of communist ideology were criminal organisations, and their leaders shall have responsibility without statute of limitations for maintaining and directing an oppressive regime, for the breaches of law committed and for the betrayal of the nation.

4. The Hungarian Socialist Party, having gained legal recognition during the democratic transition, shares all responsibility which lies with the state-party, as the legal successor of the Hungarian Socialist Workers' Party, heir to the unlawfully accumulated assets and beneficiary of the illegitimate advantages obtained under the dictatorship or during the transition, and by reason of the personal continuity which linked the old and the new party and is still characteristic of the party's leadership.

5. At the time it was not possible to prosecute the crimes committed under the communist dictatorship and aiming at the building and maintenance of the regime, and, in the absence of a constitutional turning point which could have interrupted legal continuity, no possibility to prosecute these crimes opened up even after the first free elections. The leaders of the dictatorship were not held legally or even morally responsible. The coming into force of the Fundamental Law opens the possibility to enforce justice.

6. Recognition and moral satisfaction is due to every Hungarian citizen who resisted the communist dictatorship and had his or her human dignity and rights violated or was unjustly persecuted by those who served the dictatorship, unless he or she participated in such breaches of law.

7. While breaches of law were inherent in the system of communist dictatorship, the acts were committed by individuals. The memory of crimes must be preserved for people living at present and for future generations, and the criminals must be named.

In the performance of their activities Parliament and other state organs of Hungary shall consider the above provisions of the Fundamental Law as a starting point.

Article 1

(1) The pensions or other benefits provided by the State on the basis of a legislation to leaders of the communist dictatorship defined by an Act may be reduced to the extent specified in an Act.

(2) Revenues from the reduction of pensions or other benefits under paragraph (1) shall be used to mitigate the injuries caused by the communist dictatorship and to keep alive the memory of the victims as defined by an Act.

Article 2

(1) No statute of limitations shall apply to those serious crimes defined in an Act which were committed against Hungary or persons under the communist dictatorship in the name or interest of, or in agreement with, the party-state and which were left unprosecuted for political reasons by ignoring the Act on criminal law in force at the time of perpetration.

(2) The crimes referred to in paragraph (1) shall become time-barred on the expiry of the period defined by the Act on criminal law in force at the time of perpetration, to be calculated from the day when the Fundamental Law comes into force, provided that they would have become time-barred by 1 May 1990 under the Act on criminal law in force at the time of perpetration.

(3) The crimes referred to in paragraph (1) shall become time-barred on the expiry of the period between the date of perpetration and 1 May 1990, to be calculated from the day when the Fundamental Law comes into force, provided that they would have become time-barred

between 2 May 1990 and 31 December 2011 under the Act on criminal law in force at the time of perpetration and that the perpetrator was not prosecuted for the crime.

Article 3

(1) In order for the State to preserve the memory of the communist dictatorship, a National Memorial Committee shall operate.

(2) The National Memorial Committee shall reveal the workings of power of the communist dictatorship and the role of persons and organisations that held communist power, and shall publish the results of its activities in a comprehensive report and further documents.

Article 4

It is a matter of public interest to realistically reveal the operation of the communist dictatorship and ensure society's sense of justice; the holders of power under the communist dictatorship shall qualify as public figures. In the interest of the enforcement of this public interest, the holders of power under the communist dictatorship shall be obliged to tolerate all statements of fact about their roles and acts related to the operation of the dictatorship, with the exception of deliberate statements that are untrue in essence, and their personal data related to such roles and acts may be disclosed to the public.

TRANSITIONAL PROVISIONS RELATED TO THE COMING INTO FORCE OF THE FUNDAMENTAL LAW

Article 5

The coming into force of the Fundamental Law shall not affect the effect of legislation, normative decisions or orders, or other legal instruments of state administration, concrete decisions or commitments of international law which were adopted, issued, made or undertaken before the Fundamental Law came into force.

Article 6

The legal successor of the organ which performed the tasks and exercised the competences under Act XX of 1949 on the Constitution of the Republic of Hungary shall be the organ which performs the tasks and exercises the competences under the Fundamental Law.

Article 7

The designation 'Republic of Hungary' may be used in reference to Hungary after the Fundamental Law comes into force by virtue of the legislative provisions in force on 31 December 2011 until the changeover to the designation set out in the Fundamental Law may be implemented according to the principles of responsible financial management.

Article 8

The coming into force of the Fundamental Law shall not affect the mandate of Parliament, Government and local representative bodies, or of the persons appointed or elected before the coming into force of the Fundamental Law, with the exceptions laid down in Articles 9 to 18.

Article 9

The following articles of the Fundamental Law shall also apply to the mandates of the following persons:

- a) Articles 3 and 4 to Parliament and Members of Parliament in office,

- b) Articles 12 and 13 to the President of the Republic in office,
- c) Articles 20 and 21 to the Government in office and Members of Government in office,
- d) Article 27(3) to court secretaries in office,
- e) Article 33(2) to presidents of county representative bodies in office, and
- f) Article 35(3) to (6) to local representative bodies and mayors in office.

Article 10

The time limit laid down in Article 4(3)f) of the Fundamental Law shall start to run when the Fundamental Law comes into force.

Article 11

(1) The legal successor of the Supreme Court, the National Council of Justice and its President shall be the Curia for the administration of justice, and the President of the National Office for the Judiciary for the administration of courts with the exception defined by the relevant cardinal Act.

(2) The mandates of the President of the Supreme Court and the President and members of the National Council of Justice shall be terminated when the Fundamental Law comes into force.

(3) In the interest of the enforcement of the fundamental right to a court decision within a reasonable time guaranteed by Article XXVIII(1) of the Fundamental Law, and until a balanced distribution of caseload between the courts has been realised, the President of the National Office for the Judiciary may designate a court other than the court of general competence but with the same jurisdiction to adjudicate any case.

(4) In the interest of the enforcement of the fundamental right to a court decision within a reasonable time guaranteed by Article XXVIII(1) of the Fundamental Law, and until a balanced distribution of caseload between the courts has been realised, the Supreme Prosecutor, as the head and director of the prosecution service which operates as a contributor to the administration of justice under Article 29 of the Fundamental Law, may instruct that charges be brought before a court other than the court of general competence but with the same jurisdiction. This provision shall not affect the right of the President of the National Office for the Judiciary guaranteed by paragraph (3), or the right of certain prosecution services to bring charges before any court which operates within their area of competence.

Article 12

(1) If a judge has reached the general retirement age defined by Article 26(2) of the Fundamental Law before 1 January 2012, his or her service relationship shall be terminated on 30 June 2012. If a judge reaches the general retirement age defined by Article 26(2) of the Fundamental Law in the period between 1 January 2012 and 31 December 2012, his or her service relationship shall be terminated on 31 December 2012.

(2) If persons engaged in the administration of justice in non-litigious procedures who have been appointed by the concrete public-law decision of a Member of the Government may conduct proceedings in certain types of litigation under an Act by virtue of Article 25(6) of the Fundamental Law, the provision of Article 26(2) of the Fundamental Law on the determination of the highest age shall also apply to such persons with effect from 1 January 2014.

Article 13

If a prosecutor has reached the general retirement age defined by Article 29(3) of the Fundamental Law before 1 January 2012, his or her service relationship shall be terminated on 30 June 2012. If a prosecutor reaches the general retirement age defined by Article 29(3) of the Fundamental Law in the period between 1 January 2012 and 31 December 2012, his or her service relationship shall be terminated on 31 December 2012.

Article 14

(1) The lowest age requirement defined by Article 26(2) of the Fundamental Law shall be applicable to judges appointed on the basis of a call for applications announced after the coming into force of the Fundamental Law, with the exception laid down in paragraph (2).

(2) If the appointment takes place without the announcement of a call for applications under an Act, the lowest age requirement shall be applicable to judges appointed after the coming into force of the Fundamental Law.

Article 15

The designation of the office of the Parliamentary Commissioner for Citizens' Rights shall be 'Commissioner for Fundamental Rights' as of the coming into force of the Fundamental Law. The legal successor of the Parliamentary Commissioner for Citizens' Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations shall be the Commissioner for Fundamental Rights. The Parliamentary Commissioner for National and Ethnic Minority Rights in office shall become the deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary as of the coming into force of the Fundamental Law; the Parliamentary Commissioner for Future Generations in office shall become the deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations as of the coming into force of the Fundamental Law; their mandates shall be terminated when the mandate of the Commissioner for Fundamental Rights is terminated.

Article 16

The mandate of the Commissioner for Data Protection in office shall be terminated when the Fundamental Law comes into force.

Article 17

For the purposes and as of the coming into force of the Fundamental Law, the designation of the office of the President of the County Assembly shall be 'President of the County Representative Body'. The county representative body laid down in the Fundamental Law shall be the legal successor of the county assembly.

Article 18

The member of the Budget Council in office appointed by the President of the Republic shall become the President of the Budget Council as of the coming into force of the Fundamental Law.

Article 19

(1) The provisions of the Fundamental Law shall also be applicable to cases in progress, with the exceptions laid down in paragraphs (2) to (5).

(2) Article 6 of the Fundamental Law shall be applicable from the first sitting of Parliament started after the coming into force of the Fundamental Law.

(3) As of the coming into force of the Fundamental Law, proceedings based on petitions submitted to the Constitutional Court before the coming into force of the Fundamental Law by petitioners who no longer have the right to make petitions under the Fundamental Law shall be terminated, and if the proceedings belong to the competence of another organ, the petition shall be transferred to that other organ. Petitioners may re-submit their petitions according to the requirements laid down in the relevant cardinal Act.

(4) Articles 38(4) and 39(1) of the Fundamental Law shall be applicable to contracts and subsidy entitlements existing on 1 January 2012, and to proceedings in progress aimed at the conclusion of contracts or the provision of subsidies if provided for by an Act and as laid down in an Act.

(5) Until 31 December 2012, the third sentence of Section 70/E(3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable to any benefits which qualify as retirement allowance under the rules in force on 31 December 2011, concerning any change in their conditions, nature or amounts, their conversion to other benefits or their termination.

Article 20

Sections 26(6), 28/D, 28/E and 31(2) to (3) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall also be applicable after the coming into force of the Fundamental Law to cases in progress at time of the coming into force of the Fundamental Law.

Article 21

(1) In the cardinal Act which sets detailed rules for the churches, Parliament shall identify the recognised churches and shall determine the criteria for recognition of additional recognised churches. A cardinal Act may stipulate that in order to be recognised as a church the following shall be taken into consideration: operation for a certain length of time, a certain number of members, historical traditions and social support.

(2) In the cardinal Act which sets detailed rules for the rights of nationalities living in Hungary, Parliament shall identify the recognised nationalities and shall determine the criteria for the recognition of additional nationalities. A cardinal Act may stipulate that in order to be recognised as a nationality the following criteria shall be met: native status of a certain length of time and an initiative by a certain number of persons who declare to belong to the nationality in question.

Article 22

(1) For the purposes of Article 24(2)c) of the Fundamental Law, a constitutional complaint shall mean

a) a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a piece of legislation applied in a court proceedings which has violated any of his or her rights guaranteed by the Fundamental Law, and

b) a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a piece of legislation applied or enforced directly in a concrete case without a court decision which has violated any of his or her rights guaranteed by the Fundamental Law.

(2) For the purposes of Article 24(2)d) of the Fundamental Law, a constitutional complaint shall be a complaint submitted by the petitioner after exhausting all legal remedies, or in the absence of remedies, against a court decision on the merits of the case or another decision terminating court proceedings which has violated any of his or her rights guaranteed by the Fundamental Law.

Article 23

(1) The first general elections of local representatives and mayors after the coming into force of the Fundamental Law shall take place in October 2014. The general elections of local representatives and mayors shall take place on the same day as the elections of the Members of the European Parliament, with the exception of the first general elections after the coming into force of the Fundamental Law; the interval between two consecutive general elections of local representatives and mayors may differ from the period laid down in Article 35(2) of the

Fundamental Law to the extent required by the date of the elections of the Members of the European Parliament.

(2) The participation, under Article 2(2) of the Fundamental Law in Parliament's work by the nationalities living in Hungary shall first be ensured in the work of the Parliament formed after the first general elections of Members of Parliament after the coming into force of the Fundamental Law.

Article 24

The coming into force of the Fundamental Law shall not affect any decision of Parliament or of the Government made before the coming into force of the Fundamental Law on the domestic or foreign use of the Hungarian Defence Forces, the use of foreign armed forces in Hungary or departing from Hungary, and on the stationing abroad of the Hungarian Defence Forces or the stationing of foreign armed forces in Hungary, under Act XX of 1949 on the Constitution of the Republic of Hungary.

Article 25

a) A declared state of national crisis shall be subject to the provisions of the Fundamental Law on the state of national crisis.

b) A declared state of emergency shall be subject to the provisions of the Fundamental Law on the state of emergency, if it was declared due to armed actions aimed at overturning the constitutional order or at the acquisition of exclusive power, or to grave acts of violence committed with arms or objects suitable to be used as arms, capable of endangering life and property on a massive scale.

c) A declared state of emergency shall be subject to the provisions of the Fundamental Law on the state of danger, if it was declared due to any natural disaster or industrial accident endangering life or property.

d) A declared state of preventive defence shall be subject to the provisions of the Fundamental Law on the state of preventive defence.

e) A situation defined by Section 19/E of Act XX of 1949 on the Constitution of the Republic of Hungary shall be subject to the provisions of the Fundamental Law on the state of unexpected attack.

f) A state of danger shall be subject to the provisions of the Fundamental Law on the state of danger.

Article 26

(1) A person who has been banned from participation in public affairs by a final judgement at the time of the coming into force of the Fundamental Law shall not have suffrage while such ban is in force.

(2) A person who has been put under guardianship which restricts or excludes his or her disposing capacity by a final judgement at the time of the coming into force of the Fundamental Law shall not have suffrage until such guardianship is terminated or until a court establishes the existence of his or her suffrage.

Article 27

Article 37(4) of the Fundamental Law shall be applicable to Acts of Parliament published in the period when state debt exceeded half of the Gross Domestic Product even when the state debt no longer exceeds half of the Gross Domestic Product.

Article 28

(1) Section 12(2) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable to the transfer of any local government property to the State or another local government until 31 December 2013.

(2) Section 44/B(4) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable until 31 December 2012. After 31 December 2011, an Act of Parliament or a Government decree by authorisation of an Act of Parliament may invest notaries with tasks and competences of public administration.

(3) The metropolitan or county government office may apply to a court to establish a local government's failure to comply with its law-making obligation based on an Act. Should the local government fail to comply with its law-making obligation by the date fixed by the court in its decision establishing failure, the court shall order – upon the initiative of the metropolitan or county government office – that the local government decree necessary to remedy the failure be adopted by the head of the metropolitan or county government office on behalf of the local government.

(4) Section 22(1) and (3) to (5) of Act XX of 1949 on the Constitution of the Republic of Hungary in force on 31 December 2011 shall be applicable until the coming into force of the cardinal Act referred to by Article 5(8) of the Fundamental Law. The cardinal Act referred to by Articles 5(8) and 7(3) of the Fundamental Law shall be adopted by Parliament until 30 June 2012.

(5) Until 31 December 2012, a cardinal Act may stipulate a qualified majority for the adoption of certain decisions of Parliament.

Article 29

(1) As long as the state debt exceeds half of the Gross Domestic Product, whenever the State incurs a payment obligation deriving from a decision of the Constitutional Court, the Court of Justice of the European Union or any other court or an organ which applies the law, and the amount previously earmarked by the Act on the Central Budget for performing such obligation is insufficient and the missing amount cannot even be supplied out of another amount earmarked by the Act on the Central Budget for other purposes without violating the requirement of balanced budget management, a special contribution to covering common needs shall be established, exclusively and expressly related to the performance of such obligation in terms of scope and designation.

(2) Legislation may not establish new grounds for compensation ensuring pecuniary or other asset contributions to persons unlawfully deprived of their lives or freedom for political reasons or to persons who sustained undue property damage by the State, before 2 May 1990.

Article 30

(1) The cardinal Act defined by Article 41 or 42 of the Fundamental Law may provide that the tasks and competences of the organ supervising the financial intermediary system and the National Bank of Hungary may be performed and exercised by a new organisation as general legal successor, whose president shall be appointed by the President of the Republic under Article 41(2) of the Fundamental Law.

(2) In the case specified by paragraph (1), the Vice Presidents of the new organisation shall be the Governor of the National Bank of Hungary in office at the time when the Act on the new organisation comes into force, regarding monetary policy and the tasks of the central bank, and the President of the Hungarian Financial Supervisory Authority in office at the time when the Act on the new organisation comes into force, regarding the tasks of supervision of the financial intermediary system. The mandates of the Vice Presidents shall exist until their terminated presidential mandate would have existed. On termination of the mandates of the Vice Presidents, the President of the Republic shall appoint new Vice Presidents under Article 41(2) of the Fundamental Law.

CLOSING PROVISIONS

Article 31

(1) The Transitional Provisions of the Fundamental Law of Hungary (hereinafter referred to as 'Transitional Provisions') shall come into force on 1 January 2012.

(2) Parliament shall adopt the Transitional Provisions under Sections 19(3)a) and 24(3) of Act XX of 1949 on the Constitution of the Republic of Hungary, in accordance with point 3 of the Closing Provisions of the Fundamental Law of Hungary. The Transitional Provisions shall form part of the Fundamental Law.

(3)

Article 32

The 25th day of April shall be the Day of the Fundamental Law in commemoration of the publication of the Fundamental Law.