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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

AND

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**DRAFT JOINT OPINION**

**ON**

**THE ACT ON THE ELECTIONS OF MEMBERS OF PARLIAMENT**  
**OF HUNGARY**

**on the basis of comments by**

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## I. Introduction

1. On 20 January 2012, the Minister of Foreign Affairs of Hungary requested the European Commission for Democracy Through Law (“the Venice Commission”) of the Council of Europe for an opinion on several pieces of legislation recently revised, notably Act CCIII on the Elections of Members of Parliament of Hungary (official translation into English received by diplomatic channels on 7 March 2012; CDL-REF(2012)003; hereafter “the new Elections Act”).<sup>1</sup> Following this request, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) have prepared the present draft opinion on the Act.

2. The revision of the electoral legislation was part of a wider institutional reform. In this respect, a new constitution of Hungary was adopted on 25 April 2011 and several cardinal laws were also revised upon the initiative of the ruling majority, which retains the qualified two-thirds majority in the Parliament of Hungary. The new Elections Act was passed by Parliament on 23 December 2011 and came into force on 1 January 2012, replacing the 1989 Act on Elections of Members of Parliament. This Act will, however, only be applicable for the future parliamentary elections, i.e. starting from 2014.

3. The Venice Commission had previously prepared an opinion on the new constitution of Hungary.<sup>2</sup> That opinion had made reference to electoral issues, underlining that “matters such as the elections or the rules of procedure of the parliament are often laid down in cardinal acts” (par. 23). By adopting the new Elections Act as a cardinal law, this provision was complied with.

4. Comments in this opinion should be considered without prejudice to the new Electoral Procedures Act, which is expected to be revised in the near future.

5. This opinion is based on:

- An official translation of the Cardinal Act CCIII of Hungary on the Elections of Members of Parliament (CDL-REF(2012)003);
- The 2011 Fundamental Law of Hungary (CDL-REF(2011)019);
- The 1989 Act XXXIV on Elections of Members of Parliament;
- The 1997 Act C on Electoral Procedures;
- The 2011 Act CLXXIX on the Rights of Nationalities in Hungary (CDL-REF(2012)014);<sup>3</sup>
- UN Human Rights Committee, International Covenant on Civil and Political Rights (1976),<sup>4</sup> General Comment no. 25 (1996);<sup>5</sup>
- The 1990 OSCE Copenhagen Document;
- Venice Commission, Opinion on the Constitution of Hungary (CDL-AD(2011)016);<sup>6</sup>
- Venice Commission, Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev);<sup>7</sup>
- Venice Commission, Report on Electoral Systems – Overview of available solutions and selection criteria (CDL-AD(2004)003);<sup>8</sup>

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<sup>1</sup> Act CCIII on Elections of Members of Parliament of Hungary (CDL-REF(2012)003).

Source: [http://www.venice.coe.int/docs/2012/CDL-REF\(2012\)003-e.pdf](http://www.venice.coe.int/docs/2012/CDL-REF(2012)003-e.pdf).

<sup>2</sup> Opinion on the new Constitution of Hungary, adopted by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011; CDL-AD(2011)016).

Source: [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)016-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)016-e.pdf).

<sup>3</sup> Source: [http://www.venice.coe.int/docs/2012/CDL-REF\(2012\)014-e.pdf](http://www.venice.coe.int/docs/2012/CDL-REF(2012)014-e.pdf).

<sup>4</sup> Source: <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>5</sup> Source: <http://www.unhcr.org/refworld/docid/453883fc22.html>.

<sup>6</sup> Opinion adopted by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011).

Source: [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)016-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)016-e.pdf).

<sup>7</sup> Code adopted by the Venice Commission at its 52<sup>nd</sup> plenary session (Venice, 18-19 October 2002).

Source: [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf).

<sup>8</sup> Report adopted by the Venice Commission at its 57<sup>th</sup> plenary session (Venice, 12-13 December 2003).

Source: [http://www.venice.coe.int/docs/2004/CDL-AD\(2004\)003-e.pdf](http://www.venice.coe.int/docs/2004/CDL-AD(2004)003-e.pdf).

- OSCE/ODIHR Election Assessment Mission Report on the 11 April 2010 parliamentary elections (Warsaw, 9 August 2010).<sup>9</sup>

6. On 24-25 May 2012, the Venice Commission and OSCE/ODIHR conducted a joint expert visit to Budapest in light of the preparation of this opinion. Meetings were held with the president of the Constitutional Court, the president of the National Election Commission, the Deputy State Secretary for Territorial Public Administration and Elections, representatives of political parties and of the civil society. The information and views shared with the experts during and after the visit have been taken into consideration in this opinion.

7. The present Joint Opinion was adopted by the Council for Democratic Elections at its **XXX** meeting (Venice, **XXX**) and by the Venice Commission at its **XXX** Plenary Session (Venice, **XXX**).

## II. Executive summary

8. The new Elections Act adopted in 2011 for electing members of parliament will apply to the next parliamentary elections, scheduled for 2014. Two laws regulate the elections of members of parliament: the new Elections Act, which supersedes the 1989 Act on the Elections of Members of Parliament, and the Act on Electoral Procedures of 1997 (amended in 2007 and 2009), still in force.<sup>10</sup>

9. The new Elections Act contains 26 articles. It defines the electoral system and provides rules on the delimitation of the constituencies, including two annexes that define their actual delimitation. The Act also contains provisions on candidacy rights, on the determination of election results, on by-elections, and other miscellaneous provisions. With this new Elections Act, the Hungarian Parliament retains a mixed electoral system, but has modified the formula for the allocation of seats. It also introduced some important changes, *inter alia*, a significant reduction in the number of seats in Parliament, introduction of the right to vote for Hungarian citizens residing abroad, and specific arrangements for national minorities.

10. Among the new elements of the new Elections Act which are developed in this opinion are the followings:

Developments which are neutral with respect to international standards:

- A two-round system instead of the one-round system, previously used for allocation of seats under the majoritarian part of the electoral system;
- A reduced number of seats in Parliament;
- A change in the rules for candidate registration; and
- Extending the right to vote to Hungarian citizens living abroad (i.e. without a permanent residence in Hungary).

Positive changes in the Act, in line with international standards and good practice, that may improve the administration of elections include:

- As required by the Constitutional Court, electoral constituencies are less unequal than previously, when the differences violated the constitutional principles; and
- Specific arrangements in the new Elections Act for improving the representation of the national minorities in Parliament.

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<sup>9</sup> Source: <http://www.osce.org/odihr/elections/71075>.

<sup>10</sup> According to Article 26(d) of the new Elections Act, only Article 160 of the Act on Electoral Procedures is repealed as a result of the coming into force of the new Elections Act, but necessary amendments to bring it in line with the new Elections act have been announced.

11. Based on these new and some other elements in the new Elections Act, the Venice Commission and the OSCE/ODIHR make the following key recommendations:

- Concrete constituency delimitations should not be written into a cardinal law that requires a two-thirds majority (Part III); rather the process and the formula of how to delimitate should be regulated by such law;
- Any fundamental changes, such as those to the electoral system, the determination of electoral boundaries and the method of allocating seats should be done on the basis of a broad and inclusive discussion, including various political points of view. Such a broad public consultation encourages public trust and confidence in an electoral process (Part IV);
- The law should more clearly define the method of allocation of seats to constituencies (Part IV) and, in particular:
  - o The law should define the method for distributing single-mandate electoral constituencies to the administrative counties, including the city of Budapest;
  - o The law should define the maximum admissible variation among electoral constituencies within a county, limited to a maximum deviation of ten per cent from the county average;
  - o The law should establish an independent commission, composed of for example a geographer, a sociologist and a balanced representation of the parties and, where relevant, representatives of national minorities, to be charged with drawing electoral constituencies' boundaries;<sup>11</sup>
  - o The law should define a periodic review of the distribution of seats, at least every 10 years and preferably more frequently, outside electoral periods, not waiting for a 20 per cent limit to be crossed, as defined in the current Elections Act;<sup>12</sup>
- As voters have the right to choose between registering to vote for normal party lists or national minority lists when they register for each election, the law should allow such a registration in a reasonably short timeframe before election day. This would ensure that all voters have sufficient information to make an informed choice. However, it would be preferable to give to the voters from national minorities the possibility of choice on election day between nationality lists and party lists (Part V).

12. The Venice Commission and the OSCE/ODIHR also make the following recommendations regarding the Electoral Procedures Act which is expected to be revised further:

- Electoral procedures should ensure the principle of secrecy of the vote in accordance with the Elections Act (Part III); in particular, a requirement that polling booths should be used in the case of every vote cast should be introduced;
- The law should in its procedures for collecting nomination coupons for the registration of candidates ensure sufficient deadlines for all potential candidates to take part (Part V);
- The law should provide more details regarding the process of voting abroad, in particular the registration process (Part V);

13. The Venice Commission and the OSCE/ODIHR regret that new legal provisions on fundamental aspects of the electoral process, such as the choice of the electoral system and of the method of distribution of seats or the delimitation of electoral constituencies, were not broadly discussed among all the relevant stakeholders. As reported during the Venice Commission and the OSCE/ODIHR visit, within parliament, the majority parties chose to follow a procedure of personal proposal for amendments instead of a government proposal, which resulted in a less transparent process, thus weakening confidence in the system. The Venice Commission and the OSCE/ODIHR recommend that any future changes, including to the

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<sup>11</sup> See in this respect the Venice Commission's Code of Good Practice in Electoral Matters, I. 2.2 vii.

<sup>12</sup> *Id.*, I. 2.2 v.

Electoral Procedures Act that is anticipated to be reviewed, be carried out through a broad consultation with the aim at reaching political consensus in an open, transparent and inclusive manner.

14. The Venice Commission and the OSCE/ODIHR stand ready to provide assistance to the authorities in their efforts to improve the legal framework for elections and bring it more closely in line with OSCE commitments and Council of Europe standards. Equally, it must be emphasised that full and effective implementation of the law is necessary to ensure elections are administered in line with international standards.

### III. General principles

#### Cardinal laws

15. This electoral reform should be examined in conjunction with the constitutional reform that resulted in the adoption of a new constitution on 18 April 2011, which came into force on 1 January 2012. This new constitution was assessed by the Venice Commission.<sup>13</sup>

16. For its implementation, the new constitution requires the adoption of an unusually high number of cardinal laws, i.e. laws must be adopted by a two-thirds majority of the members of parliament present and voting.<sup>14</sup> In its opinion, the Venice Commission underlined that rules which are regulated by cardinal laws, i.e. laws requiring a qualified majority of two-thirds of the members of parliament, should only concern fundamental principles.<sup>15</sup> As noted by the Venice Commission in that opinion, “[w]hen not only the fundamental principles but also very specific and “detailed rules” on certain issues will be enacted in cardinal laws, the principle of democracy itself is at risk.” This recommendation is particularly relevant regarding the new Elections Act,<sup>16</sup> which annexes full descriptions of the delimitation of constituencies.

17. It is welcomed that the fundamental elements of the electoral legislation are regulated by a cardinal law, therefore providing for its stability and broader consensus. While it is advisable that the rules governing the constituencies’ delimitation are included in a cardinal law, particularly the distribution formula, the inclusion of a detailed list of constituencies in the cardinal law undermines an efficient method of updating the constituencies in respect of the principle of equality of voting rights, as it requires a qualified majority.

**18. Therefore, the Venice Commission and the OSCE/ODIHR recommend to review the existing provisions for determining constituency boundaries<sup>17</sup> through cardinal laws by adding the mathematical formula and establishing an independent commission to draw the boundaries in the new Elections Act, as well as by removing the actual list of constituencies from the annex to the new Elections Act.**

#### Secrecy of the vote

19. The fundamental principle of secrecy of the vote is guaranteed by both the new constitution<sup>18</sup> and the new Elections Act in its Article 2(1), which stipulates that “[t]he exercise of suffrage shall be based on the free determination of voters.” This latter provision is not problematic as such. However, Article 68(1) of the current Electoral Procedures Act stipulates

<sup>13</sup> See Opinion on the new Constitution of Hungary (CDL-AD(2011)016).

<sup>14</sup> Article T(4) of the constitution.

<sup>15</sup> Opinion on the new Constitution of Hungary (CDL-AD(2011)016), see Part II A, par. 22-27.

<sup>16</sup> Despite the fact that the previous Elections Act was already subject to a two-thirds majority requirement in the 1949 constitution (Article 71(3)).

<sup>17</sup> See for more details the chapter on the electoral system, sub-item on the delimitation of electoral constituencies.

<sup>18</sup> Article 2(1) concerning the election of members of parliament.

that “[t]here are polling booths at the voters’ disposal for filling in the ballot paper” and that “[v]oters may not be obliged to use the polling booth.” This seems to contradict Article 2(1) of the new constitution, OSCE commitments, and other international standards for democratic elections that provides that votes must be cast by secret ballot. With reference to the OSCE/ODIHR Election Assessment Mission Report of 2010, **provisions of the revised Electoral Procedures Act should ensure the secrecy of the vote.**

#### **IV. Electoral system**

##### Number of seats in parliament

20. The number of members of parliament has been significantly reduced from 386 to 199. There are no international standards which recommend any particular ratio of parliamentary seats to the size of population.

##### Parliamentary electoral system

21. The Venice Commission and the OSCE/ODIHR do not impose any specific electoral system. Similarly, there are no international standards recommending a method and any degree of proportionality regarding the distribution of seats. The States enjoy a broad margin of appreciation as these choices are political decisions.

22. Although international standards do not recommend any specific model of electoral system, the process of revision of such a fundamental element of an electoral legislation, as well as the methods of allocation of the seats should be scrutinised in order to assess the inclusiveness of the process and the fairness of the system. Below, the Venice Commission and the OSCE/ODIHR offer general observations on the electoral system.

23. The old electoral system, used from 1989 to 2010, was a mixed system with three tiers and combined two choices (one for the majoritarian and one for the proportional part). The 386 seats were distributed as follows:

- 176 seats in single-member constituencies elected in a two-round system;
- 152 seats in multi-member constituencies<sup>19</sup> through a proportional system with political parties’ lists (or coalitions’ lists; with a required threshold of 5 per cent for winning seats); and
- 58 seats distributed based on unused votes from the two previous tiers.

24. With the old electoral system, 45.6 per cent of the seats were allocated under the majoritarian part and 54.4 per cent of the seats under the proportional system.

25. The new electoral system, which will first apply to the 2014 parliamentary elections, maintains a mixed system but with two tiers. All 199 seats are distributed in the following manner (still maintaining two choices, one for the majoritarian and one for the proportional election):<sup>20</sup>

- 106 seats in single-member constituencies elected in a one-round system; and
- 93 seats through a nationwide, proportional system (national lists with 5 per cent threshold for winning seats, as before or nationality lists with a lower requirement) added to a compensatory system trying to cater for ‘unused’ ballots.<sup>21</sup>

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<sup>19</sup> There were in total 20 multi-member constituencies with seats varying from 4 to 28 seats.

<sup>20</sup> Article 3 of the new Elections Act.

<sup>21</sup> Compensation votes in any individual constituency include: a) votes for any candidate who failed to win a mandate, and b) the number of votes remaining after deducting the number of votes for the runner-up candidate plus one from the number of votes for the candidate who won a mandate.

26. With the new electoral system, 53.3 per cent of the seats are allocated under the majoritarian part and 46.7 per cent of the seats under the proportional part of the system.

27. The new electoral system does not lead to a high degree of proportionality in the results, despite the compensatory seats (and is less proportional than the old one). The second tier adds votes cast for the national lists to the unused votes from the single-member constituencies.

28. By combining unused ballots and the results of the proportional ballots, the results can produce unintended random effect, i.e. not necessarily a desired degree of proportionality in results or compensation for disproportional results. In more typical mixed electoral systems, one of the two following methods are used: in the first, the two ballots are calculated independently of each other (the parallel system or the semi-proportional system); or the proportional ballot is the basis for distributing compensatory seats in order to achieve a full proportionality in parliament (mixed-member proportional). With the chosen system, it could theoretically happen that a political party wins a majority of the single-member constituencies and of the votes in the proportional race (second tier) but does not win the largest share of the seats. There is, however, a higher risk that a party winning a majority of seats in single-member constituencies gets a majority of seats in parliament even if the party is not the largest one nationwide. Such effects may, however, also arise with other electoral systems.

29. In view of the electoral reform, the parliament instituted a Sub-Committee in charge of preparing the reform. The Sub-Committee met a number of times without reaching an agreement. As reported during the Venice Commission and the OSCE/ODIHR visit, within parliament, the majority parties chose to follow a procedure of personal proposal for amendments instead of a government proposal, which resulted in a less transparent process. These proposals were finally adopted without much further discussion.

30. It is important that methods of allocation of seats and any other fundamental elements of the electoral legislation are determined by a broad political consensus. A broad public consultation and acceptance of the election legislation encourages public trust and confidence in the electoral process. **Therefore, the Venice Commission and the OSCE/ODIHR recommend any changes to the electoral systems are part of open cross-party consultations.**

#### Delimitation of electoral constituencies

31. Following the reduced number of seats in parliament, the redrawing of the single-mandate electoral constituencies was necessary. But redrawing of electoral constituencies was essential even before the electoral reform, as underlined by the Constitutional Court of Hungary in 2005 and 2010<sup>22</sup> and by the OSCE/ODIHR Election Assessment Mission Report on the 11 April 2010 parliamentary elections,<sup>23</sup> which drew attention to significant deviations in the sizes of constituencies during the 2010 parliamentary elections, in contradiction with the fundamental principle of equality.<sup>24</sup>

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<sup>22</sup> In this Decision 22/2005 – VI. 17 (dated 14 June 2005), the Constitutional Court of Hungary underlined that “through an omission of its legislative duty, the parliament has caused an unconstitutional situation by not fully providing the statutory conditions securing the enforcement of the requirements resulting from the principle of equal voting rights enshrined in Article 71(1) of the Constitution” and “call[ed] upon the parliament to comply with its legislative duty...by 30 June 2007.” The Constitutional Court has ruled again in December 2010 that the prevailing district structure was unconstitutional (Decision 193/2010 – XII. 8).

Source: <http://www.mkab.hu/>.

<sup>23</sup> OSCE/ODIHR Election Assessment Mission Report on the last parliamentary elections of 11 April 2010, part V. B, page 6. Source: <http://www.osce.org/odihr/elections/71075>

<sup>24</sup> See in this respect the Universal Declaration of Human Rights, Article 21(3); the United Nations International Covenant on Civil and Political Rights, Article 25(b); the 1990 Copenhagen Document, paragraph 7.3.



32. In a positive development, Article 4(4) of the new Elections Act now stipulates that the average deviation in number of registered voters must not exceed 15 per cent countrywide.<sup>25</sup> The same provision also stipulates that the deviation can be of more than 15 per cent if justified by “geographical, ethnic, historical, religious and other local characteristics,” provided that it does not exceed 20 per cent; otherwise, the parliament has to amend the relevant annexes of the new Elections Act.

33. The electoral constituencies are linked to the size (in terms of voters) of the administrative counties, which remain unchanged, and have to be contiguous, i.e. that they cannot cross the counties’ boundaries. The constituencies have to be revised when the administrative counties are changed and when the deviation between constituencies is too high.<sup>26</sup> Instead of including a list of constituencies as an annex to the law, the new Elections Act should rather specify the mathematical formula to be used in determining the number of constituencies per county.

34. Moreover, the delimitation of electoral constituencies should be reached by an inclusive political consensus and well in advance of elections. The Venice Commission’s Code of Good Practice in Electoral Matters recommends that “[t]he fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election...”.<sup>27</sup>

35. Furthermore, despite the constraint not to cross the administrative counties and their inherent differences in size, there is no justification to deviate by more than 10 per cent between single-mandate constituencies *within* a county.<sup>28</sup>

36. The delimitation of constituencies has to be done in a transparent and professional manner through an impartial and non-partisan process, i.e. avoiding short-term political objectives (gerrymandering). In order to respond to these aims of ensuring more public confidence in the electoral process, **the Venice Commission and the OSCE/ODIHR recommend the following improvements in the law:**

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See also General Comment 25 (1996) of the UN Human Rights Committee to Article 25 of the International Covenant on Civil and Political Rights, paragraph 21: “The principle of one person, one vote must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”

See also the Venice Commission’s Code of Good Practice in Electoral Matters, I. 2.2: “Equal voting power: seats must be evenly distributed between the constituencies. [...]”

ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.

iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.”

See also the 1994 Declaration on Criteria for Free and Fair Elections of the Inter-Parliamentary Union, article 2(6): “Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.” Source: <http://www.ipu.org/cnl-e/154-free.htm>.

<sup>25</sup> This has also been declared unconstitutional by the Constitutional Court.

<sup>26</sup> Article 4(9) of the new Elections Act.

<sup>27</sup> Article 4(6) of the new Elections Act underlines that the Annex 2 cannot be amended in the year preceding the parliamentary elections (the next ones being scheduled in 2014), which is in accordance with the Venice Commission’s Code of Good Practice in Electoral Matters, II. 2. b. It is also in accordance with its Interpretative Declaration on the Stability of the Electoral Law, adopted by the Council for Democratic Elections at its 15<sup>th</sup> meeting (Venice, 15 December 2005) and the Venice Commission at its 65<sup>th</sup> plenary session (Venice, 16-17 December 2005; CDL-AD(2005)043); II. 2 b.

Source: [http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)043-e.pdf](http://www.venice.coe.int/docs/2005/CDL-AD(2005)043-e.pdf).

<sup>28</sup> Venice Commission’s Code of Good Practice in Electoral Matters, I. 2.2 iv.

- To define in the law the distribution method for distributing the single-mandate electoral constituencies among the administrative counties, including the city of Budapest;
- To define in the law the maximum admissible variation between electoral constituencies within a county to a maximum of 10 per cent from the country average;<sup>29</sup>
- To establish by law an independent *ad hoc* or permanent commission in charge of drawing the electoral constituencies' boundaries; "this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities,"<sup>30</sup>
- To define in law a clear, periodical review of the distribution of seats, at least every 10 years, preferably more frequently and outside electoral periods, not waiting for a 20 per cent limit to be crossed, as defined in the current Elections Act.<sup>31</sup>

## V. Candidacy and suffrage rights

### Restrictions on the rights to vote and stand for elections for those convicted and for persons with mental disability

37. The grounds for denying suffrage rights to citizens have to be objective and reasonable and must be prescribed by law.<sup>32</sup> Such restrictions, only justified by pursuit of a legitimate aim, are stipulated in Article XXIII (6) of the new constitution, complemented by Article 26 of the transitional provisions. Similar provisions are included in Article 2(3) of the new Elections Act.<sup>33</sup> Article 26 of the transitional provisions is not very clear in scope and might affect suffrage rights, in particular with respect to convicted persons and persons under guardianship.<sup>34</sup> These provisions should, therefore, be clarified.<sup>35</sup>

<sup>29</sup> As in accordance with the Venice Commission's Code of Good Practice in Electoral Matters, I. 2.2 iv. Additionally, the UN Human Rights Committee emphasised in its General Comment 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights that "within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group, and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely."

<sup>30</sup> See in this respect the Venice Commission's Code of Good Practice in Electoral Matters, I. 2.2 vii.

<sup>31</sup> *Id.*, I. 2.2 v.

<sup>32</sup> General Comment 25 (1996) of the UN Human Rights Committee to Article 25 of the International Covenant on Civil and Political Rights, paragraph 14. See also the Code of Good Practice in Electoral Matters, I. 1.1.

<sup>33</sup> Article 2(3) of the new Elections Act stipulates that "a person serving imprisonment under an absolute sentence or subject to forced medical treatment in an institute as decreed in criminal proceedings shall not be an eligible candidate in any elections of Members of Parliament."

<sup>34</sup> The Venice Commission's Code of Good Practice in Electoral Matters recommends that the deprivation of suffrage rights must be based on a "criminal conviction for a serious offence" and recommends that the "withdrawal of political rights should only be carried out by express decision of a court of law. In addition, the principle of proportionality implies that such decision should be limited in time and that reviews of the measure should be possible. In this regard, Article 26(1) of the transitional provisions is problematic as it seems to deny the possibility for convicted persons to regain their right to vote and should, therefore, be revised. Furthermore, in *Alajos Kiss v. Hungary* (Application no. 38832/06; judgment of 20 May 2010, the court concluded that an indiscriminate removal of voting rights, without an individualised judicial evaluation and solely based on a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote."

<sup>35</sup> Article 26 provides that "(1) if, when the Fundamental Law comes into effect, a person is barred from participating in public affairs by a final court judgment, the person does not have a right to vote under the Fundamental Law.

(2) If a person whose capacity is limited or restricted by being subject to guardianship on the basis of a final court judgment, the person does not have the right to vote until the guardianship is terminated by a court or until a court decision returns to the person to the right to vote."

### Nomination coupons for candidate registration

38. With the new Elections Act, a political party can register a national list if it has put forward candidates in at least 27 of the 106 single-mandate constituencies across at least 9 counties. The new Elections Act requires 1,000 endorsement coupons per candidate in a single-mandate constituency, instead of the 750 endorsement coupons required, as prescribed in the previous Elections Act.<sup>36</sup> The endorsement coupons are nomination coupons endorsed by voters with registered permanent residence in the respective single-mandate constituencies. They have a function similar to voters' signatures in support of a candidate. Combined with the reduction of the number of seats in parliament resulting in the increase of the size of constituencies, these changes are welcome in that they reduce the required number of signatures from 2.8% of registered voters in a constituency to 1.3%.<sup>37</sup> As recommended by the Venice Commission's Code of Good Practice in Electoral Matters<sup>38</sup> and as underlined by the OSCE/ODIHR in its Election Assessment Mission Report on the 11 April 2010 parliamentary elections,<sup>39</sup> the number of signatures collected in support of a candidate should not exceed one per cent of registered voters in an electoral district. It is important that clear rules for the collection and verification of nomination coupons, including reasonable deadlines for the collection of such coupons, are incorporated in the anticipated revised Election Procedures Act.

39. During the last 2010 elections, all political parties expressed concern regarding various aspects of the candidate nomination system.<sup>1</sup> Particularly there were allegations on buying coupons from certain categories of voters, and collection of an excessive number of coupons in order to limit the chances of other candidates. Despite an apparently broad political will to change the candidate nomination system, there were several unsuccessful drafts put before parliament for revising the Act in this respect. **The OSCE/ODIHR and the Venice Commission therefore recommend that consideration be given to building measures into the law to guard against potential abuses and malpractices.**<sup>1</sup>

### Hungarian citizens abroad

40. According to Article 12(3) of the new Elections Act, "[v]oters without residence in Hungary may vote for one party list." This is in line with the Venice Commission's Code of Good Practice in Electoral Matters which states that "the right to vote [...] may be accorded to citizens residing abroad."<sup>40</sup>

41. In contrast to the old constitution,<sup>41</sup> the new constitution (Article XXIII) does not require a permanent address in Hungary as a precondition for Hungarian citizens to vote. In its Article 12(3), the new Elections Act grants the right to vote to Hungarian citizens residing abroad but only for the proportional part of the elections.<sup>42</sup> The Venice Commission and the

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<sup>36</sup> The endorsement coupons are nomination coupons endorsed by voters with registered permanent residence in the respective single-mandate constituencies

<sup>37</sup> OSCE/ODIHR Election Assessment Mission Report on the last parliamentary elections of 11 April 2010, part E. 2, page 12.

<sup>38</sup> Code of Good Practice in Electoral Matters, I. 1.3 ii.

<sup>39</sup> OSCE/ODIHR Election Assessment Mission Report on the last parliamentary elections of 11 April 2010, part E. 2, pages 12-13. Source: <http://www.osce.org/odihr/elections/71075>.

<sup>40</sup> Code of Good Practice in Electoral Matters, I. 1.1 c. v.

<sup>41</sup> Article 70 of the 1949 constitution granted the right to vote to every adult citizen who had residence in Hungary and voted in Hungary. Legally resident foreigners had the right to vote in local elections insofar they voted in Hungary.

<sup>42</sup> Article 12(3) of the new Elections Act stipulates that the "voters without residence in Hungary may vote for one party list." On the contrary, Article 12(1) stipulates that "[v]oters with residence in Hungary may vote for a) one candidate in any individual constituency and b) one party list." Additionally, it seems interesting to underline that the Preamble of the new constitution affirms that "Hungarian citizens living beyond the borders of Hungary shall be part of the political community."

OSCE/ODIHR welcome in principle the possibility for citizens to vote from abroad, increasing the universality of the suffrage.<sup>43</sup>

42. The new Elections Act should be read in conjunction with the new Citizenship Law,<sup>44</sup> which allows every person who was a Hungarian citizen or is a descendant of a person who was a Hungarian citizen before 1920, and who can demonstrate some proficiency in the Hungarian language to apply for Hungarian citizenship, even if the person does not live in Hungary.<sup>45</sup>

43. Consequently, the number of potential new Hungarian citizens, based on the criteria of the new Citizenship Law, is estimated at around 5 millions, in comparison to the 8 million voters living in Hungary.<sup>46</sup> Therefore, their votes may have a considerable impact upon Hungarian political life and may influence the composition of the Hungarian parliament should they all be allowed to vote. Under these circumstances, the decision of the legislature to limit the right to vote for Hungarians living abroad to the proportional part of the elections seems justified on the ground of technical conditions to their full enfranchisement. It could also be considered whether the right should be restricted to citizens having close ties with the country.

44. In order to ensure the voting rights of Hungarian citizens living abroad and guarantee an inclusive electoral process, consideration should be given to establishing more detailed and secure procedures for out-of-country voting and the registration of voters residing abroad. **The Venice Commission and the OSCE/ODIHR recommend that more detailed legal provisions regulate the vote abroad in the Electoral Procedures Act, notably the registration process.**

#### Voting rights of national minorities<sup>47</sup>

45. For the first time, special provisions aimed at favouring the participation of national minorities in parliament are stipulated in the electoral legislation. The list of recognised national minorities is listed in an annex to the Act on the Rights of Nationalities.<sup>48</sup> Article 9 of the new Election Act details the conditions for drawing up nationality lists by nationality self-governments. The provisions in the new Elections Act should also be read in conjunction with Article 64 of the Act on the Rights of Nationalities.<sup>49</sup>

46. According to Article 9(2) of the new Elections Act, nationality lists may be drawn up by nationality self-government, supported by at least one per cent of the voters registered with a

<sup>43</sup> See in this respect the Report on out-of-country Voting, adopted by the Council for Democratic Elections at its 37<sup>th</sup> meeting (Venice, 16 June 2011) and by the Venice Commission at its 87<sup>th</sup> plenary session (Venice, 17-18 June 2011; CDL-AD(2011)022).

Source: [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)022-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)022-e.pdf).

<sup>44</sup> The new Citizenship Law was adopted in May 2010 and in force since January 2011.

<sup>45</sup> Venice Commission, Report on the preferential treatment of national minorities by their kin-state, adopted by the Venice Commission at its 48<sup>th</sup> Plenary Session (Venice, 19-20 October 2001; CDL-INF(2001)19).

<sup>46</sup> As underlined in the Opinion on Hungary's New Constitutional Order of the Institute for Political and International Studies of the Faculty of Social Sciences of Budapest (page 42), "all descendants of post-1929 émigrés remained to be citizens of Hungary, in addition, the legislation adopted by the current government extends the citizenship by request to Hungarians living in the neighbouring countries."

<sup>47</sup> For more information on participation of national minorities in public life (in particular the system of nationalities' self-governments), see the Venice Commission opinion on the Act CLXXIX of 2011 on the Rights of Nationalities of Hungary, adopted by the Venice Commission at its XXX Plenary Session (CDL-AD(2012)XXX).

<sup>48</sup> In total, 13 national and ethnic minority groups are listed in the Act on the Rights of Nationalities.

<sup>49</sup> Act on the Rights of Nationalities of Hungary (CDL-REF(2012)014), Article 64 :

"§ (1) Electors may cast their votes in the locality in whose nationality register they are recorded.

§ (2) If an election has been called for the election of the members of a local nationality self-government, electors may vote for maximum three local candidates in the case referred to in Section 51(1)a) and for maximum four local candidates in the case referred to in Section 51(1)b); if an election has been called for the election of the members of a regional nationality self-government, electors may vote for one regional list, while if an election has been called for the election of the members of nationality self-governments with nation-wide competence, electors may vote for one national list."

maximum of 1,500 signatures from the nationality. The five per cent threshold is waived for such nationality lists but they are entitled to one seat only if they secure at least one fourth of the electoral Hare's quota.<sup>50</sup> The national minorities that fails to win a mandate will still be entitled to a non-voting parliamentary spokesperson, who is the unsuccessful candidate ranked first on the nationality list.<sup>51</sup>

47. This positive development in the new Elections Act follows up decisions of the Constitutional Court of Hungary which ruled that the general representation of national and ethnic minorities was not properly guaranteed, based on Article 68 of the 1949 constitution, due to a lack of implementation of the law that the Court had called upon parliament to enact.<sup>52</sup> **The Venice Commission and the OSCE/ODIHR therefore welcome the introduction of such provisions aiming at favouring the participation of national minorities in parliament.**

48. Article 12(2) of the new Election Act stipulates that voters registered in the electoral roll as minority voters may vote for a candidate in a single-mandate constituency and the list of their nationality or, in the absence thereof, for a party list. This provision limits the choice of minority voters in the proportional race on election day, especially when there is only one list competing for the vote of the respective minority. The choice of ballot is done when registering in the nationality register. Taking into consideration the requirement of prior registration as a nationality voter, the **Venice Commission and the OSCE/ODIHR recommend that as voters have the right to choose between registering to vote for normal party lists or national minority lists, the law should allow such registration in a reasonably short timeframe before election day. This would ensure that all voters have sufficient information to make an informed choice. However, it would be preferable to give to the voters from national minorities the possibility of choice on election day between nationality lists and party lists.**

## **VI. Concluding remarks**

49. Act CCIII revising the rules on elections of members of parliament of Hungary as from 2014 is a good basis for the conduct genuine and democratic parliamentary elections. The Venice Commission and the OSCE/ODIHR underline positive developments such as specific provisions for favouring a better participation of national minorities in parliament.

50. Nevertheless, the Venice Commission and the OSCE/ODIHR recommend some changes in the Act, essentially to ensure that nationality voters are not limited in their choice and to include clearer procedural guidelines and formulas for the delimitation of electoral constituencies, without defining the constituencies themselves in the Cardinal Act. The actual delimitations should be done by an independent commission.

51. The Venice Commission and the OSCE/ODIHR regret that new legal provisions on fundamental aspects of the electoral process, such as the choice of the electoral system and of the method of distribution of seats or the delimitation of electoral constituencies were not broadly discussed among all the relevant stakeholders and in particular the political parties before adoption. As is the case with other electoral systems, the electoral system chosen may lead to unintended random effects. The Venice Commission and the OSCE/ODIHR recommend that any future changes, in particular revision of fundamental provisions of the text be carried out through a broad political consensus in an open, transparent and inclusive manner.

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<sup>50</sup> This quota is obtained by dividing the total number of votes cast by the number of seats to be filled.

<sup>51</sup> Article 18 of the new Elections Act.

<sup>52</sup> Decisions 35 (dated 2 June 1992) and 24 (dated 2 May 1994). Source: <http://www.mkab.hu/>.

52. The Venice Commission and the OSCE/ODIHR recommend that the Act on Election Procedures be amended in due time in order to harmonise and detail procedures emanating from the new Election Act, including those related to the organisation of voting abroad, collection of nomination coupons and ensuring the secrecy of the vote. It is further recommended that adoption of these amendments be the result of a broad consensus, achieved in an open, transparent and inclusive manner.

53. The Venice Commission and OSCE/ODIHR continue to stand ready to assist authorities in their efforts to create a legal framework for democratic elections in conformity with OSCE commitments, Council of Europe good practice and other European and international standards.