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## **The Development of Electoral Institutions in Hungary from the Regime Change to the Present**

**Keywords:** Hungary, constitutional law, election, vote, nomination system, non-resident citizens, data protection

**Słowa kluczowe:** Węgry, prawo konstytucyjne, wybory, głosowanie, system nominacji, obywatele nierezydenci, ochrona danych

### **Abstract**

In my paper I present the electoral transformation of the last three decades by considering the most important impulses and their effects. In doing so, I focus on a few essential elements that are considered to be decisive Hungarian and internationally in terms of both electoral science and election practice. Such are, among others, primarily the nomination system, internationalization of election, the electoral data protection or the evolution of electoral technology.

### **Streszczenie**

## **Rozwój instytucji wyborczych na Węgrzech od zmiany reżimu do teraźniejszości**

W swoim artykule przedstawiam transformację wyborczą ostatnich trzech dekad, rozważając najważniejsze impulsy i ich skutki. Czyniąc to, skupię się na kilku istotnych elementach, które są uważane za decydujące w zakresie zarówno nauki o wyborach, jak

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i praktyki wyborczej na Węgrzech, jaki i na arenie międzynarodowej. Są to między innymi: system nominacji, internacjonalizacja wyborów, ochrona danych wyborczych czy ewolucja technologii wyborczej.

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The electoral system is a constitutional basic institution. However, the importance of regulation lies not only in the pillars of the system, but increasingly in the details. The appearance of this in the electoral legislation and in the measures of law enforcement ultimately ensures the legitimacy of power. Therefore, from a constitutional point of view, the acceptance of the electoral law by society is still a key issue for the exercise of power.

The election although it is connected to many other areas of law and science, is basically an institution of constitutional sort. Constitutional law, however, is generally a legal field with rigid characteristics. Permanence, the relatively greater stability compared to other areas of law, is caused, among others, by the fact that in this area of law impulses causing changes are less frequent. Or if more frequent, the checks incorporated in the legal system usually block the possibility of frequent dynamic changes. At the same time, when I want to demonstrate the development of the Hungarian electoral field in the past 30 years, this statement is valid though with some limitations. One of the reasons may be that during this period the impulses bringing changes about have intensified. However, a specific political situation where the self-regulatory mechanisms of the constitutional institutional system are almost absent.

Based on all this, I can review the electoral changes of the last three decades by considering the most important impulses and their effects on the electoral field. However, this paper does not cover all the neuralgic topics of the field. I focus only on a few essential elements that are considered to be decisive Hungarian and international in terms of both electoral science and election practice.

First and foremost, it is necessary to highlight a fundamental characteristic that determines the subject, that is the political factor. Regarding the whole electoral system and its constituent parts, it can always be said that its definition and modification – irrespective of the impact on the field – are al-

ways political decisions. At the same time, a functioning constitutional system often hampers and sometimes makes impossible the exercise of the political will. Or, for example, the fact that in most countries, such as Hungary, design and modification of the electoral regulation requires the support of a qualified majority. All this proved to be a very restrictive factor in the Hungarian relations up to 2010. Therefore, in terms of the electoral system, compromises were typical for a long time. These assumed the support of various socio-political forces and sometimes that of the profession as well. Due to this, there was a period in which, in the absence of compromise decisions, the unresolved situation of the electoral status was drawn to unconstitutional situations. Thus, e.g. unconstitutionality in the form of failure due to the lack of the parliamentary representation of nationalities<sup>2</sup>; or the invariability of borders of the constituencies – because of violation of the equal right to vote<sup>3</sup>. Both topics have been finally regulated in the post-2010 period. However, a professionally sound solution has not been found in any of the cases. As a result, the Hungarian solution for the election of the above-mentioned electoral institutions has been at the centre of controversy and international criticism ever since.

In Hungary, the political constellation has changed after 2010. In the electoral field, decisions have been made which, in contrast to the consensus practice of the previous 20 years, strengthened the majority character of the electoral system, thus weakening the competitive nature of Hungarian elections. Such was the solution of the winner compensation. The Constitutional Court has declared to be in conformity with the Basic Law, as it does not violate the prohibition of discrimination in connection with the right to vote<sup>4</sup>. The increased proportion of the individual constituencies, converting the two-round system into a single-round one or termination of the validity threshold can be mentioned as such as well. Especially the looser nomination conditions in the field of parliamentary election, which, along with the campaign financing system, has nearly called for the formation of bluff parties<sup>5</sup>.

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<sup>2</sup> Constitutional Court Decision no 35/1992 (VI.10).

<sup>3</sup> Constitutional Court Decisions no 22/2005 (VI.17), 193/2010. (XII.8).

<sup>4</sup> Constitutional Court Decision no 3141/2014 (V.9)

<sup>5</sup> R. László, *A választójogi szabályozás átalakulása 2010–2014*, „MTA Law Working Papers” 2014, No. 21. Hungarian Academy of Sciences, Budapest 7, <https://jog.tk.mta.hu/>

Noting these was only important because, when considering the impulses on the electoral issues and their consequences, we must not forget that these do not take place independently of time and space but have different results in different political environments.

## I.

Perhaps, as first among the impulses that affect electoral institutions, I have to note the historical-political events. Analyzing the electoral system and the electoral institutions of the past 30 years, I have to mention two decisive events: changes in public policy, along with this, Hungary's modern constitution and accession to the EU 15 years later.

As a result of the change of regime, the competitive type of the electoral system and the content of the electoral rights valid even today were formed in Hungary at the end of the 20th century. But the basic solutions which, though with minor or major modifications, have so far been decisive for our electoral system, were also adopted at that time. Thus, e.g. the mixed nature of the parliamentary election system, or the nomination system.

In democratic systems, electoral legislation requires the application of certain guarantees and conditions for nomination. In Hungary, perhaps the most controversial and most problematic element of the electoral regulation that emerged after the change of regime is the mechanism of recommendation of candidates. The introduction of the use of "knock-on" (recommendation) cards was well suited to the multi-party electoral system, as residents freed from the one-party system clash could create a living relationship with newly formed political organizations. The information explosion of the Internet did not take place at this time, so the campaign was basically based on the written media, advertising posters and personal contact. Handing over the recommendation cards offered an excellent opportunity for citizens to express their opinions and to learn about party programs.

Some concerns against the mechanism, which otherwise proved the test of constitutionality, were already formulated – primarily – in the field of data protection. eg. the disclosure of the voter's personal number

and address on the recommendation card limits the right to the protection of personal data more than necessary. Or, from the point of view of data protection, in the absence of the necessary guarantees, the system had the potential for abuse.

The system, acceptable in the last decade of the 20th century, has become a set of problems since the millennium.

- The inclusion of false data on the recommendation cards, the impossibility to check signatures, and thus the possibility of misuse of personal data, harassment in connection with the collection of “knock-on” cards, are just some of the issues that have caused the greatest electoral tensions in the elections. The lack of the possibility of imposing sanctions for these abuses with the nominations – due to the lack of legal regulation – is practically capable of undermining faith in the purity of the elections, ultimately questioning the legitimacy of those who come to power.
- The image of the system of recommendation for candidate was also highlighted by the fact that – some of the candidates and nominating organizations made counterfeit copies of the recommendation cards for more efficient collections, and later, with the safety mark introduced in 2010, they were sold on the market of the “knock-on” cards which significantly compromised the purity of the elections.
- Finally, it should be noted that the system of recommendation for candidates up to and including the 2010 elections – with regard to the difficult conditions for small organizations – functioned practically as the “zero” round in the electoral system for 20 years, given that larger parties displaced most of their opponents at this stage from the later competition.

Consequently, the application of a system of recommendations by the voters in the nomination process requires precise and prudent legal regulation and control mechanisms. In the case of legal regulation, it is necessary to consider the establishment of safety regulations, while stipulating the conditions of collection. The system of voter supports usually requires the processing of a significant amount of personal data as a condition for nomination, so an inadequate regulation may be a concern for data protection.

Particular emphasis should be placed on the role of control in this mechanism, in view of the fact that, for example, comparing the content of personal

data, eliminating multiple recommendations, and verifying the authenticity of signatures are major tasks for the electoral bodies and authorities.

It is important to note that the precise and rational determination of deadlines for nomination is of particular importance in the period of electoral process when designing the control system. Setting a too short control period reduces the effectiveness of the control system, and the lengthy inspection reduces the complexity of the electoral process.

The possibility of abuse when collecting signatures or funds requires criminal law regulation of the facts, the suspicion of its realization or its actual occurrence the active involvement of the investigating and judicial bodies.

One of the neuralgic elements of the recommendation system is the signature. In all cases, the voter must sign the support statement/recommendation sheet by hand, so it must be genuine. At the same time, the electoral laws do not provide for the formalities of the signature, since the central registers generally do not contain the “signatures” of the voters. In most cases, the signature does not have any exact legal criteria, so in practice, almost every signing method other than capitalized, typed can be accepted as a signature until it is proved to the contrary.

Despite the above-mentioned risks of applying this mechanism, the legislator has been adhering to this method of nomination in Hungary for 30 years. Accordingly, although the new electoral regulation following the change of government in 2010 made some changes to the recommendation system for parliamentary elections, it did not fundamentally change it. The modified system has made progress in many respects. The “knock-on” cards impersonalizing voters have been replaced by recommendation sheets. And with the permissive rule that a voter may recommend more than one candidate, the motive for data protection abuse has been basically eliminated. Indeed, by allowing the plurality of recommendations, the possibility of a “zero round” was actually devalued, which in itself brought relief to the electoral data protection “front” and in the appeal procedures.

However, what has been a salvation from the former point of view, has generated a number of problems on the other hand: small parties never seen before appeared, which, with the forints of the campaign funds in mind, took an advantage of the workload of the electoral bodies.

However, Parliament has not taken any steps to change the foundations of the current recommendation mechanism after the parliamentary elections in 2014 or ever since. Moreover, in 2014, it introduced the recommendation sheets, and the institutional system of the multiple recommendations in the municipal-, in the European Parliament-, and in the national minorities electoral regulations as well. Hence, Hungary seems to continue to be addicted to this much criticized and often conflicting and disadvantageous solution of recommendation for candidate, which, irrespective of the political courses, is becoming one of the decisive basic institution of the Hungarian elections.

Finally, it is important to note that the most critical point of the recommendation system is perhaps the “listing” of supportive voters, and the abuse of the databases thus created, or the possibility thereof. Solving the problem is hampered by the fact that recording the political orientation of voters is tied to the most dominant political actors. Hence, maintaining the rules of the system enabling abuse can serve the interests of the parties that are eligible to decide about its design.

The modified recommendation system in Hungary has caused at least as many problems as it has eliminated. This again raises the idea of reconsidering the entire nomination system. However, I think that, despite the above-mentioned negatives, the system of the recommendation for candidate surrounded by extensive guarantees, provides the best opportunity for active participation of the voters in the early stage of the electoral process. In the case of careful and prudent development, it serves as an “electoral filter” so that organizations with low social support do not adversely affect the competition of candidates.

An important impulse for the Hungarian electoral system was the EU accession of the country in the middle of the examined period (2014) and the accompanying requirements. Elaboration of the electoral rules in the European Union is within the competence of the member states, the EU countries decide about it on their own. However, given the fact that national constitutions usually contain only basic provisions for the elections, it lies within the competence of the national legislature to legislate on the different types of election and the rules of each electoral institution within the constitutional framework. The legislator can choose any form of regulation that does not

conflict with the constitutional principles and provisions of the given country and respects the relevant recommendations of the Venice Commission<sup>6</sup>. This form of EU regulation is completely correct in the context of the electoral area, as in which country which solutions are applied in practice is influenced by several factors: traditions, geographical location, material conditions, or the legal system – including the voting right – which the EU quite rightly does not attempt to unify.

It is important to note that due to the EU accession the Hungarian electoral system has reached a level, for example, where exercising the right to vote was no longer tied to staying in the country, and Hungarian citizens residing abroad on the day of the vote have been able to cast their votes personally at the delegations.

## II.

Due to the evolution of judicial protection after the Second World War internationalization of elections was first seen in the fundamental aspect of the right to vote. The most important change in this area was that democratic expectations about the right to vote got international character. As a result, more and more international documents contain now provisions for the right to vote, which regulate this subject sometimes narrowly, sometimes in more detail. Nowadays, the strengthening of the international dimension – in the field of substantive law – is the recognition of the voting right of Hungarians living beyond the border.

By the second half of the 20th century, the view that the right to vote is a human right based on the free choice of the voters, which the state must grant to its own citizens at least, became generally accepted. It is primarily for citizens living in the country, but in some cases, aliens living in the country or citizens living beyond the borders may enjoy it too. The basic question is, therefore, who has the right to vote, and compared to this it is only of secondary importance how it can be exercised.

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<sup>6</sup> Venice Commission: Code of Good Practice in Electoral Matters CDL-AD (2002) 23 Strasbourg, October 25, 2018.



A starting point of the right to vote of those living permanently beyond the border is to guarantee the right to vote as a fundamental right in the constitutions, which has become rooted in democratic legal systems from the second half of the 20th century. Voting abroad is ultimately the right for non-resident citizens to exercise equal rights with their fellow citizens living within the border, and thus to be considered as members of the political nation.

At the same time, in most countries, the right to vote of those beyond the border, which is often symbolic, raises a problem that is often spoken out. This is the fact that when voting, the future of the motherland may be decided by citizens as well, who are not substantially affected by the consequences of their decision, because they are subject only to some parts of citizens' rights and obligations. Nonetheless, the majority of states guarantees the right to vote for non-residents because of the common historical roots and the moral obligation arising from the need for a "real relationship" with the diaspora.

The practice in Hungary and the globally observable tendency clearly demonstrate that the real relationship, the actual "living citizenship" is not limited and can be no longer limited to a kind of territorial community relationship between the state and its citizen. It is not only the citizen living in the country who has a real relationship with the state, but also the one who – at any point in the world – has an intellectual, linguistic, cultural, spiritual, identity (and possibly economic) relationship with his country, which makes this actual relationship real and fills with content.

Thus, there is a general need for granting the right to vote to non-resident citizens, who are in some way tied to the mother country. One expression of this in legal regulations is the time limit that, even in the case of multiple nationality, ensures the possibility of voting for non-residents only for a certain period of time spent abroad (Germany, Great Britain). Other countries, however, are of the opinion that living relationships between non-residents and the motherland can be "measured" by voluntary and periodically renewed active registration, since almost exclusively citizen tied to the mother country by living citizenship undertake the "hardships" of the voting procedure. However, it is beyond dispute that the registration constraint on non-resident voters clearly reduces the willingness to vote. Accordingly, the registra-

tion activity of non-resident citizens in the EU countries is quite low, typically around 1–2%<sup>7</sup>.

“Special treatment” is required for countries that do not have double or multiple citizenship in their legislation. Although 17 of the European Union member states today do not require renunciation of someone’s own citizenship, the proportion of non-accepting countries is still very high in international terms – around 45% – where the home country authorities should pay increased attention to the registration and voting procedures<sup>8</sup>. Voters’ registration with inadequate discretion, registration and voting by post only, and overly detailed data in these countries may ultimately lead to the loss of foreign citizenship for non-resident citizens in such countries. Such a situation may be encountered, e.g. for Slovak or Austrian citizens.

In its report, the Venice Commission examined the practices of 57 countries in the exercise of the right to vote for non-resident citizens<sup>9</sup>. Based on this, it can be stated that there is no “international” or “EU” constraint to guarantee the voting rights of those living abroad, but similarly to exclude them. However, the Commission’s report says that, considering European mobility, the issue of the right to vote abroad should be approached in a way that strengthens the development of national and European citizenship. Like most countries in the Venice Commission report, 25 out of the 28 member states of the European Union give voting rights to non-resident in the parliamentary elections.

Hungary regards the principle of the right of blood (*ius sanguinis*) as a fundamental principle in the field of the regulating citizenship, as a consequence of which millions of Hungarians who have left the country or has been departed retained and were able to retain their citizenship. All of this affects approximately five million Hungarians living beyond the border, which is about one third of all Hungarians, and the majority of them – about 50% – live in countries that are directly adjacent to Hungary.

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<sup>7</sup> *Republikon Intézet: Különleges kisebbség. A Republikon Intézet összehasonlító elemzése a határon túli kisebbségek választójogáról.* [http://www.republikon.hu/upload/S000172/Ri\\_kulonleges\\_kisebbsseg.pdf](http://www.republikon.hu/upload/S000172/Ri_kulonleges_kisebbsseg.pdf) (9.07.2019).

<sup>8</sup> M. Szabó, *A többes állampolgárság – Új nemzetközi és uniós perspektívák felé?* „Állam és jogtudomány”, 2013, no 1–2, pp. 135–136.

<sup>9</sup> Commission De Venise: *RAPPORT SUR LE VOTE A L'ETRANGER CDL-AD* (2011) 022. Strasbourg, le 24 juin 2011.

During the 2010–2014 period Hungary has been among the last in Europe to regulate the right to vote for citizens beyond the border. While the former regulation restricted the scope of the Hungarian citizens entitled to vote to residents of the country, based on Article D) of the Fundamental Law, – which actually considers Hungarians beyond the border as part of the political nation – Article XXIII (1) establishes for non-resident citizens the possibility to exercise their right to vote. As a result of the 2010 citizenship legislation, Hungarians living beyond the country’s borders could be granted citizenship on the basis of preferential treatment, as a result of which the Hungarians constitute a unified diaspora.

Due to the regulations, non-resident citizens can vote for the national party-lists in the parliamentary election. Thus, they have no independent constituency abroad, which, due to the characteristics of the mixed electoral system, has resulted in the fact that they have only one vote unlike citizens with a Hungarian address who have two votes. Problems concerning the “half-franchise” of non-resident citizens arise from the issue of the international conventions binding for Hungary as well that consistently enshrine the principle of the equality of voting rights and that do not tolerate deviations in the number of votes, and above all Article 25 (b) of the International Covenant on Civil and Political Rights. However, the joint report by the Venice Commission and the Organization for Security and Cooperation in Europe, did not criticize, or even consider it technically proportional and verifiable<sup>10</sup>, the Hungarian restriction that non-Hungarian residents could only vote on the list during the parliamentary election. Nonetheless, I believe that further consideration may be given to ensuring that non-resident votes are equal by creating a virtual constituency abroad.

A differentiated solution has also been developed in Hungary regarding the way of voting abroad. The institution of personal voting in delegations – which has been taken over from previous practice – has remained, which has been supplemented by the possibility of postal voting. A voter registered in a foreign representation register who resides abroad on the day of the vote may vote at the Hungarian Representation (Embassy, Consulate) and cast his

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<sup>10</sup> Joint Opinion on the Act on the Elections of Members of Parliament of Hungary No. 662/2012, CDL-AD(2012)012, Strasbourg, June 18, 2012, pp. 11–12.

or her vote on a ballot paper relevant to his/her home address. At the same time, a voter who has pre-registered and has been added to the directory of postal voters but without a Hungarian address can vote only by means of a voting mail package by post (only on the national lists). From the above it can be stated that the principle of equality of citizenship is not consistently applied in the election of members of the national assembly in the Hungarian electoral system.

### III.

Changes in the requirements deriving from the rule of law, as well as strengthening of certain jurisdictions may lead to the transformation of electoral institutions, as has happened in Hungary, in the development of the right to personal data over the last 3 decades.

In Hungary, after the change of regime, data protection rules have become increasingly stringent, even in EU comparisons. The regulation sometimes seems to be contrary to the goals of the current government, business actors and those who are driven by political interests. However, short-term current political interests may not override the system of fundamental rights. Especially, if their respect is an obligation deriving from the Constitution, the Fundamental Law.

From the point of view of data protection, election and the pre-election campaigns are of special importance, as the personal data of hundreds of thousands of individuals are acquired by the parties, nominating organizations and candidates. An election is therefore a test of the rule of law in data protection too. Indeed, through the work of the electoral bodies and the events of the political campaign, it is apparent how the persons concerned can enforce their right to self-determination or whether they are limited in this right. An election – significantly influenced by the political culture – also shows where progress has been made in this area and where is a lack of legal regulation and, if so, where; and whether these anomalies hinder the exercise of the right to self-determination.

The re-codification of the electoral procedural rules in Hungary, in my opinion, has not brought about any significant changes in the electoral

data processing, has not fundamentally changed the data management routine associated with the election and the campaign, however, it has refined it considerably. At the same time, refinements can be seen as small steps forward in terms of practicality. Some, like e.g. recording telephone calls exclusively with the consent of the data subject in a *lex specialis* brought some strictness into the system. Likewise, strict accounting for the nomination sheets is a rigorous provision, but it is specifically designed to guarantee data protection. Other “reforms”, for example, the introduction of the multiple nomination can be positively evaluated from the data protection aspect, but it would have required complex reflection and preparation, since in the absence of appropriate guarantee control mechanisms for campaign financing and public spending, it had negative consequences for the society as well, because the right to information was interpreted only with regard to the expediency criteria.

I have already outlined the issue of nomination papers. From the point of view of data protection, it remains a concern that the voters’ personal information can be accessed by candidates, nominating organizations and persons acting on their behalf. The multiple nomination provides an opportunity for candidates who collect signatures in the constituencies to exchange the personal data they have previously gathered and to place false signatures on the nomination sheets. Thus, the mechanism of multiple nomination has the potential to abuse the personal data of voters.

In the electoral process, data supply during elections is a crucial issue for data protection. The fundamental question in this respect is how the citizen can exercise his right to information self-determination against political requests. According to one of the applied constitutional solutions, the central body managing the personal data of the citizens can only pass on the personal data of the voter for the campaign, if the voter has explicitly agreed to it (OPT-IN regulation). Conversely, a conditional restriction of the right to self-determination of information is the rule that the voter would be entitled to prohibit the campaign release of his personal data, but as long as he does not do so, candidates and nominating organizations may request them from the registry and during the election campaign they can use them for contact purposes (OPT-OUT regulation). However, the latter solution, which is applied in the Hungarian practice, is a fair bal-

ance between the exercise of the right to self-determination and the right to freedom of expression<sup>11</sup>.

An election privacy focal point is the campaign data management. Perhaps the most important aspect of the lawfulness of campaign data management in Hungary is the principle of purpose-oriented data management. Actually, this means that personal data can only be processed specifically for the purpose of exercising rights and fulfilling an obligation. But, the question usually cannot be decided in general terms; the permissibility of data management should be assessed on a case-by-case basis. Knowledge of the database used and the circumstances of its usage are essential to consider the legality of the operation. Another important factor in the assessment is whether the public database to be used is a mandatory data management, it means a registry created by the legislator's specific intention, or a registry based on the voluntary contribution of citizens. Another important issue is that, in the case of data processing where the legislator identifies potential sources of lawful data, its intention is likely to restrict the acquisition of data from other sources in order to respect citizens' privacy. In political campaigns, where parties, due their data poverty, grab every possible means of getting in touch with the voters, the principle and requirement of purpose-oriented data management is a useful guideline and also provides the framework for lawful data management.

A perceived or real harassment in the electoral campaigns is also the fact that, according to voters, some parties have lists of party affiliation. In Hungary, the National Authority for Data Protection and Freedom of Information and its President have repeatedly expressed their concerns about contacting voters in their homes by the party representatives for the purpose of data collection. As they pointed out in their resolution, "[...] However, a procedure whereby questionnaires are filled in at the voters' home may be objectionable from the point of view of data protection, since it entails the risk that opinions may be associated with the persons when recording address information"<sup>12</sup>.

The secrecy of voting is a basic principle of election from a data protection point of view as well, the enforcement of which is an unconditional, constitutional and international requirement. Postal voting is a legal institution

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<sup>11</sup> Constitutional Court Decision No. 175/2011 (XII.29).

<sup>12</sup> ABI 1871/A/2005.

which affects the confidentiality of voting and is sensitive from a data protection point of view. A specificity of voting in the letter is the fact that the legislator renounces the possibility of full verification of identity: the one voting by post can be identified on the basis of his statement, but the supervisory bodies cannot control the circumstances of voting. For this form of voting, the verification of voting documents ensures the confidentiality of the vote, which is usually a two-phase one: the first is the comparison of the statements with the register data, and after the verification of all the statements, the votes are counted after the ballot papers have been mixed. Data protection issues in relation to postal voting is especially important because mechanism is favorably applied by the countries concerned to solve the problem of 'cross-border voting'.

#### IV.

Last but not least, an important impact on the electoral systems is the evolution of technology. Electronic solutions and technological innovations have an inspiring effect on the wider development of electoral systems everywhere.

Technical evolution has led to two-way changes in the electoral field in the last 30 years. On the one hand, in the area of the election campaign, as the main tool of the campaigns is now ICT (info-communication technology) and certain fields of application of electronic media. This, in turn, demanded a change in the quality of regulation as well, and despite the fact that in the Hungarian practice around the turn of the millennium it was the legislator that was just tumbling in the footsteps of changing campaign techniques. This, in particular, posed a challenge in terms of violating campaign rules and the sanctioning thereof. As a result, due to an overly inconsistent practice of sanctioning infringements (jeopardizing the authority of electoral bodies, which would undermine social confidence in elections), a two-decade old legal institution, the election silence, has been abolished.

The other direction is the use of IT in the administrative and civic electoral activities. This can be observed in the work of electoral bodies, for example, in the field of electoral information technology as well as in the exercise of electoral rights, for example when voting.

The process of casting votes received special attention from the electorate, the legislator and electoral bodies during the previous elections. However, while the issue of taking out the ballot from the polling station was the main challenge of applying and interpreting law in the past, new questions were raised during the 2014 elections in relation to casting votes. As a result of technical evolution, citizens take photos of the voting card, or of each other, in the polling station, which they publish on the internet.

In this context, the Curia has rules that in itself it's not a violation of the secrecy of the election, if the voter takes a photo of the ballot in the ballot box. On the one hand, so the reasoning – because there is no law prohibiting taking photos of the ballot, and on the other hand, the principle of secrecy of the election is not compromised by the taking of a photograph because it is not suitable for binding a particular vote to a specific voter. However, the act of publishing any photograph taken of the ballot after the opinion has been expressed contradicts the principle of purposeful exercising of a right.

Finally, in connection with the development of electoral technology, I would mention the institution that is expected to represent the future in Hungarian and international elections alike: the possibility of e-voting.

Hungary is not in the front line of e-voting initiatives, nor is involved in wide scale e-participation experiments and initiatives. On the contrary, strategic focus of e-Government developments are placed on the integrative vision of ICT applications such as simplification, interoperability, portal development, one-stop-shop, and electronic services<sup>13</sup>. ICT applications in the area of enhancing the governance dimension are not in the mainstream of agenda.

The opportunities of expatriate or out-of-country voting might enhance the impetus on e-voting. Presently, the key technology to involve out-of-country citizens in participating national elections is via postal voting or personal appearance in foreign representations, consulates. Increasing national cohesion for out-of-country citizens might serve as a driver and essential political motivator for e-voting experiments even in less “participatory” countries.

The e-voting capabilities in a country are very much determined by broader experiences with public ICT implementations. Creating and enhancing

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<sup>13</sup> M. Aranyossy, A. Fekó, A. Nemeslaki, *The Quest for Success of e-Government: What Structure and Allocation of IT Spending Tells Us*, 22nd Annual NISPAcee Conference, Budapest 2014.



e-government solutions gradually increase participation which in return increases willingness to technology adoption. Given the fact, that e-voting is on the top of e-participation maturity chain, building up the level of ICT adoption and use, both on the institutional and citizen side, contributes to a more astute and innovative social environment. The out-of-country voting might be a special driver in this context when a country extends e-voting to a more e-participative country than its home base<sup>14</sup>.

The e-voting socio-technical solutions require high level of e-democracy maturity. Most governments – like also the governments of Hungary – have placed little emphasis on the development of online practices that enable civic contributions to impact decision-making, instead prioritised information dissemination and service delivery features, that is they placed the integrative and efficiency orientation of e-government in the centre of development strategies.

Creating and restoring trust in democratic institution and the enhancement of social construction of the e-democracy value-chain seems to be the most critical factor of e-voting experiments in Hungary and CEE. The trust can be built in democratic institutions via technology and the electoral organizations can be won to embrace the idea of e-voting initiations. In our context of Hungary, and in CEE, this is a critical element of any future development in e-voting since there are deeply rooted social barriers which hinder technology deployments for enhancing democratic participation.

Therefore, the Director of the Hungarian National Election Committee had not envisioned anything better in the near future than postal voting for the out-of-country voting, arguing that integrity, transparency and reliability is a much greater political value in the election process than the slight potential of increasing desire-to-vote by risky ICT innovations. Indeed, amongst the social mechanisms which create trust in e-voting system, the electoral bodies have to be prepared to transform conduct of its mission through ICT<sup>15</sup>.

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<sup>14</sup> A. Prosser, R. Krimmer, *The dimensions of electronic voting*, [in:] *Electronic Voting in Europe – Technology, Law, Politics and Society*, eds. A. Prosser, R. Krimmer, GI and OCG 2004; C. Avgerou, *Explaining Trust in IT-Mediated Elections: A Case Study of E-Voting in Brazil*, “Journal of the Association for Information Systems” 2013, No. 8.

<sup>15</sup> C. Ákos, N. András, *Az e-szavazás lehetőségei és korlátai Magyarországon*, [in:] *Választási dilemmák*, eds. C. Ákos, N.K. Egyetem, Budapest 2015, p. 257.

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