

Amendments to the electoral laws after the Hungarian elections in 2022

Hungary held its general elections and a national referendum on 3 April 2022. Using its right prescribed in law, the National Election Office submitted a package of proposals to the Ministry of Justice on 20 June 2022. According to the National Election Office, the package is based on the evaluation of the elections taking into consideration the experience of the lower level election bodies, decisions of the National Election Commission, the Curia, and the Constitutional Court. Beside submitting the proposal, the National Election Office reminded Justice Minister Varga that the number of voters is 20% higher in seven single-member constituencies than the national average, therefore the boundaries of these constituencies should be amended until the end of 2024 according to law. A consultation between the Ministry and the National Election Office was also initiated with the purpose to increase possibilities of the e-administration in election related procedures as per the press release of the National Election Office. The Deputy Prime Minister submitted an electoral omnibus bill on 21 June. The omnibus bill was almost identical to the National Election Office's proposal. It was later adopted by the Parliament, and entered into force on 26 July 2022.

The bill introduced some positive, some neutral, and some severely negative changes from the perspective of the fairness of elections. Most of the neutral amendments aim at reducing the workload of election bodies and smoothing the election administration.

Positive amendments:

- The **territorial application** of the Electoral Procedure Act¹ is expanded. This amendment was necessary as both the National Election Commission and domestic courts concluded during this year's electoral campaign that they do not have the competence to decide on objections concerning breaches of electoral laws abroad because of the limited territorial scope of the legislation. This has led to a situation where serious violations happened without any legal consequences (e.g. a bag of half burnt, filled out mail ballots found in Romania prior to election day).
- The **National Election Commission** consists of elected and **delegated members**. Delegated members are appointed by party groups within the Parliament between two general elections, and during the election campaign by parties and by national minority self-governments standing for the upcoming general elections. Until the new amendments entered into force, there was a gap between the date of announcing the elections and the date of registering the party and the national minority lists standing for the elections. There were about two months when the National Election Commission consisted only of elected members having no delegated members. The welcome amendment makes it possible to have party delegated members in the National Election Commission at all times, also before the party lists standing for elections are registered, which leads to a somewhat more levelled power structure in the National Election Commission. However, note the negative amendment explained below also concerning the delegated members of the National Election Commission!
- Voters registered in the list of voters who requested a **mobile ballot box** may decide to vote at the polling stations if the mobile ballot box is not inside the station. The amendment is welcome because some voters complained that the mobile ballot box never arrived at their place of residence even though they registered for it. It could also happen that some people

¹ Act XXXVI of 2013

were registered for the list of voters requesting a mobile ballot box without their knowledge or intent because it is easy to falsify such a request.

- If the polling district's electoral register is divided because of the high number of **absentee voters**, one registry may contain a maximum of 800 voters. The maximum number of voters on the divided registry had to be limited because the high number of absentee voters may lead to long hours of waiting for the voters on Election Day, and to mistakes in the administration by the polling station election commission.
- Postal voters may request an additional **postal voting package** at any foreign representation or single-member constituency election office if they did not receive the package by mail until seven days before the Election Day. There were several complaints that voters did not receive the packages by mail and could not exercise their right to vote. Some embassies already ensured the additional packages for such voters, but it was more of a practical solution without legislation. Many people will not have access to embassies, consulates or election offices therefore further legal amendments may be necessary to ensure that all voters who wish to vote could exercise their rights.
- Registration as a national **minority voter** may be requested nine days before Election Day instead of the former 16 days. Longer deadlines may assist voters to decide without missing the opportunity to register. However, note the negative amendment explained below concerning national minority self-governments.
- The Labour Code² prescribes after the amendment the obligation of **employers** to grant the opportunity for their employees to vote on Election Day even if they are at work. The provision strengthens the right to vote.

Negative amendments:

- **The election of the Members of the European Parliament and the municipality elections will be held on the same day** in 2024. This amendment was submitted on the same day as the omnibus bill, but in a separate proposal on the eleventh amendment to the Fundamental Law. The amendment will have a severely negative impact on the chances of opposition candidates in both types of elections held on the same day. The two campaigns should have very different themes. Since the European Parliament elections and the municipality elections require different political strategies, the opposition parties would probably stand separately at the European Parliament elections but would have joint lists or other coordination at the municipality elections. The strategies are usually planned to be built on each other and on lessons learnt since the European Parliament elections are held in the spring, and municipality elections used to be held in October. Some well-known politicians probably planned to campaign at both elections. These strategies are useless since the two elections will be held from now on on the same day. The campaign financing rules are not detailed yet, but seeing the joint general election and referendum day of this year, abuses of the legal environment and uncertainty may be expected. The local municipality representatives would remain in force until October 2024 even though they might have been replaced already months before the end of their mandates which is just enough time to undermine the upcoming municipality.
- Those **parties without a parliamentary group representation** nominating candidates at the general elections and the **minority self-governments** having minority lists for the elections may **delegate members to the National Election Commission**. These delegated members **do not have the right to vote**. This differentiation between the rights of party delegated members is not justified, and weakens the chances of a fair procedure for parties that do not have a

² Act I of 2012

group in the Parliament but are running at the elections. These new provisions especially hit minority self-governments hard, as prior to these changes they could have voted in cases affecting minorities at least.

- Those voters not having a registered address in Hungary may use **only the personal identification numbers** just like those having an address in Hungary. Prior to the changes, the law provided the possibility to use the passport number if a voter did not have a personal identification number. This amendment suggests that there is **no intention to lift the strict administrative rules which often lead to rejections of voters' requests and objections on formal grounds**. Personal identification number is rarely necessary in any other procedure; many people do not even know where to find it and that it is different from the ID number.
- If the representative body or the general assembly of a national minority self-government declares its dissolution or was dissolved, the by-election's costs have to be paid in advance by the respective minority self-government. **In case the self-government does not have the budget to pay the costs of the by-elections, the given minority group will remain without representation until the next general elections of the national minority self-government representatives**. Until the amendment entered into force, the central budget paid the costs of such a by-election if the self-government did not have the financial means. Self-governments usually do not have appropriate funds. These recently adopted rules are in severe breach of the rights of minorities to self-governance and representation.

For more details see:

<https://helsinki.hu/en/akta/elections-and-referenda/>

Hungarian Helsinki Committee

<https://helsinki.hu/en/>

helsinki@helsinki.hu