

Hungarian Report: The right to vote of persons with disabilities and citizens living abroad

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About ETHOS

ETHOS - Towards a European Theory Of Justice and fairness, is a European Commission Horizon 2020 research project that seeks to provide building blocks for the development of an empirically informed European theory of justice and fairness. The project seeks to do so by:

- a) refining and deepening the knowledge on the European foundations of justice - both historically based and contemporary envisaged;
- b) enhancing awareness of mechanisms that impede the realisation of justice ideals as they are lived in contemporary Europe;
- c) advancing the understanding of the process of drawing and re-drawing of the boundaries of justice (fault lines);
and
- d) providing guidance to politicians, policy makers, advocacies and other stakeholders on how to design and implement policies to reserve inequalities and prevent injustice.

ETHOS does not merely understand justice as an abstract moral ideal, that is universal and worth striving for. Rather, it is understood as a re-enacted and re-constructed "lived" experience. The experience is embedded in firm legal, political, moral, social, economic and cultural institutions that are geared to giving members of society what is their due.

In the ETHOS project, justice is studied as an interdependent relationship between the ideal of justice, and its real manifestation – as set in the highly complex institutions of modern European societies. The relationship between the normative and practical, the formal and informal, is acknowledged and critically assessed through a multi-disciplinary approach.

To enhance the formulation of an empirically-based theory of justice and fairness, ETHOS will explore the normative (ideal) underpinnings of justice and its practical realisation in four heuristically defined domains of justice - social justice, economic justice, political justice, and civil and symbolic justice. These domains are revealed in several spheres:

- a) philosophical and political tradition,



- b) legal framework,
- c) daily (bureaucratic) practice,
- d) current public debates, and
- e) the accounts of the vulnerable populations in six European countries (the Netherlands, the UK, Hungary, Austria, Portugal and Turkey).

The question of drawing boundaries and redrawing the fault-lines of justice permeates the entire investigation.

Alongside Utrecht University in the Netherlands who coordinate the project, five further research institutions cooperate. They are based in Austria (European Training and Research Centre for Human Rights and Democracy), Hungary (Central European University), Portugal (Centre for Social Studies), Turkey (Boğaziçi University), and the UK (University of Bristol). The research project lasts from January 2017 to December 2019.

QUESTIONNAIRES FOR CASE STUDY D.3.4 (RIGHT TO VOTE)

PRACTICAL INSTRUCTIONS AND METHODOLOGICAL ISSUES FOR ALL CASE STUDIES.

The research for this particular deliverable consists primarily in what is known as 'black-letter', doctrinal legal research. We are focussed on 'what the law says' (the 'law in books'), and how it is interpreted by those with interpretative authorities (essentially courts) and *not* whether it is applied (or not) in practice, or the kind of impact it has on society. The aim of analysis is to map out how justice is institutionalized in law, through a focus on selected rights/vulnerable groups.



The focus of the research is on hard law, that is legally binding norms (Constitution, legislations, regulations, decrees, authoritative court decisions, etc.), but to the extent that soft law instruments are relevant and influential in guiding practices, it would be important to include them in the review.

Although the focus is on substantive rights, procedural and institutional aspects matters, in particular in terms of understanding who can mobilise law and rights, when and how, in order to pursue justice claims. Therefore, information on 'admissibility issues' such as standing rights, judicial procedures and remedies, costs, etc is important. Moreover, any empirical information on who has actively sought to mobilize particular legal instruments in order to achieve justice (eg NGOs particular active in litigating certain rights, etc) is welcome.

To minimise unnecessary research work and focus efforts on looking for information not readily available in English, 'national rapporteurs' are encouraged to identify and exploit existing studies, reports, and other synthetic analyses and critical assessments on their country's performance in relation to the selected right and the selected vulnerable groups or persons, which help address (some of) the questions, as much as possible, appropriately referencing them. Examples include: opinions of the Venice Commission; reports by the EU Fundamental Rights Agency, the European Committee on Social Rights; documents produced in the context of the Universal Period Review (UN Human Rights Council); Country and shadow reports in the context of the CRC, CESCR and CRPD, UN Special Rapporteurs reports; OSCE recommendations; NGOs reports, etc.

Where these do not provide for relevant or up-to-date answers, please try to identify relevant legal rules using legal textbooks and available legal databases/search tools.

Please follow the structure of the questionnaire for the presentation of national report, to make it easier for the task coordinators to understand the relevance of the findings and prepare the national report. Use cross-referencing between answers only when necessary, to avoid undue repetitions.

We do not impose a very strict time frame. The focus should however be on the recent period, and in particular the period starting with the economic and financial crisis (2008-2018), but if there were changes that were particularly significant and important prior to that, please mention them and provide some details.



Please provide lists of references, including a separate bibliography, list of legislation and list of cases (these will be integrated into a database). Use the [OSCOLA](#) reference style.

Special note on Turkey and EU law: As Turkey is not an EU member state, it is not bound by its law. However, in section of the report dedicated to EU law, the rapporteur for Turkey could provide information on whether Turkey has transposed/implemented in domestic law some of the EU instruments and legislation as part of the *acquis communautaire*, in the view of accession or within the context of special EU-Turkey agreements.

Not all country reports are required to focus on all groups of vulnerable persons. All country teams are to focus on the position of the disabled vis-à-vis all three rights (to vote, housing and education). In addition, there is a focus on one additional vulnerable group that is especially relevant (in terms of its vulnerability) for the particular right concerned (to housing, voting and education) in the particular country. This approach allows for a combination of data that is comparative and detailed while giving adequate attention for country-specific manifestations of (in)justice in the law. Collectively, the country reports will need to research each vulnerable group listed in the description of work for each right, so the choice over which vulnerable group to research additionally to disabled persons is not a free choice. Please check with the coordinators if you are unsure which additional vulnerable group you ought to focus on for each right. Please disregard parts of questions that are tailored to a vulnerable group that you are not researching for any particular right.

D3.4. RIGHT TO VOTE: FOCUS ON FRANCHISE FOR REFUGEES, ASYLUM-SEEKERS, FOREIGN RESIDENTS, CITIZENS LIVING ABROAD, PERSONS WITH DISABILITIES AND CRIMINALS/PRISONERS.

Note: this report focuses on the right to vote, and does not include the right to be elected.

You may want to check:



- United-Nations Universal Period Review on right to vote for your country: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
- Human Rights Committee: Concluding Observations on your latest country report: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>
- Committee on the Rights of People with Disabilities, Concluding Observations on your latest country report: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>
- Council of Europe, Committee of Ministers' report on the execution of rulings: <https://www.coe.int/en/web/execution>
- European Court of Human Rights, case law database: https://www.echr.coe.int/Pages/home.aspx?p=caselaw&c=#n14597620384884950241259_pointer
- EU Fundamental Rights Agency, *Children rights to vote* (<http://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/right-to-vote>)
- EU Fundamental Rights Agency, *Charterpedia website: national case law on Article 39* (Vote – EP elections) <http://fra.europa.eu/en/charterpedia/article/39-right-vote-and-stand-candidate-elections-european-parliament> and Article 40 TFEU (Vote – local elections): <http://fra.europa.eu/en/charterpedia/article/40-right-vote-and-stand-candidate-municipal-elections>
- EU Fundamental Rights Agency *Right to political participation for persons with disabilities* (2014): HR indicators <http://fra.europa.eu/en/publication/2014/right-political-participation-persons-disabilities-human-rights-indicators>
- EU Fundamental Rights Agency, *Together in the EU - Promoting the participation of migrants and their descendants* (2017) <http://fra.europa.eu/en/publication/2017/migrant-participation>

1. NATIONAL LEGAL FRAMEWORK

1.1. CONSTITUTIONAL PROTECTION?

Does *national constitutional law protect the right to vote*, and if so, in which terms (as elaborated through judicial interpretation, where relevant)? Please report on any corresponding *state obligations* to enable the exercise of the right



to vote. If not protected under national constitutional law, which national legal framework (eg legislation, case law) grants protection to the right to vote and lay down any corresponding state positive obligations to enable the right to vote.

The 2012 Hungarian “constitution” entitled Fundamental Law (FL) is a constitution in a formal sense, but substantively it is closer to sham constitutions.

It formally protects the right to vote in Article XXIII for every adult Hungarian citizen in every type of election (and for other categories of persons, eg EU citizens or refugees, in some types of elections).

Article XXIII

(1) Every adult Hungarian citizen shall have the right to vote and to be voted for in elections of Members of the National Assembly, of local government representatives and mayors and of Members of the European Parliament.

(2) Every adult citizen of another Member State of the European Union with residence in Hungary shall have the right to vote and to be voted for in elections of local government representatives and mayors and of Members of the European Parliament.

(3) Every adult person recognised as a refugee, immigrant or resident in Hungary shall have the right to vote in elections of local government representatives and mayors.

(4) A cardinal Act may provide that the right to vote or to be voted for, or both shall be subject to residence in Hungary, and the eligibility to be voted for may be subject to additional criteria.

(5) In elections of local government representatives and mayors, voters may vote at their place of residence or registered place of stay. Voters may exercise their right to vote at their place of residence or registered place of stay.

(6) Those disenfranchised by a court for a criminal offence or limited mental capacity shall not have the right to vote and to be voted for. Citizens of another Member State of the European Union with residence in Hungary shall not have



the right to be voted for if they have been excluded from the exercise of this right in their country pursuant to the law, a court decision or an authority decision of their State of citizenship.

(7) Everyone having the right to vote in elections of Members of the National Assembly shall have the right to participate in national referendums. Everyone having the right to vote in elections of local government representatives and mayors shall have the right to participate in local referendums.

(8) Every Hungarian citizen shall have the right to hold public office according to his or her aptitude, qualifications and professional competence. Public offices that may not be held by members or officials of political parties shall be specified in an Act.

As to persons living with disability, the following paragraph is relevant:

(6) Those disenfranchised by a court for a criminal offence or limited mental capacity shall not have the right to vote and to be voted for. Citizens of another Member State of the European Union with residence in Hungary shall not have the right to be voted for if they have been excluded from the exercise of this right in their country pursuant to the law, a court decision or an authority decision of their State of citizenship.

In all, the constitution does not specify the conditions under which persons living with disabilities may be deprived of their right to vote, except that the disenfranchisement is done by a court. This is problematic since it is not clear that limitations on mental capacity should ever be a basis of deprivation of the right to vote.

The FL also has a general equal treatment clause which includes disability as a ground:

Article XV (1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(2) Hungary shall guarantee fundamental rights to everyone without discrimination and in particular without discrimination on the grounds of race, colour, sex, *disability*, language, religion, political or other opinion, national or social origin, property, birth or any other status.



(3) Women and men shall have equal rights.

(4)¹ By means of separate measures, Hungary shall help to achieve equality of opportunity and social inclusion.²

(5)³ By means of separate measures, Hungary shall protect families, children, women, the elderly and those living with disabilities.

As to citizens living abroad:

(4) A cardinal Act may provide that the right to vote or to be voted for, or both shall be subject to residence in Hungary, and the eligibility to be voted for may be subject to additional criteria.

1.2 GENERAL NATIONAL RULES

Please summarise the *national legal framework* determining *who has the right to vote* (franchise) in which local/state, national/federal (legislative, as well presidential if relevant), and European elections, as well as, where relevant, in

¹ Amended by Article 21(1)e) of the Fourth Amendment to the Fundamental Law (25 March 2013)

² The Hungarian original (although officially translated as social inclusion) is not inclusion, but closing up or catching up, or making someone catching up. This language was introduced by the infamous 4th Amendment to the Fundamental Law of Hungary because the government wished to legalize segregated education, especially with regard to Roma children. Cf <https://hclu.hu/en/articles/hungarian-government-creates-the-legal-framework-for-segregating-roma-children-in-schools-1>. In 2013, then minister responsible for education testified in court that he believes in benevolent or charitable segregation. https://index.hu/belfold/2013/04/26/balog_a_szeretetteli_szegregacioban_bizik/

³ Amended by Article 21(1)f) of the Fourth Amendment to the Fundamental Law (25 March 2013).



referenda, according to national constitutional or legislative/executive/administrative provisions, and relevant judicial interpretation? Please also include any exclusion rules (e.g disenfranchisement, voting bans, etc).

See 1.1. and 1.3.

1.3. SPECIFIC RULES TARGETING SELECTED GROUPS

Provide details on any *specific rules targeting our selected groups*, namely refugees/asylum-seekers, foreign residents, citizens living abroad, persons living with disabilities (including mental disabilities), and criminals/prisoners. Does national law impose particular obligations on the state in order to guarantee the exercise of the right to vote to those who are entitled to vote? Pay particular attention to measures aiming at guaranteeing the exercise of the right to vote of disabled persons, citizens living abroad, prisoners, older persons, etc.

As to persons living with disabilities:

The law on electoral procedure, the law on civil procedure and the Civil Code are the main sub-constitutional sources (the latter one containing the general background rules on legal capacity.)

The Act on Equal Treatment and Equality of Opportunities⁴ is the general anti-discrimination law which prohibits discrimination also on the basis of disability. No disability litigation in electoral matters could be found on the basis of this law could be found.

Art 13/A of the law on electoral procedure⁵ declares that the court has to decide on the question of the franchise in the judgment on guardianship (limited or full). The Court excludes from the franchise those adult persons whose mental capacity required for the exercise of the franchise is a) permanently or recurrently significantly reduced because of his

⁴ Act CXXV of 2003.

⁵ Act Nr



or her psychological condition, intellectual disability or addiction; or b) is permanently and entirely lacking because of his or her psychological condition or intellectual disability.

Arts 444-4446 of the law on civil procedure⁶ detail the procedure of the placement under guardianship and of the disenfranchisement, which happens on the basis of the opinion of a psychiatric expert.

Additional questions regarding disabled persons:

- (Where) can patients in mental hospitals vote, if at all?

Yes if they request mobile voting (exact provisions are copied below).

- Is there a legal requirement for polling stations to be accessible to disabled persons?

In case a person with disability requests it (§ 88 of Act Nr XXXVI of 2013 on Electoral Procedure.

- Must disabled persons (or experts on disability) themselves be consulted with regards to whether polling stations and/or voting practices are disadvantageous for disabled persons? No.
- Is there a legal requirement for ballots to be available in braille? In large text? With graphical instructions? What about for postal ballots?

The below provision is the relevant legal norm. I could not find any information on the accessibility of postal ballots.

“42 Assistance to voters with a disability

Section 88 Voters with a disability may request the following types of assistance in exercising their right to vote:

- a) the sending of a notification in Braille transcription;
- b) the sending of simplified information material;
- c) use of a Braille voting template at the polling station or during mobile voting;
- d) use of an accessible polling station.”

- Can disabled persons have a companion with them in the voting booth? Yes.
- If yes, is there a distinction with regard to whether disabled persons can have a companion with them between types of disability, for instance between physically and mentally disabled persons? Is the choice of which companion a matter of the disabled persons choice? Are there any other criteria determining who may or may not be a companion?

It is up to the choice of the person, and the below are the only provisions I could find in this regard:

⁶ Act Nr CXXX of 2016 on civil procedure.



According to the Act Nr XXXVI on Electoral Procedure:

“Section 181 (1) Voters who cannot read or are prevented from voting by a physical handicap or any other cause may use the assistance of a person of their choice – or, for lack of such assistants, the joint assistance of two members of the polling station commission.

(2) In polling districts pursuant to Section 167 (5), visually impaired voters may use Braille voting templates to facilitate voting. The polling station commission shall place the voter’s ballot paper in the template before handing it over to the voter. After voting, the voter shall remove the ballot paper from the template, place it in the ballot box and hand the voting template back to the polling station commission.”⁷

Section 167 (5) states that in polling stations where the polling district electoral register contains voters who requested assistance, a Braille voting template shall be provided.

According to Section 173 (3), voters – and assistants pursuant to Section 181 (1) – may be present in the polling station for the time required for exercising the right to vote.

- Did you come across specific provisions or discussions of the secrecy of the ballot with regard to the provisions meant to ensure disabled persons’ right to vote is respected, or justifying the absence of certain provisions with reference to the secrecy of the ballot?

No.

- Did you find reference to the vulnerability of disabled persons in terms of them being (more) liable than others to have their votes influenced or manipulated?

No.

- Is there a requirement for mobile ballot boxes to be made available for disabled persons?

Yes, if a person asks for it:

Here is the relevant excerpt from Act Nr XXXVI of 2013 on Electoral Procedure (translation provided on the informational website of the elections authority):⁸

⁷ As translated on the official informational site of the elections authority:
<http://www.valasztas.hu/documents/538536/548702/Act+XXXVI+of+2013+on+Electoral+Procedure.pdf/2e82a257-b592-4819-923f-eac4a18cfec6>

⁸ <http://www.valasztas.hu/documents/538536/548702/Act+XXXVI+of+2013+on+Electoral+Procedure.pdf/2e82a257-b592-4819-923f-eac4a18cfec6>



51 Register of voters requesting mobile voting

Section 103

(1) Requests for mobile voting may be submitted by voters listed in the polling district electoral register who are limited as to their movement due to their health condition, disability or detention.

(2) Requests for mobile voting shall arrive:

- a) following the calling of the elections, but no later than two days before the voting to the local election office where the voters is enrolled; or
- b) on the day of voting, by 15:00 at the latest to the polling station commission.

(3) Applications for mobile voting shall contain in addition to data as stipulated in Section 92 (1) a) the following: a) the voter's residence in the polling district where they wish the mobile voting to take place, if this is different from their Hungarian address; and b) the reason for requesting mobile voting.

Section 104

(1) The local election office shall enter voters requesting mobile voting into the register of voters who requested mobile voting.

(2) The polling station commission shall enter voters requesting mobile voting into the register of voters requesting mobile voting and it shall remove them from the printed polling district electoral register.

Section 105

(1) The register of voters requesting mobile voting shall contain the same information on voters as the polling district electoral register, and the data mentioned in Section 103 (3) a).

(2) Persons who are removed from the polling district electoral register shall also be removed from the register of voters requesting mobile voting.

As to citizens living abroad, the cardinal law mentioned in para (4) Art XXIII of the Fundamental Law is the Act on the Election of Members of the National Assembly from 2011.⁹

This law grants that non-resident, non-domiciled citizens might vote in the parliamentary election, nonetheless only for the party list and not in the single member district, in contrast to the domiciled (resident or non-resident) citizens, who have two votes, list and single member district.

⁹ Act Nr CCIII of 2011 on the election of parliamentary representatives.



Non-domiciled citizens cannot vote in local elections, but as a result of a December 2018 legislative change, they will be able to vote in the European Parliamentary elections if their residence is not in an EU member state (the bill was accepted by Parliament, the President of the Republic is not expected to not sign it into law.)

On the other hand, non-domiciled citizens can vote per post, while domiciled citizens abroad need to travel to the consulate (which might be both expensive and time-consuming).¹⁰

Additional questions regarding non-resident citizens (expats):

- Are some non-citizen residents allowed to vote also in some regional/local elections?

Domiciled citizens – who formally maintain their permanent residence in Hungary – have a right to vote also in local elections.

- Is the right to vote of nationals living in overseas territories different from the right to vote of nationals living in the European part of the country? n/a
- If there are restrictions on citizens living in overseas territories, do these citizens have votes in alternative representative bodies?

n/a

- Are there exceptions to such restrictions for people with service qualifications (e.g. military personnel or civil servants).

n/a

- (specific to the Netherlands): Do those not excluded from voting in the elections for the Lower House of the Netherlands who are resident in Aruba, Curacao or Sint Maarten also have the right to vote in the parliamentary elections of Aruba, Curacao and Sint Maarten respectively?

n/a

- (specific to Hungary): what is the legal definition of 'domiciled' in Hungarian law? Is one a domiciled expatriot/non-resident when one maintains a secondary home in Hungary but a primary home outside of Hungary? Or simply if one has at some point in the past had a residence in Hungary? Does this define what is meant in the country report by emigré? If domiciled refers to persons who merely have at some point resided in Hungary, is there any distinction between those that maintain a secondary residence in Hungary and those who do not?

Domiciled is someone who currently has an address in Hungary. Most persons who emigrate from Hungary keep their address, they do not deregister from the address registration even though they do not live in Hungary any more.

1.4 SPECIFIC RULES CONCERNING CITIZENS OF FORMER COLONIES

¹⁰ Arts. 259 – 266 of Act Nr XXXVI of 2013 on electoral procedure.



Are there any specific regimes for citizens of former colonies or current overseas territories?

N.A.

1.5 CONSTITUTIONAL CHALLENGES

Have national/local rules set out in legislation, regulations or other binding legal measures been challenged for incompatibility with national constitutional norms? If so, which ones, and with what effect? [If information is easily accessible, can you also indicate who were the parties challenging those rules? Have certain national rules contested by societal actors but not challenged before courts?]

As to persons living with disability:

The Constitutional Court found (still back in 2014) the system of disenfranchisement constitutional in general, even though the ombudsman believed the institution of full restriction of legal capacity (including the disenfranchisement) violated the CRPD and the constitution.¹¹

On the other hand, Hungary has taken some steps to provide persons with disabilities who are not disenfranchised with a more effective access to vote. Not at the Constitutional Court, but the ombudsman launched an investigation¹² in 2014 on the system of providing mobile ballot boxes to persons with disabilities requesting it. When the ombudsman found the system was inadequate, the government promised to take steps, and it appears that access was improved by the 2018 elections.¹³

As to citizens living abroad:

¹¹ 11/2014. (IV. 4.) AB határozat

¹² Report AJB 2449/2014.

¹³ Id and OSCE Hungary Parliamentary Elections 8 April 2018, Final Report, 11, <https://www.osce.org/odihr/elections/hungary/385959?download=true>



At the request of an individual in a constitutional complaint, the Constitutional Court examined the constitutionality of the differential treatment of domiciled and non-domiciled expatriate voters, and found that it did not violate the Fundamental Law.¹⁴ In a highly divided decision with seven parallel and five dissenting opinions, the Court considered that emigrés had a closer and more direct relationship to the country, as demonstrated by their having (and maintaining) a domicile in Hungary. This more direct relationship grounds an expectation of more investment on their part into their voting. The technical-procedural rule which does not allow voting per mail, has thus an objective reason, and is therefore not discriminatory. Note that the majority applied a weaker rationality test – as opposed to a strong fundamental rights proportionality test – because it considered the technicalities of postal or in-consulate voting do not affect the substance of the right.

1.6 RELEVANT INSTITUTIONAL AND PROCEDURAL ASPECTS

If certain institutional aspects (eg judicial review) or procedural rules (eg standing) are important in order to understand how the right to vote is protected under domestic law, please provide relevant details (200 words or a reference to accessible English language material presenting it in a relevant, synthetic and concise manner).

None.

2. IMPACT OF INTERNATIONAL/EUROPEAN LAW

2.1 CHALLENGES TO NATIONAL RULES BASED ON INTERNATIONAL INSTRUMENTS

Have rules on the right to vote set out in national constitutional documents, legislation, regulations or other binding legal measures been challenged *by reference to international instruments* (notably the ICCPR and CRPD). With what

¹⁴ 3086/2016. (IV. 26.) AB határozat



effect? Please refer to background paper (Deliverable 3.3), Section 4) Justice in the Rights to Vote, Housing and Education in International Law for relevant information.

Have international monitoring bodies adopted opinions/decision on the compatibility of those rules with international law? Did it result in changes in national law?

As to persons living with disability:

The CRPD notably is rather clear in requiring equal access to voting rights with persons living with disabilities, independent of their “competence” or “mental capacity”. Art 29 requires states to guarantee the effective and full participation in public life on an equal basis with others.

The Committee has already found violation of Art 29 by Hungary in this regard in both a concrete case¹⁵, and in general.¹⁶ The Committee is unequivocal that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability.” At the time of the April 2018 elections, 49,259 persons with disability were deprived of the right to vote.¹⁷

There does not seem to be any plan by the Government to bring the Hungarian voting rights system in conformity with the Convention.

¹⁵ Art. 29 CRPD/C/TUN/CO/1 (CRPD, 2011), CRPD/C/ESP/CO/1 (CRPD, 2011). Views of the Committee on the Rights of Persons with Disabilities under article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, Communication No. 4/2011, Bujdosó and other v Hungary.

¹⁶ Concluding observations on the initial periodic report of Hungary, adopted by the Committee at its eighth session [CRPD/C/HUN/CO/1 (CRPD, 2012)].

¹⁷ OSCE Hungary Parliamentary Elections 8 April 2018, Final Report, <https://www.osce.org/odihr/elections/hungary/385959?download=true>



As to citizens living abroad:

The OSCE electoral observation issued reports after the 2014 and 2018 elections, with in general quite critical appraisal of the overall electoral system (free, but unfair). Regarding particularly the differential voting mechanism for domiciled and non-domiciled voters, it declared that “In considering the obligation of equal suffrage, voting procedures should be the same for all citizens abroad.”¹⁸

2.2 CHALLENGES TO NATIONAL RULES BASED ON EUROPEAN (COUNCIL OF EUROPE) INSTRUMENTS?

Have national rules set out in national constitutional documents, legislation, regulations or other binding legal measures been *challenged by reference to the Council of Europe’s law*, in particular ECHR Article 3 Protocol 1, but also other ECHR provisions.

Have any cases concerning the right to vote in your country been taken to/decided upon by the ECtHR? With what effect? Was national law adjusted to comply with the ECtHR decision(s)? Please refer to background paper (Deliverable 3.3), section Please refer to background paper (Deliverable 3.3), section 5) Justice in the Rights to Vote, Housing and Education in Council of Europe Law) for relevant information.) for relevant information.

As to persons living with disabilities:

In *Alajos Kiss v Hungary*,¹⁹ the ECtHR found that the previous Hungarian regime of blanket disenfranchisement of persons under guardianship had been in violation of the European Convention of Human Rights.

¹⁸ Id. 10.

¹⁹ *Alajos Kiss v. Hungary*, no. 38832/06, 20 May 2010



The current constitutional and legal regime was adopted as a reaction to the *Alajos Kiss* decision, and it might be seen in conformity with it at least in its regulatory design (no blanket ban, judicial procedure).

On the other hand, a case against Bulgaria challenging the legality of disenfranchising decisions in the hand of a judge – ie. analogous to the current Hungarian regime -- is currently pending at the ECtHR.²⁰ If the ECtHR continues to reference the CRPD, then it likely will rule this regime also violates the Convention.

As to citizens living abroad:

The ECtHR issued an inadmissibility decision on the differential treatment of Hungarians living abroad depending on whether they emigrated and kept their Hungarian address, and those who have never resided in Hungary. In *Vámos and others v Hungary*,²¹ the Court found the differential treatment not discriminatory for it had “an objective and reasonable justification for the purposes of Article 14.” The Court considered that the Hungarian lawmaker created two regimes for expatriate voters: one for domiciled voters, who can vote for both the party lists and the individual candidates; and another one for non-domiciled voters who can only vote for the party lists, but can do so also per post.

2.3 CHALLENGES TO NATIONAL RULES BASED ON EU LAW

Has *EU law* (in particular Article 24(3) TEU, Articles 20 and 22(b) TFEU, and Articles 39-40 EU CFR) been invoked before domestic courts to challenge national rules *de lege* or *de facto* disenfranchising certain categories of persons (disabled, criminals, prisoners, expats, foreign residents, etc).

Has the right to vote in your country been subject to European Commission investigation under Article 268-269 TFEU procedure or a decision of the CJEU? With what effect? Please refer to background paper (Deliverable 3.3), section 6) Justice in the Rights to Vote, Housing and Education in European Union Law for relevant information.

²⁰ *Marinov v Bulgaria*, Application No. 26081/17

²¹ *Vámos and others v Hungary*, <http://hudoc.echr.coe.int/eng?i=001-153061>



No.

2. Relevant institutional and procedural aspects

Please provide necessary information concerning the incorporation and position/authority of international law, Council of Europe's instruments, and EU law in your country, which is of relevant to understand the protection of the right to vote in your country? In particular, does your state follow a monist or dualist approach? Can national courts invalidate/set aside national laws against international, Council of Europe and EU instruments? To what extent are the relevant provisions of international law granted direct effect?

N/A.

3. RIGHT TO VOTE, JUSTICE AS REPRESENTATION AND VULNERABILITY

3.1 RIGHT TO VOTE AND JUSTICE AS REPRESENTATION

When reviewing the national legal framework and, where relevant, the domestic engagement with international and European norms, could you identify arguments proposing different conceptions of justice as representation. Please specify whether these were part of court's reasoning or parties' arguments, and if the latter, provide any relevant information that could help evaluate who mobilized the law to achieve greater justice (eg NGOs, etc.).

Please refer to background paper (Deliverable 3.3), section 2) Subsection: Justice as Representation and the Right to Vote for relevant information.

The fact of giving the citizenship and franchise to Hungarians outside borders (ie. who live in territories lost to Romania, Serbia, Ukraine and Slovakia) has consistently been explained in terms of justice claims, and being part of an



entire strategy of so-called national unification transcending borders.²² The government even established a research institute for this.²³ The idea is that they are Hungarians, they belong to the nation, and therefore they are entitled to the formal rights which other Hungarians have. Thus, it is clearly an ethnic or ethnocultural concept of nation which is used here, implying that redrawing borders over the head of ethnic Hungarians in the 1920 Trianon Treaty was fundamentally unjust, which thus needs to be corrected.²⁴

This is however perhaps more of a recognition and inclusion type of argument than a representational one – after all, all those affected by this new franchise are represented in their country of residence and original citizenship. Furthermore, many would claim such extension of franchise goes counter to the idea of justice as representation since it distorts/diminishes representative needs of those who are not elsewhere represented, too, and who are most affected by decisions made in Parliament: Hungarians living within the borders. Furthermore, instead of virtualization of borders, it creates new divisions along ethnic lines in the neighboring countries, too, and among different groups of Hungarians, depending on their decision on taking up citizenship (which might depend on their territorial country's approach, eg Ukraine and Slovakia do not allow double citizenship), registering for voting or not.²⁵ Some even argue that the new Hungarian citizenship and voting rights regime actually contribute not to reunification, but to the exportation of internal political divisiveness to neighboring countries and to Hungarian populations in those countries.

²² See, eg, <http://www.origo.hu/itthon/20180314-a-magyar-allampolgarsag-kiterjesztese-tortenelmi-jovatetel.html>

²³ The government even established a Research Institute for National Strategy with this aim. See <http://www.nski.hu/mission.html>

²⁴ See eg http://www.allampolgarsag.gov.hu/index.php?option=com_content&view=article&id=142:semjen&catid=43:torveny&Itemid=72

²⁵ Zsolt Körtvélyesi, Az "egységes magyar nemzet" és az állampolgárság, FUNDAMENTUM 15 : 2 pp. 49-55 (2011), along similar lines in English by id, From "We the People" to "We the Nation In: Tóth, Gábor Attila (ed.) Constitution for a Disunited Nation : On Hungary's 2011 Fundamental Law, Budapest- New York, Central European University Press, (2012) 111-140.



Taking Romania as a test case, they found that the new regime created more categories of Hungarians than existed before, and thus contributed not to the reunification of the nation, but to its further division along political lines.²⁶

This argumentation becomes especially frequent when calculations show that Fidesz would not have constitution amending majority without the votes of Hungarians outside borders who voted in much higher proportion (96,24%) for Fidesz than intra-country and domiciled emigré Hungarians (47,36%).²⁷

3.2 VULNERABILITY AND THE RIGHT TO VOTE

Does the concept of vulnerability play a role in protecting the right to vote or defining who is entitled to vote and how in your country? Please explain how, and provide some representative illustrations.

Please refer to background paper (Deliverable 3.3), section 3) Vulnerability as a human rights law concept for relevant information.

As to persons living with disability:

If anything, the Hungarian regime on the voting rights of persons living with disabilities confirms at most the criticism of the vulnerability framework²⁸. The idea that some mental conditions prevent one from forming a “proper” political opinion might be understood as aiming to protect the integrity of democracy. However, it rather appears to function as an intellectual census in Hungary (eg the judge asks about the content of the 4th Amendment to the Fundamental Law – this is clearly not something the vast majority of voters in Hungary would be able to answer.) The other explanation

²⁶ See the argument in Kriszta Kovács, Zsolt Körtvélyesi Zsolt, Alíz Nagy, Margins of Nationality: External ethnic citizenship and non-discrimination, PERSPECTIVES ON FEDERALISM 7 : 1 pp. 85-116 (2015)

²⁷ See <http://www.valasztas.hu/orszagos-listak-eredmenye>, according to which 96.24% of the postal votes went to the Fidesz-KDNP list, in contrast to 47.36% of the domestic votes (this seems to include the votes of domiciled voters living abroad).

²⁸ See Background paper (Deliverable 3.3), section 3) Vulnerability as a human rights law concept.



might be a perception of enhanced risk of abuse, and this might be understood as a distorted version of vulnerability protection: the idea that some persons with mental disability can be influenced more in their decisionmaking than others without such disability is highly speculative, and one might think the solution of disenfranchisement in such a case is throwing the baby out with the water.

As to citizens living abroad:

Vulnerability does not occur in the argumentation related to voting rights of citizens living abroad.