Local Elections in Hungary: the Results in Context

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14.10.2019 doi: 10.17176/20191014-232456-0

On October 13, 2019 local elections were held in Hungary. Even though the opposition parties had to fight an uphill battle, they achieved significant success not only in Budapest, but also in other big cities. The aim of this article is to put the results in context in order to give a more accurate picture of the current Hungarian situation. The first part of this contribution briefly discusses the reform of the system of local government implemented after 2010. Secondly, it summarizes the most important changes of the electoral system put in place in the last few years. It also provides an overview of the most significant judicial decisions related to the electoral procedure and the political campaign. Finally, the article answers the question whether the strategy of the opposition parties to join forces in the campaign was successful in light of the results.

The system of local government diminished

Shortly after the 2010 election, the Fidesz-KDNP government reformed the system of local government. Unfortunately, these legislative and political measures went far beyond reasonable changes and created a radically centralized system leaving little more than a breath of autonomy and power for municipalities. The Congress of Local and Regional Authorities of the Council of Europe came to the conclusion that these reforms *„led to a deterioration of the legislative framework on local and regional issues in Hungary"*, a situation which is *"not in compliance"* with the European Charter of Local Self-Government.

The new Fundamental Law says little about local governments, consequently the Venice Commission could raise only a few concerns, but it is clear that the level of constitutional protection has decreased: the principle of local self-government has been omitted from the text, the central government's supervisory power has been strengthened and municipalities have been deprived of their constitutional right to turn to the Constitutional Court for the protection of their prerogatives. The implementing legislation, on the contrary, brought about a lot of radical changes. For example, municipalities were stripped of their most important tasks in the field of public education, health care, social, cultural and public utility services, together with their property rights over the necessary infrastructure. Local governments have also become highly dependent financially on the central government making their successful operation conditional on their political relationship with the governing parties.

In sum, the constitutional protection, the competences and the financial autonomy of municipalities, and consequently their ability to act as a counterbalance to the power of the central government has been reduced to a significant extent, and nothing shields them from further centralization. Nevertheless, municipalities led by opposition parties can still weaken the monolithic power structure created by the Fidesz-KDNP majority.

Electoral rules reshaped

In 2010 the Act on municipal elections was introduced in the form of a private member's bill in order to circumvent the rules on preliminary consultation applicable in the case of government initiatives – a trick which has become common practice in the Hungarian parliament to avoid negotiations with the relevant stakeholders. Most of the important changes were disguised as mere technicalities, but in fact they had a serious impact on local representation. Without entering into the complicated details, two discernible trends are worth noting. Firstly, the reduction of the number of seats in local assemblies limited the sphere of interaction between the voters and their representative body. Secondly, the new rules on standing for election and the weakening of the proportional elements

of the system put the smaller (opposition) parties and civil organizations in a disadvantageous position and made party affiliation of candidates more important also in electoral units traditionally led by politically independent officeholders.

In addition, the rules on the election of local assemblies of Budapest were amended only four months before the 2014 municipal elections, well within the one-year freezing period recommended by the Venice Commission. This year the governing parties were planning to abolish the direct election of the chief mayor of Budapest when they realized – based on the results of the 2018 parliamentary elections – that their public support in the capital was decreasing. This plan was only abandoned once the incumbent chief mayor, Mr. Tarlós – who is more popular in Budapest than the Fidesz-KDNP coalition – decided to run for office again, as it was (accidentally?) admitted by himself in an interview.

Legal challenges

In Hungary the electoral procedure and the campaign are regulated by a single electoral code applicable to both parliamentary and local elections (which is separate from the act on local elections mentioned in the previous section containing only substantive rules). Since the electoral code and the campaign tactics employed by the governing coalition remained essentially the same, the main findings of the OSCE/ODIHR final report on the 2018 parliamentary elections are still valid, see e.g. the exclusion of paid political ads from public tv channels, the biased coverage of candidates in the public media, the lack of distinction between government communication and the campaign of the governing parties (as candidate organizations), the shrinking possibilities for opposition parties to reach out to the voters and so on.

What is more, some of the court judgments delivered in 2018 election cases going against the political will of the government were simply "overruled" by the Fidesz-KDNP dominated National Assembly by way of amendments to the electoral code. For example, the Supreme Court held in case no. Kvk.IV.37.240/2018/2. that signatures for nomination may be collected in parking lots of supermarkets, a possibility which has been ruled out by subsequent amendments.

Another issue persistent in the campaign is what the 2018 OSCE/ODIHR report called 'a pervasive overlap between state and ruling party', often manifested in government propaganda during the campaign. Before the 2018 elections the Supreme Court held in its judgment no. Kvk.III.37.421/2018/8. that the government violated the electoral rules when it displayed a billboard supporting the campaign messages of the Fidesz-KDNP candidate parties because it failed to show the pressing need to communicate that particular message to the citizens during the campaign. As a response to this line of case-law the electoral code was amended in a way to explicitly exempt government communication from judicial review (it can no longer qualify as campaign activity).

Yet another problem was the coverage of mayors and other municipal officials seeking reelection by local newspapers in which political campaign messages were disguised as neutral information published for public interest. Again, the amendments enacted after the 2018 elections made the litigation of such cases more difficult since the overrepresentation of incumbent officeholders in a local newspaper may only constitute a violation of the new law if it happens in two consecutive issues. Nevertheless, even under the amended legislation the violation of the electoral code was established in some instances.

Often, however, the National Assembly did not have to do anything, because the packed Constitutional Court was willing to do the dirty job. In constitutional complaint procedures the justices overturned some important Supreme Court decisions and these rulings led to unfortunate turns in the jurisprudence.

In a 2019 case (Kvk.III.38.043/2019/2) the Supreme Court concluded, after having analyzed the most recent jurisprudence of the Hungarian Constitutional Court, that the principle of neutrality of state organs in the political campaign – borrowed from the case law of the German Federal Constitutional Court and applied by Hungarian ordinary judges ever more stringently – is no longer part of the Hungarian legal order. In that specific case the issue was whether cabi-

net members and the Prime Minister can say during the campaign that cities would not get government funding if they do not choose the "right candidates" backed by the governing coalition. Despite the manifestly unlawful and unconstitutional behavior of the government, the amendments to the electoral code and the case law of the Constitutional Court makes it impossible to successfully litigate these cases.

In a very recent case (no. IV/01599/2019) the issue before the Constitutional Court was whether the amendment to the electoral code making it more difficult to display campaign posters in spaces open to the public by requiring the permission of the private owner or the administrator of the public property is contrary to the Fundamental Law. Mostly the opposition candidates running for office in smaller cities were affected negatively by this law given the dominance of the Hungarian government in the media sector. The Constitutional Court did not find the law unconstitutional but concluded – as it often does in politically salient cases – that the legislator's failure to put in place adequate regulation constituted a violation of the Fundamental Law and called upon the lawmaker to remedy this unconstitutional situation within a set time-limit. We are eager to see how the National Assembly led by the Fidesz-KNDP will remedy this unconstitutional situation.

Finally, let us highlight some positive trends in the jurisprudence as well. As a consequence of the Constitutional Court's decision no 26/2019., delivered during the 2019 European elections, candidates' right to a fair hearing and to present their arguments before ordinary courts enjoy a higher level of protection, bringing the Hungarian practice closer to the recommendations of the Venice Commission. In another case (no. 1.Pk.20.435/2019/3.), the Miskolc District Court halted the redistricting of the city when it noticed that the changes would constitute gerrymandering putting the opposition parties in a disadvantageous position. The judge ruled that the public notary in charge has to give a reasoned decision on redistricting to prevent arbitrariness.

A successful cooperation of the opposition parties?

Ever since the entry into power of the Fidesz-KDNP government in 2010, the political opposition has been fragmented. Because of their (seemingly) insurmountable differences and lack of organization, opposition parties did not manage to successfully join forces at previous elections. This time, however, the governing coalition was confronted by a broad alliance ranging from the socialists through the millennials to the far-right. "Divide and conquer!" was the logic followed by the Fidesz-KDNP coalition when it reshaped the electoral rules. Accordingly, mayors were elected in a one-mandate relative-majoritarian (!) system, just like most of the representatives of local assemblies in towns having a population higher than 10.000 people, where a mixed system is in place with a weak compensatory branch. Therefore, only a close cooperation between the opposition parties had a realistic chance to defeat Fidesz (which has not been supported by the majority of the population but has remained the strongest party in relative terms in past years). Consequently, the candidate for chief mayor of Budapest and candidates running for mayor or local assembly in the most important cities were backed by all the opposition parties.

Based on the preliminary results published on the website of the National Elections Office (the final and official figures will come out this Thursday), the most important information may be summarized as follows (see in English). The turnout was relatively high: approximately 49% of the voting population in the whole country exercised their right to vote.

Budapest has been conquered by the opposition. The new chief mayor, Gergely Karácsony was backed by the opposition alliance and got 50.86% of the votes. In 14 out of 23 districts the freshly elected mayor comes from the opposition. The metropolitan assembly has a new majority: 18 representatives were opposition candidates, 13 are members of the Fidesz-KDNP coalition and there are 2 independents.

The opposition took over several important towns outside of Budapest as well. In Hungary we have 23 big cities called "towns having county rights", 10 of them

elected a mayor supported by the opposition political forces. However, in all the county assemblies the majority of mandates remained in the hands of the Fidesz-KDNP governing coalition.

After 9 years this is the first election which can be qualified as a defeat for the governing coalition, so no wonder that the opposition parties are in a state of euphoria right now. Make no mistake, outside of Budapest the Fidesz-KDNP remained the strongest political force. However, these results show that cooperation between the opposition parties has been a successful strategy meaning that from this moment on they will have a lot more professional politicians paid by the state and they can start to build up local centers of resistance.

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SUGGESTED CITATION

Kazai, Viktor Z.; Mécs, János: Local Elections in Hungary: the Results in Context, Verfassungsblog, 14.10.2019, doi: 10.17176/20191014-232456-0.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20191014-232456-0.