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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REMARKS
OF THE HUNGARIAN GOVERNMENT

ON THE DRAFT OPINION
ON THE ACT ON THE RIGHTS OF NATIONALITIES

OF HUNGARY

(received on 13 June 2012)

On II. 10:

The Commission, based on non-governmental sources, concluded that the consultation and negotiation with representatives of the nationalities before the adoption of Act CLXXIX of 2011 on the Rights of Nationalities (hereinafter "Nationalities Act") was not sufficiently extensive and effective.

According to our view, the consultation and negotiation conducted during the preparation of the Nationalities Act between July 2010 and December 2012 met legal requirements of legislation and social expectations, both regarding its duration in time, and the circle of those involved in the consultation. During the one and a half year period of the possibility to provide opinions, the submitter received for about two months the incoming proposals – from civil organizations, private persons, experts, nationality self-governments, as it was announced in the widest circle –, then, based on these almost 50 suggestions, the first norm text-versions were prepared, these were consulted already with officers and experts of the nationality self-governments. Consultations were substantive and straightforward in all cases.

On V. A. 25:

Concerning the questions raised by the Commission with regard to the Act being cardinal, it should be emphasised generally that it is part of the constitutional traditions in Hungary that the Constitution defines a number of fields, the detailed rules of which must be defined in a cardinal (qualified, two-thirds) act. The new Fundamental Law does not increase the number of cardinal laws, in fact it even decreases them to a small extent compared to the previous Constitution. The narrow interpretation of the fields of cardinal acts, as defined in the Fundamental Law, is facilitated by the so-called cardinal clause, applied during the preparation of the new cardinal acts and is built in the acts previously in force, and which specifically indicates that, from the provisions of a given act, which should be considered cardinal according to the Fundamental Law. The cardinal clause – similarly to the clause on the harmonization of laws, already in use since years – does not have a normative content, a binding force; it rather has an informative function. The requirement of being cardinal results not from the clause, but from the Fundamental Law itself: no matter whether the clause indicates a provision to be cardinal, if its subject field – according to the Fundamental Law – is not included in the fields belonging to cardinal acts. And ultimately it is going to be the Constitutional Court that is going to judge, which are those provisions, the amendment of which requires a qualified majority. As a result from the informative function, the cardinal clause may be amended with the votes of the majority of the members of Parliament that are present.

In accordance with this, § 158 of the Nationalities Act is a provision securing compliance with the requirements of the Fundamental Law regarding cardinal acts, its amendment does not require a two-thirds majority, as its framing did not require it either. However, its amendment requires the change of the provisions prescribing cardinal acts, of the Fundamental Law itself.

On V. A. 26:

The transitional provisions in Chapter XII of the Act are needed to be included in the law because of the gradual entry into force of the given new provisions. The provisions in § 22-32 regarding public education – simultaneously with the Act on Public Education – enter into force gradually, from September 2012, January 2013 and September 2013. The new rules on elections enter into force simultaneously with the preparation and arrangement of the 2014 elections. The rules regarding the operation of nationality self-governments become effective from the following, 2014 nationality elections. However, the requirement of legal security demands the nationalities' rights to be guaranteed in a secure legal environment also in the period until its entry into force. Therefore – though the effect of the entire Act on

the Rights of National and Ethnic Minorities ceased on the day of the promulgation of the new act – the transitional provisions maintain their validity up to the mentioned dates. This also explains their textual similarity with the new provisions. These transitional rules lapse parallel to the gradual entry into force.

On V. A. 29:

As for the other issues laid before the Constitutional Court by the Commissioner for Fundamental Rights, the Government is open to change, which is also shown by the fact that the Parliament has already decided upon the modification of the law, regarding the non-profit criterion of the nominator nationality organizations (entitled to propose candidates), the collective responsibility of members of nationality self-governments for the consequences of unlawful utilisation of assets, handling nationality self-government assets in case of cessation of the body, as well as the question of the right to use sign language. The proclamation of the amendment is under process. The revision of the legal institution of the forfeiture of honours is also under process.

On V.B. 33:

We would like to note, regarding point V.B. 33, that the condition “resident... for at least one century” is not a new rule. It appeared in the same way in the Act on the Rights of National and Ethnic Minorities previously in effect, therefore it can be considered by now as part of the Hungarian public law traditions.

On V. B. 35-36:

The new regulation – as opposed to the opinion of the Commission – expands its force on non-Hungarian citizens living in Hungary and affiliating with the given nationality in language and culture. The law excludes from exercising nationality rights those forming part of a given nationality but without Hungarian citizenship in one single case, namely in exercising passive franchise during nationality self-government elections. We respectfully request the revision of the statement.

On V. B. b. 40-45:

The Commission’s remarks related to the exercise of nationality rights being bound to census data reflect the difficulties of the legislators as well. While the use of some objective criterion as the condition to ensure rights is inevitable due to previous misuses of nationality rights – which previously was initiated even by the nationalities themselves –, the determination of the numerical proportion is being objected to. The parliamentary commissioner of national and ethnic minorities has pointed out after two previous elections that in at least 10% of the cases, nationality self-governments were established in localities where there lived no members of the given nationality during the previous, 2001 population census.

In fact, the use of census data in order to eliminate the abuses experienced during previous nationality elections – though these only reflect changes of 10 years – is advantageous because it is not directly linked to nationality elections, but is a “neutral” data in this regard, therefore the repliers are not likely to declare nationality affiliation during the census in respect of elections. It should be emphasised that declaring nationality affiliation is not compulsory during the census; the census-takers call the attention of those providing data to the fact that giving information is voluntary. Thus the data acquired in this way is suitable to assess the actual number of the nationality population, that is not influenced by the election respect and decreases the possibilities of abuse.

The decisions of the Constitutional Court concerning the previous Minority Act have prescribed that such a solution must be institutionalised which excludes the abuse of elective franchise yet also respects the right of self-determination of those affiliated with a nationality. The census data meet this double requirement.

On V. B. 50:

The new act indeed describes the election, organization, operation and supervision of nationality self-governments in fullest detail. The reason of this clearly is that problems hindering or encumbering the operation of the representation of nationalities during the past period arose in these fields. It was an explicit expectation during consultations with nationalities to expound these provisions in the most accurate and detailed possible way.

On V. B. 53:

The mechanism of dissolving a nationality self-government board by the Parliament has not changed as compared to the provisions of the previously effective minority act, thus it is not a new possibility in the Hungarian law and order, not even compared to that indicated in the draft.

On V. B. 73:

An amendment has been submitted regarding the language usage in the board of representatives and minutes of nationality self-governments. According to the amendment already passed by the Parliament, the minutes of the meeting has to be prepared in the language of negotiations used, or – based on the decision of the board – in the Hungarian language, therefore we ask for the cancellation of the statement.

On V. B. 77:

The experiences of the past period led to the abolition of the position of the minority ombudsman. It happened on a number of occasions that the commissioners responsible for the given fields, when examining the same issue, coming to different conclusions among themselves, formulated different proposals towards the competent authorities. The reorganization of ombudsman powers therefore serves the assurance of unity in statutory interpretation and thus the creation of legal security.