



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

EUDO CITIZENSHIP OBSERVATORY

ACCESS TO ELECTORAL RIGHTS *HUNGARY*

Andras Bozoki

June 2013



US
University of Sussex



<http://eudo-citizenship.eu>

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

***Access to Electoral Rights
Hungary***

Andras Bozoki

June 2013

EUDO Citizenship Observatory
Robert Schuman Centre for Advanced Studies
Access to Electoral Rights Report, RSCAS/EUDO-CIT-ER 2013/19
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© Andras Bozoki

This text may be downloaded only for personal research purposes.
Additional reproduction for other purposes, whether in hard copies or electronically,
requires the consent of the authors.

Requests should be addressed to eudo-citizenship@eui.eu

The views expressed in this publication cannot in any circumstances be regarded as
the official position of the European Union

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported, at various times,
by the European Commission grant agreements JLS/2007/IP/CA/009 EUCITAC and HOME/2010/EIFX/CA/1774 ACIT,
by the European Parliament and by the British Academy Research Project CITMODES (both projects co-directed
by the EUI and the University of Edinburgh). The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Access to Electoral Rights

Hungary

Andras Bozoki

1. Current debates

1.1. Introduction

The Hungarian electoral system is currently in flux. On 10 June 2013, the Hungarian parliament modified again the law on electoral procedure, the latest version of which was adopted just four months earlier. The latest reform is just another move in a series of events, which began in May 2010 with the amendment of the Hungarian citizenship law,¹ followed by the adoption of the new Constitution in April 2011,² and the passing of a new electoral law in December 2011.³ Moreover, after December 2011, the parliament also adopted a new law on electoral procedure, thus replacing the previous act on electoral procedure of 1997.⁴ This new law was first passed in November 2012⁵ yet never came into force as the Constitutional Court abolished it. A modified version which met the criteria set by the Constitutional Court was adopted in April 2013.⁶ However, as the law was being criticised on various grounds by Transparency International and other non-governmental organisations, the parliament revised it again in June 2013. These amendments addressed some of the criticisms which were made on the previous version of the law, which will be explained in greater detail later in this paper.

Any discussion of electoral rights has to be interpreted in the context of the changing electoral system, which in turn taps into the wider debate about citizenship. The recent modifications made to the electoral system are closely linked to the new citizenship regime, which after twenty years of failed attempts and heated debates now offers citizenship to ethnic Hungarian minorities living in neighbouring countries. Successive electoral reforms since 2011⁷ are a follow up to the new citizenship law as they granted voting rights to Hungary's newly constituted non-resident citizens. Although these legal changes clearly benefit

¹ Act XLIV of 2010 amending Act LV of 1993 on the Hungarian Nationality, 26 May 2010;

² The Fundamental Law of Hungary, 2011.

³ Act CCIII of 2011 on the Elections of Members of Parliament of Hungary. The English translation of the law can be found at the following site of the Venice Commission:

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2012\)003-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2012)003-e)

⁴ Act C of 1997 on Electoral Procedure, file:///C:/Users/bea/Documents/electoral%20rights/act_c_of1997.htm

⁵ Act on Electoral Procedure, 2012. <http://www.parlament.hu/irom39/08405/08405.pdf>

⁶ Act XXXVI of 2013 on electoral procedure, <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=A1300036.TV>

⁷ Act CCIII of 2011 on the Elections of Members of Parliament of Hungary.

Hungarian ethnic minorities living in neighbouring states, they also incidentally strengthen the position of Fidesz, the ruling right-wing governing party.

The report is divided into two sections. The first part reviews the main changes in the structure of the electoral system brought about by the new Constitution and the electoral law as of 2011, since these together set the context for new rules on electoral rights. This constituted the first phase of the electoral reform, which reshaped the structure of the electoral system as a whole. The second phase of the reform began in the autumn of 2012 when the government drafted a law introducing active voter registration. Passing this law on electoral procedure in November 2012, followed by the adoption of a new act on electoral procedure in April 2013 in response to the negative judgment of the Constitutional Court, and the recent modification of this act represent the most important milestones during this phase. Thus, in the first section of the paper, I will also present the recent changes in electoral procedure, which are mostly related to the prior extension of citizenship to non-resident ethnic Hungarians. I also outline the debate on the introduction of active registration, which was the most controversial aspect of these legal changes. In the second half of this paper, the technical regulations for electoral rights will be presented.

The first phase of the electoral reform was initiated with the 2011 reform of the electoral law,⁸ which not only extended suffrage to non-resident citizens but also fundamentally reshaped the structure of the electoral system. In the future Hungary will have one-round elections instead of the previous two-rounds, and the electoral threshold will be abolished. The number of deputies will be reduced from 386, to 199, where 106 of the seats can be won in single-member constituencies with the remaining 93 seats open to competition from national lists. Under both old and new rules, the system has been a mixed one in which mandates have been allocated in single member constituencies operating according to majoritarian principles and through party lists functioning by proportionality. Even before the recent changes, therefore, the Hungarian electoral system has been semi-proportional containing some majoritarian elements.

Yet the new law represents a shift in the majoritarian direction.⁹ According to the rather complicated distribution method, after allocating single-member-constituency mandates coming from first-past-the-post contests, the votes of candidates who did not manage to gain a seat in individual constituencies will be added to the votes of the affiliated party's national list. Moreover, the remaining votes of the winners in individual constituencies that were beyond the required number of votes to secure their mandate will also be added to the winning party's national list. By allocating a disproportional share of mandates to the winning party, the governing coalition led by Fidesz seems to be trying to preserve its current overwhelming power for the next elections. This is naturally a double-edged sword, which can be a liability in case Fidesz loses popularity. However, by applying the majoritarian principle in individual constituencies, as long as the opposition remains fragmented, ruling parties will be able to convert their relative majority into an absolute one.¹⁰

In addition, special provisions were adopted which, for the first time, would allow for the parliamentary representation of national minorities. National minorities can gain mandates on party lists if they manage to gather one quarter of the votes required for an average mandate. Although Hungary has thirteen registered national minorities, according to the estimates of Political Capital, a Budapest based think tank, only the Roma minority will be

⁸ Act CCIII of 2011 on the Elections of Members of Parliament of Hungary.

⁹ Act 2011 - CCIII. Law on Electoral Procedure, Article 3.

¹⁰ György Szoboszlai, *Fundamentum*, No. 4., 2010. 57, <http://www.fundamentum.hu/sites/default/files/10-4-04.pdf>

able to reach this threshold. This measure also strengthens the majoritarian element since preferential mandates won by a minority will mean that there will be fewer mandates left on the party lists, the maximum of which is 93.¹¹

Moreover, what fuelled controversy concerning the law on electoral procedure was not only a scheme of allowing the winner in single-member constituencies to transfer their remaining votes to their party on the list system, but also the redrawing of electoral districts which benefit the political right and therefore are suspected of gerrymandering.¹² According to Political Capital data, new electoral districts were arranged in such a way that traditionally right-wing districts have 6,000 people less on average than left wing districts thus giving more weight to right wing votes.¹³ By recounting the 2006 election data in single-member-constituencies according to the new electoral system and constituency map, Fidesz-KDNP coalition would have gained more mandates than MSZP which in 2006 prevailed by a large margin over Fidesz-KDNP (receiving 102 mandates as opposed to Fidesz-KDNP's 68).¹⁴

It will be argued here that extending citizenship to Hungarian minorities abroad, supplementing the citizenship of non-residents with voting rights, and the attempt to introduce active registration appear to serve the same purpose: preserving and enhancing the power of the ruling coalition.

1.1. Extending citizenship to non-residents and voting rights to non-resident citizens

Right after Fidesz won the last general election in April 2010, the citizenship law was modified in haste on 26 May, 2010, even before the new government was formed. Such speedy legislation did not allow for a substantial public debate about the law or a meaningful discussion in parliament.¹⁵ As a general criticism it can be noted here that Fidesz has been pushing through all these legislative reforms, including the passing of a new Constitution, without much public debate or involvement of the opposition.

Since the fall of communism the ever-changing citizenship regime has granted preferential treatment to ethnic Hungarians in the process of naturalisation, which was meant to counterbalance the fragmentation of the nation in many states as a result of the country's troubled history. Yet, before 2010, everybody (including ethnic Hungarians) needed to have a stable livelihood and residence in Hungary in order to be eligible to apply for citizenship, which had been a considerable burden for those arriving from neighbouring countries.¹⁶ The application procedure, which usually lasted for at least a year, could be launched only after a year of legal residence in Hungary. Thus, though the citizenship regime before 2010 might have seemed generous at first sight towards Hungarian minorities, ethnic Hungarians 'did not see themselves as preferential beneficiaries when it came to the attitude of the authorities or to procedural provisions'.¹⁷ There were several initiatives already before 2010 to address this issue: the Status Law of 2001 providing benefits and allowances to Hungarian minorities,¹⁸ a

¹¹ The new electoral law in Hungary, in-depth analysis, Political Capital, January 3, 2012, 3.

¹² Ibid, 3-4.

¹³ Ibid, 7.

¹⁴ Ibid, 6.

¹⁵ Update: Changes in the Hungarian Citizenship Law and adopted on 26 May 2010. <http://eudo-citizenship.eu/docs/CountryReports/recentChanges/Hungary.pdf>

¹⁶ Mária M. Kovács, Judith Tóth, Country Report: Hungary, EUDO Citizenship Observatory, November 2009, 1-8, <http://eudo-citizenship.eu>.

¹⁷ Mária M. Kovács, 2.

¹⁸ Act LXII of 2001 on Hungarians Living in Neighbouring Countries [Hungary], Act LXII of 2001, 1 January 2002, available at: <http://www.unhcr.org/refworld/docid/3f460e764>.

failed proposal for amending the existing citizenship law presented by MDF (a small conservative party in 2003), and the referendum on dual citizenship in 2004 which was unsuccessful owing to the low turn-out rate. All these initiatives originated from the political right, which is usually associated with representing the cause of ethnic Hungarian minorities. By contrast, the political left led by MSZP, the Hungarian Socialist Party, is usually accused of being insensitive towards ‘national issues’.

In 2010 the Orbán government, after more than a decade of political controversies, finally granted citizenship to Hungarian minorities by modifying the existing citizenship law. Hungarian minorities can now become Hungarian citizens upon individual request without having to reside in Hungary.

Interestingly, the main opposition party, MSZP, this time decided to back the amendment of the law. Considering that while being in government between 2002 and 2010 the socialists rejected the idea of extending citizenship to ethnic Hungarians, it represented a major shift in the party’s position.

By contrast to the Status Law in 2001,¹⁹ the law on citizenship was now received without international protests with the exception of Slovakia’s populist and nationalist Fico government. In retaliation, the Slovak government adopted a law within just a few hours of which the Hungarian citizenship law was passed. According to this legislation, Slovak citizens becoming citizens of another state would lose their Slovak citizenship.²⁰ Those failing to report their double citizenship would be punished by having to pay a fine. The EU, however, was very restrained in its criticism of the Hungarian citizenship law. Manuel Barroso, the head of the European Commission, only called for negotiations between the two governments.²¹

At the same time, the way the law was adopted signalled that the Hungarian government did not care much about what Hungarian minorities wanted from Budapest. Slovakia was heading for parliamentary elections in June 2010, which was why the two Hungarian minority parties in Slovakia, MKP and Híd-Most, were asking the Hungarian government to postpone passing the law until after these elections. Hungarian minorities were concerned that the law would boost the chances of Fico’s party, which was known for its anti-Hungarian attitudes. Moreover, during the Slovakian elections, Fidesz openly supported the ethnically based MKP against the other party representing Hungarians, the Híd-Most coalition, which opened itself up to ethnic Slovak voters. In spite of this, Fico’s Smer party lost the vote to the Christian Democrats led by Radicova, while Fidesz’s favorite, MKP failed to secure any place in parliament. Out of the two Hungarian parties, Híd-Most was far more successful, having received fourteen mandates and ultimately joining the governing coalition.²²

Crucially, in December 2011, Fidesz enfranchised non-resident citizens by adding voting rights to their citizenship. When the new law on citizenship was adopted in May 2010, it was not yet clear whether the government also intended to extend suffrage to citizens who did not have a permanent residence in Hungary. Even government politicians differed in their

¹⁹ The Act on Benefits for Ethnic Hungarians living in Neighbouring States—commonly known as the Status Law. The law offered benefits to ethnic Hungarians in the fields of employment, social and health care in Hungary, while also giving allowances and small grants to people in their home countries. To get these benefits, it was necessary to obtain an Ethnic Hungarian Certificate proving one’s Hungarian origin.

²⁰ Those who received another state’s citizenship by marriage or birth are exempted from this regulation. Géza Tokár, Kettősállampolgárság: Szlovákia magát bünteti, *Komment.hu*, Febr. 01., 2011.

²¹ *Ibid.*

²² Vince Ballai, A Fidesztől várják az első lépést a szlovákiai magyar képviselők. www.origo.hu, 7 June 2010.

opinions regarding whether voting rights should be added to citizenship in the case of Hungarian minorities. For instance, in the spring of 2010, Foreign Minister János Martonyi and Minister for Justice Róbert Répássi stressed that the citizenship of Hungarian minorities abroad would not mean more than a Hungarian passport. Others, such as the Christian Democrat Zsolt Semjén, argued that all Hungarian citizens should be able to vote.²³

The idea was first raised in 2006 during the election campaign by István Mikola, Fidesz's candidate for deputy premier who argued that by endowing Hungarian minorities abroad with voting rights the political right could cement its rule for twenty years.²⁴ Although such reasoning could not be heard from Fidesz this time, the party elite certainly hoped to improve its future election chances by the enfranchisement of Hungarian minorities. There are millions of Hungarians in diaspora, yet it is difficult to estimate how many of them will use their electoral rights. Analysts suggest that the number of diaspora voters could be anywhere between 300,000 and a million.²⁵ At the same time, the move of extending suffrage beyond the borders of Hungary was not popular among Hungarian citizens (51 per cent rejected it, 43 per cent supported it, seven per cent was undecided). Only the majority of Fidesz voters backed the move.²⁶

Importantly, not every party representing Hungarian minorities showed enthusiasm towards this turn of events, such as the Híd-Most in Slovakia. Besides them, Béla Markó, the former president of RMDSZ (the biggest party representing ethnic Hungarians in Romania) warned that by extending voting rights to Hungarian minorities in the adjacent states, Budapest will export Hungarian party politics to Hungarian minority communities.²⁷

1.3. The failed attempt to introduce active voter registration

The legislative attempt to introduce active voter registration was part of the second phase of the electoral reform, which started in September 2012 when the first reading of the Electoral Procedure Act was submitted to parliament. This initiative stirred a lot of tensions during the following months as it would have required citizens to register themselves at least 15 days before election day in a national voting registry. This act was passed in November but as was noted above, was never implemented due to its rejection by the Constitutional Court. According to this act, Hungarian resident citizens could have registered personally or electronically, and during the registration period, i.e. between the 1 and 15 of September by post as well, while non-resident citizens had to register by post or electronically. Moreover, citizens would have had to register before each and every election.²⁸ These changes would have presented a significant barrier to the practice of electoral rights. Not only personal registration but also electronic would have required a personal visit to the registrar's office. Electronic registration would have been a possibility through the so called 'customer's gate', an electronic system through which citizens can fulfil other administrative duties as well, for instance submit their tax return statement. Yet, in order to gain access to this customer's gate, one needs to pay first a visit to the registrar's office personally.

²³ Károly Lencsés: Kövér László: Választójogot kapnak a határon túli magyarok. *Népszabadság*, January 20, 2011. http://www.nol.hu/belfold/20110120-kover_laszlo_valasztojogot_kapnak_a_hataron_tuli_magyarok

²⁴ Ibid.

²⁵ The new electoral law in Hungary, in-depth analysis, Political Capital, 3 January 2012, 2.

²⁶ Ibid, 3.

²⁷ Szabolcs Kerék-Bárczy, Kettős állampolgárság és szavazati jog, *Élet és Irodalom*, 6 May 2011.

http://www.es.hu/kerék-barczy_szabolcs;kettos_allampolgarsag_es_szavazati_jog;2011-05-05.html

²⁸ Act on Electoral Procedure, 2012. Article 88-89. <http://www.parlament.hu/irom39/08405/08405.pdf>

The introduction of voter registration clearly would have made the exercise of electoral rights more difficult for citizens. As a result, only the most committed voters could have been expected to make the necessary effort. This would have certainly lowered the participation rate which was 64.2 per cent in 2010 during the first round.²⁹

The introduction of active voter registration triggered a heated debate in the Hungarian public sphere. Although active registration per se is not undemocratic and is practiced in several liberal democracies in the world, the government could not justify the need for its introduction or explain its benefits as opposed to the present system of electoral rolls.

The argument proposed by János Lázár, a Fidesz MP, that registration will increase democratic legitimacy and voters' activity sounded unconvincing. What might have sounded more persuasive was the argument that because non-resident citizens will have to register anyway it made sense to require everyone to do so. The principle that equal conditions should apply to every voter calls for this change – an argument that was being made in government circles. However, considering that the electoral law differentiates between electoral rights of non-resident citizens and residents themselves, as the former can vote only for party lists, it is difficult to see why the two groups could not register by different methods as well.

Furthermore, according to this law, different rules of voting would have applied to these two groups since only non-residents would have had the right for postal voting. These things considered, along with the fifteen days deadline limitation, it was easy to get the impression that the government intended to keep people away from the ballot box. The new system seemed to be less motivating for voters to turn up on election day, especially for undecided voters, the less well off, those not so well informed and the young. A statement by Lajos Kósa, the vice president of Fidesz, in a public debate removed any remaining doubts regarding the government's intentions. He lamented that previously 'voters lacking political awareness decided the outcome of elections'. As he argued, 'one million people do not even have primary education and even more are functionally illiterate', which is why registration is useful since such people will be less likely to participate.³⁰

Replacing the previous system of electoral rolls with active registration did seem like an unjustified restriction on the exercise of electoral rights. There were simply no good reasons for exchanging the old rules with the new ones. Since Fidesz has a fairly disciplined electoral base which can be relatively easily mobilised by party leaders while the opposition is fragmented and much less well organised, especially on the political left, putting up these extra barriers to voting would have probably benefitted Fidesz during the next parliamentary elections.³¹ In the absence of any plausible argument in favour of active registration, unsurprisingly the opposition was accusing the government of pursuing its own power-interests with this legislative move.³²

Although the law about voter registration was passed in November 2012, the Constitutional Court deemed it illegal. It did so despite the fact that the parliamentary majority just a few days before adopting the law - on the 29th of October, 2012 - changed the Constitution by including the concept of preliminary registration, in order to prevent the

²⁹ Feliratkozashoz kötötték a választójogot. Hír24, 29 October 2012.

<http://www.hir24.hu/belfold/2012/10/29/feliratkozashoz-kotottek-a-valasztojogot/>

³⁰ Kósa: Egymillió tanulatlan magyar miatt kell a regisztráció. Origo, October 4, 2012.

<http://www.origo.hu/itthon/20121004-kosakaracsony-vita-a-bibo-szakkollegiumban-a-valasztasi-eljarasrol.html>

³¹ Kettős mérce. 13 fideszes érv a regisztráció parlamenti vitájából, 13 cáfolat. 29 October 2012.

http://magyarinfo.blog.hu/2012/09/26/13_fideszes_erv_a_regisztracio_parlamenti_vitajabol_13_cafolat

³² For instance, Gergely Karácsony, a deputy of LMP, a small leftist opposition party argued along these lines.

Kósa: Egymillió tanulatlan magyar miatt kell a regisztráció. Origo, October 4, 2012.

<http://www.origo.hu/itthon/20121004-kosakaracsony-vita-a-bibo-szakkollegiumban-a-valasztasi-eljarasrol.html>

Constitutional Court declaring mandatory registration unconstitutional.³³ The Constitutional Court in its ruling argued that mandatory registration constrains the electoral rights of resident citizens without any sufficient reason. At the same time, the Constitutional Court found active registration justified in the case of non-resident citizens, citizens voting for minority lists and those in need of physical assistance while voting.³⁴ The Constitutional Court made this judgment after János Áder, the state president (who comes from the ruling party, Fidesz), decided to send the law to the Constitutional Court on formal grounds, yet also asked for a check of its content.

The new law on electoral procedure, which was subsequently adopted in April 2013 returned to the old system of automatic registration for resident citizens. Yet, in line with the reasoning of the Constitutional Court, non-resident citizens and those voting for minority lists still will have to register.³⁵ The law also addressed the issue of voting method of non-resident citizens, who will be able to cast their votes by post.

On 10 June 2013 the parliament further modified this law. Besides changing the rules of campaign financing and interim elections, according to this amendment the changing data of electoral rolls will have to be made public before elections. The latter move serves the primary purpose of making the list of non-resident voters transparent to the public. This was a response to prior criticisms forwarded by Transparency International and Eötvös Károly Public Policy Institute, according to which the lack of openly accessible registries of non-resident citizens would allow for abuses and cheating during elections. At the same time, with this amendment postal voting would be available only to non-resident citizens, while resident citizens temporarily residing abroad can cast their votes at foreign representations.³⁶ Before this amendment, the law would have allowed postal voting for resident citizens temporarily staying abroad.

³³ László Róbert, Notes on the current phase of electoral reform in Hungary, 12 December 2012, [Választásirendszer.hu](http://valasztasirendszer.hu),

<file:///C:/Users/bea/Documents/electoral%20rights/Notes%20on%20the%20current%20phase%20of%20electoral%20reform%20in%20Hungary%20%20v%C3%A1laszt%C3%A1sirendszer.hu.htm>

³⁴ Alkotmányellenes a választási regisztráció, *Origo*, 4 January 2013, <http://www.origo.hu/itthon/20130104-az-alkotmanybirosag-dontese-a-valasztasi-feliratkozasrol.html>

³⁵ Act XXXVI. of 2013 about electoral procedure, <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=A1300036.TV>

³⁶ Egymillió forintot kapnak kampányukra az egyéni képviselőjelöltek - A választási eljárás és a kampányfinanszírozás változásairól, *Jogi Fórum*, 11 June 2013. <http://www.jogiforum.hu/hirek/29792>

2. Access to Electoral rights

2.1 Citizen residents (Age, Mental disabilities, Persons convicted of criminal offences)

Citizen residents are enfranchised in all elections. The general age of threshold is eighteen for both voting and running as a candidate in all types of elections. A person can be disenfranchised by a court ruling due to mental illness, mental disability or addiction. In addition, a person disenfranchised by a court for committing an offence shall have no suffrage.³⁷ Exclusion from participation in public affairs may be imposed in addition to imprisonment that has not been suspended if the perpetrator has committed an intentional criminal offense and is unworthy of participating in public affairs. ‘A juvenile offender may only be excluded from public affairs if he/she has been sentenced to imprisonment for over one year.’³⁸ Regarding voting rights in referenda, the general rule as stipulated by the Constitution is that ‘Every person entitled to vote in elections of Members of Parliament shall have the right to participate in national referenda. Every person entitled to vote in elections of local representatives and mayors shall have the right to participate in local referenda.’³⁹

2.2 Citizens abroad

Temporarily absent

The general rule is that votes may be cast only in person and, with the exceptions referred to in law, only at the polling station designated in accordance with the voter’s domicile.⁴⁰ However, exceptions can be made for citizens who do not reside at their permanent address either within or outside the country on election day.

Citizens who are temporarily out of the country on election day can vote personally at an embassy or specified polling station abroad during national elections. The resident citizen who is temporarily out of the country first has to register in the electoral roll at a foreign representation.⁴¹ At local and regional legislative elections voting from abroad is not possible. Besides these arrangements, there is no possibility of proxy-voting, postal voting or e-voting.

Permanently abroad

As explained above, the new electoral law as of 2011 primarily targets ethnic Hungarian minorities who, in general, were born outside the borders of Hungary. Non-resident citizens are generally enfranchised in national legislative elections, but cannot vote or run as candidates in local or regional ones. This applies to all expatriates who are citizens of Hungary. During national elections they can practice their voting rights without limitations in the sense that there is no requirement of previous residence and no additional restriction referring to time spent abroad, or for citizens who were born abroad. However, non-resident citizens can vote and run as candidates only on a party list, but not in single seat

³⁷The Fundamental Law of Hungary, 2011, Freedom and responsibility, Article 23.

³⁸Karsai, Krisztina&. Szomora Zsolt, *Criminal Law in Hungary*, Kluwer Law International, 2010, 113.

³⁹ The Fundamental Law of Hungary, 2011, Freedom and Responsibility, Article 23.

⁴⁰ Act C of 1997 on Electoral Procedure, Article 61

⁴¹ Act C of 1997 on Electoral Procedure, Article 71/A

constituencies. During the next elections, they will be able to vote by post.⁴² They have to register previously, which they can do so electronically, by post or personally.⁴³

2.3 Foreign residents

As a general rule, foreign residents cannot vote in national elections but at the local and regional level. Every adult person who is recognised as a refugee, immigrant or resident of Hungary has the right to vote in local and regional elections and referendums. At the same time foreign residents, with the exception of EU citizens, cannot run as candidates. Therefore, only foreign residents who fall into the above mentioned categories enjoy electoral rights in local and regional elections. Beyond this provision, there is no distinction between resident citizens and citizens of other states.⁴⁴

3. Electoral rights of EU citizens

EU Council Directives 94/80/EC on local elections and 93/109/EC on European Parliament elections have been implemented since 1 May 2004. Act C of 1997 on Electoral Procedure, together with Act CXIII of 2003 on the election of the Members of the European Parliament, contains regulation reconcilable with Council's Directive 93/109/EC regarding the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals. Moreover, this Act on Electoral Procedure, together with the 1990 Act LXIV on the Election of local municipal representatives and mayors, contains regulation reconcilable with the Council's Directive 94/80/EC regulating the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.⁴⁵

Hungary has been among the countries which fulfil their obligation stemming from Directive 93/109/EC to provide information to EU citizens from other Member States on how to exercise their right to vote and to stand as a candidate in European elections in an exemplary way. According to the Commission's report, 'best practices include sending individual letters to non-national EU citizens to inform them of the arrangements for exercising their electoral rights'.⁴⁶

3.1 Local elections

Every adult citizen of any other member state of the European Union who is a resident of Hungary shall have the right to be a voter as well as a candidate in local elections.⁴⁷ However, foreign citizens can run only for representative, but not for mayor. The only further condition of eligibility is that no citizen of any other member state of the EU who is resident of Hungary

⁴²Act XXXVI of 2013 on Electoral Procedure, Article 265-68.

<http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=A1300036.TV>.

⁴³ Act XXXVI of 2013 on Electoral Procedure, Article 91(2).

<http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=A1300036.TV>

⁴⁴The Fundamental Law of Hungary, 2011, Freedom and responsibility, Article 23.

⁴⁵ Act C of 1997 on Electoral Procedure.

⁴⁶ European Commission, Report on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC), Brussels, 27.10.2010. <http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=hu&ihmlang=hu&lng1=hu,en&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=525591:cs&page=>.

⁴⁷The Fundamental Law of Hungary, 2011, Freedom and responsibility, Article 23.

shall have passive suffrage if he or she has been disenfranchised in his or her native country under law, court or official decision of his or her state of citizenship.

3.2 EP elections for EU citizens residing in the country

Citizens of another EU member state can vote and run for candidate in Hungary during EP elections, if they are residents of Hungary. However, they have to register for the elections. In doing this, they must provide a statement of their intention to exercise their right to vote during EP elections in the Republic of Hungary, and certify that they have a domicile in Hungary.⁴⁸

3.3 EP elections for national citizens abroad

National citizens who are abroad can participate in EP elections according to the same rules applying to voting abroad in national elections.

3.4 Regional and other elections

County level elections are regulated and managed according to rules applying to local governments.⁴⁹

4. Exercising electoral rights

4.1 National elections

Voter registration

Voter registration is automatic as eligible voters are automatically included in the electoral register. The same electoral register is used during national, regional and local elections and referenda. It follows from this that the method of registration is the same during every type of election and referenda, except for the fact that non-Hungarian EU citizens must register themselves for EU elections.⁵⁰ After having called the election, the head of the local election office shall compile, on the basis of the data provided in the residency register, the electoral roll, and shall continuously update it as required.⁵¹ Yet, non-resident citizens and those voting for minority lists have to register.⁵² Non-resident citizens can register electronically, by post or personally. Resident citizens wanting to vote for minority lists can register personally, by post or electronically.⁵³

Casting the vote

Votes may be cast only in person and, with the exceptions referred to in law, only at the polling station designated in accordance with the voter's domicile. During national elections

⁴⁸See Act CXIII of 2003 last modified on the 6th of May, 2010.
on the election of the Members of the European Parliament. Article 4

⁴⁹ Act LXV of 1990 On Local Governments.

⁵⁰Act C of 1997 on Electoral Procedure, Article 12

⁵¹Act C of 1997 on Electoral Procedure, Article 12.

⁵² <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=A1300036.TV>

⁵³ Act XXXVI. of 2013, article 91-92.

voters who are away from their reported address on election day might request in advance a certificate from the head of the local election office. This certificate specifies where they can vote on election day.⁵⁴ Proxy voting, e-voting and postal voting are not possible under any circumstances for resident citizens. Based on the new electoral law, as of 2011 non-resident citizens are from now on entitled to vote in national elections. The electoral law of April 2013 introduced postal voting for non-resident citizens.⁵⁵ Foreign residents are not enfranchised at national elections.

Running as candidate

Only resident citizens are allowed to run as candidates during national elections.

Assimilated or special representation of citizens residing abroad

Non-resident citizens will have assimilated representation as they will be able to vote only for party lists during the next parliamentary elections. Non-resident citizens can vote and run as candidates only on a party list, but they cannot vote for candidates running in single seat constituencies.⁵⁶

4.2 Local and regional elections

In Hungary local government exists at two levels: the municipality and the county. There is no hierarchical relationship between the two as, according to the Constitution, the fundamental rights of all local governments are the same. Counties and local governments differ in the administrative tasks that they carry out. Local municipalities provide basic public services while county governments have a supplementary function as they implement tasks that municipalities are unable to perform. Municipalities are the basic units, which consist of villages and cities and cities with county rights. The middle tier of local government is the county. There are 3,154 local government municipalities⁵⁷ and nineteen counties in Hungary.⁵⁸ Therefore, voting in the municipal and county local government elections is regulated according to the same rules and according to the same legislation.⁵⁹

Voter registration

During local and regional elections the rules of registering resident citizens and resident third-country nationals eligible to participate are the same. Hungarian resident citizens, EU citizens of another member state with Hungarian residency and every adult person who is recognised as a refugee, immigrant or resident of Hungary are eligible to participate. A resident is a non-Hungarian citizen with a reported address in Hungary whose immigration has been authorised or who has been recognised as a refugee.⁶⁰ Since, according to law, the enfranchised citizens whose address is located in the electoral district shall be entered in the electoral roll,

⁵⁴Act C of 1997 on Electoral Procedure, Article 89.

⁵⁵ Act XXXVI. of 2013, article 258.

⁵⁶Act 2011 - CCIII. Law on Electoral Procedure.

⁵⁷ This data is from 1 July 2011 from the Central Statistical Office. However, the precise number is not available because the number of local governments due to splits is constantly in flux.

⁵⁸ Open Society Institute, Local Government Initiative, Central Eastern Europe, Hungary.

http://lgi.osi.hu/country_datasheet.php?id=75

⁵⁹ Act C of 1997 on Electoral Procedure.

⁶⁰Act LV of 1993 on Hungarian Citizenship, Section 23.

registration of both citizens and non-citizens is currently automatic and depends on prior registration of residence.⁶¹

Casting the vote

As a general rule, votes may be cast only in person and, with the exceptions referred to in law, only at the polling station designated in accordance with the voter's domicile. Voters have the possibility to vote in their temporary residence instead of their permanent one. In that case they have to request a certificate from the head of their local election office.⁶² Proxy voting, e-voting and postal voting are not possible under any circumstances. Voting from abroad is not possible during local and regional elections.

Running as candidate

Hungarian resident citizens and citizens of any other member state of the European Union who is a resident of Hungary shall have the right to be a voter as well as a candidate in the elections of local representatives. The only exception is that only Hungarian citizens can run for the mayoral office. In addition, no citizen of any other member state of the EU who is resident in Hungary shall have passive suffrage if he or she has been disenfranchised in his or her native country under law, court or official decision of his or her state of citizenship.

⁶¹Act C of 1997 on Electoral Procedure, Article 13.

⁶²Act C of 1997 on Electoral Procedure, Article 104.

