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Hungary Is Campaigning: Main Issues of the New Electoral Campaign Legislation

ABSTRACT

A number of recent amendments explain the actuality of the topic, since on 26th November 2012 the National Assembly adopted Act XXXVI of 2013 on Electoral Procedure (hereinafter: Electoral Procedure Act), which introduced radical changes in the electoral campaign legislation in Hungary. According to the Act, “campaign methods shall include all methods capable of influencing or used in an attempt to influence voters’ choices.”¹ The most used campaign methods are regulated with more details: posters, direct contact by the nominating organization or the candidate, political advertisements, election rallies. Thus this essay deals with the legal notion of electoral procedure, electoral campaign and the campaign finance.

KEYWORDS

electoral campaign, electoral procedure, Hungary, media campaign, campaign finance

Hungary’s moments are quite expensive,
but enchanting words and grandiloquent declamations are too cheap.

Count István Széchenyi

Introduction

A number of recent amendments explain the actuality of the topic, since on 26th November 2012 the National Assembly adopted Act XXXVI of 2013 on Electoral Procedure (hereinafter: Electoral Procedure Act), which introduced radical changes in the electoral campaign legislation.

¹ Section 140 of Act XXXVI of 2013 on Electoral Procedure.

The campaign – in its broadest sense – is the commencement of the electoral process that actually begins immediately after the former elections, as the loser nominating organizations are preparing for the next elections with their activities – even without direct references. The official campaign period lasts from the 50th day before the voting until the end of voting on the voting day,² so the period available to popularize party programmes has been shortened.

Sections 141–142 of the Act determines campaign activity:

The following shall be campaign activities: the use of campaign resources in the campaign period, and any other activity in the campaign period aimed at influencing or attempting to influence voters' choices. The following shall not be considered election campaign: the activities of election bodies, and personal communication between citizens as private persons, regardless of its content and form.³

On one hand, “campaigning” is one of the means of persuasion at the disposal of the parties competing for political power in order to seek the voters' support to their programme or candidate. On the other hand, electoral campaign should inform the citizens appropriately and prepare them to express their opinion in public affairs and to make decisions in political disputes. Article 2 of the Fundamental Law declares that “members of the National Assembly shall be elected by universal and equal suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in a manner laid down in a cardinal Act.”⁴ This is protected by the freedom of opinion, of information and of orientation. Nonetheless, public administration should observe the law for the sake of these freedoms.

In Hungary, as the political-economic-social framework returned to the rule of law after 1989, the legality of public administration became a constitutional requirement. It means legal control over administrative activities, i.e. that public administration observes the law and causes its observance by others. The legality of public administration includes the realization of other conditions too,⁵ such as the legality of national and local elections, which requires the accomplishment of the basic principles of the electoral procedure, established by the Electoral Procedure Act as well.

² Section 139 of Act XXXVI of 2013 on Electoral Procedure.

³ Section 141–142 of Act XXXVI of 2013 on Electoral Procedure.

⁴ Article 2 of the Fundamental Law.

⁵ A. Rác, *A közigazgatás törvényességének követelményei*, [in:] Szamel Lajos Tudományos Emlékkülés, ed. F. Csefkó, Pécs 2000, p. 149.

During the electoral campaign some of the principles settled by the Act shall prevail more efficiently, e.g. the protection of the fairness of the election, equal opportunities for candidates and nominating organizations, and the exercise of rights in good faith and in accordance with their purpose. The last principle shall be given greater importance: although during campaign period candidates and nominating organizations have the right to express critiques in respect of each other's activity and programme (so-called 'negative campaigning'), this cannot lead to the infringement of the exercise of rights in good faith and in accordance with their purpose. Consequently, it is highly relevant to distinguish between a negative opinion, unable to violate individually the electoral legislation, and a statement, which, if false, can mislead the voters or, in more serious cases, might trigger criminal consequences.⁶ The Electoral Procedure Act establishes the fundamental criteria which determine whether the campaign observes or not the principles of the exercise of rights in good faith and in accordance with their purpose and of the equal opportunities. It is worth mentioning too that the judgements dealing with negative campaigning have referred several times to the practice of the European Court of Human Rights, the Constitutional Court, and of the High Court of Justice.⁷

The new Electoral Procedure Act – in contrast to the former legislation – abolished the institution of the general campaign silence, introducing only a prohibition relative to specific places and to campaign methods on the day of voting.

Main Details of Electoral Campaign Legislation

In respect of the infringement of campaign silence, Section 41 of the former Electoral Procedure Act regulated campaign methods merely hinting at some of them. The act in force did not complete the list, yet it modified the scheme of the legislation in respect of the fact that campaign silence was abolished.

According to the Act, "campaign methods shall include all methods capable of influencing of used in an attempt to influence voters' choices."⁸ The

⁶ Sections 226–226/A–226/B of the Act C of 2012 on the Criminal Code and 36/1994 (VI. 24.) ABH Constitutional Court Decision.

⁷ R. Sasvári, *Az új választási eljárási szabályozás gyakorlati tapasztalatai*, [online] http://www.kozszov.org.hu/dokumentumok/UMK/UMK_2014_4/16_Sasvari_Robert.pdf [accessed: 23.07.2017].

⁸ Section 140 of Act XXXVI of 2013 on Electoral Procedure.

most used campaign methods are regulated with more details: posters, direct contact by the nominating organization or the candidate, political advertisements, election rallies.

1. Campaign methods: Posters

Posters are the most well-known campaign methods, regarding which the Act fixes that for the purposes of the election campaign ‘poster’ shall mean election placards, legends, flyers, images and emblems regardless of size and the surface they are on.⁹

The National Election Commission (hereinafter: NEC) established that, according to Act CLXXXV of 2010 on Media Services and Mass Media, an election poster shall be considered a ‘publication.’¹⁰ thus it shall display the key editorial and publication data (imprint). The imprint shall display the publisher’s name, registered office and the name of the person responsible for publishing.¹¹ Consequently – as highlighted by the NEC too – it shall be indicated on the election posters and an omission infringes the principle of the exercise of rights in good faith and in accordance with their purpose, as in this case the exercise of the right to having the poster edited compels the violation of the rules relative to the publication.¹²

According to the Electoral Procedure Act, in the campaign period nominating organizations and candidates may produce posters without expressed permission or registration. In the campaign period posters may be placed without any limitation. In respect of the court practice up until now, this provision of the Act is supposed to be one of the most polemic issues. The Act states that “posters may not be placed on the walls of buildings and fences without the consent of the owner, the tenant or, in the case of property owned by the state or the municipality, the consent of the entity that exercises trustee’s rights.”¹³ Posters may be placed without the owner’s consent

⁹ Section 144 (1) of Act XXXVI of 2013 on Electoral Procedure.

¹⁰ “Publication: [...] any other printed material (address registers, name registers, publications containing graphics, drawings or photos, maps; flyers; printed postcards, greeting or similar cards; printed pictures, samples, photos; printed calendars; printed business advertisements, catalogues, brochures, poster ads and similar items; other textual publications)” – Section 203 of Act CLXXXV of 2010 on Media Services and Mass Media.

¹¹ Section 46 (9) of Act CLXXXV of 2010 on Media Services and Mass Media.

¹² 1112/2014 NEC Decision with regard to the complaint submitted by the individuals Z. M and A. B.

¹³ Section 144 (4) of Act XXXVI of 2013 on Electoral Procedure.

– but observing the right to the defence of property – on objects not considered buildings or fences.

It is worth mentioning the Curia's rather controversial practice with regard to the placement of election posters on poles. On 5th March 2014 the Curia decided that, according to Section 12 (3b) of Act I of 1988 on Public Road Traffic (hereinafter: Road Traffic Act)¹⁴ and to Section 3 (2) a) of Government Decree 224/2011. (X.21.) on the rules of placing billboards, advertising media and other carriers of advertisements along public roads,¹⁵ their placement shall be prohibited.¹⁶ In its decision the Curia upheld the NEC's 128/2014 second-instance resolution. In the Reasoning, the Curia stated that Section 1 of the Decree expressly names the election poster settled in Section 144 of the Electoral Procedure Act as a carrier of advertisement. Thus, it is rather evident that election posters fall under the prohibition fixed both by Section 12 of Road Traffic Act and by Section the present Government Decree.

On the other hand, in its decision passed on 17th March, The Curia establishes:

According to the right interpretation of Section 144 of the Electoral Procedure Act, the placement of election posters shall be regulated exclusively by its own provisions. Election bodies may analyse the observance of these provisions, but they may not apply road traffic rules or decrees relative to the placement of billboards, for Section 144 of the Electoral Procedure Act composes a closed system. The above-mentioned Decree fixes precisely the set of advertisement carriers including election posters, though, its application is excluded by Section 144 (4)-(7) of the Electoral Procedure Act. Thus, this provision may not abrogate the general rule of placement without limits.¹⁷

¹⁴ "Billboards and any other advertising items may not be placed on poles of street lighting, electricity and telephone, regardless of the fact that the pole is erected on the part without road surface, pavement, footway or cycle path" – Section 12 (3b) of Act I of 1988 on Public Road Traffic.

¹⁵ "For the purpose of this Decree, billboards, advertising media any other carriers of advertisement (hereinafter: carrier of advertisement): any sign or object which is considered economical advertisement according to Section 3 d) of Act XLVIII of 2008 on the conditions and restrictions of business advertising activity or the scope of which is to convince the by-passers on private roads not closed to the public about supporting or rejecting certain ideologies, principles, values and conceptions, including the election poster mentioned by Section 144 of Act XXXVI of 2013 on Electoral Procedure" – Section 3 (2) a) of Government Decree 224/2011 (X.21).

¹⁶ Kvk. III. 37. 183/2014/10 Curia Decision.

¹⁷ Kvk. II. 37. 307/2014/3. Curia Decision.

Consequently, in these cases the placement of posters on poles does not infringe the Electoral Procedure Act. However, in other cases, e.g. if the poster covers a road sign, further rules ought to be considered by the NEC.

Another exception stated by the Electoral Procedure Act: “On certain public buildings or on specific parts of public domain, the placement of posters and billboards may be prohibited by the municipality, in the Capital by the municipality of the Capital for reasons of protection of monuments and the environment.”¹⁸ *Exempli gratia*, it is prohibited to place election posters on any bridge on the Danube and in any subways.¹⁹ Furthermore, “it is prohibited to place posters on or inside buildings that serve as premises for public or municipality authorities.”²⁰ In this respect, the Metropolitan Court of Budapest upheld 16/2014 (IV.1.) NEC Resolution which declares that “healthcare providers shall not be considered state or local authority.”²¹

For the sake of the procedural principles of the election, such as the protection of the fairness of the election and the exercise of rights in good faith and in accordance with their purpose, the posters shall be placed in such a fashion that they do not cover the posters of other candidates and nominating organizations, and that they may be removed without causing any damage. According to Decree 8. Kpk. 30. 158/2006/2 of the County Court of Hajdú-Bihar: “The condition of the poster formerly placed has no importance, the person who places shall not decide whether the fixed poster of other candidate is capable of drawing voters’ attention. The person who covers the poster violates the law even if it has been already covered.”²²

The Electoral Procedure Act establishes that “posters shall be removed within 30 days after the day of the vote or the costs of the removal shall be borne by those who have placed them or those on behalf of whom they have been placed.”²³ In this respect, the NEC launched a guideline in which it fixes that the election committee has no competence to adjudge a complaint submitted because the obligation of the removal of the poster within 30 days after the election has been violated. Furthermore, this body is not authorized to impose fines. Unlawful omission is an issue of public property,

¹⁸ Section 144 (5) of Act XXXVI of 2013 on Electoral Procedure.

¹⁹ Section 2 5)-6) of 4/2014 Decision of the General Assembly of Budapest on the prohibition of the placement of election posters on certain public buildings and specific parts of public zones.

²⁰ Section 144 (5) of Act XXXVI of 2013 on Electoral Procedure.

²¹ 16/2014 (IV.1.) NEC Resolution.

²² Decree 8. Kpk. 30. 158/2006/2 of the County Court of Hajdú-Bihar.

²³ Section 144 (7) of Act XXXVI of 2013 on Electoral Procedure.

regulated by Section 13 (1) 2) of Act CLXXXIX of 2011 on Local Governments in Hungary.²⁴

2. Campaign methods: Election Rallies

According to Section 145 (1) of the Electoral Procedure Act, “election rallies may be held during the campaign period. Election rallies shall be public.”²⁵

Election rally – despite having all the essential features of an assembly – does not come within the scope of Act III of 1989 on the Right to Assembly, thus it can be held in campaign period without former registration.²⁶ In our opinion, though, it is convenient to make a registration to the police, so they can prepare for the protection of the event in case of emergency.

Article XVIII (1) of the Fundamental Law establishes that “everyone shall have the right to peaceful assembly.”²⁷ In consonance with this constitutional requirement, election rallies shall be organized in peaceful manner, i.e. participants’ conduct shall not be violent. They may join the rally but may not carry firearms, explosives, deadly weapons or any other items which can cause considerable harm. However, it would be highly agreeable to introduce a specific set of security rules, exclusively dealing with election rallies.

Comparing to the general rules of assembly, in case of an election rally the organizers’ group is smaller, as election rallies established by the Electoral Procedure Act may only be organized by a candidate or nominating organization taking part in the election, or by the initiator of referendum or popular initiative. Consequently, all the unions of the organizers mentioned by the Electoral Procedure Act are considered election rallies, both in public and on private property. During the campaign period, the election rally can be distinguished from the assemblies falling under Act III of 1989 on the basis of its purpose: it aims to influence or to attempt to influence voters’ choice.²⁸ It is worth questioning, though, whether the scope or the issue of the organization have any importance with regard to its classification as an election rally.²⁹

²⁴ NEC Guideline 13/2014 on the application of the rules with regard to the removal of election posters.

²⁵ Section 145 (1) of Act XXXVI of 2013 on Electoral Procedure.

²⁶ Section 3 a) of Act III of 1989.

²⁷ Article XVIII (1) of the Fundamental Law.

²⁸ *Választójogi kommentárok*, ed. A. Cserni, Budapest 2014, p. 271.

²⁹ B. Hajas, *A gyűlekezési jog egyes aktuális elméleti és gyakorlati kérdései*, Pécs 2012, p. 144.

On the day of voting, posters may be placed with the limitations fixed by law, but election rallies may not be held. With regard to the spot of the rally, Section 145 (2) of the Electoral Procedure Act states that “for the purposes of the election campaign, state and municipality budgetary agencies shall make premises and other necessary equipment available to the candidates and the nominating organizations under equal conditions.”³⁰ It is worth mentioning that these agencies are only bound towards the registered candidates and nominating organizations. This obligation ensures the realization of the principle of equal opportunities during the campaign period. “In buildings serving as premises for state or municipality authorities, it shall be prohibited to carry out campaign activities, hold rallies, except at settlements with less than five hundred inhabitants, provided that no other community building is available.”³¹ Election rallies may not be held e.g. in the marriage hall of the mayor’s office³² or in the Deputy Speaker’s office in the Parliament.³³

3. Campaign methods: Political Advertisements³⁴ – Media Campaign

Section 146 of the Electoral Procedure Act pronounces that

[...] political advertisement shall mean a political message in the media as defined in Section 203 (55) of Act CLXXXV of 2010 on Media Services and Mass Media (hereinafter: Media Act) with the difference that party, political movement and government shall be interpreted as nominating organization and independent candidate. ‘Political advertisement’ shall mean any content published in the press or in the cinema in return for consideration, promoting or advocating support for a nominating organization or independent candidate, or promoting the name, objectives, activities, slogan or emblem of such entities.³⁵

Political advertisements are applied as campaign methods within the framework of media campaign and they may be published exclusively after the registration of the candidate or the nominating organization. The substantial difference between the two campaign methods is that political ad-

³⁰ Section 145 (2) of Act XXXVI of 2013 on Electoral Procedure.

³¹ Section 144 (5) of Act XXXVI of 2013 on Electoral Procedure.

³² 2. Kvk. 20. 711/2006/2 of the County Court of Szabolcs-Szatmár-Bereg.

³³ 23/1998. (IV.6.) NEC Decision.

³⁴ In Hungarian ‘politikai reklám’ and ‘politikai hirdetés’ (the official English translation of the Electoral Procedure Act does not indicate this difference: [online] http://valasztas.hu/en/ovi/241/241_1_10.html [accessed: 23.07.2017]).

³⁵ Section 146 of Act XXXVI of 2013 on Electoral Procedure.

vertisement shall be published in the press or in the cinema only in return for consideration, while political commercial³⁶ shall be broadcast in the media service free of charge.

3.1. BROADCAST OF POLITICAL ADVERTISEMENTS

According to Article IX (3) of the Fundamental Law,

In the interest of the appropriate provision of information as necessary during the electoral campaign period for the formation of democratic public opinion, political advertisements may only be published in media services free of charge, under conditions guaranteeing equal opportunities, laid down in a cardinal Act.³⁷

Political advertisements may be transmitted only on TV or on the radio.

Section 147 of Electoral Procedure Act contains the general rules with regard to the broadcast of political advertisement:

147. § (1) In the campaign period, political advertisements shall be broadcast by the media provider with identical conditions – especially with regard to the number, appearing order, timeframe and time of broadcast of political advertisements – offered to nominating organisations that put forward candidates and the independent candidates. In case of joint candidates the nominating organisations are entitled jointly to order political advertisement.

(2) No opinion, assessing explanation shall be attached to such political advertisements.

(3) Media content providers shall not demand or accept consideration for broadcasting political advertisements.

(4) Those who provide political advertisements to be broadcast in audio-visual media shall arrange for the advertisements to be subtitled or supplemented with sign language interpreting. (This ensures the unimpeded access to political campaign.)

(4a) No political advertisement shall be published on ballot day.

(5) In other regards, the rules of Media Act shall be applied to the broadcast of political advertisements.³⁸

These rules shall be applied to those local and district media providers who are not obliged to announce the broadcast of political advertisement and – observing the law – are entitled to transmit political advertisement

³⁶ Politikai reklám (hun).

³⁷ Article IX (3) of the Fundamental Law.

³⁸ Section 147 of Act XXXVI of 2013 on Electoral Procedure.

with no limitation with regard to duration or timeframe.³⁹ Equal conditions shall not be analysed among the singular media providers, but per media provider.

It is the patron who provides the production of the political advertisement: he is banned from influencing media providers and is exclusively responsible for its content. Launching the political advertisement, the media provider is obliged to name precisely its patron, for it is rather questionable whether the voter is capable of distinguishing the advertisements of candidates or nominating organizations.⁴⁰

The specific rules on the linear media services of public media providers and the country-wide available linear media services of media providers not falling under the first category are included by Section 147/F of Act XXXVI on 2013 on Electoral Procedure.

147/A. § (1) During the campaign period before the general election of members of the National Assembly, after the legally binding registration of national lists, public media providers shall broadcast in their linear media services political advertisements thereof in the order as determined by the National Election Commission according to (2).

(2) During the campaign period before the general election of members of the National Assembly, the timeframe for broadcasting political advertisements shall be 470 minutes for nominating organizations putting forward party lists and 130 minutes for organizations putting forward national minority list. The time available to the nominating organizations shall be divided in equal proportions between party lists and national minority lists. Time available for nominating organizations shall be divided in equal proportions per public media service.

(3) Political advertisement shall be published by the public media provider in the media service with the greatest yearly audience rate.

(4) The media provider shall broadcast 3 times per day without interruption the political advertisements in the timeframes between 6–8, 12–14 and 18–20 o'clock. Political advertisement of nominating organizations putting forward party lists and organizations putting forward national minority list shall be broadcasted in a row. The broadcast order of the political advertisements shall be changed daily for the sake of equal opportunity.

(5) The public media provider shall broadcast the political advertisement in the day and timeframe as requested by the nominating organization. The nominating organization may request the broadcasting of political advertisement in one timeframe – for a duration of maximally one minute – only once per day.

(6) The media provider is only obliged to broadcast the political advertisement if the nominating organization hands over its political advertisement latest on the second day before the planned broadcast.

³⁹ 2/2014 NEC Guideline on the broadcast of political advertisements.

⁴⁰ *Választójogi kommentárok*, op. cit., p. 273.

147/D. § During the general elections of the national minority representatives on the day before ballot day public media providers shall broadcast the political advertisements of nominating organizations putting forward national list once, for a duration of 30 seconds per political advertisement. Provisions of section 147/A (3) and (6) shall be applied to the broadcasting.

147/E. § The public media provider is not allowed to broadcast any further political advertisement than those according to 147/A-147/D.⁴¹

In this respect, Hungarian Television Non-Profit Private Limited Company, Hungarian Radio Non-Profit Plc. and Duna Television Non-Profit Plc., as public media providers, shall broadcast political advertisements within the time limitations settled by law, from the 50th day before the election until the day before the election.

147/F. § (1) In the campaign period before the general election, media providers with country-wide available linear media services not falling under provisions of Section 147/A-147/E shall notify in a declaration the National Election Commission about their intention to broadcast political advertisements, also designating the used country-wide available linear media service/es/, latest by the 50th day before ballot day. Failing to comply this deadline shall result in not being allowed to broadcast political advertisements. The National Election Office shall publish on its official website the declarations of the concerned media providers, their name and the timeframe secured for the broadcast.⁴²

Exempli gratia, it is worth mentioning ‘TV2-case’ with regard to political advertisements. On 9th March, TV2 broadcasted nine times the Government’s advertisements, entitled ‘Hungary is doing better,’ with a duration of fifty seconds each. In the complaint submitted to the NEC, according to the complainants’ view, the slogan and the audio visual effects of this social commercial are similar to the Government’s political advertisements. The NEC stated that, according to Electoral Procedure Act, it may not be considered political advertisement, for it had evidently indicated the Government’s authority, but an announcement in the public interest or a social commercial, fixed in the Media Act.⁴³

Subsequently, complainants turned to the Curia pleading that it may classify the TV programme in question as political advertisement. The Curia amended the NEC’s decision and established that transmissions shall be

⁴¹ Section 147/A-D of Act XXXVI of 2013 on Electoral Procedure.

⁴² Section 147/E-F of Act XXXVI of 2013 on Electoral Procedure.

⁴³ 745/2014 NEC Decision with regard to the complaint of private individuals.

categorized on the basis of their content rather than their patron. Popularizing the objective or the slogan of nominating organizations shall be considered political advertisement too. If the state supports one of nominating organizations in the mass media, it might lead to a violation of law.⁴⁴

3.2. BROADCAST OF POLITICAL ADVERTISEMENTS

Section 148 of the Electoral Procedure Act settles the provisions of broadcasting political advertisements:

(2) If a press product wishes to publish political advertisements, it shall send to the National Audit Office a price list for its advertisement services within five working days after the call for elections. The National Audit Office shall enter the price list into its records and publish it on its website. The press product shall publish the same price list on its own website.

(3) Political advertisements shall only be published by press products which have had their price list registered with the National Audit Office. Political advertisements shall only be published in return for the consideration indicated in the registered price list.⁴⁵

Consequently, not meeting the deadline for registration, the press may not publish political advertisements even if it intends to ensure the publishing free of charge.⁴⁶

4. Campaign methods: Direct Political Campaigning

The Electoral Procedure Act fixes the rules of direct political campaigning: “**149. §** Election campaign materials may be delivered to voters by direct contact in accordance with the provisions of Section 89, with the restriction that the use of voters’ personal data – such as mobile phone numbers, e-mail addresses – shall require expressed consent.”⁴⁷

Direct political campaigning means delivering election campaign materials to voters by direct contact.⁴⁸

The name and address of voters in the polling district electoral register shall be supplied on request to the candidate by the election office with

⁴⁴ Kvk. III. 37. 328/2014/6. Curia Decision.

⁴⁵ Section 148 of Act XXXVI of 2013 on Electoral Procedure.

⁴⁶ 2/2014 NEC Guideline on the broadcast of political advertisements.

⁴⁷ Section 149 of Act XXXVI of 2013 on Electoral Procedure.

⁴⁸ *Választási füzetek 193*, ed. I. Pálffy, p. 18, [online] http://www.valasztas.hu/hu/ovi/content/vf/vf_193.pdf [accessed: 14.09.2014].

a competence to register them. The above-mentioned data shall be supplied on request to nominating organizations by the National Election Office. The supply of data shall be conditional on the candidate providing proof of the payment of the amount of the monthly minimum wage (101 500 HUF). The supply of data shall be conditional on the nominating organization putting forward a list providing proof of the payment of the amount of the monthly minimum wage per candidate standing for election in the constituency covered by the list. The data supply fee shall be paid to the account of the National Election Office.⁴⁹

Nevertheless, in order to protect the right to the protection of personal data declared by Article VI of the Fundamental Law,⁵⁰ voters are entitled to prohibit the supply of their data, which, otherwise, would be legal. The data shall be supplied by the election office within five days. Subsequently, candidates and nominating organizations shall plead electronically the registration of personal data with the scope of campaigning to the National Authority of Data Protection and Freedom of Information (hereinafter: the Authority), as – according to the Authority’s announcement – political campaign activities do not fall under the exceptions settled by Section 65 (3) of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.

If the data are supplied by the election office, the candidate becomes a ‘data controller’, i.e. is entitled to make and execute decisions concerning data processing or have it executed by a data processor (e.g. by a nominating organization). Evidently, as a data controller, the candidate is responsible for the damages caused by the data processor in both cases. The candidate shall enter into contract with the nominating organization as a data processor and inform the voters (data subjects) about the data processor.⁵¹

The supplied data shall be used only for direct political campaigning. Other use, copying and handing over to third parties shall be forbidden. Candidates and nominating organization putting forward a list shall destroy the supplied data not later than on the day of voting, and shall deliver a re-

⁴⁹ Sections 153–154 of Act XXXVI of 2013 on Electoral Procedure.

⁵⁰ Article VI (2) of the Fundamental Law: “Everyone shall have the right to the protection of his or her personal data, as well as to access and disseminate data of public interest”.

⁵¹ *Announcement of the National Authority of Data Protection and Freedom of Information on the methods of the registration of the data supply used for political campaign*, [online] <http://www.naih.hu/files/A-NAIH-koezlemenye-OKV-2014--3-.pdf> [accessed: 13.09.2014].

cord of the destruction to the election office within three days.⁵² In case of omission, the election office is authorized to impose fine.

If the nominating organization infringes the rules of data processing, the Authority is empowered to launch official investigation on the grounds of the infringement of voters' right to the protection of their personal data.⁵³ *Exempli gratia*, campaign activity based on public phone books is considered violation of law, for the voters' consent is necessary for the use of their phone or mobile phone number in direct political campaigning.

5. Campaign methods: Opinion Polls

The Electoral Procedure Act establishes that: “**150. §** On the day of voting, persons carrying out opinion poll surveys shall not enter the buildings where polling stations are located, and shall not in any way harass voters; they may only contact voters as they are exiting the polling station. The result of such opinion polls (exit polls) shall only be published after the end of voting as well.”⁵⁴

“While political campaign aims to influence voters' choice and conviction, publishing of the results of opinion polls does not have this direct objective”⁵⁵ – as the Constitutional Court settles in its Decision 6/2007 (II. 27.). However, even if opinion polls cannot be considered campaign methods per se, publishing these results may influence voters' choice.

In 8/2014 Guideline on the time of the end and closing of voting, the National Election Commission established that the results of exit polls shall be published after 19.00 CET, for this is the end of voting. Consequently, if at the end of voting (at 19.00) the local election commission does not close the voting because of the voters standing in queue, these voters might be informed about the result of exit polls, which might influence their choice.

Since persons carrying out opinion poll surveys shall not enter the buildings where polling stations are located, the Electoral Procedure Act corrects the former provisions by ensuring the possibility of opinion polls towards the voters exiting the building, rather than those leaving the polling station.

⁵² Section 155 of Act XXXVI of 2013 on Electoral Procedure.

⁵³ Section 52 (1) of Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.

⁵⁴ Section 150 of Act XXXVI of 2013 on Electoral Procedure.

⁵⁵ Decision 6/2007 (II.27.) of Constitutional Court.

6. Partial Campaign Silence

Campaign silence is the period during which exercising influence on voters' choice is banned. In our legislation since 2010, it has been limited to the day of voting, as the Electoral Procedure Act had abolished the institution of classic campaign silence. Campaign activity – in consonance with the former provisions – is limited only on the day of voting with regard to its area and to certain campaign methods.

In its Decision 39/2002 (IX.15.) the Constitutional Court highlighted that abolishing campaign silence is not unconstitutional, if the legislator ensures the peace of elections with other tools.

In a seven-point guideline with examples, the National Election Commission clarified Section 143 of the Electoral Procedure Act about territorial campaign silence: “No election campaign activities may be pursued in public areas within 150 meters of the designated building's entrance that is used to access the polling station.”⁵⁶

11/2014 NEC Guideline on the interpretation of the rules of relative territorial campaign silence fixes that the prohibition refers to active campaign activity (in this sense, posters legally placed in public areas need not to be removed) and that campaign activity shall not be pursued either inside the building used to access the polling station or in the polling station itself.

The Guideline declares that campaign ban within 150 meters generally refers to any electoral procedure. Furthermore, it settles that the public area of foreign country does not come within Hungary's jurisdiction, thus it is free from relative campaign silence. In other words, on the day of voting, in foreign representations, campaign activity pursued within 150 meters from the building's entrance used to access the polling station is not considered the infringement of the prohibition.

On the other hand, Section 143 of the Electoral Procedure Act is violated if on the day of voting a vehicle with the posters of any candidate or nominating organization is waiting within, or passes constantly or regularly through the area of 150 meters. Exceptions are means of transport with scheduled timetable. Thus, election posters need not to be removed from buses and trams, whereas the requirement of impartiality is violated if e.g. on the day of voting members of the election commission distribute candidates' emblems or wear the uniform of a nominating organization.

Law is infringed too if campaign activity is pursued out of 150 meters but it can be heard or seen within the area (e.g. if activists use microphones).

⁵⁶ Section 143 of Act XXXVI of 2013 on Electoral Procedure.

The validation of the principles of universal suffrage and direct ballot explains the next provisions: “The voter is entitled to get help from another person to apply for a mobile ballot box or to get to the polling station.”⁵⁷ In this respect, though, the Electoral Procedure Act introduces the following restriction: “No public announcements can be made about applying for mobile ballot boxes or transport to polling station, furthermore using buses for (organized) transport to polling stations is not allowed.”⁵⁸

As it was necessary to clarify whether this prohibition includes election bodies or not, 3/2014 NEC Guideline on the main questions of bus transfer on the day of voting established the interpretation of this provision. The Guideline declares that this ban includes election bodies, so election offices too, which shall pursue activities only determined by the Electoral Procedure Act or by other electoral provision. Section 75 of the Electoral Procedure Act itemizes the competence of election offices, in which publishing announcements on transport or bus transfer to the polling station are not included. Thus, they do not even have competence for such activities, which, furthermore, would be rather unlawful according to Section 143/A (2) of the Electoral Procedure Act.

7. Campaign Finance

The provisions of campaign finance are settled by Act LXXXVII of 2013 on the Transparency of Campaign Costs related to Election of the Members of the National Assembly, observing the principles of the electoral procedure, such as equal opportunities for candidates and nominating organizations, the exercise of rights in good faith and in accordance with their purpose, the protection of the fairness of the national election.

According to the Act, each representative candidate for a single mandate constituency (up to 1 million HUF), party setting up a party list and national minority self-governments setting up a national minority list, is entitled to support from the central budget. During the campaign period the latter two may only use the support to cover real costs related to campaign activities, whereas representative candidates may only use it to cover exclusively their material expenditures.

The support of parties setting up a party list shall be based on the product of the total number of mandates which can be acquired at the general elec-

⁵⁷ Section 143/A of Act XXXVI of 2013 on Electoral Procedure.

⁵⁸ Section 143/A (1)-(2) of Act XXXVI of 2013 on Electoral Procedure.

tion of the Members of the National Assembly multiplied by five million HUF (995 million HUF). The national minority self-governments shall be jointly entitled to support amounting to 30% of the support of parties setting up a party list (298, 5 million HUF).⁵⁹

The support is placed at the candidate's disposal by the Hungarian State Treasury (hereinafter: the Treasury) after the registration, on Treasury account, with a Treasury card. The Treasury card may not be used to withdraw money, thus the candidate shall make payments from the account or by card. In case of representative candidates, the county office of the Treasury with competence in the single mandate constituency in question contributes to the provision of activities related to the support. Candidates nominated by a party are allowed to waive their right to the support for use by the party nominating them.

Candidates shall submit a financial statement to the Treasury within 15 days after the individual results of the general election. A candidate who fails to submit the statement within the deadline shall pay double the amount of their support. A candidate who submits the statement but it is not approved by the Treasury shall pay maximum double the amount of their support. If a candidate fails to obtain at least 2% of the valid votes cast in the single mandate constituency, they shall pay back the total amount of their support. On the other hand, the parties setting up a party list who do not enter the General Assembly do not have to pay back the amount of their support. In case of failure to meet payment obligation within the deadline, the Treasury shall propose the collection of the debt by the National Tax and Customs Administration of Hungary.⁶⁰

Section 9 (1) of the Act establishes that "all candidates and nominating organizations shall publish in the Official Gazette of Hungary the amount, source, and use of state and other funds spent on election within 60 days after the election of the Members of the General Assembly". The use of state and other funds shall be audited by the State Audit Office of Hungary and the candidate or nominating organization who has exceeded the financial limit (5 million HUF per candidate)⁶¹ shall pay back to the central budget double the amount by which they have exceeded the total maximum amount that may be spent on the election.

⁵⁹ Sections 1 (1), 4 (1) and 5 (1) of Act LXXXVII of 2013 on the Transparency of Campaign Costs related to Election of the Members of the National Assembly.

⁶⁰ Section 8 of Act LXXXVII of 2013 on *ibidem*.

⁶¹ Section 7 (1) of Act LXXXVII of 2013 on *ibidem*.

Conclusion

Analysing the new provisions of the election campaign, it is worth mentioning that the legislator has shifted into the background the television campaigns, which are considered more traditional and are getting gradually more insignificant in the Western democracies as well. On the other hand, the importance and the legal ground of direct campaign methods and others based on the personal influencing of voters' choice and on the communication via internet, have increased.⁶²

According to a number of views, as commercial media cannot be obliged to broadcast advertisements, they do not allegedly put their programme time at the parties' disposal free of charge. Consequently, most voters cannot be informed via radio and television about the messages of nominating organizations, which violates the freedom of speech.⁶³

The Act settles precise rules regarding official campaign period, although in real life it might be controversial to decide whether some activities are already considered or are not still considered campaign activities. *Exempli gratia*, when the posters of mayor candidates had been placed around the capital before the opening of official campaign on 23rd August, the National Election Office established that this may not be considered campaign activity, just mere advertisement to inform people. It indicates the ambivalence of the practice, though, that in another community the local election commission considered unlawful the distribution of posters with the mayor candidate before the official beginning of the campaign period.

Undoubtedly, one of the marginal issues of the new electoral provisions is campaign finance. In the constitutional democracy, electoral legislation shall ensure that political protagonists are authorized to exercise the public power by campaigning with funds which come from transparent resources and are used in a controllable way, and by winning at a competition which ensures equal opportunities for all participants. According to the survey of Transparency International, the new legislation does not promote transparency and affiliated civil organizations are still allowed to campaign without limits and by choosing methods arbitrarily. This, consequently, leads to

⁶² B. Orbán, *Nincs önmagában véve jó vagy rossz választási rendszer*, [online] <http://arsboni.hu/orban-balazs-nincs-onmagaban-veve-jo-vagy-rossz-valasztasi-rendszer.html> [accessed: 23.09.2014]

⁶³ *Érzékeny pontok – interview with Zoltán Pozsáry-Szentmiklósy Dr.*, [online] <http://arsboni.hu/erzekeny-pontok-interju-pozsar-szentmiklosy-zoltannal.html> [accessed: 22.09.2014].

uncontrollable expenses and unregulated campaign activities.⁶⁴ It is worth highlighting the (dramatically) sharp differences between the amount of support provided to independent candidates and those nominated by parties, which violates the requirement of equal opportunities to candidates and nominating organizations. It leads to further abuses too. Political advertisement tariffs of the written press shall be announced to the State Audit Office, whereas the amount spent on the much more expensive billboards remains hidden. In other words, the new financial provisions still give way to continued corrupt activities.

Finally, we approve of the opinion according to which the court practice regarding campaign prohibition within 150 meters will be one of the key legal questions on the day of voting – despite the NEC Guideline on relative territorial campaign prohibition.⁶⁵

BIBLIOGRAPHY

1. *Announcement of the National Authority of Data Protection and Freedom of Information on the methods of the registration of the data supply used for political campaign*, [online] <http://www.naih.hu/files/A-NAIH-koezlemeny-OKV-2014--3-.pdf> [accessed: 13.09.2014].
2. *Érzékeny pontok – interview with Zoltán Pozsáry-Szentmiklósy Dr.*, [online] <http://arsboni.hu/erzekeny-pontok-interju-pozsar-szentmiklosy-zoltannal.html> [accessed: 22.09.2014].
3. Hajas B., *A gyülekezési jog egyes aktuális elméleti és gyakorlati kérdései*, Pécs 2012.
4. Orbán B., *Nincs önmagában véve jó vagy rossz választási rendszer*, [online] <http://arsboni.hu/orban-balazs-nincs-onmagaban-veve-jo-vagy-rossz-valasztasi-rendszer.html> [accessed: 24.09.2014].
5. Rác A., *A közigazgatás törvényességének követelményei*, [in:] Szamel Lajos Tudományos Emlékkülés, ed. F. Csefkó, Pécs 2000.
6. Sasvári R., *Az új választási eljárási szabályozás gyakorlati tapasztalatai*, [online] http://www.kozszov.org.hu/dokumentumok/UMK/UMK_2014_4/16_Sasvari_Robert.pdf [accessed: 23.07.2017].
7. *Választási füzetek 193*, ed. I. Pálffy, [online] http://www.valasztas.hu/hu/ovi/content/vf/vf_193.pdf [accessed: 14.09.2014].
8. *Választójogi kommentárok*, ed. A. Cserni, Budapest 2014.

⁶⁴ Transparency International Magyarország, [online] http://www.transparency.hu/uploads/docs/TI_valasztasi_torveny_hatteranyag_121219.pdf [access: 23.09.2014].

⁶⁵ B. Orbán, op. cit.

