

András A. Téglási

National University of Public Service, Budapest

Faculty of Science of Public Governance and Administration

Teglasi.Andras@uni-nke.hu

Attila Mihály Á. Nagy

Károli Gáspár University of the Reformed Church in Hungary

Faculty of Law

nagy.attila.mihaly@kre.hu

ELECTIONS IN HUNGARY AND IN OTHER COUNTRIES UNDER SPECIAL LEGAL ORDER – ESPECIALLY DURING THE PANDEMIC

Abstract: *The paper examines what was Hungary's and other European countries' answer to the collision between the exercise of the right to vote and the measures of public health meant to guarantee the right to health. The paper focuses on the effects that the epidemic triggered by the coronavirus had on Hungary's and other countries' elections and electoral processes. Overall, managing the situation posed a serious challenge to all decision makers throughout the world, and countries holding general elections during the pandemic faced particular difficulties. In countries where decision was taken to hold (general) elections (often after postponement), increased measures of protection were implemented during both the campaign and the voting. However, experience shows that despite all these efforts fewer citizens turned out to vote than before the pandemic. This faces countries which are about to organize general elections with a serious dilemma. In fact, decision makers have to ensure the right to vote for all those wanting to exercise it on the one hand, and on the other hand this has to be done amid circumstances that would not expose voters' health to danger. In order to reach a higher turnout, softening electoral requirements (concerning, for example, the very process of casting the vote) seems to be an obvious solution, but the principle of proportionality has also to be taken into account to preserve the integrity of elections.*

Keywords: *elections, electoral law, pandemic, COVID-19, special legal order, Hungary, Basic Law.*

1. INTRODUCTION

Laws defining our life have mostly been the product of the normal functioning of the state. By contrast the coronavirus – causing disease on a large scale, serious complications and the death in great numbers of those contaminated with it – has created situations that are out of the normal functioning of a state. Consequences of the pandemic are posing a serious challenge to all decision-makers throughout the world, among whom the Hungarian National Assembly and the Government.¹ The handling of COVID-19 deeply impacted the central and the territorial administrations as well; it modified down to the core the functioning of local governments.² Some measures were (and are) self-evident, such as those prescribing the wearing of masks, putting restrictions on social contacts or isolating persons contaminated with the virus. But what is the situation with elections? Can a fundamental right fixed in the *Basic Law* be restricted and if so, on what basis?

Article I of part FREEDOM AND RESPONSIBILITY of the *Basic Law* lays down the fundamental right that “The inviolable and inalienable fundamental rights of MAN must be respected. It shall be the primary obligation of the State to protect these rights.”, and, under article II, “Human dignity shall be inviolable. Every human being shall have the right to life and human dignity [...]”

Section (1) of article XX of the *Basic Law* says that “Everyone shall have the right to physical and mental health.” Ensuring the right to health was motivated at a first stage by measures of protection brought against the pandemic when the protection of people was a priority. Reasons of public health still dominate when it comes to putting restrictions on rights laid down in the constitutions of states or in international agreements.

In the practice of the Hungarian Constitutional Court the right to health appears as part of the objective aspect of the right to life. In the interpretation of the Constitutional Court the right to health is not a right on a universal basis, but a task arising from the Constitution and pertaining to the state. The state ensures this right through its central, local and other organs. Within this framework, the priority duties of the state are to maintain the functioning of the network of public health institutions and to organize health services.³

¹ Vid. more in detail in, for example: István Balázs, István Hoffman: „Közigazgatás koronavírus idején – a közigazgatási jog rezilienciája?” *MTA Law Working Papers*, 21/2020.

² Márta Péter-Delbó: *Kell-e egység a sokféleségben? A helyi önkormányzatok valamint a köztestületek feletti törvényességi felügyelet és törvényesség ellenőrzés szabályozási kérdései*. Doctoral thesis. PPKE Doctoral School in Law, 2021. 132. https://jak.ppke.hu/uploads/articles/12332/file/Peter_Delbo_Marta_dolgozat.pdf (12 Jan 2021)

³ 54/1996. (XI. 30.) AB decision

Pursuant to article XXIII of the *Basic Law*, “every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of the National Assembly, of local government representatives and mayors and of Members of the European Parliament”; and also, “everyone having the right to vote in elections of Members of the National Assembly shall have the right to participate in national referendums”, and “everyone having the right to vote in elections of local government representatives and mayors shall have the right to participate in local referendums”. That is, on the basis of the Basic Law the people shall not only be the source of public power but it also participates in exercising it.⁴

Electoral law has a double nature as it has a substantive and a universal aspect. The former means the set of laws that determine how representative bodies should be established. The latter expressing that suffrage is a fundamental political right meaning the right to be involved in power or in public affairs.⁵

To Gábor Kurunczi, defining suffrage as a fundamental right is particularly important “because providing the right to vote and to be voted for to as many people as it is possible is the most likely to guarantee – through democratic legitimation – legitimacy to the exercise of power”.⁶ Democratic legitimation is a constitutional condition for the exercise of public power. In systems based on the sovereignty of the people, it lies primarily on the transfer of power through direct elections, the people being not only the source of the power, but also takes part in its exercise (for example during a referendum).⁷

Section (3) of article I of the *Basic Law* stipulates that “the rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right”. This paper examines what was Hungary’s and other European countries’ answer to the collision between the exercise of the right to vote and the measures of public health meant to guarantee the right to health. By the expression ‘situation of pandemic’ we mean the period during which coronavirus had an impact on everyday life without considering whether the pace of its expansion made the introduction of a special legal order necessary or not.

⁴ Adrián Fábián: A hatalomgyakorlás néhány alapvető kérdéséről. Közjog és jogállam. In Ferenc Csefkó (ed.): *Tanulmányok Kiss László professzor 65. születésnapjára*. Faculty of Law, University of Pécs, Pécs 2016, 106.

⁵ Gábor Kurunczi: *Az általános és egyenlő választójog elvével összefüggő kihívások alkotmányjogi elemzése a magyar szabályozás tükrében*, Doctoral thesis. PPKE Doctoral School in Law. 2019, 12. [https://jak.ppke.hu/uploads/articles/12332/file/Kurunczi_G%C3%A1bor_dolgozatv\(1\).pdf](https://jak.ppke.hu/uploads/articles/12332/file/Kurunczi_G%C3%A1bor_dolgozatv(1).pdf) (29 May 2021)

⁶ G. Kurunczi, 21.

⁷ G. Kurunczi, 21.

2. CHARACTERISTICS OF THE SPECIAL LEGAL ORDER

The *Basic Law* of Hungary contains the fundamental rules and the constitutional norms governing the functioning of the state. It contains primarily the prescriptions that allow the state to operate in normal order, whereas its chapter on special legal order encompasses the qualified situations (state of national crisis, state of emergency, state of preventive defence, state of terrorist threat, state of danger and unexpected attack)⁸ which imply rules that differ from the general ones. The reason for this difference is that the event triggering the special legal order and endangering the normal functioning of the state and/or the life, health or property of the citizens on a massive scale requires a quick reaction from the major constitutional bodies, but this possibility for more efficient measures is limited in time as it is generally allowed until only the cause remains in effect.⁹

One of the main characteristics of the special legal order is that for the purpose of a fast and efficient decision-making, besides or instead of the bodies that normally make decrees other public bodies are also authorized to adopt laws (for example, the Head of State or the National Defence Council). At local level as well, persons that otherwise do not have this supplementary right, are given legislative competence (presidents of the county assemblies, the Lord Mayor, mayors).

The special legal order implies a redistribution (and strong centralisation) of public powers which obviously differs from the normal order of exercising power. It is all the more important that the guarantees for the rule of law prevail in the regulation and constitutional limits be put on this exceptional – although not full – form of executive power.¹⁰ In Hungary, for example, the National Assembly holds is in session in a state of danger and the Government informs the National Assembly regularly about the measures taken; if no session is held at the National Assembly, the Government informs the Speaker of the House and the leaders of the parliamentary groups.¹¹

Another important characteristic of the special legal order is that during the time it is declared, certain fundamental rights can be limited to a large extent.¹²

⁸ The 9th Amendment to the Basic Law however modified the provisions of the Basic Law concerning the special legal order as of 1 July 2023. According to this new regulation, chapter on special legal order will encompass only three qualified situations, that is the state of war, the state of emergency and the state of danger.

⁹ Balázs Gerencsér: Special Legal Orders. In András Zs.Varga, András Patyi, Balázs Schanda (eds.): *The Basic (Fundamental) Law Of Hungary. A Commentary of the New Hungarian Constitution*, Clarus Press, Dublin 2015, 307.

¹⁰ Zoltán Szente: „A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái” *MTA Law Working Papers*, 9/2020, 1-5.

¹¹ section 3 of *Act I of 2021 on the containment of the coronavirus pandemic*

¹² A. W. Bradley, K. D. Ewing: *Constitutional and Administrative Law*. Harlow, Pearson Education, 2007, 626. and Hilaire Barnett: *Constitutional and Administrative Law*. Cavendish Publishing, London – Sydney 2002, 821-822.

Among the common rules concerning special legal order, article 54 of the *Basic Law* allows for the fundamental rights – except for some of them – to be suspended or to be restricted beyond the extent provided for in article I (3). We can summarize that the exercise of fundamental rights can be restricted or suspended in certain circumstances, but certain fundamental rights (such as the right to life and human dignity) remain exceptions to the restriction or suspension¹³. The restrictions should be temporary and proportionate, which means that they cannot go beyond what is necessary to stave off the crisis or its consequences.¹⁴

3. SPECIAL LEGAL ORDERS AND PROVISIONS CONCERNING ELECTIONS

Provisions (restrictions) concerning elections figure in the chapter on special legal order only among the rules on the state of national crisis and state of emergency. During a state of national crisis or a state of emergency, no general elections of Members of the National Assembly may be called or held; in such cases, a new National Assembly has to be elected within ninety days of the termination of the state of national crisis or state of emergency.¹⁵ If the National Assembly declares the state of national crisis or state of emergency after the general elections of Members of the National Assembly have already been held but the new National Assembly has not been formed yet, the President of the Republic convenes the inaugural session for a date within thirty days of the termination of the state of national crisis or state of emergency.

The provisions on state of preventive defence, state of terrorist threat, state of danger and unexpected attack do not contain measures concerning electoral laws.

Measures concerning the state of danger and the common rules to be applied during a state of danger are defined in article 53. of the *Basic Law*: “In the event of a natural disaster or industrial accident endangering life and property, or in order to mitigate its consequences, the Government shall declare a state of danger, and may introduce extraordinary measures laid down in a cardinal Act.” During a state of danger, the *Basic Law* extends the Government’s powers to adopt decrees and allows – as provided for by a cardinal Act – the Government to suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

Although it specifies the notion of the state of danger, the *Basic Law* does not provide for concrete measures concerning the state of danger; it is up to the

¹³ Basic Law statement of reasons

¹⁴ Z. Szente, 6.

¹⁵ subsection 7 of Article 48 of the Basic Law

Government – within the framework of a relevant cardinal Act – to define the set of measures to be taken. These measures, however, are subject to a time limit as they cease to have effect after 15 days unless the Government – on the basis of an authorization from the National Assembly – extends the effect of the decree.

The framework of the Government's actions was defined by the provisions – legally effective on 12 March 2020 – in chapter V of *Act no. CXXVIII of 2011 concerning disaster management and amending certain related acts* (hereinafter referred to as: Kat. tv.); from an electoral point of view the essential points of that Act are those which determine the set of measures that the Government may take. On the basis of section 47, in a state of danger provisions different from those concerning public finances may be made and tasks of public administration within the powers of a mayor or a local government clerk may be specified by decree; furthermore, concerning the provisions of the Act on administrative procedures, provisions different from those of that Act may be introduced by decree. In a state of danger, in order to ensure production, supply and services obligation to enter into a contract may be required, the products and services being defined in a decree.¹⁶

The above provisions authorize the Government to determine, by decree, norms that differ from legal provisions in force, whereas sections 48, 49 and 50 of the Kat. tv. include concrete measures to avert a state of danger and determine the rules of curfew, wearing of masks, the introduction of digital education and restrictions on the opening hours.

Overviewing the above, we can say that on the basis of the Kat. tv. the Government did not have any possibility to amend electoral rules and so the *Government decree no. 40/2020. (III. 11.) on the declaration of the state of danger* and other laws prescribing rules of behaving did not contain restrictions concerning the elections.

We can conclude that at the very beginning of the coronavirus the regulatory regime in Hungary did not impose limitations on the right to vote in a situation of pandemic (for example influenza epidemic) nor did it prescribe special behavioural rules for the electoral process.

This period covers the time between the 1st and the 11th of March 2020, when only two local government by-elections were held.

4. ELECTIONS IN HUNGARY DURING A SITUATION OF PANDEMIC

4.1. Questions regarding electoral law in a state of danger

A radical change came in the elaboration of the legal framework meant to protect against the pandemic with *Act XII of 2020 on the containment of coronavirus* (hereinafter referred to as: *coronavirus act*), entered into force on 31 March 2020,

¹⁶ Vid. section 47(4) of Act CXXVIII of 2011

which included detailed provisions on electoral and referendum procedures. This act laid down that no by-elections may be called until the day following the end of the period of state of danger, and the elections not called or not held have to be called within fifteen days of the end of the period of state of danger. It also stipulated that no national and local referendums may be initiated until the day following the end of the period of state of danger; that the national and local referendums already called cannot be held, and the national and local referendums not called or not held have to be called within fifteen days of the end of the period of state of danger.¹⁷ The *coronavirus act* also included provisions on returning and destroying the recommendation sheets and the interruption of referendum time limits.

The explanation to the *coronavirus act* pointed out without ambiguity that the necessary in-person participation of all citizens in the election and referendum processes would seriously endanger the efforts deployed to avert the human epidemic and its consequences. The entry into force of the act had a clear effect: no election or referendum procedures could be conducted.

In exercise of the authorization as provided for by the common rules for the special legal order of the *Basic Law*, the National Assembly suspended the exercise of fundamental rights as regards elections and referendums, thereby clearly favouring and protecting fundamental rights relating to life and health.

4.2. Elections at a time of epidemiological preparedness

By adopting, on 17 June 2020, the *Government decree no. 282/2020. (VI. 17.) on the termination of the state of danger declared on 11 March 2020*, the Government decided to put an end to the state of danger introducing at the same time the preparedness for epidemic by the *Government decree no. 283/2020. (VI. 17.) on introducing a state of epidemiological preparedness*. With the termination of the state of danger the *coronavirus act* had no more effect. At the same time, the provisions of *Act LVIII of 2020 on the transitional provisions related to the termination of the state of danger and on epidemiological preparedness* entered into force repeating¹⁸ previous provisions of the *coronavirus act* and providing for

¹⁷ Vid. section 6 of Act XII of 2020.

¹⁸ Section 88 of Act LVIII of 2020: „The day on which the date of a by-election is fixed shall be any day from the day following the termination of the state of danger. The day on which the date of an election whose date has not been fixed or has not been held is fixed shall be a day within fifteen days from the termination of the state of danger.” and „National and local referendums may be initiated from the day following the termination of the state of danger. Time limits as defined in chapters II-IV of Act CCXXXVIII of 2013 on initiating referendums, the European citizens’ initiative and referendum procedure shall resume on the day following the termination of the state of danger. The day on which the date of a national or local referendum whose date has not been fixed or has not been held is fixed shall be a day within fifteen days from the termination of the state of danger.”

elections not called or not held as well as the calling and initiating of national and local referendums.

Neither Kat. tv. nor the laws implementing it contained any further provision directly concerning elections, Kat. tv., however, added section 51/A. – we'll see more in detail its importance – to *act CXXVIII of 2011*:

“51/A. § (1) In a state of danger declared in order to prevent human epidemics and averting harmful effects thereof, causing disease on a large scale and endangering life and property, and in order to protect the health and life of Hungarian citizens, the Government may – in addition to the extraordinary measures and rules defined in subtitles 21-24. –, as a means to guarantee Hungarian citizens security of their life, health, person, property and rights and in order to guarantee the stability of the national economy, suspend application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

(2) The Government may – to the extent necessary and proportionate to the objective pursued – exercise its powers defined in (1) in order to prevent, manage and eliminate human epidemics, and prevent and avert harmful effects thereof.”

At the end of June and early July 2020, in the wake of *coronavirus act* and *Act LVIII of 2020*, several elections were called; partly those not held re-called and partly because of some vacancies that had occurred before. Three of them emerged as particularly important: the parliamentary by-election in the 6th constituency of Borsod-Abaúj-Zemplén county, the mayoral and local government representatives' election in the city of Mohács and the mayoral and municipal individual constituency election in the city of Karcag. In addition, municipal or national minority by-elections were organized in almost thirty settlements.

During the preparations for these by-elections more and more questions emerged as to the management of the epidemic, the conduct of the voting, as in fact the epidemic had not disappeared with the termination of the state of danger, but it continued on a lower level of intensity with the number of new cases of infection expected to grow in a new wave of the disease with the rhythm of the infections accelerating.

In view of the situation, the Hungarian National Election Office issued circulars in late August, early September, addressed to the heads of local election offices informing them what protecting measures should be applied in by-elections, in particular concerning the actual voting operation. Three main domains were included: how to proceed with public gatherings organized prior to election day (taking of oath of members of electoral commissions, training of office and commission members); how to conduct the voting in the polling stations; and how to conduct voting by mobile ballot boxes and in particular the procedure to follow in social and health services.

These measures were aimed at helping the full exercise of the right to vote. It has to be mentioned that the polling station commissions made it possible, following

a guideline issued in August 2020 by the National Election Office, for people in quarantine to vote. The NEO guideline published in September 2020 allowed patients in hospitals and other social care facilities to exercise their right to vote during the period of ban on hospital visits introduced on 8 September 2020. In order to prevent the spread of the virus the procedure underpinning the organization and conduct of the mobile ballot box voting in institutions under the ban on visits followed the recommendations by the National Public Health Center.

In addition to the measures of protection, the National Election Office covered the fees of the supplementary record-keepers in the polling districts and distributed anti-pandemic packages in the polling districts (containing 50 masks, 10 pairs of disposable gloves and hand antiseptic gels) for the conduct of voting.¹⁹

For the voting operations to be conducted successfully, training delivered to election bodies and sufficient resources of staff and equipment are not enough – the citizens have to be informed as well. For this to be done, the National Election Office provided continuous information on its website *valasztas.hu*, whereas the local election offices kept voters informed following the methods in use in the settlements concerned.

There were no limitations on the right to vote at a time when measures introduced by the Government to protect fundamental rights relating to life and health impacted other domains of the everyday life by restricting other fundamental rights.

An interesting legal situation came in connection with the fundamental rights relating to life, health and elections. In order to slow down the spread of the coronavirus the Government had adopted the *decree no. 431/2020. (IX. 18.) on protective measures during the period of state of epidemiological preparedness* which – as regards certain specific protective measures concerning institutions of public education and vocational training – allowed only certain people to enter these institutions. The decree had made it possible for persons discharging their functions based on law – for example, members of polling station commissions – to enter such institutions but it was nevertheless ambiguous as respects voters. The government therefore adopted *decree 453/2020. (X. 9.) on certain epidemiological measures* which provided that restrictions regarding institutions of public education and vocational training did not apply to institutions as defined in *Act XXXVI of 2013 on electoral procedure* during preparations to vote, the vote and the determination of the election result where polling stations are located.

¹⁹ By adopting these measures, the National Election Office could ensure in the short term the safe conduct of elections during the situation of pandemic. But because of the excessive duration of the pandemic period, NEO also began to implement provisory measures in the electoral laws and it undertook the review of its information materials and especially that of the *Electoral booklets*.

4.3. Consequences of the renewed state of danger

As a result of the worsening of the situation of pandemic, the Government declared again, by *decree 478/2020. (XI. 3.) on the declaration of the state of danger*, the state of danger from 4 November 2020. The decree itself did not contain – just as well as the decree issued in spring did not – any provision on elections, which means that preparations and conduct of the elections could have been done even with the decree re-announcing the state of danger.

Here the amendment of *Act CXXVIII of 2011* – in other words, the addition of section 51/A. – gained all its meaning as it had given the Government large legislative powers from the beginning of the state of danger. This authorization made it possible that in contrast to the nineteen days period in spring only two days after the announcement of the state of danger the Government was able to introduce restrictions concerning elections by its *decree no. 483/2020. (XI. 5.) on transitional provisions relating to by-elections during the period of state of danger* (hereinafter: 483/2020. (XI. 5.) Govt. decree). The main points of the decree were the same as in the decree adopted in spring: no elections may be called, elections already called would not be held and referendum time limits would be interrupted.

The National Assembly adopted *Act CIX of 2020 on actions taken to control the second wave of the coronavirus pandemic* reinforcing the state of danger in the week following the entry into force of 483/2020. (XI. 5.) Govt. decree. The decree's measures were left unchanged with, however, specifications on two points:

- all election processes under way have to be cancelled, they have to be re-initiated once the state of danger has been over; in the cases where candidates have already been nominated by a final decision, only the electoral operations that follow should be carried out;
- referendums deadlines have to be interrupted, but the collection of signatures already initiated should only be suspended and it can be continued once the state of danger has been over and the signatures already collected can be used.

After that *Act CIX of 2020* had ceased to have effect – considering that the pandemic had not lost of its force and maintaining the state of danger proved to be necessary – the *Govt. decree no. 30/2021. (I. 29.) on by-elections during the state of danger and transitional provisions on national and local referendums* and *Act I of 2021 on the containment of the coronavirus pandemic* came as useful tools to manage the situation in line with the two specifications cited above.

At the moment of writing this paper there are no electoral or referendum processes under way and there won't be any until the end of the state of danger. During the second and third waves the Government and then the National Assembly suspended again the exercise of the fundamental rights in connection with elections and referendums, thereby clearly favouring and protecting fundamental rights relating to life and health. The first, second and third waves of the epidem-

ic hit Hungary at periods when neither parliamentary, municipal and mayoral, European elections nor referendums were organized, therefore limitations on the right to vote did not trigger serious opposition from the society. As to by-elections, it has to be noted that after the announcement of the state of danger, mayors in 25 settlements, municipal representatives in 18 settlements or Budapest districts, national minority representatives in 8 settlements or Budapest districts and another national minority representative in a county had to be elected.²⁰

4.4. Challenges to online meetings of election commissions

The pandemic also posed challenges to the functioning of election commissions. It is therefore unavoidable that their operation is guaranteed even during a period when, due to the reduction of contacts, personal presence cannot be ensured at all or is difficult to ensure. At the same time, regardless of the pandemic, it is important that online meetings can be guaranteed in the normal course of business in the 21st century, as this would also serve to meet the short deadlines for legal remedies.

With regard to the online meeting of electoral bodies in Hungary, Act CLXVII. of 2020 Section 16 introduced a new section into the Electoral Procedure Act, i.e. Section 40/A., according to which the meeting of the National Election Commission may be held by electronic means on the basis of the decision of the chairman.

It should be emphasized that the Electoral Procedure Act provides a legal basis for online meetings only in the case of the National Election Commission, so there is no legal possibility for this in the case of other, lower-level election commissions.

Details are provided in the Rules of Procedure of the National Election Commission for online meetings, specifically in Section 7/A., according to which, based on the decision of the Chair, the members of the Commission participate in the meeting by electronic means of video conferencing, i.e. online meeting. In particular, the Chair may decide to hold an online meeting if justified by an epidemiological emergency or other circumstances, or if a short, undisputed committee meeting is expected based on the subject matter of the proposed decisions, e.g. issuing of the mandate, registration of candidates and nominating organizations, etc.

5. ELECTIONS IN OTHER COUNTRIES DURING THE PANDEMIC

The coronavirus epidemic impacted election processes all over Europe. Between 21 February 2020 and 24 April 2021, elections in at least 78 countries were

²⁰ Source: data from the National Election Office

postponed.²¹ In at least 117 countries decision was taken to hold the elections despite the epidemic and 96 of them did hold their elections or referendums.²² In at least 52 countries elections that had been postponed earlier were held; out of these fifty-two, twenty-eight held national elections or referendums.²³ Where elections were organized among restrictions fair and free electoral campaigns had to be ensured; some countries introduced new voting methods (for example postal voting).

In the followings we will examine in detail which point of views have to be taken into account during a global pandemic when liberties are limited and participation in elections has to be guaranteed.

5.1. Considerations by the OSCE concerning elections held during a situation of pandemic

A study²⁴ by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe reviews which point of views have to prevail in a situation of pandemic in order for the countries co-operating with OSCE to deliver on their pledges. In what follows we try to sum up the main points of that study.

Even when placing limits on fundamental rights at a time of pandemic, the right to assembly, freedom of expression and freedom of movement are indispensable to fair and democratic elections²⁵ as the pledges, international obligations and standards in connection with elections cannot be questioned even during a state of emergency. However, countries co-operating with OSCE may ponder in a state of emergency whether to put forward public health considerations. In such a situation laws may be amended too quickly disadvantaging women, persons with disabilities or national minorities.²⁶

It is important that countries co-operating with OSCE guarantee that temporary amendments do not put electoral pledges already taken at risk.

In addition to examining the process of legislation it is also worth asking whether legal simplifications adopted by legislators in certain countries are justifiable and without any partisan political motives. ODIHR has several times

²¹ <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

²² <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

²³ <https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>

²⁴ <https://www.osce.org/files/f/documents/8/d/462726.pdf> (12 Jan 2021)

²⁵ Vid. from the Venice Commission: <https://rm.coe.int/16809e38a6> (12 Jan 2021)

²⁶ Vid. also the report by IFES: https://www.ifes.org/sites/default/files/ifes_covid19_briefing_series_safeguarding_health_and_elections_may_2020.pdf (12 Jan 2021)

pointed out that elections should be preceded by inclusive and transparent public consultations with stakeholders and that electoral laws have to respect the stability of the general electoral framework.²⁷

With the 1990 Copenhagen declaration, the countries co-operating with OSCE committed themselves “to hold free elections at reasonable intervals, as established by law”. The basis to all this are not only the pledges made to OSCE, but also the Universal Declaration of Human Rights. In the current context of the epidemic the principle of holding elections at regular intervals has to be weighed against other obligations of the state namely those which are in connection with the right to life and health. These fundamental rights make it necessary to take immediate measures. Postponing or suspending elections under special legal order does not mean a break with human rights, it rather underlines how important guarantees are.²⁸ It has to be pointed out that “suspensions concerning certain elements of electoral law are only allowed to the extent necessitated by the situation, therefore they have to be put to the test of proportionality”²⁹. The principle which says that regularity in holding elections should be prescribed by law has been several times violated as certain countries had no laws providing for elections postponed for reasons of state of emergency. There were also cases for decisions not being taken in a view of ordering the state of emergency and therefore causing legal uncertainty or leading to *ad hoc* solutions. These *ad hoc* decisions in connection with postponing, suspending or holding the election in a changed environment leaving then open the question whether they came to be after reasonably pondering arguments for and against other state duties such as the right to life. All this underlines again the requirement that in questions of public interest decision-making involve the largest number of stakeholders through transparent and effective consultations.³⁰

In countries where an election period had already begun at the time of the outbreak of the pandemic, ensuring fair and free campaigning meant a special difficulty. Solutions had to be found in order to remove administrative measures hindering candidates from bringing their election programme to the knowledge of their electorate. Gatherings, canvassing voters, the distribution of leaflets are all traditional campaign methods, all capable of being subject to country level limitations for health reasons.

²⁷ Vid. here OSCE ODIHR’s opinion on the draft laws submitted before the polish presidential election <https://www.osce.org/files/f/documents/d/3/450856.pdf> and here https://www.osce.org/files/f/documents/e/0/453333_2.pdf (12 Jan 2021)

²⁸ Vid. also the analysis by IFES here https://www.ifes.org/sites/default/files/ifes_covid-19_briefing_series_legal_considerations_when_delaying_or_adapting_elections_june_2020.pdf and a report by the European Council here <https://rm.coe.int/election-and-covid-19/16809e20fe> (12 Jan 2021)

²⁹ Vid. a report by the Venice Commission [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e) (12 Jan 2021)

³⁰ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 81. (12 Jan 2021)

Advantages enjoyed by the party in government, the managing of state resources – including policymaking, certain initiatives aimed at containing the virus and their social-economical effects – are of particular importance when the owners of the political power not only take measures against the coronavirus, but they also participate in the elections.³¹

As to restrictions introduced on a public health basis, it has to be scrutinized whether a given country co-operating with OSCE “provides the necessary legal guarantees to enable political parties and organizations to compete with each other on a basis of equal treatment before the law and by the authorities.”³²

In most countries co-operating with OSCE news in public media were dominated by the pandemic and the responses of governments. In the context of elections, this gives rise to some concerns regarding the commitment to provide conditions “for unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process”.³³ Whether the electoral contestants are able to use the media to convey their messages to the voters will certainly depend on how previously identified media-related shortcomings are rectified, on the impact of the economic downturn on the media landscape, but also on the willingness of those in power to not abuse their prominence in the context of the pandemic to gain an unfair advantage over political competitors. At the same time, they may be ‘punished’ by voters if they are seen as having failed to lead effectively during the crisis.

The principles of universality and equality of the right to vote and to be voted for were also challenged regarding both the longer-term processes such as voter and candidate registration, and shorter voting operations such as the methods of voting. Pledges made to OSCE concerning “guarantee universal and equal right to vote and to be voted for to adult citizens”³⁴ may be challenged if voter registration or verification efforts are halted due to public health concerns. Changing the place of residence for reasons of health concerns or the economic effects of the pandemic may necessitate the revision of voter lists.

While few countries allow for electronic submission of required documents, in a number of countries co-operating with OSCE the registration of electoral candidates is only permitted on an in-person collection, submission and verification of supporting signatures, which may be problematic in the conditions of social distancing or restrictions to assembly or movement. While traditional voting mechanisms may pose threats to public health, alternative solutions to voting in polling stations may, in turn, endanger the principle of universality, equality and secrecy of voting. A number of previous ODIHR election observation reports noted that

³¹ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 81. (12 Jan 2021)

³² <https://www.osce.org/files/f/documents/8/d/462726.pdf> 81. (12 Jan 2021)

³³ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 81. (12 Jan 2021)

³⁴ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 82. (12 Jan 2021)

homebound voting or casting ballots in prisons, hospitals or elderly homes raised concerns of undue influence on the voter. Facilitating the vote for those subject to quarantine with the aim to preserve the principle of universality is a particular challenge in the current situation. Adherence to the commitments in such cases may be ensured by effective legal and practical guarantees against wrong-doing and the development of adequate staff capacities and technical skills within election management bodies.

Certain alternative methods of voting may also challenge the principle of “votes being cast by secret ballot or by equivalent free voting procedure”³⁵. Voting by proxy (to OSCE this method does not fulfil the requirements of equality and secrecy) isn’t either an adequate answer to health concerns as women, older people and people with disabilities can be particularly exposed to measures taken by necessity and going beyond what would be justifiable; their right to secret vote can also suffer harm, if postal voting or other alternative voting methods are not accompanied by guarantees.

A number of countries co-operating with OSCE agree that “the presence of observers, both foreign and domestic, can enhance the electoral process for countries where elections are taking place”³⁶. It has, however, to be noted that simply sending electoral observers may be problematic at a time of pandemic. While certain restrictions concerning electoral observers may prove to be necessary, the principle of transparency may also be violated. It is possible to compensate for the difficulties to access to the meetings of electoral bodies by using available infocommunication technologies, while observers are faced with the same hindrances when wanting to observe voting day’s operations.

During the pandemic a number of countries co-operating with OSCE postponed their current elections.³⁷ There were countries, however, that kept the election day as initially planned.³⁸ Although a decision to hold or postpone an election in times of pandemic is a matter each state co-operating with OSCE has to decide for itself, it should be taken in line with pledges made to OSCE and other international obligations and standards. In most cases, such a decision required modification of a country’s legal and even constitutional framework.

In many countries co-operating with OSCE, the postponement of the election day was possible due to the declaration of a state of emergency (or equivalent

³⁵ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 82. (12 Jan 2021)

³⁶ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 82. (12 Jan 2021)

³⁷ Vid. the municipal elections in Kyrgyzstan, the second round of the French municipal elections, the parliamentary elections in North-Macedonia, the municipal and parliamentary elections in Serbia, the municipal elections in Romania, the municipal elections in England and Wales, the presidential election in Poland

³⁸ Vid. the presidential elections in Belarus, Iceland and the United States, the parliamentary election in Mongolia and the municipal election in Bosnia-Herzegovina

measures). In other cases, special legal frameworks had to be adopted. In some countries co-operating with OSCE, legislative processes and the adoption of laws were undertaken in a rushed manner, in the absence of a meaningful public and inclusive consultation among key electoral stakeholders, challenging the principles of legality and stability of election law. While the Council of Europe's Venice Commission notes that "amendments carried out within the year preceding a given election do not necessarily go against the European principles of electoral law,"³⁹ substantial amendments to the fundamental elements of the electoral law shortly before an election may influence the outcome of an election.

In certain countries the governing party or parties were probably more interested in postponing the elections for reasons of pandemic than the other parties. There were by contrast countries where the election could be held on the originally fixed date by using alternative voting methods aimed at containing the spread of the virus. Postal voting could be a solution but only in countries where it has proved to be viable. Alternative methods can only be implemented progressively, long before the elections, after having tested them and after having conducted consultations.

Vulnerable groups, such as people with disabilities, may be disproportionately affected by postal voting. While voting by post may increase the participation in elections, it in the same time can challenge the secrecy and equality of the vote, since the voter receives a ballot that is to be marked in an uncontrolled environment outside of the polling station. In addition to this, the number of domestic violence cases and confinement may also influence voting at home. Considerations that provide real equal opportunities for all should therefore be taken into account when introducing new voting methods. The use of alternative methods might encounter specific challenges when voting is organized for those residing abroad and regulations of both the host and the home country apply.⁴⁰

At the outbreak of the pandemic, many were keen on introducing internet voting. However, decision-makers in most countries co-operating with OSCE did not make any move toward this alternative solution, in part due to the realization that the introduction of internet voting would consume substantial time and resources.

In several cases when countries decided to proceed with planned elections some elements of the electoral process were modified such as revision of timelines pertaining to the collection of supporting signatures, voter registration updates, and the duration of the campaign period. In some countries deadlines regarding voting and counting were altered due to the introduction of alternative voting methods. Such changes were in some cases made without consultation with electoral

³⁹ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e) (12 Jan 2021)

⁴⁰ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 84. (12 Jan 2021)

stakeholders. There were countries that did not have rules pertaining to online campaigning and advertising.⁴¹

5.2. Experiences gained from elections held during the situation of pandemic

Let us now – having in mind the limits imposed by the shortness of this paper – cite some international examples allowing us to summarize the experiences gained from elections and preparations for election during the pandemic.

In Croatia, general parliamentary elections were held on 5 July 2020. In response to the epidemic, the Croatian public health institution issued recommendations for the central electoral commission (CEC); in the first days of the week of the election, the CEC presented the measures to be followed on election day. The reception by the public of these recommendations was mixed. Some had concerns that those contaminated with the virus or simply having fever or other similar symptoms would not be able to exercise their right to vote. Domestic electoral observers and academics turned to the Constitutional Court. In its decision, the Constitutional Court ordered the central electoral commission to facilitate the exercise of the right to vote for those contaminated with coronavirus. The CEC acted in line with the instructions, but only two days before election day. The Constitutional Court also stipulated that voting outside the polling stations must be made possible for those contaminated with the virus. This was done by the use of mobile ballot boxes: on election day until noon mobile boxes could be requested without any particular justification, but there were no guarantees that everyone could effectively make use of this way of voting. In total, it can be said that requests for mobile voting were met. Citizens in quarantine were able to cast their ballot in person, just outside their home. Those contaminated could vote by proxy, the person authorized to do so marking the adequate circle, then handing over the ballot paper to the persons officially designed, waiting outside the home of the citizen.⁴²

In Poland, in the context of the presidential election the government decided – after the outbreak of the epidemic and at the same time when the state of emergency was declared – to hold the election on 10 May 2020, the date originally fixed. The Polish Parliament also modified the electoral law, the amendments extending the right to vote by post to those over the age of 60 and to those in quarantine. In addition, a draft Act – forcefully criticized by the opposition –, introduced on 6 April, aimed at conducting the whole election by postal voting authorizing the Speaker of the Parliament to change the day of voting. The draft Act partially reassigned important functions related to elections from the national electoral commission (NEC) to the Ministry of State Assets. In the end, the draft wasn't

⁴¹ <https://www.osce.org/files/f/documents/8/d/462726.pdf> 84-85. (12 Jan 2021)

⁴² https://www.osce.org/files/f/documents/b/4/465120_0.pdf (12 Jan 2021)

passed because the opposing parties had agreed, on 6 May, to postpone the election. But, because of the postponement the campaign itself and campaign financing got in a sort of *ex lex* status. On 2 June the electoral law was amended under an expedited procedure: the powers of the NEC were reassigned, optional postal voting was introduced and the training and enrolment of members of lower level election bodies was regulated. As to the campaign, assemblies could be held with a maximum of fifty persons, and candidates were able to reach out to their electorate mainly by internet. After that the epidemic had been temporarily contained, campaign activities could again be conducted.⁴³

At the outbreak of the epidemic, a thirty-day state of emergency had been declared in North Macedonia which was then followed by the suspension, by means of a presidential decree, of all electoral process. The conditions for resuming the electoral processes, their conduct, the validity of previous processes, voters' registration, campaign in the media, adequation to public health requirements (including an additional voting day provided for those contaminated with the virus) – were all regulated by decrees. Regulations lacked consistency therefore causing legal uncertainty. For example, rules concerning assemblies were implemented by a government decree on the coronavirus, amended 28 times and relating to different stages of the electoral process. The regulation on indoor and outdoor events was adopted six days after the beginning of the campaign and it came to be modified two times during the campaign. Decisions ordering the amendments and the amended texts themselves were published separately, often with several days of delays.⁴⁴

In Serbia, in harmony with his constitutional commitments, the president of the republic fixed, on 4 March, the date of 26 April as the day on which the parliamentary election should have been held. On 16 March, in a state of danger declared with the outbreak of the pandemic the whole electoral process was suspended. With the state of danger lifted on 6 May, the electoral process resumed on 11 May. A new date – 21 June – was fixed as voting day. The electoral commission had made preparations for the use of masks and gloves in order to contain the spread of the virus, but they were not always used at local level.⁴⁵

In Romania, turnout at the parliamentary election⁴⁶ was far lower (33%) than expected. One possible explanation for this is the fear of virus, although during the preparations for the election the ministry of public health had determined which prescriptions should have been followed in public institutions and, indeed, on voting day these were applied. The persons contaminated with the virus were

⁴³ <https://www.osce.org/files/f/documents/6/2/464601.pdf> (12 Jan 2021)

⁴⁴ https://www.osce.org/files/f/documents/b/e/465648_0.pdf (12 Jan 2021)

⁴⁵ <https://www.osce.org/files/f/documents/a/3/466026.pdf> (12 Jan 2021)

⁴⁶ www.roaep.ro (12 Jan 2021)

able to vote by mobile ballot box. Curfew was eased, but only for voting day and for staff involved in the conduct of the election.⁴⁷

Decree no. 2019-928. by the Council of Ministers (décret n° 2019-928 du 4 septembre 2019) adopted on the basis of provision L227 of the French electoral Act (Code électoral) fixed the date of the first round of the 2020 municipal elections for 15 March, the second round having been fixed for 22 March 2020. In view of the coronavirus epidemic and by means of the decree no. 2020-267. (Décret n° 2020-267 du 17 mars 2020), issued on 17 March 2020, the Council of Ministers postponed the second round of the election to June 2020 at the latest. The date on which the second round should have been held was fixed for 28 June by decree no. 2020-642. (décret n° 2020-642 du 27/05/2020), issued on 27 May 2020. Decree no. 2020-743. (Décret n° 2020-743 du 17 juin 2020), issued on 17 June 2020 regulated the second round in the context of the epidemic as follows: voters particularly vulnerable could vote in separate queues, at once a maximum number of three voters were allowed in the polling rooms, every polling station was equipped with disinfection points containing soap or hydroalcoholic gel. In addition, the wearing of masks was obligatory and the ballots were not stamped in order to contain the spread of the virus. Citizens were strongly encouraged to vote by proxy – a legal method of voting anyway. In France, in the second round during previous municipal elections turnout had always exceeded 60%, it was 62,9% in 2014, 65,2% in 2008, whereas it was only 41,6% in 2020 showing a clear effect of the epidemic despite the protecting measures.⁴⁸

On the basis of the Portuguese constitution even in a state of danger elections cannot be postponed, therefore the presidential election was held in January 2021. It is not possible to vote by post or electronically in Portugal. The government eased the epidemic regulation in order for the citizens to be able to exercise their right to vote, so the vote began much more earlier with the aim to avoid long queues of voters. Hardly 40% of those having the right to vote cast their ballot, although the authorities had lifted the restrictions for voting day.⁴⁹

In Catalonia, in the context of the coronavirus political leaders wanted the parliamentary election to be postponed and held on 30 May 2021, but a court decision went against this. The court argued that the epidemic was not an unexpected event, on the contrary it had been known to arrive one day and a cancellation

⁴⁷ https://www.osce.org/files/f/documents/4/9/472812_0.pdf (12 Jan 2021)

⁴⁸ electoral code (Code électoral) L227. §-a

decree no. 2019-928. (décret n° 2019-928 du 4 septembre 2019)

decree no. 2020-267. (Décret n° 2020-267 du 17 mars 2020)

decree no. 2020-642. (Décret n° 2020-642 du 27/05/2020)

decree no. 2020-743. (Décret n° 2020-743 du 17 juin 2020)

⁴⁹ <https://www.politico.eu/article/portugal-president-election-2021-vote-coronavirus-infections/>, <https://hu.euronews.com/2021/01/25/marad-az-elnok-de-erosodnek-a-jobbaldali-populistak-portugaliaban>

would have meant a restriction on election as a fundamental right. The court added that a postponement would have produced a period of uncertainty too long at a time when democratic normality had to be restored and the Catalan autonomous community needed its president and governing parties.⁵⁰ The Hungarian news agency (MTI) reported that the voting – finally held on February 2021 – began at many places with a delay of two hours as a result of many determined by drawing lots to be members of polling station commissions not being present and substitutes being needed to replace them. Out of the 82 thousand people designated 34 thousand demanded exemption because of the situation of pandemic, the central electoral commission (JEC) approving 22 thousand requests. By contrast, those absent without permission were fined and could even face imprisonment based on the law. The voting was organized amid exceptional health measures, with significantly more polling station than usual. So citizens could vote in the FC Barcelona stadium, on markets, in sport facilities, even an arena for bullfighting was made available.⁵¹ Despite all these efforts only 53% cast their vote which has been the lowest turnout so far.⁵²

In Israel, the central electoral commission (CEC) introduced, in March 2021, the polling booth “drive through”. This new method allowed the most vulnerable and those in quarantine to vote without leaving their car. The voter took the ballot from a stand beside their car, then put it into a ballot box after having made 1,5 meters. Drones were used to take pictures of the traffic around these special polling facilities then these pictures were forwarded to the CEC. If the CEC judged that a too long queue of cars has lined up, order was given to regroup voters to another special polling facility. The rules pertaining to the votes by absentee voters (for ex. Israeli diplomats abroad) were applied to the votes cast in these special polling facilities which means that the ballots should be put in a double envelope. The number of polling booths was increased by 30%. Fifty buses transformed into mobile polling stations were put in service all over the country. Polling facilities were installed at Ben Gurion airport for Israeli citizens re-entering their country and waiting for their passport to be checked.⁵³

Another novelty in Israel was the app named *Democrator* developed by the civil organization *Darkenu*. Through this downloadable free app friends and family members could send messages to encourage each other to go to vote.⁵⁴

⁵⁰ <https://vilaggazdasagi.blog.hu/2021/02/17/>

⁵¹ https://mandiner.hu/cikk/20210214_katalan_valasztas_harmas_holtversenyt_es_a_fuggetlensegparti_gyozelmet_is_josolnak_a_felmeresek

⁵² https://vilaggazdasagi.blog.hu/2021/02/17/a_katalan_valasztas_utan#more16430006

⁵³ <https://www.al-monitor.com/originals/2021/03/israel-deploy-drones-election-day-facilitate-voting-covid-19-patients>

⁵⁴ <https://www.thenationalnews.com/world/covid-protected-booths-and-the-democrator-app-is-israel-s-2021-election-the-future-1.1189867>

In March 2021 parliamentary elections were held in the Netherlands. One hundred and fifty deputies were elected in the lower house of Parliament through direct voting, for a mandate of four years. Machine voting used for nearly 30 years since the '70s was replaced in 2009 by paper-based voting when it became clear how easily voting machines can be manipulated.⁵⁵ Citizens could vote at any polling station within the city where they were registered; voting in another polling district than the one according to the residence of the citizen was also possible. In harmony with transitory rules introduced in the context of the epidemic, anyone could vote from two days earlier on, that is, from 15 and 16 March; any citizen including those abroad could vote by proxy. A person could vote for three other authorizing him. Out-of-country voters voted by post. Overseas voters could download the ballot paper electronically, but had to mark and cast the ballots in hard copy. For these elections, mail voting was extended to voters over the age of 70.⁵⁶

The coronavirus pandemic which imposed restrictions on freedom of movement created a special context in which the issue of electronic voting gain a particular importance. The question is no longer if electronic participation can be offered to voters as an additional option. The elections postponed due to the pandemic (e.g. the 2020 Polish presidential election or the second round of the 2020 French municipal elections) highlighted that there may be situations where electronic voting seems to be the only possible or at least the most practical way of participating in elections. Even before the pandemic, one could observe active reflection on electronic voting in the administrative, academic and political world. Electronic voting in part or on an experimental basis is already being used in some countries while other are reflecting about it. In France, for example, during the 2017 presidential election campaign, the promises of Emmanuel Macron to strengthen democracy included the introduction of electronic voting. More recently, on 2 June 2020, several members of the French National Assembly submitted a draft bill calling for the introduction of electronic voting.⁵⁷ At the end of 2020, the French Senate also urgently prepared a report on this issue, in which it concluded however that the security conditions for electronic and Internet voting were not yet in place, but work on this subject needed to be continued.)

6. SUMMARY

This paper examines the effects that the epidemic triggered by the coronavirus had on Hungary's and other countries' elections and electoral processes. Overall, managing the situation posed a serious challenge to all decision makers

⁵⁵ <https://www.reuters.com/article/us-netherlands-election-pencil-idUSKBN2B91OD>

⁵⁶ <https://www.osce.org/files/f/documents/4/0/478501.pdf>

⁵⁷ https://www.assemblee-nationale.fr/dyn/15/textes/l15b3039_proposition-loi.pdf

throughout the world, and countries holding general elections during the pandemic faced particular difficulties.

As to Hungary, it must be pointed out that in the early phases of the pandemic the electoral laws had not changed, preparations for local government by-elections had been done until 31 March 2020 and votings had been carried out in only two local government by-elections. But the rapid spread of the disease brought a radical change and made it necessary to introduce a special legal order. In exercise of the authorisation as provided for by the common rules for the special legal order of the Basic Law, the National Assembly and – following an authorization by the National Assembly – the Government suspended, for the duration of the state of danger, the exercise of fundamental rights as regards elections and referendums, thereby clearly favouring and protecting fundamental rights relating to life and health.

In countries where decision was taken to hold (general) elections (often after postponement), increased measures of protection were implemented during both the campaign and the voting. However, experience shows that despite all these efforts fewer citizens turned out to vote than before the pandemic. This faces countries which are about to organize general elections with a serious dilemma. In fact, decision makers have to ensure the right to vote for all those wanting to exercise it on the one hand, and on the other hand this has to be done amid circumstances that would not expose voters' health to danger. In order to reach a higher turnout, softening electoral requirements (concerning, for example, the very process of casting the vote) seems to be an obvious solution, but the principle of proportionality has also to be taken into account to preserve the integrity of elections.

Putting forward considerations of public health seems a priority when a new type of epidemic appears and neither the number of illnesses nor the consequences can be assessed; solutions to contain the epidemic are being looked for as the disease is spreading. But arguments for measures to prevent public health weigh less and restrictions have to be reviewed once the epidemic has been contained or has been brought under control. The study of international practices presented in this paper may facilitate decision-making in the context of the epidemic and we hope that they will provide multiple lessons as to methods which may contribute to a safe conduct of (general) elections or referendums during a situation of pandemic.

REFERENCES

- A. W. Bradley, K. D. Ewing: *Constitutional and Administrative Law*. Harlow, Pearson Education, 2007.
- Adrián Fábián: A hatalomgyakorlás néhány alapvető kérdéséről. Közjog és jogállam. In Ferenc Csefkó (ed.): *Tanulmányok Kiss László professzor 65. születésnapjára*. Faculty of Law, University of Pécs, Pécs 2016.

- Balázs Gerencsér: Special Legal Orders. In András Zs.Varga, András Patyi, Balázs Schanda (eds.): *The Basic (Fundamental) Law Of Hungary. A Commentary of the New Hungarian Constitution*, Clarus Press, Dublin 2015.
- Gábor Kurunczi: *Az általános és egyenlő választójog elvével összefüggő kihívások alkotmányjogi elemzése a magyar szabályozás tükrében*, Doctoral thesis. PPKE Doctoral School in Law. 2019, 12.
[https://jak.ppke.hu/uploads/articles/12332/file/Kurunczi_G%C3%A1bor_dolgozatv\(1\).pdf](https://jak.ppke.hu/uploads/articles/12332/file/Kurunczi_G%C3%A1bor_dolgozatv(1).pdf) (29 May 2021)
- István Balázs, István Hoffman: „Közigazgatás koronavírus idején – a közigazgatási jog rezilienciája?” *MTA Law Working Papers*, 21/2020.
- Hilaire Barnett: *Constitutional and Administrative Law*. Cavendish Publishing, London – Sydney 2002.
- Márta Péter-Delbó: *Kell-e egység a sokféleségben? A helyi önkormányzatok valamint a köztisztviselők feletti törvényességi felügyelet és törvényesség ellenőrzés szabályozási kérdései*. Doctoral thesis. PPKE Doctoral School in Law, 2021. 132.
https://jak.ppke.hu/uploads/articles/12332/file/Peter_Delbo_Marta_dolgozat.pdf (12 Jan 2021)
- Zoltán Szente: „A 2020. március 11-én kihirdetett veszélyhelyzet alkotmányossági problémái” *MTA Law Working Papers*, 9/2020, 1-5.
- Basic Law of Hungary
54/1996. (XI. 30.) AB decision
Act I of 2021
Act CXXVIII of 2011
Act XII of 2020
Act LVIII of 2020
decree no. 2019-928. (décret n° 2019-928 du 4 septembre 2019)
decree no. 2020-267. (Décret n° 2020-267 du 17 mars 2020)
decree no. 2020-642. (Décret n° 2020-642 du 27/05/2020)
decree no. 2020-743. (Décret n° 2020-743 du 17 juin 2020)
National Election Office’s official website
<https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>
<https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>
<https://www.idea.int/news-media/multimedia-reports/global-overview-covid-19-impact-elections>
<https://www.osce.org/files/f/documents/8/d/462726.pdf>
<https://rm.coe.int/16809e38a6>
https://www.ifes.org/sites/default/files/ifes_covid19_briefing_series_safeguarding_health_and_elections_may_2020.pdf
<https://www.osce.org/files/f/documents/d/3/450856.pdf>
https://www.osce.org/files/f/documents/e/0/453333_2.pdf
https://www.ifes.org/sites/default/files/ifes_covid-19_briefing_series_legal_considerations_when_delaying_or_adapting_elections_june_2020.pdf
<https://rm.coe.int/election-and-covid-19/16809e20fe>
[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)

<https://www.osce.org/files/f/documents/8/d/462726.pdf>
[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e)
https://www.osce.org/files/f/documents/b/4/465120_0.pdf
<https://www.osce.org/files/f/documents/6/2/464601.pdf>
https://www.osce.org/files/f/documents/b/e/465648_0.pdf
<https://www.osce.org/files/f/documents/a/3/466026.pdf>
www.roaep.ro
https://www.osce.org/files/f/documents/4/9/472812_0.pdf
<https://www.politico.eu/article/portugal-president-election-2021-vote-coronavirus-infections/>,
<https://hu.euronews.com/2021/01/25/marad-az-elnoke-erosodnek-a-jobboldali-populistak-portugaliaban>
<https://vilaggazdasagi.blog.hu/2021/02/17/>
https://mandiner.hu/cikk/20210214_katalan_valasztas_harmas_holtversenyt_es_a_fuggetlensegparti_gyozelmet_is_josolnak_a_felmeresek
https://vilaggazdasagi.blog.hu/2021/02/17/a_katalan_valasztas_utan#more16430006
<https://www.al-monitor.com/originals/2021/03/israel-deploy-drones-election-day-facilitate-voting-covid-19-patients>
<https://www.thenationalnews.com/world/covid-protected-booths-and-the-democrator-app-is-israel-s-2021-election-the-future-1.1189867>
<https://www.reuters.com/article/us-netherlands-election-pencil-idUSKBN2B91OD>
<https://www.osce.org/files/f/documents/4/0/478501.pdf>
https://www.assemblee-nationale.fr/dyn/15/textes/115b3039_proposition-loi.pdf

Андраш А. Теґлаши

Национални универзитет за државну службу, Будимпешта

Факултет за правне науке и државну управу

Teglas.Andras@uni-nke.hu

Атила Михаљ А. Нађ

Универзитет „Гаџпар Кароли“ Реформске цркве у Мађарској

Правни факултет

nagy.attila.mihaly@kre.hu

Избори у Мађарској и у другим државама под посебним правним поретком – посебно током пандемије

Сажетак: У раду се истражује какав је био одговор Мађарске као и других европских држава на колизију између остваривања права гласа и мера јавног здравља које би требало да обезбеде латентну праву на здравље. Рада се фокусира на ефекте које је епидемија изазвана корона вирусом имала на изборе и изборне процесе у Мађарској и другим државама. Уочено, управљање ситуацијом представљало је озбиљан изазов доносиоцима одлука широм света и државе у којима су се спроводили избори током пандемије суочиле су се са посебним изазовима. У државама у којима су донеле одлуке да се (избори) избори одрже (често након одлагања), примењиване су повећане мере заштите и током изборне кампање и током гласања. Међутим, искуство показује да је, упркос свим овим напорима, мање трајана искористило право гласа него што је то био случај пре пандемије. То је суочило државе које ће ускоро организовати изборе са озбиљном дилемом. У ствари, доносиоци одлука, са једне стране, морају да обезбеде право гласа за све оне који желе да га остваре, а са друге, да то учине у околностима које неће изложити опасност здравље бирача. У намери да постигну вишу излазност бирача, ублажавање изборних услова (који се односе, на пример, на сам поступак гласања) чини се да је очигледно решење, али принцип пропорционалности ипак мора бити узет у обзир да би се сачувао интегритет избора.

Кључне речи: избори, изборно право, пандемија, Ковид-19, посебан правни поредак, Мађарска, Основни закон.

Датум пријема рада: 27.08.2021.

Датум достављања коначне верзије рада: 17.01.2022.

Датум прихватања рада: 17.01.2022.