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The latest trends in the transformation of the Hungarian electoral system

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Part I. A brief summary of the research task

In 1986, at the age of 17, I took part in the National High School Study Competition and wrote my dissertation on the topic of the two parliamentary elections after the Second World War. in 1945 and 1947. This was the first time it was possible to write about this period as a student. The difficulty of the research was that local election data had to be retrieved from my home town, which was only accessible in the archives of the "PARTY" (Communist Party of Hungary) at that time. Local Documents Offices did not take over the remaining, sometimes incomplete, material for safekeeping until the first half of the 1990s. My first dissertation in grammar school had an influence at the start of my university studies, which could begin after the first democratic parliamentary elections in Hungary. The above-mentioned paper was typed by a friend of my family, who worked at the local council and got me a job there so I worked at Town Hall in Kaposvár for two years prior to my university studies. As a civil servant apprentice at the Townhall, I gained substantial experience in all areas of local administration and was even entrusted with the organization of the 1990 census at local level. This early experience established my interest in administrative law at the university. Dr. László Kiss was the appointed university professor in 1992, and his dissertation on deregulation and legislative issues stimulated my interest in codification, a subject which was not taught at the university at the time.

For 20 years after my graduation, I participated in the legislative process by not only conducting the elections as the operative head of the parliamentary and local council elections office, but also through my participation in the codification process within the Hungarian Association of Cities of County Rank. The analysis of changes in electoral law, taking into account the social impact, provides an opportunity to formulate further amendments, which may include proposals that support the correctness of the previous changes in regulation. As a result of my research, certain legal institutions' proper functioning or lack thereof can be characterized by facts and decisions on legal redresses, e.g. the authentication of referendum questions, or the process of the rejection of a mandatory referendum by the local council. My research was not limited to legal regulation and the analysis of its results, neither to the examination of the development of the decision making process in the context of legal redresses.

I participated in the 2018 parliamentary elections and the 2019 local elections - taking unpaid leave - as a candidate, so I managed to gain experience from a completely new perspective when applying the current regulations. Various sub-clauses affect the enforcement of the originally intended law in principle, either in terms of excessive administrative requirements, or equal access in opportunities for funding. In addition, the application of the candidacy rules related to the institutional conflict of interest also provides an opportunity to making an interesting comparison opportunity. While a government official in a given government office may run as a party candidate within his local jurisdiction without suspending his activities and still receives full pay, a judge must request his suspension as a candidate outside his local jurisdiction and he can be an independent candidate on unpaid leave. However, the law does not provide detailed rules on this. As a consequence of the analysis of the changes in the substantive and procedural rules of the election, a codified, text-based written bill may be put forward in the near future, useful in practice, not only as a topic of the dissertation.

Part II. A brief description of the research methodology and analyses

a) The review of the substantive and procedural law of the Hungarian electoral system and the related bills and regulatory concepts, along with the comparison of election results, clearly suggests the legislative intention, which primarily aims for the long-term preservation of political power. At the time of the political system change, the electoral system developed at the meetings of the National Round Table was based on consensus, which is reflective of the historical period. These legislative proposals were sanctified by the communist parliament and it did not take a leading role in their elaboration. Interestingly, democratically elected parliamentary majorities no longer intended to reach consensus.

The new regulation of the 1994 local elections served the interests of the then parliamentary majority at that time, whose regulatory solutions returned to the 2013 electoral reform, although at that time, on the other side of the political palette. These law changes served the interests of power regardless of the political side, which is well characterized by the transition to a one-round electoral system. This change took into account the current party structure and served to secure its power by dividing the votes for the fragmented parties in opposition. The change of election law in the legal redress practice following the development of the regulation was ensured by the analysis of the given decisions, which at the same time expressed the independence or lack thereof the given institution practising legal redress. It is important to draw attention to institutional guarantees, as equal opportunities for political parties in decision-making can only be ensured institutionally, and not by relying on the professional training and expertise, human character, personal principles and values of individuals involved in the given decision-making. These important properties can only be fully realized in a proper regulatory environment.

b) Among the methods for processing changes in the substantive and procedural law of the Hungarian electoral system, the primary is the analysis of changes in legislative text is of primary importance, paired with a review and evaluation of the proposed changes in the legal literature. A special opportunity during the research was provided by the knowledge sharing internship program during the research, which operated on the basis of an agreement between the Doctoral School and the Curia. Within the framework of this program, I was able to compare dr. Zsolt Balogh's extensive experience as my mentor judge in election and

referendum matters, who is also the leader of the judicial council of the Municipal Council of the Curia, with my experience as the operative head of the parliamentary and local council elections office for 20 years. I had the opportunity to gain insight into the process of judicial working practice before finalised decisions. This meant active work in practice, as I wrote the version of judgment, I envisioned in a given case, which I then had the opportunity to discuss with members of the judiciary. It was a rare and special opportunity in my research. The culture of debate and human attitude and professional work experienced at the Curia influenced my decision to change my career, so during the research I applied for and received a judicial appointment to the Budapest-Capital Regional Court. This method has allowed me to record my critical observations for areas of improvement in the current regulations and my proposed suggestions for regulatory direction when discussing each provision. These legislative proposals form a coherent whole in order to serve and strengthen civic democracy.

Part III. A brief summary of scientific conclusions and their potential application

The scientific result of the dissertation is a coherent warning to the legislators that it is not only about a legislative proposal, covering critical observations on areas of improvement in the regulation, but also about the guaranteed independence of the state. The geopolitical situation and historical development of Hungary must fundamentally determine an electoral system that ensures representation of the people. The Opposition Round Table at the time of the change of political system gathered these elements to be followed, taking into account the regulation of European states that excluded monopolies and provided guarantees after the fall of the aggressive dictatorships of the Second World War. The regulation of these countries implements the exercise of power forced into a coalition and the system of autonomous organizations with broad powers of control, together with the unrestricted decision-making power of independent courts. The scientific conclusion of the dissertation highlights the weakness of the current electoral system, which manifests itself in instability.

Since the change of political system, an unprecedented two-thirds majority on three consecutive occasions of the same political force has been observed, as a result of the economic crisis of 2008 with the devastating defeat of the then parliamentary majority parties. Recognizing the possibility of constitutional power, the governing parties have created an electoral system based on the new constitution, which, building on the weakness of the national party structure, resulted in two nearly identical two-thirds victories in proportions. In addition to the detailed rules and sub-clauses, the current two-thirds parliamentary majority is based on three pillars.

On the one hand, by making the two-round election process into one-round, it has made it more difficult for fragmented opposition parties to come together. On the other hand, strengthening the victory of a candidate belonging to a parliamentary majority with wider publicity and resources by enabling multiple recommendations and the distribution of votes among many candidates, even if a majority of voters vote against them.

Finally, the fact that with the introduction of overcompensation, the difference between the votes of the winner in the individual constituency and the number of votes cast for the subsequent candidate is added to the votes on the winner's compensation list, ensures

that the winner gains a higher parliamentary seat. The new regulation means that from one economic crisis to another, a political community can rule the country with the legitimacy provided by the electoral process, which does not really involve elections based on equal opportunity. Such a regime legally abolishes the systems and institutions established to oversee it. It first gains influence over independent organizations through personal decisions and then gradually transforms them as an organisation in order to ensure the goals of the regime. Finally, the state is made up of a seemingly incapacitated organizational system which makes loyalty to the leading political force a priority in its system for selecting persons.

The resulting centralized state creates a one-man leadership that inevitably leads to continuous operational disruptions. During the operation of its economy, it produces an extremely narrow economic and political elite, with expanding layers in society that are gradually falling behind, whose advocacy in this electoral system is minimal. The greatest danger during this period is the dependence of a state on a more developed economic interest or, in the modern sense, being in an area with military interest. The material interest or other way of influencing of the narrow elite results in unprofitable economic relations for the country, which cannot be changed by the will of the voters in a distorted electoral system, since such a concentrated power structure can also use publicity as propaganda. However, the costs of the unprofitable economic situation are still borne by the taxpayers dependent on the state, further increasing their own trajectory of falling behind. The next economic crisis, which is nowadays rarely dependent on a single country due to globalisation, will result in an unexpected and unpredictable power change. Therefore, the other side of political life or an entirely new political force gains majority, leading to the old elite to be replaced, but for aspects of convenience, it is difficult to imagine it resulting in a systemic change. This is because the electoral system will protect the interests of the new elite until the next economic crisis. It is the task of academic science to point out the contexts, dangers and consequences of regulation and to formulate proposals that will be widely published and adopted with the support of the electorate. To achieve this goal, it is necessary to gain inside knowledge of politics and to associate the legal regulation to it.

Many times, results can also be achieved through the development of detailed rules, sub-clauses and the application of codification techniques, which shows that to have the results of scientific research accepted is a complex task. The career of the author of the dissertation offers an opportunity to provide a comprehensive description and explanation of

research results. Through this, not only a dissertation has been written, but also specific legislative proposals have been formulated as a summary of the research work.

The dissertation consists of five major parts.

The first focuses on the regulation of the establishment of constituencies, which is the base of the electoral system, its direction of change is clearly in the interest of power, so it is important to incorporate guarantees, avoiding that a given majority would serve as a means of their own political interests. The guarantees of making this seemingly administrative decision must go beyond the mandate of the elected body and should not become a means of further strengthening the interest of the majority in the long term. Guarantee regulation today is the cardinal legislation that loses its guarantee character if, with the transformation of the electoral system, the two-thirds parliamentary majority becomes permanent, even in the form of the democratic handover of power with a majority system.

The second part deals with data protection issues related to the electoral process. In particular, the Constitutional Court only allows the use of a personal number, which allows for the interconnection of personal data, including sensitive data, only in a limited number of processes, e.g. in the electoral process. In addition to the creation of a personality profile, voter listing on a political basis, despite its illegal nature, has become one of the cornerstones of the electoral system, without which electoral victory is inconceivable. This, together with the shortcomings of the current regulatory system, completely exposes the voter to the nominating organizations. Part of the dependence is the failure of fully exercised freedom of information, as voters have uncontrolled information about candidates. Electoral bodies do not have the opportunity to refute untrue facts candidates have written about themselves (for example, claims about their qualifications). The failure of the inclusion of a criminal record cannot be replaced by electoral bodies either.

The third part discusses the directions of the changing regulation of the parliamentary elections system and the experience from the candidate's point of view. The unique aspect of this experience is that it approaches the regulation from an independent candidate's view, which should be based on equal opportunities for candidates, otherwise we cannot talk about an election, only a simple vote, which is highly predetermined. Reaching a wide public, the

funding opportunities for candidates, the changing system of conditions for the provision of state resources are all indicators of the degree to which equal opportunities are in place.

The fourth part highlights the characteristics of the local elections and mayoral elections, the justified or unjustified deviation from the rules of the parliamentary election. As a candidate of a local civil organization, I managed to get to know the selection of candidates, the recommendation and the campaign process. With the help of various experts, I took an active part in the poster design of the promotion materials and the creation & elaboration of the published content, but the operation of the electoral system can really be explored in depth during negotiations with other candidates/competitors. It was an added bonus that having participated in the parliamentary elections in 2018, it provided me with significant routine, making my navigation through it much easier. I was able to take part in the background negotiations with a realistic opportunity, in which there is only a chance to participate only as a candidate. My 20-year experience as head of the election office enabled me to follow a systematic plan throughout the campaign, where only the interests of the candidates had to be taken into account. It can be said that, in addition to its determinism, this route of choice provides the greatest opportunity for manoeuvre to negotiate with competitors. This section covers the knowledge gained during the process and its evaluation. The scientific researcher is provided with an objective systemic approach through the necessary investigation of exciting details and their connections.

The dissertation ends with the fifth part summarizing the main conclusions and proposals, which discusses the presentation of the electoral redress system and its development proposals. It covers the seventh and eighth amendments of the Fundamental Law of Hungary establishing the Administrative Court, which were accepted within one year, repealing one with the other along an opposing concept.

Behind this rapid change of concept was the actual political consideration at the time, which had nothing to do with regulatory concepts. Within the integrated court system or in an independent Administrative Court system, the correct level of the decision-making and the judgment of judges underpinned by appropriate professional training are of significant importance. In case of some special legal redresses, only administrative decisions may be referred to single-judge decisions, while substantive decisions need to be referred to the council of expert judges. The main specialty of the electoral legal redress process lies in

timeliness, due to the extremely short deadlines, it requires not only the judge's competence in this special area of law, but also the development of a well consolidated body of case law that helps a quick and well-founded decision. In the absence of these, the courts' conduct of avoiding a substantive adjudication of cases persists, which results in a high number of decisions dismissing the action, based primarily on procedural defects, so that they can avoid taking a stance and rule on the substance. This judicial attitude is common in other areas of law, but it highly destroys public confidence in the electoral process because it means advocating offenders in the eyes of the law-abiding citizen. As a result of the election, the winner, even though they achieve this victory by committing an offense, gain legitimacy for their offending behaviour by completing their four or five-year term. Infringements of right in the electoral process are difficult to prove in case of breaches in the election campaign or when election results are illegally influenced, therefore it is important that a sound and consistent of case law based on typified cases helps establish the facts correctly and identify causal connections. Without sufficient experience in election-related case law, it is difficult for an administrative judge to make a well-founded decision due to special procedural rules and their unique application in the emergence of justice.

Part IV. List of publications, references related to the dissertation

1. Legal and institutional safeguards for the establishment and modification of constituencies [Codification and Administration 2017. no.1. pp. 40-50]
2. Directions of legal redress in the election process [Codification and Administration 2017. no.2. pp. 36-69]
3. Legal and institutional safeguards for the establishment and modification of constituencies Jura 2018. no. 1. pp.100-109]
4. The changing forum system of electoral legal redress [Codification 2019. no. 1. pp.19-33]
5. “Questions and answers about the protection of personal and special data of voters” Jura 2019. no. 1. pp. 388-403.]
6. The parliamentary elections of 2018 based on the experience of an independent candidate [New Hungarian Public Administration 2020. vol. 13. no. 3. pp. 45-55]
7. The parliamentary elections of 2018 based on the experience of an independent candidate [Jura 2019. no 2. pp. 374-390]
8. Features of local elections in the electoral system of Hungary [Codification and Administration 2019. no.2. pp. 27-41]
9. “The case-law of the Curia during the review of the decisions of the National Electoral Committee in the election process” [Hungarian Law 2020. no. 4. pp. 243-253]