

András László Pap,¹ Boldizsár Szentgáli-Tóth²
CC Decision 1/2013. (I. 5.) on registration as a prerequisite for the right to vote³

Significance of the decision

Following a referral by the head of state (a rare action), the decision invalidates legislation that restricts the right to vote by setting forth intricate registration requirements that create a burden for certain group of voters. (The decision also strikes down restrictions on publishing survey results and other forms of political campaign in movie theatres and disparate regulations concerning public and private media outlets.) The main significance of decision concerns the assessment of the institution of registration, where the CC held that, in line with the case law of the European Court of Human Rights, requirements for prior registration are not inadmissible per se, but need to meet proportionality standards. (The decision also strengthened free political speech standards.)

1. The background of the decision

The following facts are important to understand the decision. In 2010 the FIDESZ-Christian Democratic coalition gained a two-third majority in the parliamentary elections, allowing it to adopt a new constitution and amend laws requiring a qualified majority. Within a month, even prior to electing the new government, Parliament amended⁴ Act LV. 1993 on Hungarian citizenship offering citizenship to persons who were previously citizens of Hungary, or whose ancestors were citizens of Hungary, or who are of Hungarian descent but are now foreign citizens. This law is primarily meant to offer citizenship to persons of ethnic Hungarian descent whose Hungarian ancestors were placed outside the Hungarian borders as a consequence of the Paris Peace Treaties following World War I. The new electoral law abolished residency requirements for eligibility to vote, instituting a legal framework, where non-residents' votes are worth less than half than those of residents, as since they do not have SMDs, and cannot vote for SMD candidates, their votes are counted only in the national list. Estimates of the size of the ethnic Hungarian communities across the border vary, ranging between 2.5–3 million. (By the next, 2014 parliamentary elections 600,000 non-resident Hungarians had acquired citizenship, 193,793 registered to vote, but as a result of complicated voting procedure, 128,429 valid mail votes were cast, with FIDESZ receiving the overwhelming 95.4 percent of these.)⁵ Hungarian residents who work or study abroad could not vote by mail but needed to travel to a Hungarian embassy or consulate, whereas non-

¹ Research Professor, Centre for Social Sciences, Institute for Legal Studies/ Professor, Eötvös University/Ludovika University, Budapest, Hungary.

² Research fellow, Centre for Social Sciences, Institute for Legal Studies, Budapest, Hungary

³ This research is funded by project no. NKFIH 128397 investigating the normative content of the principle of democracy from EU- and constitutional law perspective and project no. NKFIH 134962 of Hungarian National Research and Innovation Grants on operationalizing ethno-racial identity.

⁴ Act XLIV of 2010

⁵ Pogonyi, 85

resident citizens could cast their votes from home. The decision concerned a new comprehensive law on electoral procedure, adopted by Parliament adopted on 26 November 2012, in regards of which the President of the Republic used his ‘constitutional veto’ powers, referring it to the CC for preliminary review before signing and promulgating.

According to Article XXIII (1) of the Fundamental Law, every adult Hungarian citizen shall have the right to vote and to stand as a candidate in elections of Members of Parliament, municipal representatives and mayors, and of Members of the European Parliament. The President’s concerns thus pertained to provisions in the Act requiring the registration in the registry of constituents as a precondition of exercising one's right to vote in parliamentary elections. This was a novel feature of the law as neither did the previous constitution (in force until January 1, 2012) nor the adjacent electoral procedures set forth such an institution, although the old constitution restricted the right to vote on parliamentary elections to resident citizens. The President of the Republic initiated also the preliminary review of some provisions related to the election campaign, concerning their compatibility with the Fundamental Law.

The ruling itself provides an overview of international jurisprudence regarding the central issue of registration. It refers to the Code of Good Practice in Electoral Matters, adopted by the European Commission for Democracy through Law (aka Venice Commission),⁶ a consultative body of the Council of Europe, which acknowledges that ex officio registration, does not exclude the possibility of registration upon request [ABH 2013, 18-20.].

In assessing the complaints, the European Court of Human Rights (hereinafter ECHR) used a well-elaborated set of criteria, allowing a wide margin of appreciation in relation to the obligation of the State to guarantee the conditions for exercising the right to vote, and noting that the primary obligation in the field of Protocol 1 Article 3 is not one of abstention or non-interference, as with the majority of the civil and political rights, but one of adoption by the State of positive measures to "hold" democratic elections.⁷ However, “conditions imposed must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure.”⁸ In the Georgian Labour Party v. Georgia-case,⁹ recalling that features that would be unacceptable in the context of one system may be justified in the context of another, the Court acknowledged that the active registration system (where voters could register even on election day) may not impose an unacceptable restriction per se, but restrictions can only be justified for the purpose of reaching a legitimate aim and only a justification of due weight can legitimize such measures.

2. motion

⁶ Opinion no. 190/2002, Strasbourg, 23 May 2003, CDL-AD(2002)23

⁷ Mathieu Mohin and Clerfayt 2 March 1987, Appl. no. 9267/81, ca., 50. §

⁸ Hirst v. United Kingdom (No. 2.), 6 October 2005, 62. §, Appl. no. 74025/01

⁹ Georgian Labour Party v. Georgia, 8 October 2008, Appl. no. 9103/04

Before promulgation, the President of the Republic initiated the preliminary review of Section 88, Section 92, Section 151, Section 152 (5), Section 154 (1) and Section 353 (4) of the Act on Election Procedure adopted by the Parliament on the session of 26 November 2012. The President also requested the review of provisions closely connected to the challenged articles, and also asked the CC to establish those constitutional requirements, which enforce the provisions of the Fundamental Law.

First the President challenged two provisions of the Act in the field of the central registry of constituents (hereinafter: registry of constituents). In connection with Section 88 of the Act, he held it as a disproportionate restriction of the right to vote provided in Article XXIII of the Fundamental Law, that constituents having an address in Hungary are bound to use this address during their registration to the 'registry of constituents. According to the presidential motion, narrowing down the possibility of voluntary registration is unjustified in view of the Fundamental Law and it is disadvantageous for some groups of voters (e.g. commuters). Furthermore, he asserted that Section 92. of the act amounts to an unjustified discrimination, in violation of Article XV (2) of the Fundamental Law that in comparison with citizens living in Hungary, voters living in Hungary without a registered address do not need to initiate registration personally and have the option to register via mail, something which is not allowed for the former group. Based on all the above, the President of the Republic requested to rule that Sections 88 and 92 as well as the other closely connected provisions of the act are contrary to the Fundamental Law [ABH 2013, 6-7.].

The President of the Republic also initiated the a priori constitutional review of some provisions related to the election campaign. He held that Section 151 of the Act, allowing the dissemination of political advertisements only for public service media providers, and Section 151 (3), prohibiting the dissemination of political advertisements even by public service media providers within the 48 hours preceding the voting, are restrictions contrary to the Fundamental Law. Similarly, he argued that Section 152 (5) of the Act, prohibiting the cinemas to show political advertisements in the whole campaign period is contrary to the Fundamental Law. In addition, he claimed that Section 154 (1) of the Act, prohibiting the publication of the results of opinion polls connected to the elections on the last six days of the campaign period – including the day of the voting until the closing of ballots are violating the freedom of press and the freedom of expression.

3. The decision and its reasoning

The CC found most arguments of the presidential motion well-founded, and held that Section 82 (2),¹⁰ Section 88 (1),¹¹ Section 92¹² and Section 106¹³ (along Section 151,¹⁴ Section 152

¹⁰ “The central registry of names shall contain the data of the citizens who have the right to vote and of the citizens who do not have the right to vote due to the lack of adult age, but who are older than the age of 17 (in this chapter hereinafter together: “constituent”), recorded in the central registry of names upon their request.”

¹¹ “Constituents having an address in Hungary may request the recording in the registry of names at the notary competent in accordance with the constituent’s address, or, in the case under Section 89 para. (2), with their place of residence a) personally, b) through the electronic gateway.”

(5),¹⁵ and Section 154 (1)¹⁶ of the Act on the Election Procedure are contrary to the Fundamental Law.

3.1. Registration as a general mandatory requirement of exercise right to vote is an unnecessary and disproportionate restriction on right to vote, however, such a measure may be constitutionally justified for certain special groups of voters (citizens without permanent residence at the country, national minorities, persons with disabilities).

The registry of constituents contains not only the basic identification data of constituents, but also the electoral district where they are entitled to vote, and this is also the basis of the list of constituents for each voting district. According to the act, the registration is voluntary, made upon request of the voter; the omission of this is not sanctioned. Moreover, registration is an extra-constitutional prerequisite to exercise right to vote, which is provided just by statutory provisions.

The right to vote plays an important role in enforcing an effectively functioning democracy. Although the State enjoys a wide margin of appreciation regarding the specific regulations, general and equal suffrage must be considered as an indispensable precondition of democracy in order to guarantee the unquestionable legitimacy of the elected bodies [63/B/1995 AB, ABH 1996, 509, 516.]

A particular rule on elections or a specific provision of electoral law can be rarely regarded as an undue restriction on the democratic character of elections [ABH 2013, 25-26.]. The entire electoral regulatory framework needs to meet the requirement of facilitating – above all – the free expression of constituents' opinion.

The Fundamental Law explicitly sets forth the right to vote as a fundamental right, and stipulates also a narrow list of exclusion grounds from right to vote, and amongst these criteria the request on the registration at the registry of constituents is not mentioned [ABH

¹² “The provisions on constituents living abroad and not having an address in Hungary shall be applicable to the request for recording, and the recording, in the registry of names in the case of constituents living in Hungary, but not having an address here.”

¹³ “(1) At the elections, the registry of names in the voting circles shall contain the names of the constituents who are recorded in the central registry of names on the basis of their request submitted not later than on the fifteenth day preceding the day of the voting. (2) At the elections set on a day following the 1 January of the year of the elections under Section 85 para. (1), the registry of names in the voting circles shall contain the names of the constituents who are recorded in the new central registry of names on the basis of their request submitted not later than on the fifteenth day preceding the day of the voting.”

¹⁴ “(1) In the campaign period, political advertisement can only be disseminated in the public service media, on the same conditions for the nominating organisations setting a national list in the election of the members of the Parliament, and the nominating organisations setting a list in the election of the members of the European Parliament. It is prohibited to attach any opinion or an evaluating comment to political advertisements. (2) The public service media provider may not ask and may not accept any consideration for disseminating a political advertisement.”

¹⁵ The ordering party of a political advertisement to be aired in the audiovisual media service shall provide for subtitling the advertisement or supplying it with sign language interpretation.”

¹⁶ “In the campaign period, political advertisement can only be disseminated in the public service media, on the same conditions for the nominating organisations setting a national list in the election of the members of the Parliament, and the nominating organisations setting a list in the election of the members of the European Parliament. It is prohibited to attach any opinion or an evaluating comment to political advertisements”

2013, 26.]. Exclusion grounds from right to vote forms a closed list, and each ground must be based on the suffrage clause of the constitution, statutory provisions cannot broaden the scope of constitutionally prescribed criterion for exercising right to vote [ABH 1994, 79, 82.; 339/B/1994 AB ABH 1994, 707, 710.].

The essential content (...) of active and passive right to vote may not be restricted by a statute except from cases in compliance with constitutional regulations. Thus, according to Article I (3) of the Fundamental Law, a fundamental right may only be restricted in order to allow the exercise of another fundamental right or to protect a constitutional value, to the extent that is absolutely necessary, proportionately to the objective pursued, and respecting the essential content of such fundamental right. Therefore the CC continued the review on the basis of the petition by examining whether the Act would restrict the right to vote under Article XXIII in a manner contrary to Article I (3) of the Fundamental Law.

The Act introduces an active method of electoral registration, such request has to be submitted personally at the notary, by mail in a specific scope, or through the electronic gateway. However, in the case of resident Hungarian citizens (having a official, registered domicile in Hungary), there is no constitutionally justifiable reason for excluding from the exercising of the right to vote those who have not asked for registration in the registry of constituents. One may establish, also from the text of the Act itself, that even without individual requests, the State can obtain the data necessary for compiling the registry of constituents of resident citizens having a [ABH 2013, 29-30.].

The request for registration shall basically contain the citizen's name, his/her mother's name and his/her personal identifier. These are all personal data that can be found in the registry of citizens' data and address (hereinafter: registry of citizens). With regard to the vast majority of voters – the registry specified in the Act only contains data that can also be obtained from the registry of citizens; the request for registration in the registry of voters cannot be regarded as an absolutely necessary restriction for all constituents. Moreover, in case of registration requirement, another register is to be made on the voters entitled to be registered in the registry of voters (to be used among others in the course of setting up the voting districts, in order to enable the National Election Office to inform the eligible voters on the conditions of exercising their rights and on the method of registration.

A further question emerged whether requiring registration may be a proper tool to serve the equality of right to vote. In the voting districts the numbers of voters must be as aim to be as similar as possible, and differences are only allowed on the basis of due constitutional grounds (ABH 2005, 246, 254.).

The CC pointed out on the one hand, that according to the Act on the elections, the proportionality of individual constituencies has to be made on the basis of the number of voters on the election day of the previous general elections of Parliamentarians, and not in view of the persons inscribed for the given elections. On the other hand, it would not be possible to lawfully determine the proportionality of the constituencies on the basis of the number of persons inscribed for the actual elections, since the Act on the elections establishes that the borders of the constituencies are not allowed to be changed between the first day of the year preceding the general legislative election and the day of the legislative election.

Moreover, ever since the free parliamentary elections in 1990 resident voters had the possibility to exercise their right to vote without an obligation of registration. This manner of

voting become a constant element of the election procedure. If – in Hungary in the past – there had been no registry of citizens, and therefore the exercising of the right to vote could only have been possible on the basis of advance voluntary registration, then the constitutionality of the regulations found in the Act could be evaluated differently even in the case of the subsequent introduction of the registry of citizens [ABH 2013, 33.].

In the above, the CC established that requiring registration in the registry of constituents as a condition of exercising one's right to vote was contrary to the Fundamental Law. However, the constitutional review was not extended to registration in general. The registration of voters may be justified on certain grounds, as the current voter registry (based on the general Tuaregistry of citizens) does not contain all groups of the voters. Thus, for a specific group of voters, (non-resident citizens, members of national minorities, voters in need of assistance) pre-registration is indeed a legitimate tool for exercising and facilitating the right to vote.

The CC declared it as a constitutional requirement, that the rules of the election procedure should facilitate the exercising of the right to vote [ABH 2013, 36.]. The necessary data of all persons, having a right to vote according to the registry maintained by the State, shall be entered into the registry of constituents, thus granting the equal exercising of the right to vote for all persons having suffrage. Thus in the case of voters having a Hungarian address, filing the request according to their addresses is not any more a general precondition of exercising the right to vote. At the same time, there will remain a specific scope of persons with regard to whom it will be necessary to require a request for registration to the registry of constituents.

Regarding the equality concerns of the presidential motion, the CC established that there is no justification to exclude, by the Act, the possibility of personal registration by voters living in Hungary without an address, as compared with electors having a Hungarian address [ABH 2013, 39.]. Taking this into account, it amounts to an unreasonable discrimination not to grant the possibility of personal registration, similarly for the voters living in Hungary and not having an address.

3.2. The ban on publishing political advertisements during electoral campaign periods in certain branches of the media as well as the ban on publishing the results of political surveys during the last six days before the day of the elections amounts to unconstitutional limitations on freedom of expression and freedom of the press.

The President of the Republic considered that certain provisions of the Act regulating the participation of mass media in the election campaign were contrary to the Fundamental Law. The petition argued, that the ban on disseminating political advertisements during the campaign period outside from the public service media means a severe limitation on freedom of expression and freedom of the press. The CC considered that this prohibition would result in eliminating the possibility of political advertising in the very forms of media that reach the widest scope of layers in the society. Therefore, the prohibition is a significant restriction of expressing political opinion in the course of the election campaign. The CC has already pointed out that “the media has a particularly important role in influencing the opinion of the public, and it is of prominent importance that in the period of election campaigns the right to

the freedom of expression and the right to have information on data of public interest should be enforced in the framework of broadcasting.” [Decision 60/2003. (XI. 26.) AB, ABH 2003, 620, 621.] The CC also explained in its decisions interpreting the freedom of the press that – with regard to the predominant social effect and manipulating power of the media services – special obligations can be imposed on the functioning of media services. [See summarised in: Decision 165/2011. (XII. 20.) AB, ABH 2011, 478, 505–509.].

Regarding the election campaign, the CC acknowledged in its established practice specific reasons that may (also) restrict the functioning of the media. Examining the rules on election silence, it pointed out in the Decision 39/2002. (IX. 25.) AB that restricting the campaign activity actually serves the purpose of the free articulation of the voters’ will and this way the establishment of the representative body on the basis of free will, necessitated by the right to vote as a fundamental right and the requirement of the rule of law. (ABH 2002, 273, 279.)

However, in the present case, the CC took due account of the facts that the Act had eliminated the institution of election silence, and campaign activities can also be performed on the voting day, while the prohibition only applies to the public grounds located in an area within 150 meters from the entrance of the voting premises. Moreover, the act stipulates, that posters and flyers can be prepared and put out all through the campaign period including the voting day; a direct political campaign can be performed even on the voting day; while the holding of election gatherings all through the campaign period, with the exception of the election day [ABH 2013, 45-46.].

As recalled by the CC, the predominant influencing power of the media services may justify imposing by the legislation certain extra obligations – with due respect to the equal opportunities of the running political parties – even if the campaign activities are not restricted in general. However, with regard to the aim of allowing the free formation and the expression of the voters’ will, it is gravely disproportionate to ban political advertisements on the wide scale as specified by the Act, especially when the legislator has significantly eliminated the restrictions applicable to the campaign activities. In addition to this, the CC established that this provision of the Act neither does serve the purpose of providing balanced information, nor can be justified by the intent of reducing campaign costs.

Moreover, the CC considered that it was not a disproportionate restriction in itself if the broadcasting of political advertisements was fully prohibited in the media services within 48 hours prior to the elections [ABH 2013, 48-49.]. Such a restriction can be justified with the aim of the uninfluenced expression of the voters’ will. Nevertheless, the prohibition affecting non-public media services – was contrary to the Fundamental Law, therefore the 48-hours-long ban is also in conflict with the Fundamental Law due to the close connections of the provisions’ contents.

The CC examined a further provision of the Act, prohibiting the cinemas to show political advertisements in the campaign period. The CC established that in the case of movie theatres, there are no special reasons that might justify the particular restrictions applicable in the case of media services. Therefore, in this case, – taking also into account that the legislator abolishes the general restriction on campaign activities – there is no constitutional justification for the ban on political advertisements.

Finally, the CC turned to the examination of the prohibition on disclosing opinion poll results connected to the elections during the last six days before the campaign period. It has been

already established that “The restriction of the freedom of expression and the freedom of the press to any extent other than the election silence – if it is necessary and proportionate on the basis of the CC's decision [Decision 39/2002. (IX. 25.) AB, ABH 2002, 273, 279.] in the interest of the protection of the right to vote and on the basis of the requirement of a democratic State under the rule of law – cannot be constitutionally justified.” (ABH 2007, 135, 141.) With due account to the above, the CC established that the restriction of six days contained in Section 154 (1) of the Act restricts the freedom of expression and the freedom of the press not unnecessarily but disproportionately.

4. Dogmatic analysis

The argumentation of the CC has been contested widely, also within the Court itself.¹⁷ Most points of debate concerned registration, but some were triggered by campaign-restrictions. The decision had a concurring reasoning and five dissenting opinions.

4.1. Whether the justification of registration is convincing

Justice Kovács completed the reasoning of the registration's unconstitutionality in his concurring opinion. He opened up the international horizon of the ruling and provided a deeper understanding of the registration requirement for each citizen in the electoral district based on his/her domicile under art. 3. of the First Protocol on the ECHR. Justice Kovács argued that this measure lacks clear and convincing justification, but in the light of the governmental communications, such targets may be identifiable as promoting the fairness of elections; to eliminate the short-comings of the citizen's registry, and to integrate citizens without residence in Hungary to the electoral system.

However, in the light of a broader international comparison regarding registration as a requirement of exercising right to vote, Justice Kovács concluded that such measures are widespread around the world, but such criterion are usually less onerous for the voters, than the particular method of registration was in Hungary.

Finally, due to the requirement of registration, certain groups of voters may be prevented from registration despite their lawful behaviour (for instance when lots of requests for registration are submitted on the last day of the deadline set), and in this case, these citizens would be deprived from their right to vote [ABH 2013, 51-58.].

In his dissenting opinion, Justice Balsai called also for a more complex detailed analysis of the introduced system of electoral registration to assess its constitutionality. He considered, that the legislation has a wide margin of appreciation within the constitutional standards to elaborate the electoral system, as long as the electoral law does not exclude certain people from voting on statutory grounds, or would impose unreasonable additional requirements on the voters [ABH 2013, 58-60.].

¹⁷ Kurunczi Gábor: Előzetes választói regisztráció az alkotmányosság mérlegén. Pázmány Law Working Papers, 2012/43. <https://plwp.eu/docs/wp/2012/2012-43-kurunczi.pdf>

Justice Lenkovits opined, that although the fact that registration requirement serves the seriousness of the electoral decision, and it is in harmony with the new constitutional approach of mainstreaming citizen responsibility and duties, the additional burden imposed on citizens is uncertain, and the justification of the necessity of such a measure is not convincing, therefore this is contrary to the Fundamental Law [ABH 2013. 60-64.].

Justice Pokol added a further element which potentially justifies the necessity of electoral registration. The enhancing mobility of the population within and cross the borders of Hungary may result that the registry of citizens contains invalid data of the constituents. In his view, the registration requirement would be also a proper tool to treat this issue [ABH 2013, 64-67.].

Justice Szívós joined almost all arguments, which have been raised by the other dissenting opinions, and also brought further aspects to the discussion. She expects that the registration would strengthen the interest of citizens in public affairs, and their participation in exercising public power [ABH 2013, 67-78.].

4.2. Whether the new constitutional context of fundamental rights are taken into account

Several dissenters held that the ruling lacks the consideration of the amended constitutional context with the adoption of the Fundamental Law, which established an inherently new context for the interpretation of fundamental rights, especially the right to vote.

According to Justice Balsai, the constitutional framework of political rights has been amended considerably, and the constitutional review of electoral registration shall reflect on this. The conceptualization of the political community has been reframed, and the boundaries of constituents has been also extended remarkably. The approach of the Fundamental Law differs significantly from the previous concept in regard of the responsibility and the duties of the citizens. Balsai invoked clauses of the National Avowal and also two articles of the Fundamental Law as main novelties of the constitutional framework in this regard:

Article D):

Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, shall facilitate the survival and development of their communities, shall support their efforts to preserve their Hungarian identity, the effective use of their individual and collective rights, the establishment of their self-governments, and their prosperity in their native lands, and shall promote their cooperation with each other and with Hungary.

Article O):

Everyone shall be responsible for him- or herself, and shall be obliged to contribute to the performance of state and community tasks according to his or her abilities and possibilities.

Justices Dienes-Oehm, Lenkovits, Pokol and Szívós also highlighted the importance of the new constitutional standards, the greater weight on the responsibility and the duties of individuals towards the community.

4.3. Whether advance electoral registration amounts to a limitation on exercising right to vote

The reasoning of the ruling was based on the assumption that the registration requirement constitutes a limitation on exercising the right to vote, and then, the main question was, whether this limitation has been necessary and proportionate. However, some members of the CC rejected this idea. Three approaches have been presented by the dissenting opinions.

The dissenting views of Justice Dienes-Oehm demonstrate well an alternative interpretation of the pre-registration requirement. Justice Dienes-Oehm held that registration is a mere technical and administrative prerequisite of exercising right to vote, and does not amount to a limitation of this fundamental right at all. For the sake of the fairness of elections and the prevention of manipulation, it is expected reasonably from the citizens that in every electoral cycle would devote a short time to identify themselves according to the rules prescribing this duty.

Justice Szívós also opposed the description of registration as a limitation on the exercise of the right to vote. She considers electoral registration as an administrative prerequisite, but on other grounds than Justice Dienes-Oehm did. According to her, only such measures could mean a limitation on exercising a fundamental right, which set such requirements for citizens, that are beyond their influence, or which absolutely or in its real effect deprive citizens from exercising a fundamental right. Szívós argued that electoral registration is not covered by this definition.

Another dissenter, Justice Pokol saw electoral registration as a functional element of the system, since lists from voters are indispensable to hold elections. In his view, the functional elements of exercising fundamental rights shall be exempted from the constitutional review, and only the specific rules on these functional elements may be challenged. Consequently, the constitutionality of electoral registration itself should stand beyond doubt, but the constitutionality of certain rules on registration might be questionable.

4.4. Whether the campaign-related restrictions are reasonable

Finally, some concerns have been also raised regarding the constitutional review of the prohibitions on certain campaign activities.

Justice Lenkovits read together the constitutionally provided special role of responsibilities and duties with the campaign-related restrictions, and noted that these rules serve the limitation of uncontrolled power of non-transparent private entities in the electoral campaign. The legal framework of elections need to protect voters not only from the undue influence of the state, but also from private entities, therefore these rules are deemed to be constitutional.

Justice Pokol added that the ban on political campaign at the commercial media diminishes the cost of the electoral campaign, which reduces corruption. Nevertheless, in line with the majority, Justice Pokol found the restrictions on cinemas as a severe restriction on freedom of expression.

Justice Szívós would also have upheld the constitutionality of campaign-related restrictions, moreover, she urged for a more detailed analysis of prohibition on cinemas and opinion polls in the light of the specialties of these paths of communication.

5. Aftermath of the decision

The dogmatic pillars of the decision had not been changed or contested.¹⁸ The CC emphasized that the Hungarian electoral system always operated without pre-registration, and, in the light of the Court's earlier practice, this constitutional tradition is relevant under the Fundamental Law as well. This was a crucial step in the light of those views, that the conceptualization of political rights should be reconsidered due to the significant changes of the constitutional context brought by the new constitution, the Fundamental Law.

Since the decision, the substance of the electoral framework has been challenged only once, when a petitioner submitted a constitutional complaint arguing, that the permission of postal voting for Hungarian citizens without permanent residence in Hungary, and the exclusion from this opportunity of those Hungarian citizens, who have permanent address in Hungary, and are only abroad on the day of the elections constitutes an unjustifiable differentiation between persons in comparable situation. The CC upheld the constitutionality of the challenged rules as they were supposed to fall within the responsibility and the margin of movement of the parliament [3086/2016. (IV. 26.) decision AB].

Registration is still required for Hungarian citizens who do not have permanent residence in Hungary; for voters who belong to a national minority and wish to cast their votes on the designated "nationality lists"; and also for persons with disabilities to be eligible for voting assistance.

In the past years two notable developments surfaced in regards of electoral legislation and registration in Hungary: Oppositional parties introduced the pre-selection of candidates, and the prerequisite of participating in these procedures is to submit a request for registration, and this is expected to be possible also via electronic means in 2021.¹⁹ Furthermore, the Covid-19 pandemic boosted electronic and postal voting globally, and probably this tendency will be also relevant for Hungary, which may provide new functions and justifications to advance certain forms of electoral registration.²⁰

Electoral campaign remained a highly debated issue, fuelled particularly by a 2016 referendum,²¹ and the 2018 parliamentary elections. The debates concern, inter alia, the involvement of the government and mayors; the dominance of government-owned and biased media sources; using children in political advertisements; and the organised transport of voters to the polling stations.²² The act on electoral procedure has been amended in 2018,²³

¹⁸ Unger Anna: A demokratikus választások alkotmányos és politikai ismérvei és a magyar választási rendszer. *Fundamentum*, 2014/4. 5-22. <http://fundamentum.hu/sites/default/files/teljes-szamok/fundamentum-14-4-beliv.pdf>

¹⁹ <https://xpatloop.com/channels/2021/05/opposition-parties-in-hungary-agree-on-primaries-selection-method.html>

²⁰ Anika Eleni Heinmaa: Special Voting Arrangements (SVAs) in Europe: In-Country Postal, Early, Mobile and Proxy Arrangements in Individual Countries. *International IDEA*, 2020. <https://www.idea.int/news-media/news/special-voting-arrangements-svas-europe-country-postal-early-mobile-and-proxy>

²¹ <https://www.politico.eu/article/hungary-referendum-eu-migration-viktor-orban/>

²² <https://www.osce.org/odihr/elections/hungary/373603>

²³ Act 36. of 2018.

affecting technical rules on electoral registration for citizens without permanent address in Hungary, for ethnic minorities and for voters with disabilities; banning campaign activities on the day of the elections in and around polling stations; and imposing an obligation for private media to inform the National Electoral Authority in advance if they wish to disseminate political advertisements during the campaign period, yet criticism points to a need for further regulation.²⁴

Literature

Stephen Ansolabehere and David M. Konisky: The Introduction of Voter Registration and Its Effect on Turnout. *Political Analysis*, vol. 14, No. 1 (2006), pp. 83-100.

Code of Good Practice in Electoral Matters, European Commission for Democracy through Law, Opinion no. 190/2002, Strasbourg, 23 May 2003, CDL-AD(2002)23

Kurunczi Gábor: Előzetes választói regisztráció az alkotmányosság mérlegén. *Pázmány Law Working Papers*, 2012/43. <https://plwp.eu/docs/wp/2012/2012-43-kurunczi.pdf>

David W. Nickerson: do Voter Registration Drives Increase Participation? For Whom and When? *The Journal of Politics*, 2014. Vol. 77. 88-101.

Pogonyi S. (2015). Transborder Kin-minority as Symbolic Resource in Hungary. *Journal on Ethnopolitics and Minority Issues in Europe* 4(3), 73-98.

Tóth M. Balázs: Kampánytilalom és kampánykorlátozás alapjogi szemmel. *Fundamentum* 2014/4.

Unger Anna: A demokratikus választások alkotmányos és politikai ismérvei és a magyar választási rendszer. 2014/4. 5-22. <http://fundamentum.hu/sites/default/files/teljes-szamok/fundamentum-14-4-beliv.pdf>

²⁴ Tóth M. Balázs: Kampánytilalom és kampánykorlátozás alapjogi szemmel. *Fundamentum* 2014/4.