

Executive summary of HCLU's 2019 election report

In order to understand the content and message of this report we need to write about how HCLU's Electoral Rights Program is structured. The program for the two elections of 2019 was launched in September 2018. By this time, we had begun organizing the eighteen training courses attended by nearly three hundred voters who were willing to be active in making elections legal and fair in their own areas. Several of these civilians later became candidates or - organizationally - nominating organizations in the municipal elections. During the election campaigns, we received several legal aid questions from them, mainly concerning the fairness of the election and equal opportunities for the candidates.

In addition to directly reaching out to active voters, we expanded HCLU's electoral law website "valasztasz.tasz.hu" with information related to municipal and European Parliament elections. Voters, the press, candidates and nominating organizations can access a wide range of legal knowledge and tools through this site. In 2019 the site was accessed 31,000 times and hundreds of sample submissions were downloaded by users.

Besides general legal information, we have received and answered hundreds of individual requests for legal aid via email and phone during the election campaign period. In addition, our law student volunteers who participated in election monitoring observed hundreds of electoral and judicial decisions according to the laid out criteria. Not only did they observe the decisions, but also summarized and helped us evaluate them. On several occasions, we also took legal action in the cases that came to our attention.

We have always acted impartially in providing legal aid and legal representation. On each occasion we contacted every candidate and nominating organization who were entitled to initiate the procedures. In deciding when to provide legal representation we were guided by two aspects: the fairness of the elections and the strategic development of the right to vote.

Our experience gained through legal aid, monitored election decisions and legal representation is at the heart of this report. Of course, we continually followed the press reports related to the elections, the relevant literature, and we also observed the opinions of the election experts. The facts, legal opinions and conclusions from these sources are also included in the report.

Each chapter of the report is followed by recommendations. As we have stated previously, we do not consider it realistic that the legislature or certain public bodies will accept or even consider our recommendations in the near future, unless they are of a strictly technical nature. One of the key lessons of the report is that the legislators are currently not interested in establishing a fair and just electoral system. This is because governing parties with a two-

thirds majority in Parliament are able to write election rules unilaterally. Due to the nature of this governing power, these rules contribute to the fragmentation of opposition parties, they enable the state to help the governing parties' election campaign and make guarantees less forceful in elections. The erosion of guarantees makes it more difficult for public authorities to account for violations in the electoral process.

We do not expect Parliament to substantially improve electoral procedure laws in the short term, but we do hope that our observations deduced from electoral principles and constitutional values will have an impact on law enforcement agencies. We also expect that a future Parliament with a more balanced party structure will examine what problems have been caused by the current electoral procedure law and what solutions exist to mitigate these problems.

HCLU did the most a human rights organization is able to: it acted in the interests of voters, drew conclusions and made its recommendations. The document is widely available and can be considered a record of the age we live in.

Before we get into the report, we have highlighted below one statement from each of the ten chapters to give a holistic view of the biggest problems with the Hungarian electoral procedure.

Polling station commissions

Polling station commissions are election bodies worth particular scrutiny in the future, as electoral fraud may happen at the level of the polling districts. If the polling station commissions do not have as many members as is permitted by regulation, it is very difficult to guarantee the fairness of the elections. While the legal bases are more or less in line with rule of law, there are many obstacles regarding the equality of appointed members in practice. In some cases these seem to be organized and deliberate obstructions, while in others they may just be bad habits. One thing is certain: the National Election Office needs to communicate clearly on this topic when it comes to training municipal clerks and writing election booklets.

Postal voting

Despite the decisions of the Constitutional Court, the institution of postal voting is unconstitutional as long as it is not provided equally for everyone. There are two ways to restore legality: (i) all voters abroad should be entitled to vote by mail, or (ii) the institution of postal voting should be abolished and all citizens who are entitled to vote abroad shall vote at the nearest foreign representation after making a prior request. It is beyond dispute that the latter solution would be safer.

National minority elections

The conducting of the national minority voting leaves much to be desired, as shown by the high number and proportion of invalid votes. According to HCLU this is partly caused by regulatory problems, however the situation could also be improved through more prudent implementation of legislation. We have made recommendations regarding this problem.

Voters with disabilities

The situation of disadvantaged voters has improved a lot in recent years, partly due to the cooperation between HCLU and the National Election Office. There are still room for improvement, as shown in our recommendations at the end of this chapter.

Data management

There have been a number of signs for years that parties are harvesting voter data illegally. Many people are of the opinion that without some kind of database it is impossible to organize political election campaigns. Also, it is unrealistic not to record where political activists were welcomed and where they were driven off. The legislation, however, is clear: the processing of all data requires the consent of the concerned person. Naivety or not, compliance with these rules must be enforced by law enforcers. Our recommendations go into the details of this topic.

Multiple recommendations of candidates

The most serious concern regarding candidate recommendations is the multiple recommendation system. This is the most common reason for personal data abuse and all forms of misuse of state aid. HCLU is all for the abolition of the system of multiple recommendations!

Election campaign

Perhaps the most complex chapter in the report is the Election Campaign. The most important issue within this chapter and perhaps throughout the entire report is the neutrality of the state. If the state is allowed to help the ruling parties or their candidates by any means, then the chances of other candidates are minimized. The use of state-controlled channels and resources for political campaigning is illegal even if it does not violate the current statutory law or even if the election bodies do not establish a violation. One of the pillars of democracy is the separation of powers. If the executive power intervenes in the competition of parties aspiring to the legislature there is no democracy in the common sense - there is electoral autocracy.

The day of voting

The most important issue on the day of voting is the preparedness of the polling station commissions. If there are not at least two professionally prepared opposition delegates in every polling district it is not possible to fully guarantee the fairness of the elections, not even

with our recommendations. In the report, we have made recommendations only to those exercising public power. We can state in the introduction, however, that it is the primary interest of all nominating organizations to have mentally, physically and professionally well-prepared members of the polling station commissions in each and every polling district during the next parliamentary election. Otherwise, the fairness of the election cannot be guaranteed.

Legal remedy

This chapter's essential question is which group of subjects is entitled to seek legal remedy. In our view, both the law and the case-law significantly restrict the scope of substantive legal remedies by allowing only concerned parties to appeal a decision of an election commission. The fairness of the election, however, is important for all voters and it is in everyone's interest to have a decision in all legal disputes regarding the election; the scope of the right of appeal, thus, should be broadened accordingly.

Trust in the fairness of the elections

Maintaining the public's trust in the fairness of the elections is essential from the very start of the electoral procedure, but naturally it is most influenced by the events on election day. Mass abuses of law are most common in parliamentary elections, but how the police are capable of detecting, preventing and proving the threatening or coercion of voters and so called chain voting is important during every election. Our experience shows that in 2019 the performance of the police in this regard was not effective. We do not believe that individual police officers or police headquarters should be held responsible, but rather that the National Police Headquarters did not have an appropriate action plan and procedural protocol for these cases.

The contents of our report were discussed in two roundtable conferences on 21 February 2020 with members of the National Election Commission (NEC) delegated by nominating organizations, various electoral lawyers and representatives of the National Election Office. The participants included Ilona Pálffy, the President of the National Election Office, Dezső Avarkeszi and András Litresits, appointed members of the NEC, Gergely Gönczi, former member of the NEC, Attila Szabó, head of HCLU's Electoral Rights Program, Ildikó Bartha, János Mécs and András György Kovács as representatives of two Hungarian universities, the University of Debrecen and the Eötvös Loránd University, along with Balázs Tóth, lawyer.

After the discussions we implemented most of the observations made by the participants in our report. If for some reason we did not agree with the observation, we indicated this separately in the text.

In order to be familiar with as many professional opinions as possible we invited to the roundtables NEC delegates from all nominating organizations of the European Parliament elections, along with the elected members of the NEC. We regret that in the end none of the elected members of the NEC were able to participate and not all of the nominating organizations were represented. Since in our report we most often criticize those exercising public power, it is especially woeful that no NEC members were present from the two current ruling parties, Fidesz and KDNP.

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