

Ivan Halász

The Political Integration of the Migrants in the Hungarian Electoral System after 2010¹

ABSTRACT

The paper presents the changes of the constitutional design of the Hungarian political community, in particular complex reconstruction of the Hungarian electoral system between 2011 and 2013, following the adoption of the new Hungarian Constitution.

Keywords: migrants, electoral system, political integration

¹ This paper was prepared with the support of the International Visegrad Fund (IVF VUSG Project No. 60900011). The IVF supports the participation of author in the IACL Oslo Congress 2014 too.



Ivan Halász

Polityczna integracja imigrantów w węgierskim systemie wyborczym po 2010 roku

STRESZCZENIE

Artykuł przedstawia zmiany konstytucyjnego kształtu węgierskiej wspólnoty politycznej, w szczególności kompleksowe przekształcenia węgierskiego systemu wyborczego w latach 2011–2013 dokonane po przyjęciu nowej węgierskiej konstytucji.

Słowa kluczowe: migranci, system wyborczy, integracja polityczna



1

INTRODUCTION

The constitutional design of the Hungarian political community has changed very deeply in the last few years. The adoption of the new Hungarian Constitution in 2011 was very important in this process. On 18 April 2011, the Parliament of the Republic of Hungary adopted a new Fundamental Law of Hungary, in principle, a new constitution of the country. Its creation was preceded by an interesting political development which started in the parliamentary elections of April 2010, which were won by the coalition of the Young Democrats Association (the Hungarian Civic Association – FIDESZ – MPSZ) and the Christian Democratic Peoples' Party (KDNP). They won by two-thirds and that is a constitutional majority. The new right-wing, ideologically national-conservative and Christian parliamentary majority, quite soon decided to begin the process of preparing a new Fundamental Law of the State. The process of constitution-making was followed by a complex reconstruction of the Hungarian electoral system between 2011 and 2013.

A very important part of the new Fundamental Law from the point of view of the redefinition of the Hungarian political community is the preamble. This, officially, is named as „National Avoval”. In the preamble, the issue of the Hungarian nation and nationalities living in the country were also developed in an interesting way. This essential document, speaking in the name of the members of the Hungarian nation and assuming responsibility for every Hungarian, expresses in its first part what the Hungarians are proud of. Certainly: „WE, THE MEMBERS OF THE HUNGARIAN NATION, at the beginning of the new millennium, with a sense of responsibility for every Hungarian, hereby proclaim the following: ...” Then the document promises that the spiritual and mental unity of the nation, which was separated in last century, will be preserved. In this part, the preamble declares: „The nationalities living with us form part of the Hungarian political community and are constituent parts of the State”.

The notion „Hungarian political community” is, in this form, new to Hungarian constitutional history. In this sense, there was a certain change compared to the text of the first articulated version of the Fundamental Law of March 14. It considered the nationalities and national groups to be a part of the Hungarian nation, that is, in principle, it also formulated the concept of a political nation alongside the cultural-language concept of the

Hungarian nation. The latter concept indirectly dominated also in the constitutional text of 1989. The ethnically perceived nation has a role there only in relation to the foreign Hungarians. It was changed at last minute and the originally politically and ethnically perceived concept of a „nation” became more ethnicized although the conclusion of the document already speaks in the name of the citizens of Hungary.

A gesture towards the nationalities is also the fact that the „National Avowal” promises protection of their language and culture, which is also a change compared to the original version of the Fundamental Law Draft from 14 March which promised similar protection only for the Hungarian culture, language and the natural and man-created values of the Carpathian Basin.

2

THE FORMER ELECTORAL DEVELOPMENT OF HUNGARY AND MIGRATION ISSUE

New, democratic electoral legislation was enacted in the Central European region during the time of the 1989/1990 transition, but the regulations underwent major amendments over the last quarter of a century. One of the main reasons was that the legislator introduced ballots at additional levels – particularly the European elections and regional municipal elections. However, the depth and, in particular, the frequency of changes applied to the existing, traditional types of elections (i.e. parliamentary and local municipal elections) and varied a great deal from country to country.

The Hungarian electoral system was changed less frequently than the Polish system. That does not mean that there were no amendments at all, but until 2011, they were not sufficiently major to change the identity of electoral legislation. That only occurred in 2011 and then in 2013. First, parliament adopted the new (material) Act on Parliamentary Elections, which permitted Hungarian citizens without residential addresses in Hungary to vote on the party lists, and introduced a single-round system which resembles the British model in respect of the MPs elected in individual constituencies. Then, in 2013, a new Act on Electoral Procedure was enacted, which contains the common „technical” rules regulating elections at all levels. So while in Poland, all the material and procedural electoral rules are stipulated in a single code, in Hungary, a heterogeneous situation has

developed – the material legislation is enacted in individual electoral laws while procedural rules are concentrated in a single law that is in effect an electoral code.

Migration is always a two-faced affair – it is composed of immigration and emigration. Naturally, the two processes are closely related. At the same time, both have an effect on the actual make-up and operation of the political community. This is usually reflected in legal regulations. But the effects of emigration and immigration take different forms. The political (electoral) integration of immigrants extends to the local and sometimes to the regional level as well. At present, the question of whether expatriates without a residential address in Hungary – those who chose to emigrate as well as those who just happen to be abroad at the time of elections – should be allowed (everywhere) to vote is largely raised only at the level of national (and perhaps European) parliamentary elections or referendums.

3

THE HUNGARIANS LIVING ABROAD AND THE QUESTION OF EXTERNAL VOTING

The political integration or possibly reintegration of emigrated expatriates² and (or, more precisely, their inclusion of a particular sort in the political community) raises less questions of principle and more of technical problems, at least as long as they retain their original citizenship. On the one hand, the majority of European states – and, as of now, all of the Visegrád Four³ – do not exclude their citizens from the parliamentary electorate when they no longer have registered residential addresses in the country. In effect, the national franchise is retained automatically, so to speak, as long as citizenship of the country is retained. Central European countries do not apply the Anglo-Saxon solution of disenfranchising their citizens after a certain period of time living abroad (for examples, see the regulations of Great Britain, Australia, Canada or New Zealand). Technically, however, the issue raises several problems – for instance: is the state obliged to assist

² And transborder kin-minorities with citizenship of the kin-state.

³ About this „trade mark” see: J. Marušiak et al., *Is Visegrad Still a Central European „Trade Mark”?*, Bratislava, 2013.

its citizens in expressing their political views, i.e. is it obliged to go after them with a possibly virtual ballot box, or should it opt for a more neutral approach, letting those wishing to vote arrange it themselves? That would mean that while voters are not required to establish residency in the country, they would have to be in the country on election day. On the other hand, should the state decide to make it easier for those living abroad to take part in the elections, decisions need to be made about the method (the exact form of voting abroad that is to be permitted), the guarantees and the funds the state is prepared to invest in doing so. The general rule is also valid here: the more comfortable and safe a solution is, the more it costs.

At present, all Central European countries allow their citizens living abroad to vote in parliamentary elections in some form or another, while some of them also permit voting in direct presidential elections. But that has not always been the case, and the individual national systems took different routes to the present state of affairs. The Polish have the oldest traditions in the area, voting was already permitted at Polish embassies and on boats sailing under the Polish flag during communist dictatorship, although that option, which had been in existence since the 1950's, was primarily targeted not at Polish expatriates, but at officials, soldiers and students living abroad, and possibly tourists.

Hungary is a special case. Prior to 1989, there was no possibility of voting abroad, and neither was it introduced by the new, democratic electoral regulations. The Hungarian Constitutional Court, on the other hand, began to consider the voting rights of citizens living abroad very shortly after the transition. In 1990, the Constitutional Court ruled⁴ that the part of Article 2, paragraph (4) of Act no. XXXIV of 1989 on the Election of Members of Parliament that stated that „persons abroad on the day of voting” were prevented from voting was unconstitutional, and therefore it rescinded it. The provision remained in effect with the following wording: „(4) Persons without a permanent or temporary residence in Hungary are prevented from voting”. This was made possible by the radically amended constitution of 1989, which made the exercise of the franchise conditional on having residency in Hungary.

⁴ See Constitutional Court Resolution no. 3/1990 (III. 4.) on the exercise of the voting rights of Hungarian citizens abroad.

This legal situation was valid during 24 years. The Hungarian parliament created the opportunity for Hungarian citizens living abroad to vote in the parliamentary elections only in the electoral reforms of 2011 and 2013. In fact, Hungarian citizens who only left the country for shorter terms and retained their residency in Hungary have been permitted to vote as Hungarian foreign representations since 2006, but not many electors actually took advantage of that opportunity in 2006 or 2010.

The situation was radically transformed after 2010, when the FIDESZ-KDNP conservative coalition won the parliamentary elections and achieved a two-thirds majority in the House. That was sufficient to allow them to create a new constitution, and the new majority used that entitlement and adopted the country's new Fundamental Law in 2011. The Fundamental Law no longer contained the provision limiting voting to those citizens of the country who have residency in the country as well. In keeping with its promise, the government coalition introduced a simplified nationalisation procedure allowing Hungarian-speaking applicants with Hungarian ancestors to get Hungarian citizenship even if they do not intend to settle in Hungary. Going back on their pre-election promises, the coalition also allowed Hungarian citizens resident abroad to vote in the parliamentary elections in the new electoral law enacted at the end of 2011.

However, the franchise of external Hungarian citizens, and its exercise, differs from those resident in Hungary in two respects. Firstly, external Hungarian citizens may only vote after prior registration, which is a logical requirement⁵. The other difference is that in the Hungarian system, in which all electors have two votes (one to cast for an individual candidate in an individual constituency, and one to cast for a party or minority representative of their preference), those not resident in Hungary only get one vote – they may only vote for one of the organisations on the national party list.

With that reform, Hungary joined the ranks of the majority of European states in which voting in the parliamentary elections only requires citizenship. However, the introduction of the new model caused heated, passionate political dispute between the government side and its left-wing and liberal opposition. The latter accused the government coalition of using the reform

⁵ The government also wanted to introduce preliminary registration for citizens living in Hungary, but in 2013 the Constitutional Court pronounced that plan unconstitutional.

to get new voters, because preliminary surveys had predicted that the majority of the new external electors would support the conservatives. The prediction was in fact borne out by the results of the 2014 general elections: almost 95% of the citizens voting by post voted for the FIDESZ-KDNP block⁶.

The other objection, more technical in nature, concerned the issue of why voting by post, a novelty in Hungarian law, had not been also extended to Hungarian electors who maintained their residency in Hungary (and hence actually have two votes), but were abroad on election day and were entitled to vote at embassies. (Naturally, they also had the option of coming home for the elections and vote in the constituency of their residency). Although that category includes tourists, students, diplomatic envoys, soldiers on foreign missions and similar groups, the decisive majority is formed by the new Hungarian migrants who left Hungary for various periods in search of work, most of whom are working in a member state of the European Union or in North America. That is to say, this group is a new Hungarian diaspora, or at least an embryonic precursor to it. The size of that group is estimated at two hundred thousand people, but it may be as high as four hundred thousand. It is difficult to establish their number more accurately because many of them commute, and the majority have not given up their residency in Hungary. Although Hungarian legislation prescribes that they do so if they spend a longer period abroad, failure to do so is not sanctioned, and most people do forget to take that step.

It was during the election campaign that the opposition began to object to that category of electors not having the right to vote by post. They started with the premise that the number of Hungarians working abroad has increased most drastically during the last three to four years, and that therefore these people were most likely to be against the current right-wing government, whose rhetoric included occasional anti-EU elements. That would have meant that their votes would have improved the chances of the opposition parties. Therefore the opposition disapproved of the fact that members of that group could only vote at embassies, as that is generally more costly than posting a vote. In actual fact, the number of people who indicated their wish to do so was below expectations: only about 28 thou-

⁶ Levélszavazás. http://www.valasztas.hu/hu/ogyv2014/853/853_0.html Majority of postal votes came from Romania – 58 330 voters have permanent address here. The number of voters with Romanian residency is higher, because the majority of voters with e-mail address has origin in Romania too.

sand citizens⁷. That number is a lot smaller than the 190 thousand of the almost half a million recently nationalised citizens who had registered to vote. On the other hand, it is true that the smaller group got two votes, unlike the larger one.

The equality of electors was the issue that was raised very often in the professional debate around the new electoral system. A part of the profession found it objectionable that in effect, two categories of citizens had been created – those with one and those with two votes⁸. Certain specialists held that the solution is inconsistent with previous rulings of the European Court of Human Rights at Strasbourg⁹. The best arguments for the distinction were based on the platform of proportionality. It was as if the legislator had wished to use the solution to distinguish between those who actually live in the country, pay taxes and contributions and would take the consequences of the decisions of the representative bodies they create on the one hand, and those to whom all of that does not apply but who, as citizens, can return to live in Hungary at any time under the constitution, and who, as it were, may wish to cast their votes to influence future conditions in the country.

The government coalition supported the introduction of the external franchise by the argument that no distinction should be made between citizens, particularly not with respect to the exercise of their political rights. According to the government, the inclusion of those living abroad in the political community was consistent with global and European trends. In addition, some government politicians also used symbolic arguments – they claimed that this was a way of achieving the political unity of the nation without any territorial changes, and that the exercise of the franchise could

⁷ 28,167 citizen registered for 2014 election of MPs, but only 24,119 citizen voted (85,65 %). The biggest Hungarian constituency is living and voting in Brussels (1675 voters), Munich (2580 voters), London (4435 voters), Bern (1196 voters), Berlin (1137 voters), Vienna (1131 voters), Haag (968 voters) and New York (680 voters). Küllépviselési szavazás http://www.valasztas.hu/hu/ogyv2014/859/859_0.html.

⁸ During the parliamentary debate of the electoral bill in 2011, certain government MPs actually raised the idea of giving external citizens two votes as well, in line with all other Hungarian citizens. The specific solution proposed was to set up a few special individual constituencies in which only external nationals would vote for the candidates. Despite the fact that Chairman of the House László Kövér supported the model as well, the majority of the parties in government finally rejected the plan.

⁹ A. Jakab, A külföldön élő magyar állampolgárok választójoga egyenlőségének kérdése a választási törvény koncepciójában, *Pázmány Law Working Papers*, No. 38/2011, p. 3. See <http://plwp.jak.ppke.hu/hu/muhelytanulmanyok/20111/45-jakab-andras-a-kuelfoeldoen-elo-magyar-allampolgarok-valasztajoga-egyenlosegenek-kerdes-a-valasztasi-toerverny-koncepciojaban-nr-201138.html>.

have a purpose in forming national identities in the Hungarian communities living outside Hungary's borders.

The issue of the exact way in which Hungarian citizens living abroad would vote took some interesting turns. The matter was actually not decided in 2011, but only in 2013, with the enactment of the new Electoral Procedure Act. The main problem was that a number of neighbouring states are rather unfriendly towards the Hungarian policy on citizenship, particularly the fact that now, Hungarian citizenship can be obtained without settling in Hungary. Incidentally, that practice is not unique in the Central European region, in fact, it has almost become a fashion. Yet three neighbouring countries, Austria, Slovakia and Ukraine specifically prohibit double and multiple citizenship.

For that reason, and, partially, to ensure that the Hungarian citizens living in those countries do not put their safety and their legal status there at risk by exercising their right to vote, a rather complicated voting model was created for external citizens. Officially, the Hungarian legislator moved to introduce voting by post, but the model was augmented with components of voting at embassies and in Hungary as well. In practice, that meant that Hungarian citizens living abroad first registered in the electoral register, then requested a postal package that included the voting-papers. They could request to have the package delivered to their home addresses, but they could also pick them up at a Hungarian embassy, or in Hungary. A similar solution was adopted for voting itself. In the optimal, default case, electors would send their votes by post, but they could also take them in person to the embassy in their country, which would forward the letters to Budapest, or they could also travel to Hungary on election day (or a few days earlier), and deposit the envelopes containing their votes at the electoral office in advance. It is important to note that the votes cast in that way at the embassies are not mixed in with the votes cast in the ballot box there, as they would be evaluated using a different process. The votes of external citizens are counted up by the National Electoral Office centrally, in a standardised manner¹⁰.

It is evident that the new Hungarian electoral system takes a very large number of criteria and multiple interests into account. As a result, it is quite

¹⁰ The results of the last Parliamentary Election (6th April 2014) are very interesting from this point of view: the absolute majority of the Hungarian external voters registered as „postal constituency” (without residency in Hungary) preferred the voting by embassy (111,268 voters). Only 43,056 persons sent their vote by post. 4330 voters left their vote in the polling station on the territory of Hungary. Levélszavazás. http://www.valasztas.hu/hu/ogyv2014/853/853_0.html.

complicated, particularly if we also take into account that the national minorities living in Hungary also elect their representatives in a preferential system¹¹. The more complicated a system is, the more technical problems it is likely to raise, although it seems that the 2014 elections didn't suffer any major troubles.

4

THE POLITICAL INTEGRATION OF IMMIGRANTS IN HUNGARY

The issue of local government did not belong among the most discussed problems during the constitutional process in 2011. The most serious change in the area of local government is the fact that from now on, its bodies will be elected every 5 years and not, as it was until now, every 4 years. Like this, it will be possible to achieve that the national and municipal elections (they take place in Hungary together with the district elections) do not take place within one year. An interesting change, which has already been referred to above, is that the new Fundamental Law does not exclude the possibility a foreigner, an EU citizen, becoming a mayor.

In terms of openness to foreigners residing in the state's territory, the Hungarian draft regulation seems to be closest to Slovak legislation. The new Hungarian Fundamental Law, adopted in April 2011 with effect from 1 January 2012, no longer contains the restriction of the previous Constitution, according to which only Hungarian nationals could be elected mayors or chairmen of county assemblies. Thus, upon the entry into force of the new Fundamental Law, citizens of other EU member states living in Hungary may also be elected mayors and chairmen. This has not been ruled out by the new law on local self-governments of late 2011¹².

¹¹ A candidate on the national minority list needs only a quarter of the votes needed by a candidate on the regular party list to get into parliament. Despite that fact, in 2014, none of the national minorities managed to send a representative to parliament, although they can still send advocates with consultation rights. Currently, a total of 13 such advocates have the right to attend the National Assembly.

¹² 2011. évi CLXXXIX. törvény Magyarország helyi önkormányzatairól (the so-called Hungarian Local Government Act).

To be exact, the law says nothing about the citizenship of potential municipal mayors or city mayors. In this sense, at the county and municipal level in Hungary, currently there are two categories of voters – those who possess active and passive suffrage, and those who only possess active suffrage. The former category includes Hungarian citizens and citizens of EU Member States resident in the country; the latter includes refugees and immigrants – third-country nationals. At the level of the national parliament, Hungary, too, grants the right to vote only to its own citizens. As to the elections to the European Parliament, in addition to its own citizens, citizens of other EU member states are also eligible to vote, but only if they have a registered residence in Hungary.