



President of
the National Election Commission

**Report by the President of the National Election Commission on the activities of
the National Election Commission during the 2014 European Parliamentary
election**

Pursuant to the competency laid down in Article 13 (2) of Act XXXVI of 2013 on Electoral Procedure, I am submitting the following report to the Esteemed Parliament on the activities of the National Election Commission during the 2014 European Parliament election.

The President of the Republic of Hungary set the 2014 European Parliament election day for 25 May 2014 by the Resolution No. 90/2014 of the President of the Republic of 10 March 2014. The substantive rules of the election which the election bodies have already applied during the previous elections are laid down in Act CXIII of 2003 on the Election of Members of the European Parliament. The procedural rules of the election are set out in the Electoral Procedures Act updated in the year of 2013.

As there were still 47 days ahead of the procedure of establishing the results of the elections of the members of the Hungarian Parliament at the time of the call for the election, the procedural acts of both elections took place in line for a significant duration. This conditions, therefore, made the preparation for the implementation of the election difficult for the election bodies and among themselves, the National Election Commission.

I. Operation of the National Election Commission

The fairness and legality of the 2014 European Parliamentary election were ensured by the polling station commissions serving in 10 386 polling districts, the election offices operating at 96 foreign representations and 106 parliamentary single-member constituency election commissions, as well as the National Election Commission elected on 30 September 2013 by the Parliament.

At the time of the call for the election, considering that procedures of each election were running simultaneously, additional members who were appointed by the nominating organisations on the grounds of putting forward national list in the elections of members of Hungarian Parliament, carried out the duties of the National Election Commission till 6 May 2014 beyond the seven elected members.

In the European Parliament elections on the grounds of putting forward list 6 nominating organisations (of which two put forward joint party list) appointed members to the National Election Commission, who functioned between 13 May and 3 June 2014, till the decision of the election results entered into force. Considering the results of the elections of the Members of Hungarian Parliament, additional four nominating organisations (of which two also put forward joint party lists) appointed members to the Commission on the grounds of having a political faction in Parliament.

II. Making decisions

Thirty-six sessions were held by the National Election Commission between 7 March, the day of the call of the election and 30 May 2014, the day when the result of the election were determined.

Within this period the Commission took 952 resolutions, of which 83 were related to the 2014 European Parliament elections.

The types of the resolutions by cases are the following:

- 37 resolutions: registration of nominating organisations;
- 11 resolutions: registration of party lists;
- 16 resolutions: imposition of fines;
- 8 resolutions: adjudication of complaints and appeals related to breaches of the election campaign rules;
- 5 resolutions: registration of observers;
- 4 resolutions: decisions ex officio (determining the order of party lists by lottery draw, defining the content of the ballot paper, establishing the election result, determining the timeframe of broadcasting political advertisements in linear public media services);
- 2 resolutions: other decisions (rejection the appointment of a delegate, amendment of some data of a registered nominating organisation).

III. Legal remedies against the decisions of the National Election Commission

In the European Parliamentary election the procedure of Curia were requested seven times against the decisions of the National Election Commission, that is not more than 8 % of the decisions.

Three applications for judicial review were rejected by the highest judicial authority on formal grounds, while in four cases the requests were subject to scrutiny. In that cases, the Curia agreed with the reasoning included in the relevant resolution of the National Election Commission and, in consequence, all the decisions were upheld.

IV. Experiences of the application of law

Nominating organisations, lists, election campaign

While in the elections of the Members of Hungarian Parliament 94 nominating organisations applied for registration at the National Election Commission, in the European Parliamentary election 37 political parties submitted such registration, less than 40% of the nominating organisations submitted such request during the elections of Hungarian MPs.

All of the parties complied with the registration criteria and were therefore registered by the Commission.

Among the registered organisations, only 29 requested recommendation sheets, one of them withdrew such application after requesting, four of them did not take the required recommendation sheets, while one nominating organisation demanded such a few that excluded the possibility of putting forward a list. 10 nominating organisations returned recommendation sheets which were without any recommendations or contained only a few to the National Election Office. After all, 13 nominating organisations notified their lists at the National Election Commission of which 2-2 put forward joint party list. 8 of the notified 11 lists met the legal requirements.

In the European Parliamentary election the campaign began on 5 April and ended at 7.00 p.m. on 5 May 2014. Therefore, according to the rules laid down in Electoral Procedures Act, the nominating organisations had 50 days for gaining support of voters as well as influencing voters' choices in order to being backed by support signatures and votes as well.

However, probably the lack of the state support for election campaign activities was one of the reasons which led to a very moderate movement of the nominating organisations during the period of the election campaign.

The short period between the elections as well as the moderate election campaign activities of the parties both led to a turnout of 28,97% among voters in Hungary which was the 6th worst attendance on average throughout the 28 Member States of the Union.

Multiple recommendations

The institute of multiple recommendations was one of the significant elements of the election system's reform conducted in 2013. According to the amendment of the cardinal act containing the substantive rules of the European Parliament election (came into force on 3 May 2013) voters had the opportunity to express their sympathies for several party lists in this election as well.

One of the legislature's reasons of the introduction the institute of multiple recommendations was to reduce the possibility of voters' personal data abuse experienced previously, besides keeping such institute in effect. However, this purpose couldn't have been absolutely achieved. Regarding this election, the police is currently investigating alleged signature fraud cases against unknown culprit as well.

The primal advantage of the multiple recommendations revealed on the part of the nominating organisations is that the competition for gaining support of voters, and thus, the difficulty of gathering support signatures decreased and, therefore, putting forward list became easier.

While in the period of collecting support signatures the aforementioned primal advantage of the multiple recommendations could have been demonstrable either numerically by the gathered statements of support, this positive effect, this backing had not realized on the election day by the will of voters.

Two of the nominating organisations which put forward list didn't surpass the 5 per cent threshold. The number of votes casted on election day in the interest of these nominating organisations was not only a fragment of the valid votes (0,52% and 0,4%) but also significantly differed from the amount of the statements of support collected during the period of putting forward lists.

Although these nominating organisations have such a little support of voters in reality, they had the same rights in the electoral procedure (for ex. the right of appointing members to the election commissions) as parties that enjoyed substantive backing of society revealed unequivocally both by support signatures as well as votes.

Furthermore, according to the experiences of the application of the legal regulations related to the institute of multiple recommendations, the period of the 3-day legal deadline for verifying the statements of support is not sufficient for the election offices. In consequence, this legal deadline should be extended.

In addition, other problems surfaced related to the institute of multiple recommendations. According to the Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information, voters who have signed the sheet of statement of support are entitled to asking information about which of the nominating organisation's recommendation sheet their statements appear on. However, this entitlement of voters ensured by the election offices is not in line with the provision of the Electoral Procedures Act which rules that the election offices need not verify all of the recommendations insofar as it is determined that the number of valid recommendations has reached the number required for candidature. In consequence, legislation should be amended to ensuring the compliance between the Act on Freedom of Information and the Electoral Procedures Act.

It should be also mentioned that Bill No. T/146. on the Amendment of the Act CLXXXIX of 2011 on Local Governments in Hungary, and the Act L of 2010 on the Election of Municipal Representatives and Mayors as well as the Act XXXVI of 2013 on Electoral Procedure submitted to the Parliament on 30 May 2014, also includes proposals related to both subjects mentioned above. The reading of such Bill is being currently on the agenda of the Parliament.

Fines

In the European Parliamentary election as the part of the electoral procedure, the nominating organisations were bound to return all the recommendation sheets issued, affixed and provided with serial numbers by the National Election Office by the deadline set for the notification of list. Regarding this commitment, the parties had strict liability, therefore, in case of a breach of this obligation, the National Election Commission shall have imposed fine ex officio. The amount of fine was defined in extremely high amount, HUF 50 750 per recommendation sheet by legislature. Consideration could be given to reducing the

unsubstantiated amount of fine. The Bill No. T/146 contains proposals related to this subject as well.

Placement of posters during the election campaign

Related to the placement of posters during the election campaign there is an imbalance between two fundamental rights of MAN: the right to freedom of speech and the right to property. As the Constitutional Court of Hungary emphasized, nominating organisations could exercise their right to freedom of speech by displaying election posters. According to the argument of Curia, solely the Electoral Procedures Act's provisions, especially Article 144 are applicable regarding the placement of posters, and hence, other legal regulation's adequacy, for ex. the rules of the road shall not be the subject of examination.

However, according to the provisions of Electoral Procedures Act, the consent of the owner, the tenants or the entity that exercises trustee's right is required only when the posters are placed on „the walls of buildings” and „fences”. When beside „buildings” or „fences” other objects become affected, the owner of property shall tolerate the placement of posters without any consent. Therefore, this may cause the violation of the right to property ensured by Fundamental Law (the constitution).

Appointing members to election commission

The rules of appointing members to election commission laid down in Electoral Procedures Act does not unequivocally regulate the case when two elections' procedure is running simultaneously. In consequence, it is unclear that if the candidates/parties who are entitled to appointing member in both elections, may delegate upon only one or both ground.

According to this issue, the National Election Commission stated in Resolution No. 1089/2014 that a nominating organisation may delegate member only upon one ground to election commission even if the organisation is entitled to delegate upon other ground as well. The Curia upheld the decision.

Furthermore, the legal regulation on the appointed members does not unequivocally regulate the case when a party which has put forward list in the European Parliamentary election, upon this ground, may delegate member to the parliamentary single-member constituency election commission or not. This entitlement is not clearly granted by the Act on the Elections of Members of the European Parliament as well as the Electoral Procedures Act. Pursuant to Article 2(2) of the Act on the Elections of Members of the European Parliament, with regards to the election, the territory of Hungary forms one constituency. Pursuant to Article 28(1) of the Electoral Procedures Act, an additional member of parliamentary single-member constituency election commission shall be appointed by each of the independent candidates and nominating organisations putting forward list in the constituency. Putting forward list is the condition of appointing member to election commission. Furthermore, pursuant to Article 2(2) of the the Act on the Elections of Members of the European Parliament, lists are put forward in national constituency, not in single-member constituency, and thus, the lists are registered by the National Election Commission. Therefore, according to the relevant rules of the Act on the Elections of Members of the European Parliament and the Electoral Procedures Act, parties are not entitled to appoint member to parliamentary

single-member constituency election commission operating in the election of the members of European Parliament upon the ground of putting forward list. Hence, the competency of this election body regarding this election procedure reduced to the adjudication of complaints against the activities and decisions of the polling station commissions as well as complaints regarding other acts committed at the polling stations. According to this interpretation of law, in the European Parliamentary election parties are entitled to appoint members to the polling station commissions and the National Election Commission upon the ground of putting forward list, while the parliamentary single-member constituency election commissions shall operate only by elected members.

According to the other interpretation of the provisions of appointing members to election commissions, pursuant to Article 331(1) and 245 of the Electoral Procedures Act, the entitlement of appointing actually depends on which election commission operating in the relevant election.

However, the clarification of legislation is beyond the power of issue non-binding guidelines to other commissions by the National Election Commission. Hence, introducing amendment to ensure legal certainty is the competency of legislature.

V. Legislative proposals

According to the experiences of the application of legal regulations mentioned above, I would like to kindly draw the Esteemed Parliament's attention to the the following recommendations.

Reconsideration could be given to the review of the institute of multiple recommendations in order to ensure the privacy of personal data of voters.

The prohibition on the placement of election posters should be extended to other objects beside „buildings“ and „fences“ in order to ensure the balance between the right to freedom of speech and the right to property.

Furthermore, the rules of appointing members to election commissions should be amended in order to clarify that members could be appointed only upon one ground by candidates and nominating organisations. On the other hand, it should be defined that in the European Parliamentary election appointing members by nominating organisations is only possible to the National Election Commission and the polling station commissions on the grounds of putting forward list.

VI. Conclusion

I do believe that the European Parliamentary election was conducted in compliance with the legal regulations.

The excellent workmanship of the conscientious election body staff regarding the implementation of the election is remarkable. In consequence, the fairness and legality of elections as well as impartiality were ensured. Furthermore, it should be noted that they

carried out this task between March 7 and 23 April 2014, during a period of 47 days, at the time when the procedure of the election of the members of European Parliament and the election of the members of the Hungarian Parliament were running simultaneously in a partially reformed legal framework.

I would like to express my gratitude to all the members of the election commissions, as well as the heads and the staff of the election offices who ensured third time the right of voters to elect the representatives of Hungary to the single institute of the European Union which is elected by direct suffrage.

I would like to ask the Esteemed Parliament to kindly accept this report.

Budapest, 4 June 2014

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