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Regulating the role of money in politics. Campaign-finance in Hungary.

### THE FUNDAMENTAL FEATURES OF THE HUNGARIAN POLITICAL SYSTEM

Hungary is a unitary, unicameral parliamentary democracy. The power lies at the national and (to smaller extent) at local (municipal) levels, regions have little relevance. The president is elected indirectly, by the national parliament. Below the national level, mayors, local councilors, members of the county conventions, and ethnic minority councils are elected by popular vote. All other officeholders are appointed by the government or by the national parliament. In 2004, for the first time, Hungarians could vote for the members of the European Parliament as well.

The first three Parliaments contained six parties, in the fourth one only four parties are represented. The Independent Smallholders Party and the Christian Democratic People's Party failed to overcome the electoral threshold in 2002 and 1998, respectively. The radical right Hungarian Justice and Life Party was represented only in the third Parliament (1998-2002).

The first election was dominated by the struggle between the center-right Hungarian Democratic Forum and the liberal Alliance of Free Democrats. By the end of the decade both parties shrunk to the status of minor players, hardly being able to clear the five percent electoral threshold. They were both eclipsed by the Hungarian Socialist Party and by Fidesz. The Hungarian Socialist Party is the successor party of the Communist party, but its present profile is technocratic, similar to the one of the German Social Democratic Party. Fidesz used to be liberal, but shifted to the right, and now it is best characterized as a conservative party, somewhat similar to the Gaullist parties in France.

National and local representative bodies have a four years long mandate. During the country's fifteen years of post-communist history there was no example of early election.

Each citizen of legal age (18) who lives on the territory of the country has the right to vote and to be elected. At local elections resident non- citizens can also vote.

The electoral rules at local elections depend on the size of the settlement. In localities with 10.000 or less inhabitants voters have as many votes as seats are to be distributed, and the candidates with most votes get the seats. In settlements with more than 10.000 inhabitants the local councilors are elected in a mixed system. Part of them are elected in single mandate constituencies, while another group obtains seats from compensation lists (pooled from those ballots that yielded no seats in the single-member constituencies). Mayors are elected directly, with a first-past-the post system. The members of the county councils and the councils of the capital city are elected through a proportional party-list system.

The electoral system for the national parliamentary elections is a mixed one. Voters have two votes. They can vote for regional party lists and for individual candidates. 176 members of the 386 member strong Parliament are elected in single member districts, through a French style double-ballot system. Candidates having obtained at least fifteen percent of the votes validly cast during the first electoral round may stand for election in the second round. If there are no such three candidates, the three candidates having obtained the greatest number of votes during the first electoral round may stand.

The rest of the mandates are distributed through a proportional list system. 152 of these seats are supposed to be gained from twenty regional constituencies, using the Hagenbach-Bischoff largest-remainder formula. In practice some of these regional mandates are moved to the national level. Those votes that produced no mandates in regional constituencies and in single-member districts are accumulated and may yield an additional fifty-eight compensatory seats from the national lists, through the d'Hondt method. The threshold for being eligible for list-seats is 5 % since 1994. Between 1990 and 1994 it was 4%.

Candidates in single-member constituencies may be nominated by both voters and parties. Regional and national lists can be submitted only by organizations registered as parties. A national list may be set up by a party that has lists in at least seven regional

constituencies. In order to be eligible for a regional list parties must be able to nominate at least two candidates in the particular region.

The Members of the European Parliament are elected through a proportional party-list system, using again a 5 % as a threshold. For the European Parliament elections the whole country is one constituency.

All the party lists used in Hungarian elections are closed lists. That means that the party leadership determines the rank order of the candidates, the voters have no influence over it whatsoever.

The laws on the electoral procedure do not cover comprehensively all practical issues related to the elections. Regulation and arbitration on ambiguous issues is delegated to the National Election Committee. Major parties have equal representation in this body.

Given the unitary, and relatively homogeneous nature of the country, legislation is centralized. The central government and the Parliament are entitled to regulate matters related to campaigns. More precisely, given the politically sensitive nature of the issue, relevant changes can be brought about only by the decision of the national assembly. The laws related to campaigns are among those legislative acts that require the support of two thirds of the Parliament.

#### REGULATION OF CONTRIBUTIONS

The most particular feature of the regulations concerning donations is that they hardly exist in Hungary. There is no upper limit concerning the amount of contributions. Parties and candidates can accept donations from anyone, except foreign governments, enterprises owned by the state (even partially), state-supported foundations and anonymous donors. Contributors do not receive tax exemptions. Only donations to organizations and foundations that declare their non-partisan character receive tax benefits.

## PUBLIC FINANCE

The Hungarian state provides generous support for parties, but only a rather small portion of this support is meant to feed into campaign-activity.

The state budget allocates annually a specific amount for the routine functioning of the parties. The exact sum is decided by Parliament each year, as part of the law on the national budget. Seventy-five percent of state subsidies are distributed on the basis of votes cast for the parties securing more than one percent of the vote. The remaining 25 percent is distributed equally among the parties having a faction in the Parliament. Originally, the sum received from the 75 percent box was not supposed to be higher than half of the parties' overall budget, but the parliament abolished this constraint already in 1990. The significance of these subsidies is considerable: they can reach 70-80 percent of the overall income of the parties. The economic activity of parties receives tax exemptions, but the usual employer taxes, social security contributions, etc must be paid.

In 2003 state-sponsored party foundations were established (Act XLVII) following the German example, with the aim to provide a scientific and educational background for the parties. The amount of money provided in this form comes close to 50% of the above discussed direct state subsidies. Each foundation receives 25 times the basic salary of an MP. Above this sum, for each MP belonging to the respective party the foundation receives 85% of the yearly basic salary. The Parliament may provide further support on an ad hoc basis. The foundations are directly controlled by the parliamentary factions of the parties.

The salaries of MPs don't appear to be particularly high, but the various allowances, compensations and reimbursements add up to a more impressive sum. Mail and telecommunication services are free of charge. MPs can use 75% of their base salary to maintain an office. Fringe benefits - refunds for travel, accommodation, etc. - have increased drastically over the years. As a response to the rising income of the parliamentarians, the party headquarters started to demand from them a sum equaling 10 to 15% of their salaries.

Parliamentary factions are also subsidized. They receive a monthly amount equal to the basic remuneration of twenty-five MPs, plus 30% of the basic remuneration for each

member in case of the governing party and 60% of the basic remuneration for each member in case of the opposition parties. This is the only element of the system that distinguishes between incumbents and challengers, and it is in the favor of the latter. The factions are entitled, per MP, to use a monthly budget of supply equaling 25% of the MP's base salary.

At least thirteen civil servants work for each parliamentary faction. The parliamentary groups are entitled to two further employees after each fifth member (Act LV of 1990 On the Legal Status of Members of Parliament). In addition, two civil servants (plus one additional employee for every fifty members) assist the factions in European Union-related matters.

Various organizations (e.g., youth and women's organizations) affiliated with parties can benefit from the parliamentary fund that supports civic organizations.

All the above listed government subsidies may find their way into the electoral campaign, although none of it is supposed to. But there is no surveillance system in place that could differentiate between expenses related and non-related to the campaign. The government provides a separate, fixed sum (100 million Hungarian Forints) for electoral expenses. This sum is distributed each election year. Depending on the number of nominations, it translates into around 25-30,000 Forints per candidate, that is, an insignificant quantity. All official candidates are entitled to this sum, but those candidates who are nominated by a party receive it through their party – if they receive it at all.

The national media (TV and Radio) broadcasts the political advertisements of parties with national lists free of charge at least once between the 18th and the 3rd day before election day and once on the last day of the election campaign. The regional and local media must do the same for parties and single-member constituency candidates in their respective scope of broadcasting. During election campaigns parties also benefit from not being compelled to ask for special permission in order to produce posters, billboards, leaflets, etc. The candidates are entitled to use the vehicles of public mass communication free of charge from the day of registration up to the day subsequent to election.

Local authorities may offer premises at the disposal of candidates and organizations nominating candidates with equal conditions. Normally, electoral meetings are prohibited

in buildings housing state or municipality authorities. In settlements with less than 500 inhabitants, where no other public building is available, exception may be made. There are no special clauses in the electoral law that would regulate the behavior of civil servants during the campaign, but other regulations bar them from participating in public partisan activities.

### REGULATION OF EXPENDITURES

The only relevant restriction on electoral expenditure concerns the tight ceiling, introduced in 1996. Candidates are not allowed to spend more than one million Forints on the campaign. In case of parties this sum must be multiplied by the number of candidates, that is, with a maximum of 386.

Parties are allowed by law to establish and own companies. These companies, as well as the parties themselves, are entitled to deal in profit-orientated businesses. Parties are, however, severely restricted in this domain. They are only allowed to sell publications, emblems, insignia and lease properties in their possession. Offices hired from the state cannot be used for financial purposes. Parties can buy securities and bonds, but they may not possess corporate stocks. These restrictions do not apply to companies established by parties. There is no restriction on third party spending either.

The freedom of media is severely curtailed during the last days of the campaign. Results of public opinion polls cannot be published starting from the eighth day before the election day until the end of the election. During the last day before the vote all campaign activities must stop. The media is not allowed to deal with campaign related issues during this day.

### REGISTRATION AND DISCLOSURE OBLIGATIONS

Regulations concerning the registration of political parties are relatively liberal in Hungary. To be registered, one must collect only ten signatures of Hungarian citizens, elect a representative body and accept a party statute. A party may cease to exist according

to a court decision if it nominates no candidates at two consecutive elections. No deposit must be provided at the time of registration, or at elections.

Candidates in individual districts require 750 endorsements by voters for becoming official candidates. All voters having a domicile in the constituency may propose a candidate.

Parties and independent candidates are bound to give an account on the usage of electoral state-funding within 30 days after election-day. Parties must also publish amounts, sources and manner of usage of state and other financial resources in the National Gazette within 60 days after the second electoral round. Those who exceed the one million Forints limit must pay twice the sum of the surplus to the national budget within 15 days.

Parties are compelled to publish their annual budget biannually in the National Gazette. The name of domestic donors who gave more than 500,000 Forints and foreign donors who gave more than 100,000 Forints must be made public. If a party receives donation in kind, it must assess its monetary value.

In practice, benefactors are keen to preserve their anonymity and the money arrives to the parties via various foundations. In 2002, for example, the MSZP received 200 million Forints, but only 6.3 million came from identified persons.

#### LIMITATIONS ON NON-CITIZENS AND NON-RESIDENTS

Only Hungarian citizens can become candidates at the national elections. Not even all Hungarian citizens can vote, but only those who are within the territory of the country, since voting stations operate only within Hungary. At the European Parliament elections, however, citizens of the European Union registered in Hungary may vote and may be elected. There are no special restrictions on foreigners playing a role in financing Hungarian parties and candidates.

#### REGULATION OF LOBBYISTS AND GOVERNMENT CONTRACTORS

Lobbying is not yet properly regulated in Hungary. The government did produce a draft on the issue in 2001, but this draft was never voted upon. According to the draft lobbying would be recognized as a fundamentally positive activity but would also be restricted to officially registered actors.<sup>1</sup> Civil servants, and the companies owned by them would be barred from lobbying. Lobbyists would be forbidden to provide any sort of material or other advantage to the contacted politicians and public office holders. Even without this law enacted, according to the criminal law, influencing public officials for material gains is unlawful. Civil servants are forbidden by law to become involved in partisan activities.

The conflict of interests of MPs became more tightly regulated recently. MPs cannot take part in the leadership of various economic enterprises: wherein which the property share of the state exceeds ten per cent of the voting rights, privatized enterprises (for two years after privatization), enterprises operating with the full or majority property participation of local governments, credit institutions, insurance companies, voluntary mutual insurance companies, etc. An MP cannot work as legal representative of the state, of its organs and institutions. No reference can be made to the membership of the Parliament in any professional or business matter. The MPs must report to the Speaker of Parliament about their employment relationships, participation in business associations or in public-utility undertakings.

In her capacity as an MP, a politician cannot accept a present that is worth twice the basic parliamentary salary. Concerning smaller presents, a record shall be kept by MPs as part of their statement of property, income and economic interests.

These regulations do not foreclose, obviously, ambiguous situations and major scandals. In 2004, for example, the relatives of a government-party MP received 270 million Forints for their agricultural enterprise. The very same MP proposed in the parliament that the official borders of a prestigious wine-district should be redrawn in such a way that his vineyard could be included. When the Parliament rejected the proposal, he managed to convince the ministry to regulate in his favor.

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<sup>1</sup> There exists already a separate list of organizations, maintained by the Speaker of the Parliament, that are active in persuading MP's, but only social organizations are on the lists, companies and individuals are not.

More general problems flow from the fact that the incompatibility of jobs of parliamentarians and mayors was abolished by the 1994-1998 government. As a result, many mayors appeared in the House, spending most of their time lobbying for their own city. Interestingly, this orientation does not seem to harm party unity: MPs vote with the party leadership in a very disciplined way. But the parliamentary debates became more predictable and ritualistic, since the number of MPs genuinely concerned with general principles declined.

Local councilors were for most of the years free to engage in all sorts of economic activities, including owning companies that have contracts with local governments. In recent years regulations are becoming less permissive. The Parliament is working on a new legislative initiative aimed at maximizing the premiums that the mayors and councilors in the local governments can award to themselves.

Members of state boards that decide about contracts above one million Forint must submit each year a declaration concerning their financial situation. The decision maker board members cannot be owners or employees of the competing companies, or relatives of them.

#### ADMINISTRATION AND ENFORCEMENT

The government administration is forbidden by law to monitor the finance of parties. The only authority entitled to do that is the State Audit Office. The head of the Office is elected by Parliament and reports to it. The State Audit Office is one of the least partisan and least politicized institutions of the country.

The Office biannually checks the financial accounts of the parties. If, for some reason, it intends to carry out investigation at some other time point, it must warn the party one month prior to the investigation. If the Office discovers an anonymous donation or illegal economic activity, the party must pay the sum in question to the state budget, and the same sum will be deducted from the party's annual state allowance.

The powers of the Office are very restricted. If it discovers mistakes in the reports, it can only ask the parties to publish a corrected version. In other words, there is no real sanction for false accounting practices. The Office is not able to investigate the true identity of the donors and it has no means to conduct an investigation among the financial partners of the parties. In extreme cases, the State Audit Office can ask the public prosecutor to launch an investigation. To sum up, in reality the State Audit Office is unable to supervise the parties' and candidates' activities.

### CONCLUSIONS: PITFALLS AND PENDING REFORMS

The most obvious problem lies exactly in the inability of the State Audit Office to investigate the validity of the report of the parties. Even concerning obvious accounting mistakes, the room for maneuver is limited. The parties routinely modify their budget-reports following the Offices' critical comments, and as a result the correct reports are published two or three years late. It is common knowledge that parties spend around five times more on electoral campaigns than it is allowed. The fear of authoritarian state intervention led to strong financial autonomy of parties. The unrealistically low ceiling of electoral expenditure practically forces the parties to misuse this autonomy. Finally, one of the most serious problems is that the identity of the donors hardly ever becomes known since the donations go through various foundations. The threshold above which the identity of the donor must be revealed is probably too high anyway.

While state intervention has in general an impartial character, this is not true in the case of referendums. The government, for example, generously sponsored the "yes" campaigns for the country's membership in the NATO and the EU. Campaigning at referendums clearly lacks proper regulation.

In 1999 a number of politicians and experts, from different parties, proposed the radical restructuring of the system of party finance. Most initiatives suggested a drastic increase in state support, more opportunities for parties to run enterprises, stricter limits on private donations and tighter public control over party budgets. It was also suggested that the donors should account for the source of the money given to parties. Some of the

proposals even called for the elimination of all non-state sources of income in order to provide for more transparency.

These plans proved to be too radical to be implemented. But the Hungarian elite cannot escape confronting the issue of electoral expenditures. If the state continues to limit expenditures, the State Audit Office must be given real power to control the parties. Hungary must also develop a regulation concerning third party spending. The only reason why this phenomenon has attracted little attention up to now is that the authorities (and the public) had to accept the candidates and parties reports concerning the campaign expenditures. In reality the campaigns are financed through multiple channels. The foundations and firms related to parties do not only provide fora, finance gatherings and advertisements, provide cars, cell-phones and other tools, but they also pay the parties' activists, experts and bureaucrats.

Another problematic area concerns the system of party-based patronage. In Hungary political patronage is extensive. The victory of the opposition means that civil servants, heads of public utilities, even heads of theaters must leave their positions. Although the number of political advisors is limited by law to five percent of the public servants within a particular department, their actual number is much larger.

Companies close to the victorious parties can hope for advantageous contracts. Even when the competition is open to everyone, and the choice of companies seems to be transparent, companies whose leaders are known to support the "wrong" side often do not even bother to enter the competition.

The existing favoritism and corruption<sup>2</sup> has its partial explanation in the polarization of the party system. The struggle for determining the shape of the new Hungary is often merciless, and politicians easily bypass rules of personal and public ethics in this fight. But the ideological nature of the struggle also limits corruption. One cannot persuade a party to fight for a cause that is contrary to its principal ideas. One cannot "buy" a party in Hungary.

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<sup>2</sup> According to Transparency International Hungary Hungary is the 42<sup>nd</sup> on a list of 146 countries, with a score of 4.8. Only Estonia and Slovenia is "cleaner" in the post-communist world.

Another reason for being - cautiously - optimistic is that integration into the European Union severely curtailed the possibility of the governments to distribute goodies among political supporters. As privatization proceeds, there is less and less to be distributed anyway. The legislative acts introduced in 2003 in the framework of the so called “glass pocket program” contributed to more transparency.

A comprehensive lobby-law seems to be necessary, however, to clarify certain gray zones. Companies, for example, often sponsor “academic trips” of civil servants. The governments keep on organizing free competitions where in fact only one company can satisfy all the criteria. Finally, a new media-regulation must be worked out, because at the moment the public TV and Radio channels are deeply politicized, sometimes even under direct partisan control.