



Hungarian Helsinki Committee



EÖTVÖS KÁROLY
POLICY INSTITUTE



HUNGARIAN CIVIL LIBERTIES UNION

Unconstitutional and illegitimate changes in the system of municipal representation

11 June 2014

The Hungarian Civil Liberties Union (HCLU), the Hungarian Helsinki Committee, and the Eötvös Károly Policy Institute opine that the modification of the municipal representation of the Hungarian capital, enacted on 10 June 2014, violates the basic principles of constitutionality and flies in the face of international norms and good practices on electoral rights. The new electoral law was accepted, in a procedure of urgency, after a mere 11 days after it was proposed by the governing forces with a motion of urgency. The recently codified modifications call into question the legitimacy of any future elections conducted according to the new rules of political competition, which have been unilaterally changed by the governing parties only a few months preceding the municipal elections, clearly adjusted to the outcome of the latest elections, and in violation of the equality of the right to vote.

0. Changes in the system of municipal representation

Act No L of 2010 on the Election of Self-government Representatives and Mayors, in force until 10 June 2014, provided for the direct election of all members of the Metropolitan Assembly, the body of municipal representation of Budapest. According to Article 16 and 17 of the Act, each voter of the 23 metropolitan districts of Budapest could cast his or her vote on one list, and the metropolitan lists were given mandates in proportion to the votes cast on the lists.

Members of the governing parties filed a proposal on May 30 2014 for the amendment of the relevant legislation¹, passed into law on 10 June 2014, after its first reading. According to the proposal, the Metropolitan Assembly would be composed of the Lord Mayor, the 23 mayors of the metropolitan districts and 9 representatives who obtain their mandate from compensation lists. Mayors and the Lord Mayor would still be elected directly by voters. Once the mayors were elected, compensation lists would be drawn. Only those nominating organizations would be entitled to establish a compensation list which had a candidate for mayor in more than half of the metropolitan districts. Those nominating organizations which had joint candidates running for the mayor's office in more than half of the metropolitan districts would have a joint compensation list.

Compensation lists will be given a mandate in the Metropolitan Assembly in proportion to fragmentary votes cast on candidates for mayors of metropolitan districts. Each vote cast on a candidate who runs for the mayor's office but loses will be considered a fragmentary vote. Further, an amendment to the bill establishes that in the distribution of mandates in the Assembly that are won as a result of votes that have been redirected to compensation lists, votes

¹ Bill No. T/146

will be weighed according to the population of the metropolitan district where they are cast.² Finally, the bill was also amended, as initiated by the governing parties, with a new restriction on majority decisions made in the Metropolitan Assembly. According to the restriction, proposals will be accepted in the Assembly only if they are accepted both by the majority of its members, and by metropolitan district mayors who represent the majority of the *population* of Budapest.³

1. Changing the rules of political competition too late

The next election of municipal representatives and mayors is taking place in October 2014: this time was specified in the 4th Amendment to the Basic Law of Hungary in March 2013.⁴ Yet the legislator decided a mere 4 months before the next municipal election to radically change the system of municipal representation in Budapest, the capital of Hungary and the last stronghold of the opposition. Thus participants of the political competition—parties and candidates—can only learn about the terms of political competition immediately before the election, and now they are forced to readjust their strategies before the election in October. Likewise, voters can learn only very late about the exact terms on which they can authorize their municipal representatives for the next 4 years.

The changes in the system of municipal representation, just enacted, substantively affect the chances of the parties and candidates running for office in the municipal elections. Given the current distribution of party preferences, smaller parties only have a chance to obtain mandates in the Metropolitan Assembly if they form alliances and establish joint compensation lists. In light of the new electoral system, they have to substantially revise their strategies, consider potential alliances, the price they have to pay in terms of votes lost if they join or refuse to join alliances. This makes it clear that electoral law underwent change way too late, already during the preparatory phase of the municipal elections of 2014.

Changing the voting system so late obviously neglects the recommendations and good practices for free and fair elections as highlighted by international organizations representing the constitutional values of rule of law and democracy. The recommendation of the Venice Commission as well its later interpretation⁵ make it clear that the most fundamental aspects of the electoral system—namely, the rules translating votes into mandates—should not be changed any later than 1 year before the elections they apply to. Modifying the system of municipal representation 4 months before the elections obviously ignores this recommendation. Furthermore, it neglects recommendations by the Organization for Security and Cooperation in Europe (OSCE) to the effect that electoral law should not be revised so late that participants in the elections do not have sufficient time to prepare for their participation.⁶ Both international recommendations are based on the principle that the outcome of an election is legitimate only if candidates and parties have a reasonable chance to prepare for the elections, in full awareness of the voting system in which they run for office. Since this condition is obviously not met, we cannot consider the Budapest municipal elections of 2014 fully legitimate.

² Bill Amendment No. T/146/9.

³ Summary Amendment No. T/146/16, 14.

⁴ The Basic Law of Hungary, Concluding and further measures, 7. (Cf. 4th Amendment to the Basic Law of Hungary, Article 20.)

⁵ European Commission for Democracy through Law (Venice Commission), *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report*, CDL-AD(2002)023-e, Opinion no. 190/2002, (Strasbourg, 30 October 2002), II.2. 64., 65., and: *Interpretative Declaration on the Stability of Electoral Law*, CDL-AD(2005)043 Study no. 348/2005. (Strasbourg, 20 December 2005), I., II.4.

⁶ Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Guidelines for Reviewing a Legal Framework for Elections*, III.C. (p. 6)

2. Adjusting the voting system according to previous election outcomes

We have good reason to assume that the legislator introduced the new modifications of the electoral system in full awareness of the outcome of the previous European Parliamentary (EP) elections held in May 2014, and adjusted the system in light of this outcome so as to ensure the victory of the governing parties, who dominate legislation, in the municipal elections.

Since European Parliamentary elections are held on a purely proportional representation basis, parties were not forced to form alliances in the EP election of 2014 in order to have a reasonable chance to win seats, but ran for seats on their own—unlike in the Parliamentary election of 2014, where the voting system incentivized parties to run jointly for mandates. Consequently, this year’s European Parliamentary election outcomes indicate rather precisely the support each party enjoys.⁷ Smaller parties, aware of the outcomes, declared their respective intentions to run on their own in the municipal elections too. Yet the proposed bill, which was introduced on 30 May 2014, only 5 days after the EP elections, now creates a system of municipal representation in Budapest, the last stronghold of opposition forces, which deprives opposition parties of any chance to win seats in the Metropolitan Assembly unless they form alliances with each other and jointly establish compensation lists as well as candidates for metropolitan district mayors.

Changing the voting system immediately following a previous election, in a way which clearly disadvantages opposition parties in light of the previous election outcomes, cannot but make the impression that the legislator introduced the changes in full awareness of the previous election outcomes, and in the hope of achieving specific results in the next election to which the new system will apply. This impression is confirmed by the fact that the legislator could not offer any relevant justifications for the change—such as a need to increase the transparency of the system of representation in the Metropolitan Assembly, and to increase the efficiency of the decision-making in the Metropolitan Assembly⁸—that were not known well before the EP elections of 2014.

3. The unilateral imposition of the voting system

Changes in the voting system were unilaterally decided on by the governing majority. Governing forces gave no indication that they had any intention to change the system of municipal representation that was established in 2010. These changes were enacted without the support of any of the opposition parties or independent MPs in opposition, and enjoyed the unanimous support of the governing forces. The modifications of the system of municipal representation hence reflect the exclusive will of a single participant of the political competition—namely, that of the governing forcing.

The legitimacy of future municipal elections is thus also greatly undermined by the fact that one competitor has imposed the terms of the electoral competition on all the other competitors. No elections can be considered fair if the terms of the electoral competition are not acceptable to all interested parties, and are not established as a result of an extensive and transparent debate. The Venice Commission and the OSCE have already warned the Hungarian legislator in their joint opinion on the law regulating the parliamentary election system that legislation regulating

⁷ An official summary of the EP election outcomes is available at the website of the National Election Office: http://valasztas.hu/hu/ep2014/877/877_0_index.html

⁸ Bill No. T/146, General Reasons

elections should be subject to wide consensus, and a result of inclusive, transparent deliberation which involves all interested parties.⁹

4. *Violation of equal suffrage*

The recent changes to the system of municipal representation also violate the equality of the right to vote. According to the new rules, the Metropolitan Assembly will consist mostly of the mayors of the metropolitan districts (23 members), and to a lesser extent, members who got their mandates from compensation lists (9 members), as well as the directly elected Lord Mayor (1 member). The political influence voters exert in voting for members of the Assembly varies considerably, given that metropolitan districts have varying population size. As noted above, another amendment, introduced by an MP representing the governing forces, has also been accepted to the effect that in the distribution of mandates in the Assembly that are won as a result of votes that have been redirected to compensation lists, votes will be weighed according to the population of the metropolitan district where they are cast. Thus the inequality of the right to vote is not so conspicuous in the case of votes that count toward seats won from compensation lists.¹⁰ Yet this does not reduce the inequality inherent in the way metropolitan district mayor members obtain a mandate in the Metropolitan Assembly. 23 out of 33 seats shall still be obtained in an unequal election system.

It is a severe violation of equal suffrage that each metropolitan district elects exactly one member to the Metropolitan Assembly—namely, its own mayor. Metropolitan district mayors are elected by districts which have extremely varying population sizes. For instance, District 23 has a population of 21,155, whereas District 11 has a population of 143,165, almost 7 times the population of District 23, according to the latest available census data.¹¹ (The example is far from exceptional, as the census data show.) The new regulation turns metropolitan districts into electoral districts for the purposes of electing the members of the Metropolitan Assembly. Yet as electoral districts, they should either have approximately identical population size,¹² or delegate a number of representatives to the Assembly proportionate to their population. The governing parties did not even make an attempt to remedy the vast inequality of political influence inherent in electing metropolitan district mayor members of the Assembly.

No remedy to this inequality can be found in one of the last amendments to the bill, coming from the governing parties, which introduces a new restriction on majority decisions made in the Metropolitan Assembly. According to the restriction, proposals will be accepted in the Assembly only if they are accepted both by the majority of its members, and by metropolitan district mayors who represent the majority of the *population* of Budapest.¹³ This restriction is unsatisfactory as a remedy to unequal suffrage in regard to members of the Metropolitan Assembly for at least 3 reasons.

First, given the immense variation of population size between metropolitan districts, it is possible that mayors aggregately representing a minority of Budapest's population veto a decision that is

⁹ *Joint Opinion on the Act on the Elections of Members of Parliament of Hungary*. Adopted by the Council for Democratic Elections at its 41st meeting (Venice, 14 June 2012) and the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012), CDL-AD(2012)012, Opinion No. 662 / 2012, 13., 52.

¹⁰ Bill Amendment Proposal No. T/146/9., 2 June 2014, 1.

¹¹ Central Statistics Bureau [Központi Statisztikai Hivatal], 2011. *Népszámlálás* [Census of 2011], 3. Területi adatok [Regional data], 3.1 Budapest, *Table no. 4.1.1.1.*, p. 484.

http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_03_01_2011.pdf

¹² The Hungarian Constitutional Court has repeatedly reaffirmed this principle: votes should have approximately the same weight in electing representatives. See, e.g., decisions 809/B/1998., 22/2005. (VI. 17).

¹³ Summary Amendment No. T/146/16, 14.

accepted by mayors aggregately representing the majority of the population of the capital. Therefore, the amended decision-making procedure does not even guarantee the equality of voters' influence on the decisions made in the Assembly, since it is not only the minority that needs the majority's assent, but also the majority that needs the minority's assent to decisions made in the Assembly.

Second, equal suffrage does not merely require that voters have an equal influence on the decisions made in representative bodies. Equal suffrage requires, in addition, that voters have equal influence on electing their representatives. Yet none of the amendments that aimed to increase the proportionality of decision-making *within* the Metropolitan Assembly can remedy the problem that there are extreme inequalities among citizens in electing their delegates *to* the Assembly.

Third, the amendment completely ignores that the function of representative bodies—including the Metropolitan Assembly—is not limited to decision-making: it is equally important that they also serve as fora of public deliberation. The equality of political influence required by equal suffrage also extends to the deliberative functions of representative bodies. Yet equal influence on the deliberation is made impossible, since mayors representing much less populated districts will obviously participate in debates and preparatory deliberations on a par with mayors representing a significantly higher number of citizens. Thus the requirement of equal suffrage as it reflects on deliberation in representative bodies is utterly neglected.

All of the above show that it is impossible to guarantee the equality of the right to vote as long as metropolitan districts serve at once as electoral districts in electing the Metropolitan Assembly, and metropolitan district mayors represent the population of Budapest in the Assembly. Any voting system—including the one just enacted—which includes district mayors as representatives in the Assembly, violates the requirement of equal suffrage.

In conclusion, the recently enacted changes to the system of municipal representation in Budapest radically undermine the legitimacy of the municipal elections in Budapest in 2014 or in any future election organized according to these regulations. Changing the voting system only a couple of months before the elections calls into question the fairness of the municipal elections of 2014. The adjustment of the voting system to the outcomes of the previous election, and the unilateral imposition of the changes, as well as the severe violation of equal voting rights violate fundamental procedural and substantive constitutional principles.