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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

HUNGARY

**NINTH AMENDMENT
TO THE FUNDAMENTAL LAW**

and

EXPLANATORY MEMORANDUM*

*Translation provided by the Authorities

Ninth Amendment to the Fundamental Law of Hungary

The National Assembly as constituent power, acting within its power laid down in Article 1 (2) a) of the Fundamental Law, amends the Fundamental Law as follows:

Article 1

Article L) (1) of the Fundamental Law shall be replaced by the following provision:

“(1) Hungary shall protect the institution of marriage as the union of one man and one woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children. The mother shall be a woman, the father shall be a man.”

Article 2

Article T) (1) and (2) of the Fundamental Law shall be replaced by the following provisions:

“(1) Generally binding rules of conduct may be laid down in the Fundamental Law, or in laws adopted by an organ with legislative competence specified in the Fundamental Law, promulgated in the official gazette. A cardinal Act may lay down different rules for the promulgation of local government decrees, and of laws adopted after the Government initiating the declaration of state of war or state of emergency, and during the period of special legal order.

(2) Laws shall be Acts, government decrees, prime ministerial decrees, ministerial decrees, decrees of the Governor of the Hungarian National Bank, decrees of the heads of independent regulatory organs, and local government decrees.”

Article 3

Article XVI (1) of the Fundamental Law shall be replaced by the following provision:

“(1) Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.”

Article 4

Article XXXI (3) and (4) of the Fundamental Law shall be replaced by the following provisions:

“(3) During the period of state of war, adult male Hungarian citizens with domicile in Hungary shall perform military service. If military service involving the use of arms cannot be reconciled with the conscientious belief of the person obliged to perform military service, he shall perform unarmed service. The forms of, and the detailed rules for, the performance of military service shall be laid down in a cardinal Act.

(4) For the period of state of war, adult Hungarian citizens with domicile in Hungary may be ordered to perform work for national defence purposes, as provided for in a cardinal Act.”

Article 5

(1) Article 1 (2) h) of the Fundamental Law shall be replaced by the following provision:

(The National Assembly)

“h) shall decide to declare war situation and to make peace;”

(2) In Article 1 of the Fundamental Law, the following paragraph (3) shall be added:

“(3) For war situation to be declared and peace to be made, the votes of two thirds of the Members of the National Assembly shall be required.”

Article 6

Article 8 (3) h) of the Fundamental Law shall be replaced by the following provision:

(No national referendum may be held on)

“h) the declaration of war situation, a peace agreement, the declaration and termination of state of war, and the declaration, extension and termination of state of emergency;”

Article 7

In Article 38 of the Fundamental Law, the following paragraph (6) shall be added:

“(6) The establishment, operation and termination of, and the performance of public duty by, a public interest asset management foundation performing public duty shall be regulated in a cardinal Act.”

Article 8

In Article 39 of the Fundamental Law, the following paragraph (3) shall be added:

“(3) Public funds shall be the revenues, expenditures and claims of the State.”

Article 9

Article 45 (2) and (3) of the Fundamental Law shall be replaced by the following provisions:

“(2) Unless otherwise provided in an international treaty, and in accordance with the provisions of the Fundamental Law and a cardinal Act, the National Assembly, the President of the Republic, the Government and the minister vested with the relevant functions and powers shall have the right to direct the Hungarian Defence Forces.

(3) The Hungarian Defence Forces shall operate under the direction of the Government.”

Article 10

Article 47 (3) of the Fundamental Law shall be replaced by the following provision:

“(3) The Government shall decide on the deployment of the Hungarian Defence Forces and foreign armed forces referred to in paragraph (2) based on a decision of the European Union, the North Atlantic Treaty Organisation or an international organisation for defence and safety cooperation ratified by the National Assembly through the adoption of an Act, and on other troop movements by them.”

Article 11

The part “SPECIAL LEGAL ORDER” in the Fundamental Law shall be replaced by the following part:

“SPECIAL LEGAL ORDER

Article 48

Special legal order shall be the state of war, the state of emergency and the state of danger.

State of war

Article 49

(1) In the event of

a) declaration of war situation or a danger of war,
b) external armed attack, an act with an impact equivalent to an external armed attack, or an imminent danger of either of them, or
c) the performance of collective defence obligation arising from an alliance,
the National Assembly may declare a state of war.

(2) For a state of war to be declared, the votes of two thirds of the Members of the National Assembly shall be required.

(3) During the period of state of war, the Government shall exercise the powers delegated to it by the National Assembly, and shall decide on the deployment of the Hungarian Defence Forces abroad or within Hungary, on their participation in peacekeeping, on their humanitarian activity in a foreign operational area, or on stationing them abroad, and on the deployment of foreign armed forces in Hungary or departing from the territory of Hungary, or on stationing them in Hungary.

State of emergency

Article 50

(1) In the event of

a) an act aimed at overthrowing or subverting the constitutional order or at exclusively acquiring power, or

b) a serious unlawful act massively endangering life and property, the National Assembly may declare a state of emergency.

(2) For a state of emergency to be declared, the votes of two thirds of the Members of the National Assembly shall be required.

(3) A state of emergency may be declared for thirty days. The National Assembly may, with the votes of two thirds of the Members of the National Assembly, extend a state of emergency by thirty days, provided that the circumstance serving as grounds for the declaration of the state of emergency continues to exist.

State of danger

Article 51

(1) In the event of a serious incident endangering life and property, in particular a natural disaster or industrial accident, and in order to eliminate the consequences thereof, the Government may declare a state of danger.

(2) A state of danger may be declared for thirty days.

(3) The Government may, on the basis of authorisation by the National Assembly, extend a state of danger, provided that the circumstance serving as grounds for the declaration of the state of danger continues to exist.

(4) The National Assembly shall decide on the authorisation referred to in paragraph (3) with the votes of two thirds of the Members of the National Assembly present.

Common rules for special legal order

Article 52

(1) During the period of special legal order, the application of the Fundamental Law may not be suspended.

(2) During the period of special legal order, the exercise of fundamental rights, except for the fundamental rights provided for in Articles II and III, and Article XXVIII (2) to (6), may be suspended, or may be restricted beyond the extent specified in Article I (3).

(3) During the period of special legal order, the Government shall be obliged to take every measure that guarantees continuous operation for the National Assembly.

(4) During the period of special legal order, the operation of the Constitutional Court may not be restricted. During the period of special legal order, the Government shall be obliged to take every measure that guarantees continuous operation for the Constitutional Court.

(5) The detailed rules to be applied during the period of special legal order shall be laid down in a cardinal Act.

Article 53

(1) During the period of special legal order, the Government may adopt decrees by means of which it may, as provided for in a cardinal Act, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(2) The Government shall continuously inform the President of the Republic, the Speaker of the National Assembly, and the standing committee of the National Assembly vested with the relevant functions and powers about any decree adopted during the period of, and in accordance with the rules related to, special legal order.

(3) The National Assembly may repeal a decree adopted by the Government during the period of, and in accordance with the rules related to, special legal order. The Government shall not adopt again a repealed decree with identical content, unless this is justified by a substantial change in circumstances. The Government shall, without delay, inform the President of the Republic, the Speaker of the National Assembly, and the standing committee of the National Assembly vested with the relevant functions and powers about any decree thus adopted, along with the reasons for its adoption.

(4) A special legal order shall be terminated by the organ entitled to declare the special legal order if the conditions for its declaration no longer exist.

(5) Any decree adopted by the Government during the period of, and in accordance with the rules related to, special legal order shall be repealed upon the end of the period of special legal order.

Common rules for the state of war and the state of emergency

Article 54

(1) After initiating the declaration of state of war or state of emergency, the Government may adopt decrees by means of which it may, as provided for in a cardinal Act and to the extent necessary for immediately handling the circumstance serving as grounds for the declaration, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(2) The Government shall continuously inform the President of the Republic, the Speaker of the National Assembly, and the standing committee of the National Assembly vested with the relevant functions and powers about any decree referred to in paragraph (1).

(3) A decree under paragraph (1) shall remain in force until the decision on the declaration of state of war or state of emergency, but for not more than sixty days after the Government initiated declaration; if the state of war or state of emergency is declared, such a decree shall remain in force until the end of the period of state of war or state of emergency at the latest.

(4) If state of war or state of emergency is not declared, the National Assembly shall adopt an Act on the regulatory transition related to the extraordinary measures provided for in the decrees under paragraph (1).

(5) After initiating the declaration of state of war or state of emergency, the Government shall be obliged to take every measure that guarantees continuous operation for the National Assembly.

(6) The National Assembly may repeal a decree under paragraph (1). The Government shall not adopt again a repealed decree with identical content, unless this is justified by a substantial change in circumstances. The Government shall, without delay, inform the President of the Republic, the Speaker of the National Assembly, and the standing committee of the National Assembly vested with the relevant functions and powers about any decree thus adopted, along with the reasons for its adoption.

(7) After the Government initiates the declaration of state of war or state of emergency, the operation of the Constitutional Court may not be restricted. After initiating the declaration of state of war or state of emergency, the Government shall be obliged to take every measure that guarantees continuous operation for the Constitutional Court.

(8) The detailed rules to be applied after the Government initiates the declaration of state of war or state of emergency shall be laid down in a cardinal Act.

Article 55

(1) During the period of state of war or state of emergency, the National Assembly may not dissolve itself and may not be dissolved. During the period of state of war and state of emergency, no general elections of Members of the National Assembly may be called or held; in such cases, a new National Assembly shall be elected within ninety days of the end of the period of state of war or state of emergency. If the general elections of Members of the National Assembly have already been held but the new National Assembly has not yet been formed, the President of the Republic shall convene the constitutive sitting for a date within thirty days of the end of the period of state of war or state of emergency.

(2) During the period of state of war or state of emergency, the President of the Republic may convene the National Assembly that has dissolved itself or has been dissolved.

Specific special legal order rules applicable to the National Assembly and the President of the Republic

Article 56

(1) If the National Assembly is prevented from making such decisions, the President of the Republic shall have the right to declare a state of war, to declare and extend a state of emergency, and to authorise the Government to extend state of danger.

(2) The Speaker of the National Assembly, the President of the Constitutional Court and the Prime Minister, speaking with one voice, shall establish that the National Assembly is prevented from acting if it is not in session and convening it is made impossible by insurmountable obstacles caused by shortage of time and the circumstance serving as grounds for the declaration of special legal order.

(3) As soon as the National Assembly is no longer prevented from acting, it shall at its first sitting decide, in accordance with the rules applicable for when it is not prevented from acting, on whether the decision by the President of the Republic under paragraph (1) was justified

and lawful, and review the extraordinary measures taken during the period of special legal order.”

Article 12

(1) With the exception specified in paragraph (2), this Amendment to the Fundamental Law shall enter into force on the day following its promulgation.

(2) Article 2, Articles 4 to 6, Article 9 and Article 11 shall enter into force on 1 July 2023.

(3) The National Assembly adopts this Amendment to the Fundamental Law pursuant to Article 1 (2) a) and Article S (2) of the Fundamental Law.

(4) A consolidated text of the Fundamental Law shall be published in the official gazette without delay after the entry into force of this Amendment to the Fundamental Law.

Background information to the Ninth Amendment of the Fundamental Law

I. Family, children

I.1. The amendment of Article L concerning family and marriage:

- The Government's proposal would enshrine in the Fundamental Law that the mother shall be a woman and the father shall be a man;
- The Government's proposal follows biological evidence and not international trends or ideologies in relation to childbearing;
- The Government's proposal considers it necessary to mention the values that permeate the legal system, the respect of which ensures the most appropriate living environment to the younger and future generations; to this end, in the context of family life and the upbringing of children, it establishes the concept based on the unchangeable nature of birth, according to which the mother is a woman and the father is a man;
- In addition, by clarifying the existing interpretation, the proposal also states that marriage applies to one man and one woman: *'Hungary protects the institution of marriage as a relationship between a man and a woman'*.
- The Hungarian Government does not intend to attack or restrict the rights of any particular group. It should be emphasized - contrary to some critics - that the proposal does not introduce any new rules for same-sex partnerships, nor does it contain any restrictions, it only clarifies the concept of marriage and lays down a biological principle. The proposal does not change the legal institution of registered partnerships concerning same-sex couples. Registered partnerships will continue to enjoy the same protection in accordance with international standards, as all social groups are important to Hungary, as every Hungarian is a valuable member of the community, that we call Hungarian nation. According to our Fundamental Law, human dignity is inviolable and this must be respected by all. It is therefore necessary to emphasize that the rights of our children shall not be under pressure from certain interest groups or ideological trends.

I.2. The amendment of Article XVI concerning the rights of the child:

- The Government's proposal would add two elements to the paragraph on the rights of the child:
 - Hungary protects the right of children to self-identity according to their sex at birth,
 - Hungary provides education according to the values based on the constitutional identity and Christian culture of our country.
- The Basic Law mentions the right of children to a healthy development, which is a key value to be protected;
- Sex at birth is a gift or a factor that cannot be changed: it is a biological principle. Human dignity thus includes the right of every child to self-identity according to their sex at birth, part of which is to be protected against mental or biological interference affecting their physical and mental integrity;
- The proposal provides a clear basis for all members of the younger generation to learn about, preserve and pass on Hungary's national identity, sovereignty and the role of Christianity in preserving nationhood. It should be emphasized that the latter elements are not new in the Fundamental Law, and these values based on the Christian culture of Hungary do not mean a commitment to a religion, but to the system of historical and cultural traditions that has developed in Hungary over the past 1,000 years. The provision of such education also means that the state has to maintain an institutional system that is able to provide this, but at the same time does not exclude the operation of other value-based educational institutions in accordance with the Fundamental Law. This principle shall in no way affect the exercise of the right to freedom of conscience and religion, which includes the freedom to choose and to change one's religion or belief.

II. Public interest asset management Foundation performing public duty

- The proposal of the Government stipulates that the establishment, operation and termination of a public interest asset management foundation and the performance of its public duty must be governed by a cardinal act;
- With this addition, the Government expresses the separation of public and private relations in the interest of the stability of long-term social processes and of legal certainty;
- The new constitutional provision would strengthen the independence of these foundations from the executive by guaranteeing legal certainty, long-lasting legal stability and institutional independence with a political agreement;
- By including it in the Fundamental Law, the Government's proposal would recognize the outstanding social value-creating role and independence of public interest asset management foundations performing public duty;
- The purpose of the regulation is to protect these organisations, universities and other institutions, and to guarantee their operation for they are the cornerstones of higher education and talent management.

III. Public funds

Compared to the previous Constitution, the Fundamental Law contains a separate section on public funds, however, the concept of public fund was not defined earlier, therefore, the proposal would add the following section: *public funds shall be the revenues, expenditures and claims of the State* ” for the following reasons:

- The proposal would thus define the concept of public funds, since different interpretations have emerged in the practice of constitutional and other bodies, and it will therefore be defined clearly, unambiguously and comprehensively for the whole structure of the state;
- The definition would cover all constitutional, state and local government bodies and institutions;
- The aim of the legislator is to conclude disputes concerning public funds and to provide guarantees of the transparency rules laid down in the Fundamental Law.

IV. Special legal order

The amendment to the Fundamental Law would significantly renew the rules concerning the special legal order with effect from 1 July 2023, providing adequate preparation time as follows:

- Instead of the previous six, the cases of special legal order would be reduced to three cases - state of war, state of emergency and state of danger.
- In all three cases, the Government would have a central role (instead of the National Defence Council in the case of the state of national crisis; and instead of the President of the Republic in the case of the state of emergency). The reason is that after the promulgation of the special legal order, it is necessary to ensure fast, operative and responsible decision-making in both the political and the legal sense, for which the Government appears to be suitable in the Hungarian constitutional system.
- The cases of declaring a state of war (the present state of national crisis) and a state of emergency would be expanded, taking into account the requirements of the changing security environment (for example, a cyberattack that does not constitute an act of violence or an attack in the form of environmental pollution), and the Parliament would still be the only one entitled to declare both.
- Similarly to a state of war and state of emergency, the Parliament may authorise an extension of a state of danger of thirty days. As a result of the change, the Parliament would primarily have control over the maintenance of the special legal order.