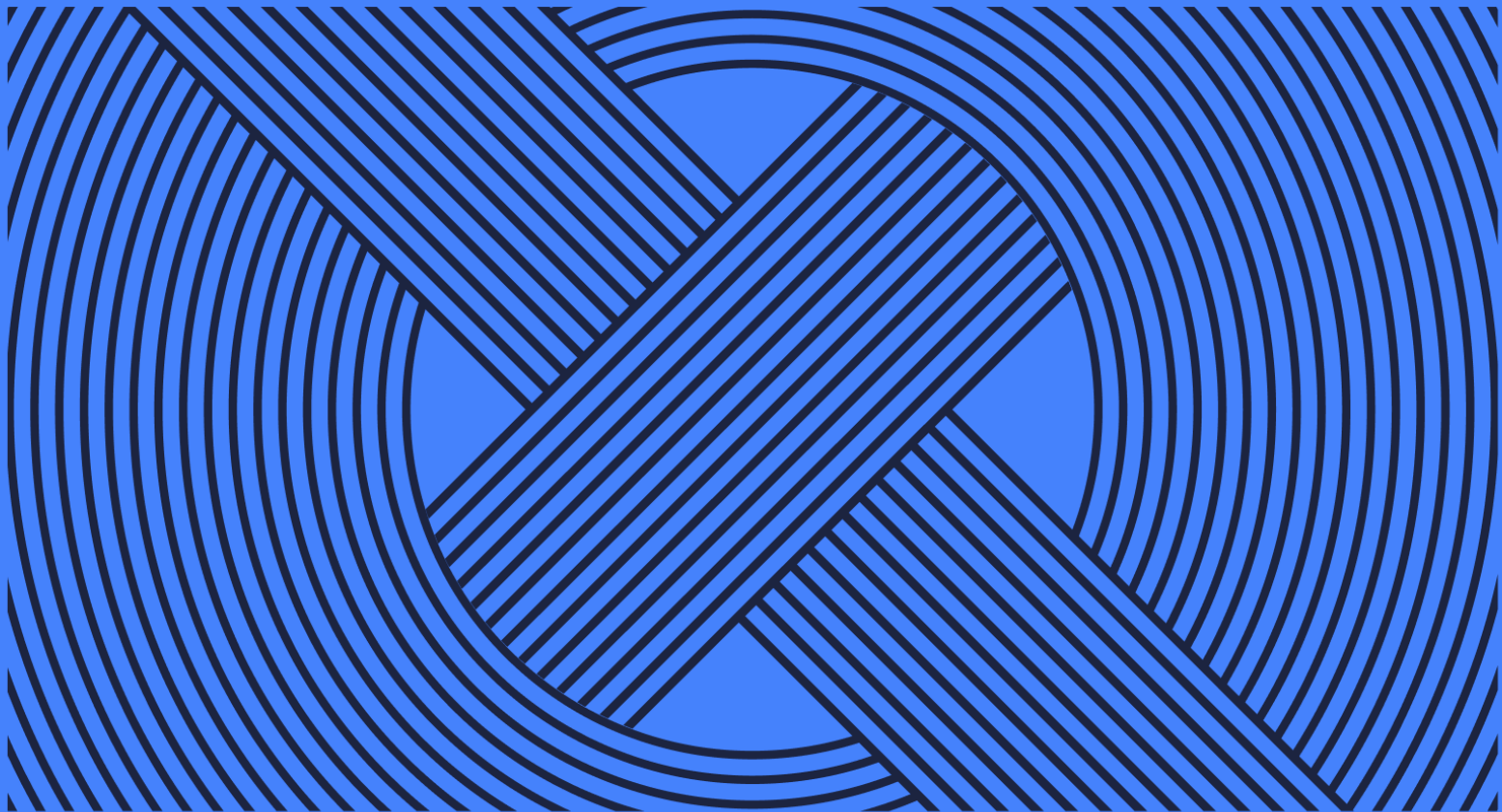




HUNGARIAN
HELSINKI
COMMITTEE

Lessons learned from legal remedies



General elections and referendum
in Hungary, 2022

Table of Contents

Executive summary	2
1. Introduction.....	3
2. Rejection on formal grounds.....	4
(a) Missing personal data	5
(b) Affected persons' right to appeal.....	5
(c) Compulsory legal representation	6
(d) Mandatory identification of the breach of law	6
(e) Proof of violation.....	7
3. Unknown violators	8
4. Serious violations at postal voting.....	9
5. Activities by state entities during campaign	10
6. Campaign financing	11
7. Evolution of the National Election Commission's interpretation during the campaign	11
8. Constitutional Court	12
9. Politically sensitive cases.....	13
(a) Objections against pro-government media.....	13
(b) Emails sent by the Government Communication Centre.....	14
(c) Direct campaigning in violation of data privacy	14
(d) Referendum campaign	15
(e) Postal voting packages delivered by pro-Fidesz activists in Vojvodina.....	15
(f) Burned postal votes.....	16
10. Recommendations.....	16

Executive summary

Hungary held its general elections and national referendum on 3 April 2022. The 50 days long campaign was accompanied by many small-scale and some severe breaches of the electoral procedure rules and the internationally recognised principles of elections. Legal remedies were in many cases not accessible, in some cases imbued with bias, and in most of the cases ineffective.

The Hungarian Helsinki Committee's in-depth analysis of decisions delivered by state bodies on election- and referendum-related remedial requests reveals several issues which shall be addressed by the legislature and/or the relevant decision-making bodies. The Hungarian Helsinki Committee has reviewed 235 decisions of the National Election Commission, 78 decisions of the Curia, and 19 Constitutional Court decisions.¹ Some of the lessons learned are outlined in the present note.

Breaches of the Electoral Procedure Act including breaches of the principles of elections may be remedied by submitting objections to the election commission having territorial competence (constituency level election commissions or the National Election Commission). Decisions of the constituency level election commissions may be appealed before the National Election Commission, and decisions of the National Election Commission may be challenged in a one instance judicial review procedure before the Curia. Constitutional complaints may be submitted to the Constitutional Court against the court decisions if fundamental rights were violated in the court procedure. Deadlines are short in the campaign period for both the applicants and the decision-making bodies. If the decision-making body finds a violation of the law, the consequences may be the following: identifying the breach of law, ordering the cessation of the violation, issuance of a fine, and/or ordering that the affected part of the election be repeated.

The strict formal requirements of objections, appeals, judicial review applications and constitutional complaints enable the decision-making bodies to keep the short deadlines applicable in election related cases, however these requirements often hinder the access of applicants to effective legal remedies. For instance, identifiable applicants' submissions are rejected if they fail to provide their personal identification number. Voters' right to fair elections is not regarded by the Hungarian legislature to justify the right to appeal, since under the pertaining Hungarian laws only applicants directly affected by a breach of law may appeal the election commission's decisions on objections. Legal representation is not available for everyone even though applicants must be represented by lawyers before courts in election related cases. The requirement to expressly identify the exact subsection of the law that has been violated according to the applicant, and to provide exhaustive evidence often set unsurmountable obstacles for applicants and are sometimes misused by the decision-making bodies.

There were several violations connected to parties and candidates without effective legal remedy because the violator's identity could not be proven unequivocally. Severe violations abroad concerning postal voting lacked any legal remedy, as the decision-making bodies concluded that the territorial scope of the Electoral Procedure Act and legal remedies were limited to Hungary. A 2018 amendment of the electoral law legalised the overlap during the campaign between government and governing parties, therefore for example protocol events of candidates who are at the same time members of the government are not considered campaign activities even during campaign period. This resulted in almost full immunity from the electoral procedure rules for the governing coalition's candidates. Unlawful campaign financing and spending does not have an effective legal remedy at all, the decision-making bodies concerned have concluded that they have no jurisdiction in such cases. Candidates and parties used this legal loophole widely.

¹ Table of the decisions [here](#)

The National Election Commission's decisions were in many cases inconsistent, and this mainly benefited the government or the governing party coalition. The Constitutional Court rarely found violations of fundamental rights, and when it did, it always favoured the government. In some politically sensitive cases, legal remedy was not available against government, pro-government entities, and in cases of violation of data privacy related to the campaign, legal remedy was not effective in most of the cases against any of the political parties' acts.

This note outlines some of the issues surrounding the election-related legal remedies, and highlights some of the important cases of the 2022 campaign period. The flawed electoral laws (e.g. the provision according to which the campaign activity of government officials is excluded from the scope of the electoral procedure rules), the political actors' disrespect toward the electoral principles and the fragile independence of decision-making bodies rendered electoral legal remedies almost fully ineffective. Consequently, in the present legal framework and political context, the function of electoral legal remedies is limited to the documentation of the violations of the electoral laws, but they do not constitute effective legal remedy.

Based on the analysis of the case law, the Hungarian Helsinki Committee recommends the amendment of the Electoral Procedure Act² regarding the following issues: (i) the National Election Commission should be provided with broader competences so that it could look into and find violations of the fundamental election principles if those violations stem from breaches of laws other than the Electoral Procedure Act; (ii) the provision of the personal identification number should not be the only option for persons wishing to subject electoral remedies to identify themselves; (iii) the election commissions should have the right to *ex officio* continue their investigations in case an objection fails due to formal grounds; (iv) the system in which voters were allowed to appeal the decisions made with regard to their objections should be restored; (v) the provision excluding the actions of government officials from the scope of the campaign activities should be revoked; and (vi) as a minimum, unlawful campaign financing should be monitored and controlled during the campaign period (and not only afterwards, where the distortion caused by such campaigning cannot be effectively remedied).

1. Introduction

Elections and referendum related legal remedies are available based on the Electoral Procedure Act if there is a breach of a legal regulation pertaining the elections or the fundamental principles of elections and of the electoral procedure. A legal remedy may be sought by submitting an **objection** to the competent election commission. If the violation affected only one constituency, the body competent to decide on the objection is the election commission of the given constituency. The National Election Commission has the competence to decide on objections against violations affecting more than one constituency and on appeals against the decisions of constituency-level election commissions. The objection may be submitted by voters listed in the central electoral registry, nominating organisations and by other natural, legal persons and associations without a legal personality if they were affected by the violation. Appeals and judicial review applications may be submitted only by persons affected by the violation, therefore, while any voter may submit an objection regarding any violation, not any voter may appeal or seek judicial remedy against the decisions on their objections.

Objections have to include the name and address of the submitter, the personal identification number or court registration number of the submitter, a description of the legal violation and indication of the violated Section and Subsection (if applicable) of the Electoral Procedure Act, as well as evidence substantiating the breach. Email is also an accepted channel for submitting objections and appeals. Objections shall be submitted at the latest within three days after the violation has taken place or a continuous violation has ended. Election commissions have to deliver a decision on objections within

² Act XXXVI of 2013 on the Electoral Procedure

three days from the submission. Decisions of constituency-level election commissions may be **appealed** against with the National Election Commission, while the decisions of the National Election Commission may be challenged before the Curia (Hungary's apex court) through a **judicial review application**. In both cases, the deadline for seeking remedy is within three days from the receipt of the decision. The Curia is the only court with competence to examine judicial review applications against the election commission decisions on objections. The Curia shall adjudicate the application within another three days. If the submitter believes that the Curia has violated the Fundamental Law (the Hungarian Constitution) in its decision, a constitutional complaint may be submitted. The Constitutional Court decides on the admissibility of the constitutional complaint within three working days, and if the Constitutional Court finds the complaint admissible, it shall deliver its decision within another three working days. Legal representation is mandatory before the Curia and the Constitutional Court.

The campaign period of the general elections and referendum³ held on 3 April 2022 lasted from 12 February 2022 until Election Day. The Hungarian Helsinki Committee has examined the recommendation collection of candidates (necessary for registering a candidate), the campaign, and the Election Day related decisions on objections which were submitted directly to the National Election Commission when more than one single member constituency was effected by the violation of the Electoral Procedure Act, on appeals against lower level election commission decisions which were examined by the National Election Commission, on judicial review applications which were examined by the Curia, and on constitutional complaints which were decided on by the Constitutional Court if fundamental rights had been breached in the judicial review procedure. This paper is not an exhaustive study on the election related legal remedies, but its goal is to give an overview of problematic aspects, difficulties of accessing effective legal remedy, and the fragile independence of the National Election Commission, Curia, and Constitutional Court. The Hungarian Helsinki Committee published a [Threat Assessment Policy Brief](#) before the campaign, a [Baseline Information Note](#) on the general elections and referendum, and [Updates](#) on relevant events during the campaign period. Some of the cases and issues outlined in this paper have been already mentioned in detail in those previous publications.

2. Rejection on formal grounds

Legal remedies have short deadlines for applicants and for the decision-making bodies in electoral procedures. There is no possibility for submitting additional information. The Electoral Procedure Act lists formal requirements applications must follow.⁴ If the application lacks the required content, election commissions (and also courts) would reject on formal grounds without examining the application on the merits. The National Election Commission rejected 93 objections on formal grounds

³ The national referendum of 3 April was initiated by the Government which called it a 'child protection' referendum, while NGOs and civil society concerned it as part of the Government's anti-LGBTQI campaign. The questions of the referendum were formulated in a manner that can be regarded as biased against the LGBTQI community, and concerned a legislative amendment which was already passed in the summer of 2021, rendering the referendum practically meaningless as far as the actual legal consequences are concerned (more on the amendment [here](#)).

The Parliament is obliged to pass a law in accordance with the result of a valid and binding referendum within 180 days, and the results are binding for three years. A referendum is valid if more than half of the electorate casts a valid ballot, and its result is binding if more than half of the voters give the same response. This year's referendum was the first to be held on the same day as the general elections, which was possible after the amendment of the Referendum Act (Act CCXXXVIII of 2013) at the end of 2021.

Besides the government, only NGOs conducted a referendum campaign, the latter for invalid votes, since these NGOs found the questions of the referendum nonsensical and discriminatory. The valid votes did not reach the legal threshold; therefore, the referendum's results are not binding.

More on the referendum in Section 2 of the Hungarian Helsinki Committee's Baseline Information Note of 18 February 2022, available [here](#).

⁴ Section 212 Subsection (2), and Section 224 Subsection (3) of the Electoral Procedure Act

out of 235 decisions in total (rate of rejections on formal grounds: 40 %). This number shows only those decisions which rejected the whole objection on formal grounds without examining any of the substantive content. The Curia had in total 75 applications and rejected 20 on formal grounds (rate of rejections on formal grounds: 26 %). The Constitutional Court examined on the merits only four cases out of 19 (rate of inadmissible applications: 79 %). Legal representation is compulsory before the Curia and the Constitutional Court which could be the reason for the relatively low number of rejections on formal grounds by the Curia. The National Election Office published an objection template on its website⁵ to make it easier to meet the formal requirements but the numbers show that the template in itself did not prevent high numbers of formal mistakes. According to the report of the National Election Commission submitted to the Parliament after the elections, only 3% of the decisions of the National Election Commission were changed by the courts. In the rest of the cases, no judicial review applications were submitted, the Curia or the Constitutional Court agreed with the National Election Commission, or the judicial review applications were dismissed on formal grounds.⁶

(a) Missing personal data⁷

Short deadlines and the lack of the possibility to submit additional information require that an objection contain accurate data enabling the decision-making body to unambiguously identify the applicant. In most of the cases which were not examined on the merits, the required personal data were not fully provided: the applicants particularly often used ID or passport numbers instead of their personal identification numbers. The personal identification number is rarely necessary in any other procedure, many people do not even know about its existence. **Since the goal of the requirement to provide accurate data is to identify the applicant and substantiate his/her right to vote, and identification is possible without the personal identification number as well, more flexible rules could make the legal remedy more accessible as there would not be such a high percentage of rejections on formal grounds.**

Example

There were 67 decisions of the National Election Commission on objections (not appeals) submitted by natural persons among those reviewed by the Hungarian Helsinki Committee. 17 of these decisions were rejections on formal grounds partly or fully because the personal identification number was not indicated in the objections. In some cases, postal voters used their passport numbers instead of the personal identification numbers, and some inland voters used their ID numbers.

(b) Affected persons' right to appeal⁸

Objection against violations of the Electoral Procedure Act may be submitted by anyone from the voters' registry but appeals, judicial review applications and constitutional complaints or objections by legal entities may only be submitted by persons who are directly affected by the violation. Therefore, **several voters who experience violations cannot appeal against decisions handed down regarding their objections.** In many cases candidates, parties or other legal entities took over the procedure when it came to an appeal or judicial review, but they did so and could do so only when they were directly affected by the violation.

⁵ Information on legal remedies at the website of the National Election Office [here](#)

⁶ Report of the President of the National Election Commission, May 2022, p11, available [here](#)

⁷ Subsection (2) c), d) of Section 212, Subsection (3) b), c) of Section 224 of the Electoral Procedure Act

⁸ Subsection (1) a) of Section 231 of the Electoral Procedure Act

Example:

An appeal against the decision of a single member constituency election commission was rejected on formal grounds because it was not submitted by a person directly affected by the violation which concerned a Fidesz candidate attending a school event.⁹

(c) Compulsory legal representation¹⁰

Application for judicial review or constitutional complaint may be submitted only by a legal representative (attorney-at-law). In one of its decisions, the Curia justified this requirement on the basis that legally adequate applications are needed due to the short deadlines set for courts (i.e.: if the courts need to spend time on the correction of the errors of the petitions, they cannot keep the tight deadlines). The Curia rejected significantly fewer applications on formal grounds than the National Election Commission. The Constitutional Court still found inadmissible most of the complaints. Even though experts (lawyers) obviously have the knowledge to submit applications which are easier to examine and do not lack formal requirements. **Compulsory legal representation hinders the availability of legal remedy** for persons who do not have the funds for or access to attorneys-at-law since legal aid is not available on such a short notice.

(d) Mandatory identification of the breach of law¹¹

The Electoral Procedure Act lists among the compulsory elements the description of a breach of law (violation). The judicial practice has narrowed this provision down to the obligation to identify the exact legal provision that the person asking for the remedy regards to have been violated, and to indicate how the facts and legal arguments are connected to that particular provision. On one hand, this might cause **difficulties to applicants without legal competence** as it requires the applicant to know and understand well the provisions of the Electoral Procedure Act and other laws. On the other hand, this requirement provides a wide **discretion for the election commissions and courts** as they might state that the legal grounds and the facts were not sufficiently connected in the application even when the applicant ('s lawyer) would strongly disagree.

Examples:

There were several examples when private persons failed to indicate the violated provisions in their objections. However, in at least one case, it was obvious that the National Election Commission's decision to reject an objection due to the lack of the indication of the exact legal provision breached was arbitrary and ungrounded, since the Curia and later the Constitutional Court did examine the objection on the merits. The case concerned a government email sent to people who had registered earlier for COVID-19 vaccination (and had simultaneously consented to the Government sending them information in the future) about the war in Ukraine, including information on a position regarding the war that was falsely attributed to the Opposition parties by the Government.¹² (*See also Section 5, 8, and Section 9 Subsection (b)*) In this case, the United Opposition submitted an objection against the Government's email claiming that the email had misled the voters by claiming that only the present government would keep Hungary out of the war in Ukraine, and all other political forces would plunge the country into the war. The United Opposition also claimed that the misuse of data and the misleading message had resulted in a breach of the principles of fairness, equal opportunities and exercising the rights in a good faith since the government parties had circumvented the electoral rules when they communicated their message in the above manner. According to the decision of the

⁹ Decision 116/2022 of the NEC

¹⁰ Subsection (5) of Section 224 of the Electoral Procedure Act

¹¹ Subsection (2) a) of Section 212, Subsection (3) of Section 223 of the Electoral Procedure Act

¹² Decision 120/2022 of the NEC

National Election Commission, (i) the commission does not have the competence to examine the misuse of personal data (the applicant did not ask for this examination); (ii) the applicant did not submit evidence on the Fidesz-KDNP's position to prove that it was similar to that of the Government as presented in the email (the applicant attached the email which clearly contains statements about "the opposition"); and (iii) the applicant only submitted an abstract statement claiming a breach of the law but did not explain how and which provisions of the law had been violated (the decision contains a summary of the United Opposition's objection, and even from this summary it is clear that the objection identified those provisions of law that were claimed to have been breached, and a direct connection was made between the provisions and the alleged breach of the law). The rest of the arguments of the applicant were not addressed by the National Election Commission at all. The Curia examined the application for judicial review on the merits, but it did not provide any explanation, justification on why it disagreed with the National Election Commission's assessment that the objection had not been admissible for a substantive examination.

The Curia ruled in three referendum related cases (which concerned whether the campaign for invalid votes at the referendum is unlawful), that the application for judicial review by the alleged violators (i.e. the NGOs campaigning for an invalid vote and a candidate supporting them on social media, two of them subsequently fined by the National Election Commission) had failed to indicate the exact provision of law violated by the National Election Commission's decision although even from the Curia's decision itself it seemed that this had not been the case because the Curia summarised the applications' contents in its judgment, and this summary in fact contained reference to the relevant legal provisions and arguments about how they had been breached.¹³ (*See also Section 7, and Section 9 Subsection (d)*)

It seems that the National Election Commission has not been consistent in its jurisprudence regarding the requirement of expressly indicating the violated provisions of the law, and it also seems that political bias might have played a role in this lack of consistence. An example is offered by the objections submitted against NGOs which campaigned for invalid votes at the referendum: according to the facts summarised in the decisions of the National Election Commission, the objections only referred to allegedly violated principles of the Electoral Procedure Act, and to the fact that in the petitioners' opinion, calling for invalid vote casting makes it impossible for a referendum to fulfil its constitutional purpose. As far as it can be judged from the reasons attached to the decisions, there was no connection made between the allegedly unlawful acts and the provisions of the law, and the National Election Commission still adjudicated the objections on their merits and imposed a fine on some of the concerned NGOs.¹⁴ (*See also Section 7, and Section 9 Subsection (d)*)

(e) Proof of violation¹⁵

Having short deadlines and no further submissions, rejections (either on formal grounds or on the merits) were often based on insufficient evidence. The applicant must prove his/her statements. Many types of evidence might substantiate sufficiency (even written statements of witnesses). The decisions lead to the assumption that the **applicants were often not aware of their obligation to provide proof**, or the provided evidence was not sufficiently convincing, did not prove all the details of the objection. **In some cases, evidence could not be available for the applicant, or negative evidence should had been submitted** according to the argumentation of the proceeding authorities.

¹³ Decisions Kvk.VII.39.409/2022/2., Kvk.IV.39.419/2022/4., Kvk.IV.39.420/2022/4. of the Curia

¹⁴ Decisions 324/2022, 325/2022, 327/2022, 328/2022, 329/2022 of the NEC

¹⁵ Subsection (2) b) Section 212 of the Electoral Procedure Act

Examples:

Employees of a municipality put out posters in favour of a Fidesz candidate, the applicant attached photos to his objection. According to the decision of the National Election Commission, the submitted photos and the statements of the applicant (who knew these people in person) could not prove unequivocally that the people putting out the posters were employees of the municipality, and that they put out the posters supporting the Fidesz candidate on behalf of the municipality.¹⁶

Mi Hazánk party was offered significantly fewer billboards than other big parties by the company operating billboard advertisement spaces. The objection of Mi Hazánk was rejected because although the emails exchanged were attached, it was not proven how many billboards other parties received exactly which is obviously not accessible information for the applicant.¹⁷

The candidate applicant caught in the act people taking down his posters and having posters of a Fidesz candidate in their car. The applicant called the police, took photos which he attached to the objection. The National Election Commission ruled that the photos did not prove that the people who took down his posters were entrusted by the Fidesz candidate.¹⁸

There were four appeals against single member constituency election commission decisions because mayors of villages sent letters to the residents explaining that the village would not receive funds if Fidesz does not win at the elections. The National Election Commission ruled that it was not proven that the letters were prepared on public funds of the municipality, and the mayors have the right to the freedom of expression.¹⁹

Illegal voter transportations on Election Day were objected, and decisions were appealed to the National Election Commission in three cases. Photos and statements were not enough to prove without doubt that people on the pictures were transported unlawfully, and whether they were voters.²⁰

In some cases the strict rules of evidence presentation were in favour of opposition candidates or parties (for example the text of an opposition candidate's direct campaign via phone was not submitted by the applicant, and therefore the unlawfulness²¹ was not regarded to have been proven²¹) (See also Section 3, and Section 9 Subsection (c)), however, in most of the cases the strict regulation happened to lead to decisions not finding a breach of law by Fidesz, Fidesz candidates and pro Fidesz actors (13 out of 18 NEC rejecting decisions were handed down because of lack of evidence on objections submitted against the acts of these actors).

3. Unknown violators

The offender's identity was in many cases not proven by evidence, therefore, even when the National Election Commission found violation of law, no one was ordered to cease the violation. Without identifying the violator only the violation can be defined but no further sanctions (order to cease violation, issuance of a fine)²² are applicable. The practice and the legal background allow **candidates and parties to basically do whatever they wish until it cannot be proven that they were the violators. This has jeopardised the fairness of elections.**

¹⁶ Decision 178/2022 of the NEC

¹⁷ Decision 180/2022 of the NEC

¹⁸ Decision 224/2022 of the NEC

¹⁹ Decisions 228/2022, 229/2022, 230/2022, 231/2022 of the NEC

²⁰ Decisions 358/2022, 359/2022, 360/2022 of the NEC

²¹ Decisions 292/2022, 307/2022 of the NEC

²² Subsection (2) Section 218 of the Electoral Procedure Act

Examples:

Violators of law were unknown in cases of posters without the mandatory imprint²³, posters put to places where they were not allowed²⁴, in many cases of torn or damaged posters²⁵, and in most of the cases of direct campaigning via phone calls, text messages²⁶. (See also Section 2 Subsection (e), and Section 9 Subsection (c))

4. Serious violations at postal voting

Several violations of law (some of them particularly severe) were reported in connection to postal voting (see the details below). The National Election Commission²⁷ and the Curia²⁸ did not find a violation in any of those cases. The courts have concluded that the Electoral Procedure Act's territorial scope only covers Hungary therefore the National Election Commission does not have jurisdiction over violations of the Electoral Procedure Act's provisions committed abroad. The Constitutional Court found inadmissible a constitutional complaint against such a decision.²⁹ The practice has questioned the very essence of the election principles and postal voting because it means **there was no law protecting voters' rights, fairness and other principles beyond the borders of Hungary, while voting can and does take place abroad in significant numbers.**

According to the National Election Office, there are 450,000 voters having the right to vote by post.³⁰ The issues of data privacy violations (postal voting packages delivered by party activists), of violations of free and fair elections (postal voting packages collected by party activists, burned filled-out ballots, and repacked filled-out postal voting packages), of violation of the right to vote (never received postal voting packages) should lead to a well-designed **amendment of the Electoral Procedure Act** as soon as possible because **the principles and requirements cannot be ensured within the scope of the present system.** The Deputy Prime Minister proposed a bill³¹ in June 2022 amending the Electoral Procedure Act; one of the important amendments expands the territorial scope of the Act. If passed, the bill will solve a major issue affecting the voters' right abroad. However, there are still remaining problems to be addressed regarding the postal voting and the voting at foreign representations of Hungary.

Examples:

Postal voting packages were delivered by pro-government activists in Vojvodina, Serbia instead of the Serbian Post Office. (See also Section 8, and Section 9 Subsection (e)) In Romania, two organisations which are close to Fidesz-KDNP and at least one mayor and a company encouraged in radio commercials and on leaflets postal voters not to trust the Romanian Post Office but instead to hand over the filled-out ballots to the organisations' staff. The Democratic Alliance of Hungarians in Romania (RMDSZ), a Romanian party supporting Fidesz-KDNP, sent text messages to Hungarian voters not to take the ballots to Consulates but to hand them over to RMDSZ. A bag of partly burned, already filled-out ballots were found near Târgu Mures, Romania. The burned ballots were cast for the United Opposition and Mi Hazánk opposition parties. (See also Section 9 Subsection (f)) Some voters never

²³ E.g. Decisions 277/2022, 282/2022 of the NEC

²⁴ E.g. Decisions 166/2022, 190/2022 of the NEC

²⁵ E.g. Decisions 177/2022, 195/2022 of the NEC

²⁶ E.g. Decisions 267/2022, 291/2022 of the NEC

²⁷ E.g. Decisions 261/2022, 263/2022, 272/2022 of the NEC

²⁸ Decisions Kvk.I.39.354/2022/5, Kvk.VII.39.408/2022/2. of the Curia

²⁹ Decision IV/878/2022 of the Constitutional Court

³⁰ See the website of the National Election Office [here](#)

³¹ T/367. Bill

received their postal voting packages, and therefore they could not exercise their fundamental right to vote. Objections against these violations were not successful.³²

In 2018, more than 4,300 postal votes were found invalid because the envelopes were damaged. The votes were sent from a region where Fidesz-KDNP is popular. Fidesz tried to appeal the decision finding those votes invalid but failed.³³ An amendment followed these events making the postal votes valid even if they are sent back in other than State provided envelopes, and even if they are somewhat damaged (votes sent in envelopes that are opened are still regarded as invalid). In 2022, an opposition observer delegated to the National Election Office noticed that some of the postal voter packages (the observer knew about 40 such packages) were placed in the envelopes by the Hungarian Post Office. This might have led to finding those votes invalid since they were damaged to some extent by someone and repacked by the Post Office. It was unclear for the opposition delegate whether those repacked postal voter packages were found invalid by the National Election Office, or they were counted among the valid ballots, because when the delegate had seen the repacked ballots they had not been opened yet, and later they disappeared, and the delegate was not informed about what had happened to the ballots. Legal remedy was requested twice with the aim of counting those repacked ballots as invalid. However, the remedial requests brought no result. At first, the National Election Commission³⁴ decided that the objection was premature. In the course of the second attempt for legal remedy, the Curia³⁵ said that it was already too late to prevent the results of the elections from becoming final, because an objection should have been submitted earlier (against the National Election Office's decision regarding the validity of the ballots).

5. Activities by state entities during campaign

Due to an amendment adopted at the end of 2018, those **candidates who are at the same time members of the government practically cannot be found to commit violations during the campaign**. According to the changes, activities arising from functions, determined by law, of local self-governments and other state entities shall not be considered election campaign activities.³⁶ This provision was widely used by the governing party coalition.

Examples:

Single member constituency candidates who were at the same time members of the government distributed laptops (EU funded project, 2021-2025 implementation period) for students in high schools and published about the events in media or social media³⁷, participated at openings of new school premises and communicated about this in the media or social media³⁸; Mr. Viktor Orbán published photos with children³⁹; a municipality published an issue of the local paper on local developments supported by the government and Fidesz candidates⁴⁰; emails were sent to people who registered for COVID-19 vaccination and gave consent for further contact about the opposition's alleged intent to enter the war in Ukraine and about the government's position on the referendum questions⁴¹ (*See also Section 2 Subsection (d), Section 8, Section 9 Subsection (b)*); National Chamber of Agriculture sent

³² See Sections 4-6 of the information notes by the Hungarian Helsinki Committee of [7 March](#), [23 March](#), and [2 April](#) at the hyperlinks, and e.g. Decision 261/2022 of NEC

³³ Decision Kvk.III.37.503/2018/6. of the Curia

³⁴ Decision 285/2022 of the NEC

³⁵ Decision Kvk.I.39.429/2022/3. of the Curia

³⁶ Section 142 of the Electoral Procedure Act

³⁷ E.g. Decisions 109/2022, 112/2022 of the NEC, and e.g. Decision Kvk.II.39.258/2022/7. of the Curia

³⁸ Decision 130/2022 of the NEC, 209/2022 of the NEC

³⁹ Decision 301/2022 of the NEC

⁴⁰ Decision 216/2022 of the NEC, and Decision Kvk.IV.39.364/2022/6. of the Curia

⁴¹ Decisions 113/2022, and 259/2022 of the NEC

letters to its members in support of Fidesz⁴². All these acts did not violate legally the principles of elections due to the amendment introduced at the end of 2018.

6. Campaign financing

The decisions of the National Election Commission and the Curia show that **there is no effective legal remedy against unlawful campaign financing and expenditure**. According to the National Election Commission and the Curia, objections may be raised only against violations of the principles of the electoral procedure under the Electoral Procedure Act, and violations of the Act on Transparency of Campaign Costs⁴³ may not be remedied in objection procedures even if the applicant believes that the violation of campaign cost rules caused at the same time violation of electoral procedure principles. Legal remedy is not available before reports on campaign expenditure by parties and candidates are submitted which are due after the elections. Fidesz filed most of its objections and judicial review applications against allegedly prohibited campaign financing on Facebook advertisements in favour of United Opposition candidates. All these objections were rejected with the argument that the National Election Commission does not have jurisdiction over campaign financing. **Lack of control and effective legal remedies during the campaign period led to enormous overspending on all sides**, however none of the over-expenditure can be compared to the **government's communication spending** which is excluded from the campaign as detailed in *Section 4*.

7. Evolution of the National Election Commission's interpretation during the campaign

Inconsistency leaning in favour of the government could be observed in the practice of the National Election Commission.

Examples:

The National Election Commission wrote in a decision of 23 March that political advertisements in referendum-related campaigns aim to influence voters to cast votes as the campaign organisers wish, and the possible votes may be 'Yes', 'No' or Invalid.⁴⁴ Only nine days later, the National Election Commission wrote in another decision on an objection against the public media and its failure to provide information on positions different from the government's on the referendum, that the invalid vote is an unlawful vote and therefore such a campaign is also unlawful.⁴⁵ Only another six days passed, and the National Election Commission took the position that casting an invalid vote is 'of course' lawful but the campaign for invalid votes is not.⁴⁶ (*See also Section 2 Subsection (d), and Section 9 Subsection (d)*)

When a Fidesz candidate and member of Parliament pulled out the power cord from the opposition's advertisement LED screen wall, the constituency-level election commission fined him 500,000 HUF (ca. 1,300 EUR), which was reduced to 20,000 HUF (52 EUR) by the National Election Commission on 3 April. The reasoning for the reduction was that the action had 'only' violated the principle of exercising rights in accordance with their purposes (i.e. the ban of abusing rights), and the offender had not committed other violations during the campaign in 2022.⁴⁷ The same day, the National Election Commission modified the decision of a lower level election commission against a United Opposition

⁴² Decision 300/2022 of the NEC

⁴³ Act LXXXVII of 2013 on Transparency of Campaign Costs related to the Election of the Members of the National Assembly

⁴⁴ Section [15] of Decision 193/2022 of the NEC

⁴⁵ Section [36] of Decision 270/2022 of the NEC

⁴⁶ Decisions 324/2022, 325/2022, 327/2022, 328/2022, 329/2022 of the NEC

⁴⁷ Decision 297/2022 of the NEC

candidate and cancelled the fine because the lower level commission justified the fine only by copying the text of the Electoral Procedure Act but did not explain in details the facts and reasons which made the fine necessary in the given case.⁴⁸ Five days later the National Election Commission fined two coordinator NGOs of the ‘invalid referendum campaign’ with the maximum amount (3 million HUF = ca. 7,800 EUR each), and 16 NGOs (including the two coordinators) who signed an open letter in January calling voters to cast invalid votes with 176,400 HUF (ca. 460 EUR) each using the same, very broad, general reasoning, only by quoting the law and not giving any valid reasoning, and the cases were also concerning only the principle of exercising rights in accordance with their purposes.⁴⁹ (See also Section 2 Subsection (d), and Section 9 Subsection (d))

8. Constitutional Court

19 constitutional complaints were submitted, upon three complaints the Constitutional Court annulled the decisions of the Curia, one was rejected on the merits, and 15 were struck out as inadmissible. Out of the 15 inadmissible cases, three were submitted by the Fidesz or Fidesz candidates, three by Opposition parties, two by NGOs, seven by private persons. The admissible but rejected case was submitted by the United Opposition about a candidate and Member of Parliament distributing laptops in schools.⁵⁰ (See also Section 5 above) One successful complaint was submitted by the Fidesz, two by the government. The Fidesz case was about when to start to count the deadlines for objection in case of a printed media outlet.⁵¹ The two government cases were about the emails sent to people who registered for COVID vaccination about the war, and on fake news about the opposition’s position on the war. The government claimed in its constitutional complaints that its fundamental right to fair trial was violated in the judicial review procedure. The Constitutional Court found that the Curia had not checked all the relevant facts, and it was part of the government’s task determined in law to write about public life in its information provisional email.⁵² (See also Section 2 Subsection (d), Section 5, and Section 9 Subsection (b)) Two inadmissible Fidesz cases were about campaign financing in connection to the scope of the Electoral Procedure Act.⁵³ (See also Section 6) One inadmissible Fidesz case was about whether the party delegated single member constituency election commission members may express their political views on social media during their mandate. The Curia ruled that it was the right of the party delegates, and the Constitutional Court did not find any possible violation of Fidesz’s fundamental rights which would have made the complaint admissible.⁵⁴ **The cases of the pro-government activists delivering the postal voting packages (See Section 4, and Section 9 Subsection (e)) and of fining the NGOs for their successful referendum campaign and then rejecting their judicial review on formal grounds (See Section 2 Subsection (d), and Section 9 Subsection (d)) were not found being in any possible violation of the Fundamental Law.**⁵⁵

The Constitutional Court could not guard the fundamental rights during this campaign period, as (similarly to the National Election Commission) it decided in favour of the government in the politically sensitive cases.

⁴⁸ Decision 289/2022 of the NEC

⁴⁹ Decisions 324/2022, 325/2022, 327/2022 of the NEC

⁵⁰ Decision 3131/2022 of the Constitutional Court

⁵¹ Decision IV/647/2022 of the Constitutional Court

⁵² Decisions IV/665/2022., and IV/712/2022. of the Constitutional Court

⁵³ Decisions IV/888/2022., and IV/930/2022. of the Constitutional Court

⁵⁴ Decision 3175/2022 of the Constitutional Court

⁵⁵ Decisions IV/878/2022., IV/984/2022., IV/985/2022. of the Constitutional Court

9. Politically sensitive cases

This Section lists some politically sensitive cases which had big publicity or strong connection to power. Some of the cases have occurred as examples in previous Sections, too.

(a) Objections against pro-government media

There were only a few objections submitted against television broadcasters (alleged violators: pro-government broadcaster, and public media), they were all rejected.

The Hungarian Helsinki Committee submitted an objection against a broadcaster airing the government's referendum-related political commercial⁵⁶. The commercial was aired as a 'social advertisement' but the Hungarian Helsinki Committee claimed that it was a political one, and the broadcaster had no right to air it.⁵⁷ The National Election Commission rejected the objection on formal grounds. The Curia ruled that the National Election Commission had been wrong when rejecting the objection on formal grounds but rejected it on the merits. According to the Curia, the TV advertisement did not suggest any point of view, only promoted voters' attendance at the upcoming referendum.⁵⁸

The TV2 television channel's news reporters posted a video endorsing Mr. Viktor Orbán⁵⁹ on the website of the channel's news. The National Election Commission decided that publishing the video fell under the editor's freedom as the channel is a commercial one, therefore the Electoral Procedure Act was not violated.⁶⁰

A party of the United Opposition submitted an objection because TV2 television channel invited in its morning show only pro-Fidesz interviewees during the campaign period. The National Election Commission rejected the objection because the applicant submitted evidence only on five morning shows in its submission even though the campaign period lasted for 50 days, therefore it was not proven who were the interviewees on the other days. The National Election Commission added that members of Fidesz may appear in TV shows for other reasons than promoting the Fidesz during campaign period.⁶¹

NGOs coordinating the 'invalid referendum vote' campaign submitted an objection against the public media because the public news channel M1 invited only pro-government interviewees and showed only the government's views on the referendum. The National Election Commission rejected the objection stating that the 'invalid vote' campaign is unlawful, and that other television broadcasters also did not show much of the NGOs' campaign.⁶²

⁵⁶ The video of the commercial is available [here](#)

⁵⁷ In any campaign period, social advertisements are supposed to be neutral from the point of view of party politics (e.g. 'there will be a referendum'), while political advertisements aim to popularise parties, candidates, or referendum responses (e.g. casting 'No'). Those TV channels which plan to air political commercials have to register at the National Election Commission at the beginning of the campaign period. The TV channel which breached the law according to the Hungarian Helsinki Committee did not register for airing political advertisements.

⁵⁸ Decisions 153/2022 of NEC, and Kvk.IV.39.300/2022/5. of the Curia

⁵⁹ See the video [here](#)

⁶⁰ Decision 268/2022 of the NEC

⁶¹ Decision 269/2022 of the NEC

⁶² Decision 270/2022 of the NEC

(b) Emails sent by the Government Communication Centre

The Government used the COVID-19 vaccine registration email list to share the government's point of view on the war in Ukraine along with smear messages about the opposition. The Curia changed the decision of the National Election Commission and ruled that the government's email sent to the email list of people who gave consent to receive government information (COVID-19 vaccine registration list) was unlawful when including statements about the opposition as the government's information provision should be visibly separated on government activities and on criticising the activities of parties and candidates. The government turned to the Constitutional Court claiming that the Curia violated its fundamental right to fair trial. The Constitutional Court nullified the decision of the Curia. *(See also Section 2 Subsection (d), Section 5, and Section 8)*⁶³

The government used again its data base collected when people signed up for the COVID-19 vaccination and it sent an email six days before Election Day with the subject 'information on the referendum', but the content explicitly called for casting 'No' votes at the referendum (which was the message of the government). The Hungarian Helsinki Committee, two NGOs (Amnesty International Hungary and Háttér Association) coordinating the 'invalid vote' campaign and some private persons submitted separate objections to the National Election Commission referring to the misuse of data, unlawful referendum campaigning by the government, and unequal chances for the NGOs to disseminate their campaign messages. The National Election Commission joined the objections, although the objections referred to different violations, and rejected all of them. The decision of the National Election Commission regarded the provision of information and referendum campaigning as constituting the same type of action despite clear, separate legal definitions. The National Election Commission ruled that the government had acted lawfully. The Curia⁶⁴ ruled that the emails were indeed campaign tools but did not find a violation of law claiming in its decision that (i) the applicant did not substantiate the alleged violation of the fairness of the referendum; (ii) the competing campaigns may reach through other channels the same people whom the email reached, and (iii) neither the National Election Commission nor the Curia has the competence to examine whether the usage of personal data had been lawful. The Curia did not react on some of the arguments of the applicant, and the reasoning according to which other campaign organisers (NGOs) may reach the same people (ca. 6,5 million voters) is unrealistic.

(c) Direct campaigning in violation of data privacy

The United Opposition used the campaign tool of text messages and phone calls to reach voters. Recipients claimed that they did not give consent to be contacted by the United Opposition. The National Election Commission decided upon objections against this direct campaigning of the United Opposition that the text messages and calls violated the Electoral Procedure Act, but the persons of the violators were unknown in almost all cases. *(See also Section 2 Subsection (e), and Section 3)* There were 18 objections or appeals before the National Election Commission, most of which were rejected on formal grounds or for the lack of sufficient evidence. *(See Section 2 on the difficulties applicants have to encounter when seeking legal remedy)* In six cases the National Election Commission found violations, but only in two cases⁶⁵ were the offenders identified (in these cases the objection was originally submitted against the telecommunication company, which, in its appeal probably provided information on the subscriber's data who made the calls, and the National Election Commission identified the subscriber as the offender based on this information).

⁶³ Decisions 120/2022 of the NEC, Kvk.V.39.269/2022/4. of Curia, IV/712/2022. of the Constitutional Court

⁶⁴ Decisions 259/2022 of NEC, and Kvk.III.39.398/2022/4. of the Curia

⁶⁵ Decisions 335/2022 and 345/2022 of the NEC

In February 2022, a member of the parliament and candidate and a Secretary of State handed over emergency call devices to an elderly supporting organisation. A few days before Election Day, several holders of such devices reported that the emergency call device suddenly started to play the recorded message of Mr. Viktor Orbán. The line could not be broken until the voice message was over. The holders said that they did not even know that the device could take incoming calls, since there was only one button which is connected to the ambulance. There was only one objection before the National Election Commission against this direct campaigning with the use of emergency devices which was rejected on formal grounds⁶⁶.

(d) Referendum campaign

As detailed above, the National Election Commission did not find a violation of the Electoral Procedure Act when the TV2 television channel broadcasted the government's political commercial as a social commercial (*See Subsection (a)*), when the public media news channel did not even mention the message of the 'invalid referendum vote' campaign (*See Subsection (a)*), when the government sent its referendum campaign message in a newsletter to people who registered for the COVID-19 vaccination and gave consent for future contact (*See Subsection (b)*). It has also been explained above how the National Election Commission used biased measures when deciding on the 'invalid referendum vote' campaign regarding the legal grounds and the fine, and that the Curia and the Constitutional Court did not find the application for judicial and constitutional review sufficient in three cases (*See Subsection (d), Section 2, and Section 7*), while in three cases the Curia quashed the decisions of the National Election Commission.⁶⁷

(e) Postal voting packages delivered by pro-Fidesz activists in Vojvodina

Hungarian Association of Vojvodina (VMSZ) Serbian party and/or Concordia Minoritatis Hungaricae (CMH) organisation obtained the postal voting packages of ethnic Hungarians in Serbia even when voters precisely requested delivery to their postal addresses. Activists of VMSZ (or CMH), which is well connected to Fidesz, delivered the postal voting packages. The activists were encouraging voters not to send back the ballots by post directly to the National Election Office but to take them to the VMSZ (or CMH) office. It has been reported that in some places the activists did not deliver the mail voting packages but contacted the voters via Facebook Messenger to go to the VMSZ (or CMH) office for obtaining the packages. In one reported case, the voter was told that he was not allowed to take the package from the VMSZ (or CMH) office but had to fill it out there and leave the mailing to the VMSZ (or CMH). These are serious violations of privacy, and of the principles of free and fair elections because VMSZ (or CMH) obtained addresses and names of voters without their consent, there is no guarantee that VMSZ (or CMH) delivered the voting packages also for those who are well-known non-Fidesz voters, and there is no guarantee that VMSZ (or CMH) did not open the filled-out votes and throw away or corrupted those which were cast for the opposition. The National Election Office claimed that they followed the procedures, and it must had been the Serbian Post Office which delivered the mails to the VMSZ (or CMH) instead of voters. The National Election Commission decided that the National Election Office handed over the mails to the Hungarian Post Office, the Hungarian Post Office delivered the mails to the Serbian Post Office, and therefore the Hungarian actors did not violate the electoral procedure rules. The Curia ruled in the same case upon review applications that the National Election Office does not have to follow the mails after handing them over to the Hungarian Post Office, and the National Election Commission does not have jurisdiction to examine the conduct of the Serbian Post Office. The complainant requested review of the Curia decision by the Constitutional Court. The Constitutional Court refused to examine the application on the merits stating that the application did

⁶⁶ Decisions 293/2022 of the NEC

⁶⁷ Decisions Kvk.V.39.421/2022/5., Kvk.V.39.422/2022/3., Kvk.VI.39.423/2022/6. of the Curia

not contain any reasoning why the Curia's decision would violate fundamental rights. The case ended without any courts finding violation.⁶⁸ (See also Section 4, and Section 8)

(f) Burned postal votes

A bag of partly burned, already filled-out ballots were found near Târgu Mures, Romania. The ballots were cast for the United Opposition and Mi Hazánk. The National Election Commission and the Curia rejected the objection and the application for judicial review on formal grounds because of lack of territorial jurisdiction.⁶⁹ (See also Section 4)

10. Recommendations

Based on the above analysis, the Hungarian Helsinki Committee has formulated recommendations, which it shared with the National Election Office, asking it to initiate the amendment of the Electoral Procedure Act by the Parliament. The following legal remedy-related recommendations were made by the Hungarian Helsinki Committee:

- Broaden the competence of the election commissions in order to establish breaches in cases where breaches of other laws (for example the Privacy Act⁷⁰) lead to violations of fundamental election principles.
- Broaden the territorial scope of the Electoral Procedure Act in order to ensure effective legal remedy against infringements of the election rules abroad.
- Allow persons seeking legal remedies to identify themselves with documents other than the personal identification number.
- The election commissions should have the right to continue a case *ex officio* even if the objection is not sufficient for an examination on the merits, if the gravity of the alleged infringement justifies so.
- Allow any voter to appeal those election commission decisions that concern their objections.
- Revoke the provision that excludes the actions of municipality, government and state officials from the scope of campaign activities.
- Strengthen the campaign financing and expenditure control even during the campaign period, so that violations could be challenged in the course of the campaign, and not only after it has been completed.
- Work out the regulation on campaigning for referendums.
- Provide the possibility to receive the postal voting packages in registered letters.

⁶⁸ Decisions 187/2022 of the NEC, Kvk.I.39.354/2022/5. of the Curia, IV/878/2022. of the Constitutional Court

⁶⁹ Decision 287/2022 of the NEC, and Kvk.VII.39.408/2022/2. of the Curia

⁷⁰ Act CXII of 2011 on Informational Self-Determination and Freedom of Information