

Legal remedies in the Hungarian election system

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The constitutional frames of remedies available in the Hungarian election system are defined by the following principles of the Constitution of the Republic of Hungary:

- according to Article 2(1) the Republic of Hungary is an independent, democratic constitutional state;
- based on Article 50(1) the courts shall protect and uphold constitutional order, as well as the rights and lawful interests of national persons, legal persons and unincorporated organisations and shall punish those who commit criminal offences;
- pursuant to Article 57(5) in the Republic of Hungary everyone may seek legal remedy (in accordance with the provisions of law) to judicial, administrative or other official decisions, which infringe on his rights or justified interests.

Chapter XIII of the Constitution sets forth the basic principles of elections and declares that detailed regulation is to be provided by a separate law requiring a qualified (i. e. two-thirds) majority vote of the Members of Parliament.

Based on such constitutional principles in 1997 the Parliament passed the Act on Elections including provisions on legal remedy. The act is still in force but it has been amended several times. Act LXXXI of 2005 brought about a comprehensive modification of legal remedies which will be first tested in the coming election of Members of Parliament in 2006.

The new act relied on the practical experiences of earlier elections, the legislative inadequacies explored in the remedial decisions of election organisations and courts, as well as the decisions of the Constitutional Court concerning elections. The system of legal remedies has been restructured and as a result of the transformation we now have a clearly arranged system with detailed, concrete and ample regulation.

The remedial provisions of the act have to be applied in the case of the following elections:

- election of MPs
- election of the Members of the European Parliament
- election of representatives of local governments and mayors
- election of members of local minority governments
- national referendum
- local referendum
- national popular initiative
- local popular initiative
- other elections when law provides so.

Election committees and courts examining requests for legal remedies have to keep in mind the main principles of elections, namely:

- the clearness of elections and the prevention of fraud;
- voluntary participation in nomination, campaign and voting;
- equal opportunities of nominees and nominating organisations;
- well-intentioned and proper application of law;
- impartial attitude in legal remedy;
- the fast and authoritative announcement of the election results.

Let me mention a dilemma in the application of law which frequently arises in the case of election remedies, too.

A frequent problem in judicial practice has been that there has been a lack of definition of scope of powers which would be needed in order to realise the fundamental principles of Article 3 of the act. Legal security, being the central principle and value of the rule of law, demands that authority and

competence is to be observed, therefore the judicial practice of the Supreme Court consistently confirms the strict positivist practice of election organisations, especially that of the National Election Committee. Judicial practice is insistent on the borderlines of competence and without concrete authorisation it does not make a decision, not even if it were needed for the enforcement of the fundamental principles included in the act. Indirectly, it relies on these principles but the direct basis of judicial decisions is provided by concrete and specific provisions. Now there is a new provision which is aimed at solving this issue by making it possible to request legal remedy referring to the infringement of the basic principles of elections.

The general rules of legal remedies applicable in elections are set forth in Chapter X of the act.

An objection can be submitted to the competent election committee referring to the violation of the Act on Elections, as well as of the basic principles of election procedures. The complaint can be lodged by anyone, to be directly affected by infringement is not a requirement.

The complaint shall arrive within three days from the commitment of the supposed infringement.

The obligatory elements of content are listed one by one in the act. If the complaint is late or if it does not contain the obligatory elements of content, the election committee rejects it without any examination on the merits. An important requirement of the act is that the objection shall contain the evidence of infringement. The short time available to examine the complaint does not make it possible for the election committee to obtain all necessary evidence.

If the election committee approves of the complaint, it may take the following decisions:

- it establishes that there has been a violation of law;
- it prohibits the person who violated the law from further violations;
- it annuls the whole or a part of the election procedure and orders it to be repeated.

The election committee shall make the decision within three days of the receipt of the complaint. An appeal against the first instance decision of the election committee can be lodged by the electors, the nominee, the nominating organisation and the legal person concerned in the case. The appeal shall be submitted to the election committee that has made the challenged decision within three days. New facts and evidence might appear in the appeal.

The appeal shall be examined and decided upon by the second instance election committee within three days of its receipt. The decision on the approval of the voting sheet data is an exception: it shall be made the day following the submission of the complaint. The second instance election committee either sustains or changes the contested decision.

Any citizen, nominee, nominating organisation or legal person concerned in the case may submit a request for the judicial review of a second instance decision of the election committee and of the National Election Committee within three days.

The modification of the act this year has introduced significant changes in the judicial review procedure. It regulates judicial procedure in detail and necessitates a change of judicial practice in several procedural issues.

The act provides that a request for judicial review shall contain the statement of its legal basis and it may contain new facts and evidence.

Legal representation in the judicial procedure is a must. The chamber consisting of three professional judges examines the request in a non-contentious proceeding. Second instance decisions of election committees are examined by the territorially competent county or metropolitan court and the request for the review of the decision of the National Election Committee is examined by the Supreme Court. The court shall make its decision within three days of the submission of the request. In the case of

requests concerning the approval of voting sheet data the court decides on the day following submission. The court either sustains or changes the challenged decision.

There is no further remedy against the decision of the court.

In the case of legal remedy concerning the list of names, the media campaign and the announcement of the result, the above-mentioned general rules have to be applied with some modification defined in the act.

- As regards legal remedy concerning the list of names, a significant departure from the general rules is that referring to an omission or deletion in the list or to an addition to it, objection can be submitted while the list is being displayed.
The objection is to be submitted to the leader of the local election office, who decides upon it on the following day. If the office leader does not approve of the complaint, (s)he forwards it to the local court, in Budapest to the Pest Central District Court, on the day following its receipt. The court makes a decision within three days of the receipt of the complaint.
- Legal remedy concerning media campaign might be related to the participation of the media in the election campaign. If the competent local, territorial or national election committee approves of an objection referring to the infringement of the basic principles of election procedures or of a complaint regarding the displaying of a political advertisement, it might oblige the editorial board of the periodical, the programme broadcaster or the news agency to publish its decision.
- The appeal against the decision of the election committee on the result of the election shall arrive on the day following the decision. The appeal has to be decided upon on the day following its receipt. The request for judicial review shall be submitted in a way that it arrives on the day following the decision of the election committee at the latest. The court decides on the request on the day following submission at the latest.

Finally I would like to mention that the new provisions concerning legal remedy do not solve the problem around deadlines of examining requests for judicial review. The Constitutional Court has claimed in several of its decisions that the short deadlines (one and three days) are necessary and justified because of the nature of the election system. However, the new provisions make it even more difficult to render well-founded and lawful judicial decisions on time.

The act, for example, does not make it possible for the competent court to refuse the request but demands that the documents are to be obtained in short time. Furthermore requests submitted personally without legal representation cannot be dismissed without examination on the merits. Ensuring oral statement for every client renders the procedure even longer.

Special difficulties arise for the courts from the new provision concerning the statement of the election result. According to this provision if there is a mathematical possibility to change the result, the court examining the request for judicial review is obliged to recount the votes. To be able to comply with this provision in time is doubtful in spite of the fact that the deadline for recounting is two days and the court might ask for the cooperation of the election offices. (From the practice of the Supreme Court one might recall the request for the review of the narrowest national result of the election of MPs, in which the losing parties asked for the total recounting of votes.)

The courts have announced to legislative organs several times that meeting the short deadlines in complicated cases or in the case of objections relating to a considerable number of votes is extremely difficult even if the judges are assisted by special organisational measures at the courts. The new provisions have further increased the tasks of the courts, in preparing the decision several measures have to be taken, e.g. obtaining documents, procedure for supplying deficiencies, personal hearings etc. Therefore, not disregarding constitutional aspects, we think that the reasonable lengthening of deadlines would be necessary.