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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OPINION

**ON THE REGULATORY CONCEPT
OF THE CONSTITUTION
OF THE REPUBLIC OF HUNGARY**

**CHAPTER XVIII
THE PARLIAMENTARY COMMISSIONER OF CITIZENS RIGHTS**

by
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COMMENTS ON REGULATORY CONCEPT OF THE CONSTITUTION OF THE HUNGARIAN REPUBLIC.

Chapter XVIII. The parliamentary commissioner of citizens' rights.

a) The draft states that the constitution should specify "what parliamentary commissioners serve the protection of citizens' rights". If the functions of the parliamentary commissioner are to be described in the Constitution itself, the Constitution should obviously describe the organisation of the institution of the parliamentary commissioners.

It is a purely political problem - and a problem of practicability and convenience - whether a state should establish more than one commissioner or whether one commissioner with general competence would suffice. If one looks to neighbours in Western-Europe, the picture is highly different in this respect.

The next question, is whether, if one decides to establish more than one commissioner, the three categories established in the Regulatory Concept are the most appropriate one (a general commissioner, a commissioner for data protection and a commissioner for minority protection). I am of the opinion that a foreign expert should be reluctant to comment on such a political decision.

One question relating to a) deserves to be commented upon, though. The draft is referring to the "commissioner and his deputy". There is a question, both of principle and of practicability, what formal position the deputy commissioner is envisaged to play. If one establishes a system in which the commissioner himself shall have to make the formal decision in any complaint, one will risk to overburden the commissioner and to create a backlog. On the other hand, it is certainly complicated to distinguish, in the legislation establishing the system of parliamentary commissioners, which complaints shall have to be decided upon by the commissioner himself and which complaints are to be delegated to the deputy commissioner.

b) The election of the parliamentary commissioner may be arranged in different ways. The only remark I would like to submit at this stage, is to focus on the possible re-election of the commissioner for one period. This is a question of a more general character pertaining to people in powerful positions. On some occasions, one might find it appropriate to explicitly eliminate this option in order for him to be more outspoken and critical. On other occasions, one might be more concerned with continuity and the experience already built into the institution; therefore one would permit re-election.

c) In the draft c), the task of the commissioner is described as being to "eliminate constitutional irregularities". It is not clear to me whether this is an intentional restriction on his competence, or whether the commissioner shall be entitled to look also into the legislation and its application by the executive branch.

d) It seems rational that the commissioner can handle the application at its merits only if the applicant does have a legal interest in the outcome of the application.

e) The competence of the commissioners is very wide. [I do have certain problems interpreting the last sentence of e), this may be expressed in a more clear way.]

f) It seems but natural that the details of the role of the commissioner is defined and described in a statute.