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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS

**ON THE TWO DRAFT LAWS
AMENDING LAW NO. 47/1992
ON THE ORGANISATION AND FUNCTIONING
OF THE CONSTITUTIONAL COURT
OF ROMANIA**

by

Mr. P. PACZOLAY (Member, Hungary)

1. Art 51para (1):

It is very problematic the lifting of the quorum under special circumstances. It is justified to protect the functioning of the Court against the politically motivated challenges but it must be balanced by the preservation of a certain quorum necessary to the decisions of the Plenum.

2. Art 55:

There are certain dangers in the mechanical application of the Code of Civil Procedure to the Constitutional Court's proceedings. The Constitutional Court should decide on the exclusion of constitutional judges.

3. Art 5 para 4¹:

The exclusion from the candidacy those persons whose relatives are or were political leaders is unusual and seems exaggerated. This is specially true in the case of those whose relatives "were at least five years the members of the leadership of political parties". I understand the concern of the legislator under the peculiar circumstances and shortcomings of political culture in Romania, nevertheless, in most countries even persons with political past (e. g. former members of parliament, ministers, etc.) may be elected constitutional judges.

I think that these circumstances should not be prohibited by the law, but the parliament – in the process of the election of the judge – should evaluate whether a past political career or a close relation to a political leader would raise concerns regarding the impartiality of the candidate.

4. Art 61 par (3):

The proposed provision creates discrimination among judges and prosecutors and other legal professions, and this would require justification (unfortunately we have not received the explanatory note). However, it is acceptable, and known in several European countries a certain preference aimed at to guarantee that a given number of ordinary judges should be elected as constitutional judges.

To sum up: the above mentioned amendments do not contribute to the improvement of the procedure and the composition of the Romanian Constitutional Court.