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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**REMARKS
OF THE HUNGARIAN GOVERNMENT**

**ON THE DRAFT JOINT OPINION
ON THE ACT ON THE ELECTIONS
OF MEMBERS OF PARLIAMENT**

OF HUNGARY

(received on 13 June 2012)

1. Referring to section 10 of the draft:

The first enumeration paragraph of section 10 wrongly states that the new election act introduces a two-round system instead of a one-round system. The fact is that a one-round system is introduced instead of the previous two-round system.

2. Referring to section 36, fourth enumeration paragraph

Our standpoint is that the legal regulation introduced in the act duly enables:

- a) the flexible adjustment of constituency borders when necessary
- b) the exclusion of professionally unfounded, politically biased changes

Ad a)

The Act stipulates that in case of differences exceeding 20% of the average the readjustment of constituency borders is compulsory.

According to Section 4 Subsection (8) of the Act: *„The rate of deviation ... shall be determined in comparison with the number of voters as of the day of the preceding general elections of Members of Parliament.”* Therefore the text of the Act does not enforce a revision period measured in years, it stipulates that the constituency borders have to be revised after every general election, based on election day data. In practice this means a revision every four years.

Ad b)

The Act provides that changing of constituency borders (besides the modification of administrative boundaries) shall only be possible if considerable deviations occur (above 20%) – the reason for this warranty provision is to avoid manipulative, politically biased boundary delimitation. If the pre-requirement of the revision would be only the time passing and not the amount of the deviation itself, it would enable the all-time ruling parties to initiate modifications even if these would be otherwise professionally unfounded and unnecessary.

3. Referring to section 37 of the draft

Our standpoint is that the provisions of article 26 of the Act on the transitional provisions of the Fundamental Law are univocal.

- a) Article 26 paragraph (1) stipulates that persons barred from participating in public affairs shall be disfranchised. The barring from public affairs is based on an individually considered decision of the judiciary, complying with the requirements of the European Court of Human Rights and Article XXIII paragraph (6) of the Fundamental Law.

The tool for disfranchising criminals remains the barring from public affairs after the Fundamental Law came into force. The transitional provision stipulates for the sake of clarification that cases of final judiciary decisions of barring from public affairs before the coming into force of the Fundamental Act also result in the loss of the right to vote (just as previously).

We have to remark, that in the footnote 35. of the draft opinion the translation of the transitional provision is incorrect, it should be properly: *„If, when the Fundamental Law comes into effect, a person is barred from participating in public affairs by a final court judgement, the person does not have the right to vote or to be elected, under the effect of the ban from participating in public affairs”*

- b) Paragraph (2) of Article 26 contains provisions for the suffrage of persons with limited mental capacity. The previous Constitution disfranchised persons placed under

guardianship limiting or banning their legal capacity. After coming into force of the Fundamental Law the loss of the right to vote and the institution of guardianship will be considered as separate matters, therefore in the transitional provisions regulation was needed for the suffrage of those persons, who have been under guardianship at the time of the coming into force of the Fundamental Law but had no final judiciary decision regarding their right to vote.

Based on the transitional provisions such citizens are disfranchised.

Article 14/A of the Act IV of 1959 on the Civil Code stipulates that guardianship imposed has to be revisited in a time determined by the court but latest every 5 years. During the revising procedure the court explicitly has to decide about the disfranchisement too. Revision of the disfranchisement can also be requested off the turn according to Article 11/A (5) of the Act C of 1997 on Electoral Procedure.

Therefore there is a regulation for every possible case regarding the right to vote:

- persons explicitly disfranchised after coming into force of the Fundamental Law do not have the right to vote,
- persons placed under guardianship before coming into force of the Fundamental Law will remain disfranchised until a court makes a final decision regarding their right to vote,
- persons who have been placed under guardianship before coming into force of the Fundamental Law but a court has made a decision choosing not to disfranchise them, will have the right to vote.

4. Referring to Section 19, 38, 39, 44, and 48 of the draft opinion

We are thankful for the recommendations concerning electoral procedure. The revision of the Act on Electoral Procedure, the shaping of the new regulation and negotiations between the parties are in progress. During this process we will take the valuable recommendations of the Venice Commission and the OSCE/ODIHR into consideration.