

ADMINISTRATIVE SANCTIONS IN ELECTION AND REFERENDUM PROCEDURES

*Attila Mihály Nagy, Károli Gáspár University of the Reformed Church – Faculty of Law, Hungary,
nagy.attila.mihaly@kre.hu*

Abstract

The purpose of the electoral procedure is, in essence, to prepare for, conduct, and determine the results of a specific election, thereby enabling the elected representative to take office or the elected body to assume its mandate. A larger procedure includes several smaller processes or procedural actions, some of which are necessary, while others are contingent, all ultimately aimed at ensuring the exercise of voting rights and the enabling of public authority. In view of these characteristics, sanctions are applied in the electoral procedure to ensure that the process is conducted in an orderly manner. The aim of the study is to provide a comprehensive and thorough overview of the system of sanctions applied in the Hungarian electoral process. Within this framework, it will first of all place the election and referendum sanctions within the administrative sanctions, then describe the sanctions applicable in the electoral procedure in the current legal environment and their constitutional and principle background. By examining the system of sanctions, it will point out the correlations and contradictions identified, and it will present proposals for the legal regulation of sanctions.

Points for practitioners

The paper is useful for practitioners working in public administration. It provides a comprehensive resource for practitioners seeking a detailed understanding of the sanctions applied in the Hungarian electoral and referendum processes. Specifically, it addresses three critical themes of practical significance: the existing objective fines, all other legal consequences, statistics on election and referendum procedure fines. In several cases, it reviews the history of the regulation of individual sanctions applied in the electoral process, highlighting in particular those cases where the legislator changed, for example, the amount of a particular sanction and other related rules based on practical experience following an election.

Keywords: sanction, administrative sanction, objective fine, legal consequences in the electoral procedure, legal consequences in the referendum procedure

1. Introduction

The purpose of this article is to provide a comprehensive and thorough overview of the system of sanctions applied during the Hungarian electoral and referendum procedures.

First, it reviews the major historical changes in electoral law, the emergence of sanctions, and their main types with constitutional and principled underpinnings. In the second part the research explains the sanctions applicable within the current legal framework during the electoral and referendum procedures. Afterward, it presents the most noteworthy statistics on sanctions imposed during general elections held since the adoption of the Fundamental Law and the Electoral Procedure Act, and, in light of these, it attempts to assess the effectiveness of the application

¹ Attila Mihály Nagy, assistant professor, Károli Gáspár University of the Reformed Church, Budapest, Hungary

of sanctions. In this context, the article also explains why the Parliament has modified the amount of certain sanctions in several cases, and I will present the related decision of the Constitutional Court and its reasons.

The study also examines the differences between objective and discretionary sanctions, and the differences between sanctions imposed ex officio and those imposed following an investigation of a case raised by a person entitled to it. The article also points out the inconsistencies found in the legislation (e.g. missing types of sanctions; differences between the recovery thresholds of different sanctions; different rules on the possibility of waiving time-barred claims for certain sanctions) and present my proposals for their resolution.

The article also aims, beyond addressing the legal aspects of electoral sanctions, to discuss their organizational and technological aspects, thus serving as a valuable resource for anyone interested in all essential details of electoral sanctions and seeking to understand their complexity and functioning.

2. Methodology

Three main research questions arise, such as

- What does the administrative sanctions system look like?
- What are the elements of the sanction system applied during Hungarian election and referendum procedures?
- How effective are these sanctions, what contradictions and deficiencies does the regulation have?

Overview of issues related to the aforementioned questions is based on desk research of relevant academic literature and legislative acts, supplemented by available relevant statistical data. Decisions of election commissions, courts and the Constitutional Court are an additional source for analysing related practices. The study aims to provide both a descriptive and an evaluative analysis.

3. The system and legal nature of administrative offences

In general, there is a complex liability regime for administrative offences.² There may be criminal sanctions, sanctions for infractions, administrative sanctions for substantive administrative offences and, in the case of administrative proceedings, procedural fines.

As to its nature, legal liability is usually subjective or objective. The distinction between these two types of liability is based on the consideration of human will, and therefore objective liability is essentially responsibility for results. An administrative sanction is a liability of an objective nature, which means the breach of the law is in itself sufficient for the sanction to apply, irrespective of the psychological relationship of the person concerned. A procedural fine, on the other hand, is subjective.³

The administrative sanction is a legal penalty for infringements of the law established in the course of administrative proceedings under Act CL of 2016 on the General Administrative Procedure (hereinafter referred to as the „General Administrative Procedure Code”)⁴, and the procedural fine is a sanction for unlawful conduct during the proceedings.

² For more information see BALÁZS SZABOLCS GERENCSÉR - ÁDÁM VARGA - VIKTOR BÉRCES: *Administrative Sanctioning*, Budapest, Pázmány Press, 2023, 9-17.

³ ANDÁS TAMÁS: *The Theory of Administrative Law*, Budapest, Szent István Társulat, 2007, 476.; DOMAHIDI ÁKOS [Suffrage]. In ANDRÁS JAKAB (ed.), *Commentary to the Constitution.*, Budapest, Századvég, 2009, 2474.

⁴ See Act CXXXV of 2017 on sanctions for administrative offences

An administrative sanction is a liability of an objective nature, i.e. the breach of the law is in itself sufficient for the sanction to apply, irrespective of the psychological relationship of the legal entity concerned. A procedural fine, on the other hand, is subjective.

Public procedures must respect the right to a fair public hearing enshrined in Article XXIV (1) of the Fundamental Law, which states that "Everyone has the right to have his or her affairs handled impartially, fairly and within a reasonable time by public authorities." This fundamental right is binding on all authorities in their proceedings, but it is also necessary for the parties and other participants in administrative proceedings to cooperate, based on the principle of good faith. This has been already laid down in Act CXL of 2004 on the General Rules of Administrative Procedure and Services (hereinafter referred to as the "Act on the General Rules of Administrative Procedure and Services").⁵ Violation of this obligation was made punishable by a procedural fine in the Act on the General Rules of Administrative Procedure and Services, when it provided that if the client or other participant in the procedure acts in bad faith, the authority may impose a procedural fine.⁶

According to the General Administrative Procedure Code, the authority must act in accordance with the requirements of due process, cooperation with the client and good faith.⁷ With regard to the issue of good faith, in addition to the same provisions as in the Act on Rules of Administrative Procedure and Services, the new provisions of the General Administrative Procedure Code also contain clarifications with regard to the principle of good faith. The General Administrative Procedure Code emphasises the requirement of good faith and cooperation of the client, which must go hand in hand with the fairness of the procedure of the authority in order to safeguard the public and private interests of lawful and well-founded decision-making.⁸ The law maintains the principle that the public authority has a duty to presume the good faith of the client and that it is for the public authority to prove the contrary.⁹

However, the General Administrative Procedure Code does not explicitly link the imposition of a procedural fine to the bad faith of the client or other participant in the procedure, but it does sometimes require or assume that the violation of the law due to the client's own fault is the basis for the imposition of a fine.¹⁰ The fine is imposed in order to facilitate the success of the procedure.

Contrary to the provisions of the Act on the General Rules of Administrative Procedure and Services, where only in certain cases, in the case of culpable breach of duty, a procedural fine could be imposed, Paragraph 77 (1) of the General Administrative Procedure Code makes it clear that any procedural breach of duty by any procedural actor may be the basis for the application of a procedural fine.¹¹

In the context of procedural fines, the Constitutional Court's decision 3020/2017 (II. 17.) is noteworthy. In this decision, the court pointed out that the provisions of the principles are binding in all administrative proceedings, they must be enforced at all stages of the proceedings, i.e. they must be taken into account in the application of the law, they may be invoked and must be applied in the decisions.¹² The Constitutional Court has also stated that

⁵ "Paragraph 6 (1) In administrative authority proceedings, the client shall act in good faith. (2) The client's conduct shall not be aimed at misleading the authority or unduly delaying the decision or the implementation. The good faith of the client shall be presumed in the procedure, and the burden of proof of bad faith shall be on the public authority."

⁶ See: Paragraph 61. of the Act on the General Rules of Administrative Procedure and Services

⁷ See: Paragraph 2 of the General Administrative Procedure Code

⁸ GERGELY BARABÁS, BERTOLD BARANYI, MARIANNA FAZEKAS (eds.): *Comprehensive commentary on Act CL of 2016 on general public administration procedures*, 2025. évi Jogtár-formatú kiadás, Budapest, Wolters Kluwer Hungary Kft, clarification to Paragraph 77.

⁹ See: Paragraph 6 of the General Administrative Procedure Code

¹⁰ See Paragraphs 24, 60, 64, 74 and 77 of the General Administrative Procedure Code

¹¹ GERGELY BARABÁS, BERTOLD BARANYI, MARIANNA FAZEKAS (eds.): *Comprehensive commentary on Act CL of 2016 on general public administration procedures*, 2025. évi Jogtár-formatú kiadás, Budapest, Wolters Kluwer Hungary Kft, clarification to Paragraph 77.

¹² Reasoning [16]

"[t]he purpose of a procedural fine is to establish a legal disadvantage in relation to an unlawful act committed in the course of a procedure, as defined by law, and thus to enforce lawful conduct, i.e. a procedural fine may be imposed on all persons on whom the authority may impose an obligation in the procedure, such as the client, other participants in the procedure or any person who is obliged to cooperate in clarifying the facts. In many cases, procedural violations can cause more damage than substantive violations, and can make the application of the law by the authority much more difficult. The legislator therefore enjoys a large degree of freedom in determining the procedural fines associated with certain administrative procedures."¹³

4. Sanctions in election and referendum procedures

The organisation and conduct of elections and referendums is a state task in the field of public administration. Election and referendum procedures are not aimed at deciding a specific official matter, but at the establishment of public authorities and the direct exercise of power by the electorate. "Citizens with the right to vote are in a special situation compared to the general client, since while the latter are usually subject to the exercise of public power by public authorities, in the case of the referendum procedure it is the citizens with the right to vote themselves who exercise direct power, while in the case of the election procedure it is the people who exercise indirect power, or the basis for all public power."¹⁴ Election and referendum procedures are governed by separate codes of procedure, but the above-mentioned Constitutional Court finding that procedural violations can cause enormous damage is even more true in their case. In the following, I will examine the structure of the liability regime in electoral administration and its most relevant features.

In connection with violations of the law during election and referendum procedures¹⁵ there are also criminal sanctions, there are administrative sanctions in the Election Procedure Act and the Referendum Act as well as the sanctions provided for in the Campaign Finance Act.

The Venice Commission's international recommendation, the Code of good practice in electoral matters also proposes the introduction of sanctions for infringements of electoral freedom, breaches of electoral secrecy and campaigning offences, breaches of campaign balance.¹⁶

It is also important to note that the individual electoral substantive laws do not contain separate, so-called sector-specific sanctions, and there is no justification for them, as unlawful acts must be judged in the same way for all types of elections.

In essence, the purpose of the election procedure is to prepare and conduct a specific election and then determine the result, thus enabling the elected representative to take office and the elected body to begin its work. It could be said that the main purpose of the procedure is therefore to exercise the right to vote and to enable the exercise of public power, directly or indirectly. The sanctions provided for in the election and referendum procedures are applied in order to ensure that the procedure is conducted in an orderly and lawful manner. Procedural violations in election and referendum procedures can cause incalculable damage to the proper functioning of the democratic state order under public law.

¹³ Reasoning [18]

¹⁴ ANITA BOROS, ANDRÁS PATYI (eds.): *The basic characteristics of Hungarian administrative (non-authoritative) procedures in the light of efficiency*, Budapest, Dialóg Campus, 2020, 23.

¹⁵ See Paragraph 350 of Act C of 2012 on the Criminal Code on the offence of violating the order of elections, referendums and European citizens' initiatives.

¹⁶ See pages 12, 13 and 24 of the "Code".

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev2-cor-e\(16/04/2025\)](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev2-cor-e(16/04/2025))

The Election Procedure Act and the Referendum Act, as well as the Campaign Finance Act typically sanctions objective forms of liability, and provides legal consequences for such situations. As is generally the case in administrative law, the question arises in relation to electoral law as to how we can characterize the relationship between multiple forms of liability and whether we can speak of a collision between them.

It must be acknowledged that the sanctions imposed under the laws governing elections and referendums and the Criminal Code are also applicable to crimes against the order of elections and referendums, as interpreted by András Varga Zs., according to which, when interpreting the prohibition of double assessment, account must be taken of the difference between the absolute and relative purpose of the administrative law sanction: in those cases where, in addition to the administrative sanction, the same (or similar) facts are accompanied by a criminal or misdemeanour threat, the relative purpose of the objective administrative sanction is to guarantee in advance the legal consequence of the violation of the substantive rule in the event that the subjective (i.e. culpability-based) criminal sanction is not imposed for whatever reason. András Varga Zs. argues that in such a case, administrative liability is in fact a residual liability in advance.¹⁷

The absolute aim of the sanctions imposed under the election and referendum procedure laws is the lawful conduct of the given procedure, and the relative aim is the guaranteed establishment of the legal consequence for the violation of law, irrespective of the guilt-based sanctioning. It is also important to note in this context that the sanction imposed by the election and referendum procedural laws always precedes the criminal sanction in time, due to the summary nature of the procedure.

It is important to note, that even in voluntary primary elections among opposition parties in Hungary, which is not part of the legal framework, the allied parties accepted an agreement, that they are entitled to impose sanctions against those who violate the principles set out in the code.¹⁸

After clarifying these basic principles, I will show how in Hungary sanctioning works related to elections, and what legal consequences and sanctions can be applied.

Sanctions may be imposed *ex officio*: in the case of failure to comply with a legal obligation, or on-request, on the basis of an objection by a person entitled to impose it.

4.1. Objective fines

In two cases, the election commission applies an objective fine sanction in respect of the *ex officio* procedure:

First, a fine shall be imposed if the voter intending to stand as an independent candidate or the nominating organisation intending to nominate a candidate did not submit all the recommendation sheets by the legal deadline. Otherwise, the National Election Commission acts *ex officio* and imposes fines in the event of failure to return the recommendation sheets in the national referendum initiative.

In the context of this sanction, I consider it necessary to note that, in my opinion, it is not appropriate that the Referendum Act does not provide for a fine in the case of failure to comply with a similar obligation in the case of local referendum initiatives, since a similar range of personal data is processed and therefore their protection is equally justified. In my opinion, therefore, the correct approach in the case of local referendums would be for the recommendation sheets to be issued by the local election office, for them to be returned and for the failure to return them to be punished by a fine.

¹⁷ ANDRÁS VARGA ZS.: *The Constitutional Foundations of Public Administration and Administrative Law*, Budapest, Dialóg Campus, 2017, 205.

¹⁸ ÁDÁM RIXER: *The Development of Legal Institutions Related to Primary Elections in Hungary*. *Krytyka Prawa*, 2022, 14 (3), 128

4.2. Objective fine in the election procedure

According to the paragraph 124 of the Election Procedure Act, a fine shall be imposed if the voter intending to stand as an independent candidate or the nominating organisation intending to nominate a candidate did not submit all the nomination forms made available to it to the election office by the deadline for the nomination of candidates. In the event of failure to comply with this obligation, the election commission responsible for registering the candidate shall impose a fine *ex officio*. No fine may be imposed for a recommendation sheet submitted no later than the day after the deadline for submission but not containing a recommendation. The amount of the fine shall be HUF 1,000 for each non-submitted recommendation sheet.

The regulations concerning the level of sanctions have undergone an interesting development: the draft of the Election Procedure Act, submitted to the National Assembly on September 18, 2012, as an initiative by its representatives, did not contain any provision imposing a fine for failure to return nomination sheets. This was partly because the proposer at that time wanted to make the possibility of casting a vote subject to registration, and the rules on requesting and submitting the recommendation sheets reflected this. The possibility to impose a fine was created by the amendment proposed by the Constitutional Affairs Commission on 30 October 2012, and the objective rule on fines was introduced in the text of the law without the exact reasons being clarified during the negotiations. The amount of the fine was half of the monthly amount of the statutory minimum wage for each non-submitted recommendation form at the time of entry into force of the Election Procedure Act. Thus, in the 2014 elections of Members of Parliament and the 2014 elections of Members of the European Parliament, a fine of HUF 50,750 was paid for each recommendation sheet not submitted by the deadline. The National Electoral Commission (hereinafter: NEC) acted in dozens of cases during the parliamentary elections at second instance, but in view of the objective nature of the fine, it could not change the decisions of the parliamentary single-member constituency election commissions in any of the cases. A similar result was reached by the Curia in its ruling on the applications for review against the NEC decisions, and the Constitutional Court rejected all the constitutional complaints against the Curia decisions.¹⁹

On the basis of the lessons learned from the two elections, the legislator corrected the wording of the law so that the amount of the fine would be HUF 10,000 for each non-submitted recommendation sheet, and also stipulated that no fine could be imposed for recommendation sheets not containing recommendations submitted on the day after the deadline. This reduced amount of fine was applied already for the 2018 elections of the Members of Parliament, but the legislator further reduced it, so that for elections called after 1 September 2018 (following the model of the Referendum Act), a fine of HUF 1,000 per sheet will be payable, reaching the level of the current fine.

4.3. Objective fine in the referendum initiative

The NEC acts *ex officio* and imposes fines in the event of failure to return the signature gathering forms in the national referendum initiative²⁰. The amount of the fine is eight hundred forints per form, but in total it may not exceed five times the monthly amount of the mandatory minimum wage in the case of voters and ten times the

¹⁹ See e.g. Constitutional Court's Decision 3070/2014 (III.26.)

²⁰ Constitutional Court's Decision 3195/2014 (VII. 15.) Reasoning [20]

monthly amount in the case of organisations, and there are 15 days after the deadline for returning the blank forms.²¹ For local referendum initiatives, the law does not provide for a fine.

The Referendum Act did not originally include the legal institution of fines with regard to referendum initiatives either. Act XLVIII of 2016 amended the Referendum Act with effect from May 21, 2016, and introduced a fine of HUF 1,000 per form, with no maximum fine. This provision was examined by the Constitutional Court after a private petitioner, "Do you agree that the twenty-fourth of December should be a public holiday?" was fined by the NEC in the course of collecting recommendations for a referendum question proposed and validated by the NEC, and the Curia upheld the decision. In Constitutional Court's decision 22/2020 (VIII.4.), the court stated on the one hand that "the function of the fine under Paragraph 19(3) of the Referendum Act is inherently preventive and can be clearly distinguished from both the sanctions under the Act CXII of 2011 on the right to self-determination in information and freedom of information and the criminal offence of misuse of personal data. On the one hand, the mandatory requirement to return the signature gathering forms and the sanctioning of failure to return them with a fine are intended to prevent the misuse of personal data (as a criminal offence under the Criminal Code) or the infringement or imminent threat of infringement of rights in relation to personal data (as a ground for action by the National Authority for Data Protection and Freedom of Information)" [Reasoning (41)]. The Constitutional Court has also held that the obligation to submit signature gathering forms and the prospect of legal sanctions for failure to do so are also constitutionally justified and may thus be necessary under Article I. (3) of the Fundamental Law [Reasoning, (43)]; but it has concluded that any organizer of a referendum shall be subject to a fine of HUF 13,334,000²² even if "it can be proved that the failure to deliver the signature gathering forms is due to the conduct of a person participating in the referendum or to an unavoidable external circumstance (*vis maior*) completely independent of the conduct of the organiser. Such a threat of a fine (on a signature gathering form by signature gathering form basis), which is apparently low but unrealistically high overall, is clearly capable of deterring voters from exercising their right to a referendum under Article XXIII (7) of the Fundamental Law, as recognised by the Fundamental Law" [Reasoning (55)]. Therefore, the Constitutional Court annulled the second and third sentences of Article 19(3) of the Referendum Act with effect from 30 June 2021, and the Parliament subsequently created the current regulation on fines in the national referendum procedure.²³

In the context of this sanction, I consider it necessary to note that, in my opinion, it is not appropriate that the Referendum Act does not provide for a fine in the case of failure to comply with a similar obligation in the case of local referendum initiatives, since a similar range of personal data is processed and therefore their protection is equally justified. In my opinion, therefore, the correct approach in the case of local referendums would be for the signature gathering forms to be issued by the local election office, for them to be returned and for the failure to return them to be punished by a fine.

4.4. Comparison of the level of objective fines

²¹ Paragraph 18 of the Referendum Act

²² Pursuant to Paragraph 15 (1) of the Referendum Act, a voter initiative for a national referendum may be supported on a signature gathering form issued by the National Election Office. Considering that, according to Annexes 1 and 2 of Minister of Justice's Decree 10/2016 (VI.28.) on the tasks falling under the competence of election offices in the initiation of a referendum, a maximum of 15 valid signatures can be collected on a signature gathering form, the organiser needs a minimum of 13,334 signature collection forms to be able to collect 200,000 valid signatures, assuming that each signature collection form received contains 15 signatures and all signatures are valid.

²³ Paragraph 18 (2) of the Referendum Act: (...) The amount of the fine shall be eight hundred forints for each signature gathering form not submitted, but in total it may not exceed five times the monthly amount of the mandatory minimum wage in the case of voters, and ten times the amount in the case of organisations.

By comparison, it is worth pointing out that currently the greatest demand for a recommendation sheet linked to the drawing up of lists in election procedures is likely to arise during the election of Hungarian members of the European Parliament. 20.000 recommendations²⁴ require a minimum of 2,500 recommendation sheets²⁵ of eight lines, so the nominating organisation is necessarily threatened with a fine of HUF 2,500,000, which is not more than ten times the current minimum wage²⁶ (HUF 2,908,000) and a fraction of the HUF 13,334,000 mentioned in the Constitutional Court's decision.

In the case of an independent candidate, the highest recommendation sheet requirement is the 5,000 recommendations²⁷ to be collected by the candidate for mayor, which requires a minimum of 625 eight lined sheets²⁸. In this case, the candidate will necessarily be subject to a fine of HUF 625,000, which is also below the maximum fine for a voter organiser currently set at HUF 1,454,000 in the Referendum Act.

5. Objective legal consequences and sanctions beyond the election process

In proceedings related to the election procedure, but not conducted by electoral bodies, additional financial disadvantage may be established. Several provisions of the Campaign Finance Act provide for a repayment obligation, both in terms of the support obtained by the individual candidate or the nominating organization on behalf of the individual candidate, and in terms of the support obtained by the nominating organization on the basis of the list. On the one hand, if the candidate does not obtain at least 2% of the valid votes cast in the single-member constituency or, except in the case of death before the vote, is eliminated under the Election Procedure Act²⁹, he/she is obliged to repay the support to the Hungarian State Treasury. The party setting up the party list is also obliged to repay to the Hungarian State Treasury the support received with regard to the setting up of the list, if the party list is eliminated under the Election Procedure Act³⁰ or does not reach at least 1% of the total valid votes cast for the party lists. or does not reach at least 1% the total valid votes cast for the party lists³¹. In its decision 3176/2015. (IX. 23.), the Constitutional Court examined the repayment obligation imposed on candidates for the Campaign Act in connection with the right to property set out in Article XIII (1) of Fundamental Law, and rejected the petition, stating that "this support (...) is provided for a specific public law purpose, on a voluntary basis, under specific legal conditions, and with the risk that it will have to be repaid in the absence of sufficient voter support. The person who receives the support (i.e. the candidate) does not acquire ownership rights that allow free disposal, it may use it for a specific purpose, but only subject to strict accounting. In this sense, therefore, the support under the provision challenged in the application cannot be associated with the property protected by the Fundamental

²⁴ Pursuant to Act CXIII of 2003 on the Election of Members of the European Parliament, Paragraph 5(2)

²⁵ See Annexes 12 and 13 on the detailed rules for the performance of tasks falling within the competence of electoral offices in the 2024 general elections held in a joint procedure for members of the European Parliament, local government representatives and mayors, as well as representatives of national minority local governments, determining the scope of nationally aggregated election results, the detailed rules for the performance of IT tasks related to elections by the capital city and county government offices, and the forms to be used in the joint procedure, the Minister of Justice's Decree 2/2024. (III. 11.) on the detailed rules for the implementation of tasks falling within the competence of election offices in the 2024 general elections

²⁶ From 1 January 2025 HUF 290,800, see Government Decree 394/2024 (XII. 12.) on the establishment of the mandatory minimum wage (minimum wage) and the guaranteed minimum wage

²⁷ Pursuant to Paragraph 9 (4) of Act L of 2010 on the Election of Local Government Representatives and Mayors.

²⁸ See Annex 14 to Minister of Justice's Decree 2/2024 (III. 11.) on the detailed rules for the implementation of the tasks falling within the competence of election offices at the 2024 general election of members of the European Parliament, local government representatives and mayors and representatives of national minority self-governments in a joint procedure, on the determination of the scope of national aggregated data of the election results, on the detailed rules for the performance of the IT tasks of the government office of the capital and county and county in connection with the elections, and on the forms to be used in the joint procedure

²⁹ See Paragraph 137 of the Election Procedure Act

³⁰ See Paragraph 138 of the Election Procedure Act

³¹ See Paragraph 8 (4) and 8/C (1)-(2) of the Campaign Act

Law as a property right. (...) The Law does not make the use of the support compulsory; it is at the consideration and discretion of the candidate. In doing so, she/he may take into account the amount of support she/he has received in the course of standing as a candidate, and her/his perceived visibility and popularity. Private wealth, i.e. the candidate's own property, is at stake if these indicators are not very high. In constitutional terms, therefore, a rule requiring repayment of a support cannot constitute a provision which deprives or restricts the right to property, since the owner has voluntarily initiated and accepted the support of her/his own free will, knowing the conditions."³² Consequently, Article 8 (4) (a) of the Law does not infringe the right to property enshrined in Article XIII (1) of the Fundamental Law.

The establishment of repayment obligations is not the task of the election bodies, nor are they related to the activities in the election campaign but have objective grounds. A candidate who has been eliminated may no longer campaign for her/his own benefit, so that the aid granted for the whole campaign period would not be used for the purpose intended by the legislator. At the same time, the legislator expects that the budget support will be used in a way that is as efficient as possible. The resources that can be used for campaigning can be linked in a certain causal way to campaigning, and the latter to the election results, so that it is not unreasonable to take an interest in the recipient of campaign support to campaign with a certain degree of effectiveness. In the light of these characteristics, the rules on campaign contributions covered by the Campaign Act are without prejudice to the sanctions of the electoral administration, despite the appearance created by certain facts or the objective nature of the repayment obligation.

In addition to the above, if the candidate or nominating organisation does not account the support within the statutory deadline, it must pay twice the amount of it to the treasury. In the event that the candidate or nominating organisation settles the accounts but the Treasury does not accept all or part of the accounting, it must pay the treasury twice as much as the incorrectly settled amount.

Another provision of the Campaign Act is that the State Audit Office shall, within one year of the election, carry out an ex officio audit of the use of the supports at the treasury in respect of the candidates who have obtained parliamentary representation.³³ If the State Audit Office finds during the audit that the use of the support provided to the candidate has been in violation of the requirements of the Campaign Act, the candidate is obliged to repay the support provided or in the case of the party, the party is obliged to repay the amount, proportional to the non-compliance with the condition of use, but not more than twice the amount of the support provided. Repayment is also due in the event that the State Audit Office finds that the rules on the limitation of election campaign expenses have been infringed. In this case, the amount spent on the campaign unlawfully, exceeding the total amount available for the election, must be paid twice into the central budget.³⁴

Paragraph 33 of Act LXXXVIII of 2023 on the Protection of National Sovereignty incorporated the obligation to make a so-called sovereignty declaration into the text of the Election Procedure Act. The candidate must declare when filing that he/she complies with the requirement for candidates not to use foreign support or assets derived therefrom for the purpose of influencing or attempting to influence the will of the electorate in relation to the

³² Reasoning [28],[31]

³³ Paragraph 1 (3) of the Campaign Act: The support may only be used to finance material expenses related to campaigning activities during the election campaign period in accordance with the Act on Election Procedure.

³⁴ See Paragraph 7 and 9 of the Campaign Act.

election in question. This is also checked by the State Audit Office and if it finds that the candidate has violated this provision, the candidate is obliged to pay twice the amount of the support to the central budget.³⁵

These provisions are clearly sanctions relating to the candidate's or nominating organisation's own assets, in relation to the accounting and use of the support.

6. Imposition of sanctions following an objection

Another way of imposing sanctions in election and referendum procedures is the appeal procedure following an objection. In this case, in its chapter on legal remedies, the Election Procedure Act lays down three main legal consequences in the event of a violation of the election law or the principles of the election and the election procedure:

- the establishment of the violation, - the prohibition of further violations, - or the annulment and repetition of the election procedure or the part of it affected by the legal remedy.³⁶

Paragraph 2 (1) of the Election Procedure Act provides as a mandatory provision that "[in] the application of the rules of the election procedure the following principles shall be enforced:

- a) safeguarding the fairness of the election,
- b) voluntary participation in the election procedure,
- c) equal opportunities between candidates and nominating organisations,
- d) facilitating the exercise of rights by voters with disabilities,
- e) good faith and proper exercise of rights,
- f) the publicity of the election procedure."

The principles are typically of a guiding nature, facilitating the interpretation of the law and thus ensuring legal certainty. The basic principles contain requirements that determine the content of individual legal relationships, and the overall conduct of the parties involved, serving as guidelines and a framework for interpretation. In addition to their general meaning, the principles are also directly applicable in election and referendum procedures, and any breach of them constitutes an infringement of the law.³⁷

As regards the procedures initiated by objection, it is important to note that, given the absolute purpose of electoral sanctions, which is the lawful conduct of the procedure in question, it is strange, but given the summary nature of the procedure, it is understandable that the imposition of these sanctions depends on the submission of an objection, the legal act which initiates the procedure. An objection may be lodged by any voter, candidate, nominating organisation, natural or legal person or unincorporated organisation on the central electoral register. In fact, the examination of the objection can be compared to the notification to the bodies acting ex officio as a rule, since the objection to be examined by the election commissions does not have to contain³⁸ an indication of the legal action to be taken by the commission against the offender. In the objection, the objector must indicate the infringement

³⁵ See Paragraph 124 of the Election Procedure Act. Pursuant to Paragraph 307/D of the Election Procedure Act, organizations initiating registration as nominating organizations for the election of local government representatives and mayors must make a similar declaration: the association must declare that it will not use foreign support or support from domestic legal entities or organizations without legal personality, anonymous donations or assets derived therefrom for the purpose of influencing or attempting to influence the will of voters in relation to the election in question. The legal consequences are the same as those specified for candidates.

³⁶ See Paragraph 208 and 218 of the Election Procedure Act

³⁷ See for more information Constitutional Court's Decision 12/2024 (V.10), Reasoning [34], Constitutional Court's Decision 3210/2024 (VI.13.), Reasoning [32], Curia Decision Kvk.III.37.799/2020/3, Reasoning [18] or Curia Decision Kvk.IV.37.657/2019/3, Reasoning [31]

³⁸ See Paragraph 212 on the Election Procedure Act

but does not have to propose the application of a specific legal sanction. If the objection is upheld, the electoral commission is entitled and obliged to decide on the application of the aforementioned legal sanctions, i.e. the commission itself determines the sanctions to be applied. Csaba Cservák said: "It is extremely welcomed that - partly as an incentive for the profession - election commissions can finally apply substantive, specific sanctions."³⁹

6.1. Main legal consequences

About the main legal consequences: In the election procedure, it is not necessary to identify the violator in order to establish the infringement, so in the case of such decisions establishing the infringement of an unknown person, we can only speak of the establishment of the violation as a legal consequence, not a sanction imposed.

In the case of an identifiable violator, however, the sanction of prohibition of further violations should already apply, except in cases where this is useless, for example at the end of the campaign period, when the prohibited activity cannot effectively be continued.

In this regard, the rules governing election campaigns, in the section on media remedies, prescribe as a further legal consequence, in the event of a violation of law by media content providers, to publish the operative part of the decision establishing the violation.

The least frequently used main legal sanction is the annulment and repetition of the election procedure or one part of the procedure affected by the violation. This sanction does not constitute a legal disadvantage for the specific violator, but it is aimed at protecting the public interest embodied in the purpose of the election procedure. So far, the only known case of the repetition of the entire election procedure was the decision of the Budapest District Court from 2013 in the case of the organised transport of voters in the by-election of the mayor and single-member constituency representative in Fót.⁴⁰

In some cases voting is repeated, such as in the 2024 general election of local government representatives and mayors in Nagytarcsa⁴¹, where the mayoral elections voting was repeated, and in Fonyód⁴², where the Curia decided to repeat voting of the election of representatives on the multi-member list of local government representatives.

³⁹ CSABA CSERVÁK: *Regulation of electoral bodies, with special regard to the National Election Commission*. In Ákos Cserny (ed.): *Electoral dilemmas*, Budapest, NKE Szolgáltató Kft., 2015, 21.

Csaba Cservák is currently an elected member of the National Election Commission (16.04.2025.)

⁴⁰ At the time of the decision, Act C of 1997 on Election Procedure (the old Act) was still in force, Paragraph 78 of which allowed for the application of legal consequences identical to Paragraph 218 of the Election Procedure Act in proceedings initiated upon request.

⁴¹ At the mayoral election held on 9 June 2024, in Nagytarcsa, in polling district 004, a voter noticed in the morning hours that one of the ballot boxes was damaged, that the tab serving to close it was broken off, thus the cover of the ballot box could be opened. The polling station commission (hereinafter referred to as the "PSC") recorded a report of the incident, in which it stated that at 11.15 a.m. it observed that the ear had broken off and the lid had opened. Thereafter, no ballot paper was placed in or removed from the ballot box until the fault had been rectified, and the box was declared fit for use again after the lid had been sealed with a label. In the legal remedy proceedings initiated after the voting, the Curia stated that if the closed state of the ballot box during the entire voting process cannot be established beyond doubt, all ballot papers collected in the unsealed ballot box must be declared invalid and cannot be taken into account for the final result. The Curia also took into account the proportion of voters who voted in all polling districts and the proportion of voters in polling district 004 (26%). Without this polling district, the result would not have reflected the overall will of the electorate. On the basis of the above, in order to ensure that the will of the electorate was expressed and enforced, the Curia considered it necessary to order a repeat of the vote in polling district 004. For more information, see Curia Decision Kvk.I.39.132/2024/7.

⁴² In Fonyód, the Somogy County Regional Election Commission, acting on appeal, decided to recount the votes in the election of the multi-member list representatives. The Curia, however, found that the Regional Election Commission did not carry out the recount of votes ordered by it, thus violating the second sentence of Paragraph 241(3) of the Election Procedure Act, which would have required a recount of votes by the court, but in the opinion of the Curia it had no legal possibility to order such a recount because the Somogy County Regional Election Office delivered the election documents to the court in a damaged box. The Curia recorded that if the means of transport containing the election documents (votes) was damaged to such an extent that it could have been accessed by an unauthorised person or persons and its contents could not be reconstructed beyond doubt, then - due to the violation of Paragraph 2 (1) a) of the Election Procedure Act - it would make it impossible to appeal against the election results by recounting the votes pursuant to Article 241 (3) of the Election Procedure Act. For this reason, the Curia ordered a repetition of the election. For more information, see Decision Kvk.VII.39.179/2024/6 of the Curia.

6.2. Sanctions that may be imposed in addition to the main sanctions

There are sanctions that may be imposed only in addition to the sanctions applied as main legal consequences. These can be a fine imposed at the discretion of the electoral commission for violation of campaign rules on the one hand, and for violation of the obligation to destroy the provided data from the electoral register on the other. In deciding whether the imposition of a fine for a campaign violation is justified and in determining the amount of the fine, the election commission shall take into account all the circumstances of the case, in particular the size of the group of persons affected by the violation, the level and territorial extent of the violation, and the repetitive nature of the violation. When determining the amount of the fine, - the law also requires - account shall also be taken of the fact that the violation was obviously intentional. In the case of both campaign offences and media remedies, the examination of intentionality, the subjective responsibility, is a foreign element, which is one of the aspects of the exercise of discretion.⁴³

In the case of media remedies, the Election Procedure Act also allows for the application of discretionary fines in addition to the sanctions applicable as a general rule. In this case, too, all the circumstances of the case must be taken into account, in particular the type of media service provider involved in the infringement, its audience, the characteristics of the press product involved, the level of the infringement and the repetitive nature of the infringement. In determining the amount of the fine, account shall also be taken of whether the infringement was obviously intentional.

Due to the summary nature of the election procedure, the election commission decides on the objection on the basis of the available data, which is why the law includes the clause "obvious", which simplifies the examination of intentionality. Thus, for example, the Electoral Commission of the 1st Parliamentary Constituency of Baranya County⁴⁴ found obvious intentional infringement in the imposition of fines in 2022, when a candidate disconnected from the power source the power cable of a campaign device promoting another candidate. It can therefore be concluded that, in addition to the objective aspects, the subjective liability element is also examined when imposing these penalties.

6.3. Fines for failure to comply with the obligation to provide information on the register

The other case is also interesting: Data from the electoral register may only be used in the election procedure for the purposes of direct political campaigning. Any other use, copying or transfer to third parties is prohibited. Candidates and nominating organisations drawing up a list shall destroy the provided data on voting day at the latest, and shall deliver the minutes taken of destruction to the election office that provided the data within three days. A fine may be imposed for breach of this obligation at the discretion of the electoral commission. In this respect, the Election Procedure Act therefore, as in the case of the collection of recommendations and signatures, lays down obligations in relation to the protection of personal data, which makes it particularly important to enforce compliance with the law. It is noteworthy, however, that imposing a fine for the missing or late submitted minutes taken of destruction, which is a question of fact, is entirely at the discretion of the law enforcement body, and can

⁴³ See Paragraph 219 of the Election Procedure Act

⁴⁴ Decision 24/2022 (III. 31.) of the Election Commission for Parliamentary Single-member Constituency No. 1 of Baranya County

only be sanctioned if an objection is lodged, whereas the legal basis for the application of the fine is the same as used for the ex officio failure sanctions.

A further important circumstance is that the scope of personal data concerned in the case of the data from the electoral register is obviously wider, for example of all voters in a single-member constituency or a municipality, than in the case of the collection of recommendations in a single-member constituency or a municipality, where only a significantly smaller proportion of voters and so data are concerned.

In this case, in my view, it would be more appropriate for the Election Procedure Act to provide for ex officio proceedings and obligatory sanctioning in the case of this violation of law. This is perhaps also confirmed by the fact that since 2018, taking into account all general and by-elections, local and national referendums, only two such decisions for fines have been issued nationwide, and those were based on objections by the head of the same election office in two different elections.⁴⁵

7. Statistics on election and referendum procedure fines

The decisions of the election commissions are public and while there is no single record of all commission decisions, the election offices are obliged to record the details of all commission decisions imposing fines in the central IT system operated by the National Election Office. Hence, there is in fact no obstacle, either in law or in the records, to the electoral commission imposing a new fine in proportion to the fine imposed in a previous election procedure. However, the practice of the courts contradicts this, according to the Curia, "the imposition of a fine can always be based on a breach of the rules committed during the campaign period of the current election procedure. Pursuant to the Paragraph 139 (1) of the Election Procedure Act, the election campaign period runs from the 50th day prior to the day of voting until the end of voting on the day of voting."⁴⁶

According to data recorded by the National Electoral Office, with regard to objective fines imposed for failure to submit recommendation sheets pursuant to Paragraph 124 of the Election Procedure Act, following the entry into force of the Election Procedure Act, 37,050 sheets were not submitted in 2014, and following the first reduction in fines, 73,372 sheets were not submitted; and since the elections scheduled after September 1, 2018, i.e. since the second reduction in the fines, a total of 23,998 sheets have not been submitted. Of these, the election commissions issued 1,383 decisions of fine for more than 70,000 candidates in the 2024 general elections, of which 1,275 were fines of less than HUF 10,000, i.e. less than the collection threshold.

In 2014, the election commissions imposed fines of HUF 50,750 for each of 37,050 recommendation sheets used in the election procedure, totalling HUF 1,880,287,500. In 2024, this figure was HUF 9,977,000 for 9,977 sheets. Of the fines imposed in 2014, only HUF 69,768,432, or less than 4% of the amount of the fines imposed, was paid, while the fines imposed in 2024 amounted to HUF 8,453,000, almost 85% of the amount imposed. It can be observed from this that the willingness to pay increased significantly as the amount of fines decreased.

Since 2014, the election commissions have imposed fines of HUF 26,520,300⁴⁷ for violations of election campaign rules and principles, and HUF 39,283,500 for violations by media service providers.⁴⁸

⁴⁵ See Decision 56/2018 (IV. 14.) of the Election Commission for Parliamentary Single-member Constituency of No. 5 of Szabolcs-Szatmár-Bereg County and Decision 100/2024 (VI. 17.) of the Local Election Commission of the City of Mátészalka

⁴⁶ <https://kuria-birosag.hu/hu/valhat/kvkiv3760920193-szamu-hatarozat>

⁴⁷ In 2018 14.919.000,- HUF, in 2019 2.893.500,- HUF, in 2020 30.000,- HUF, in 2022 4.136.400,- HUF, in 2024 4.541.400,- HUF;

⁴⁸ In 2018 10.160.000,- HUF, in 2019 26.498.500,- HUF, in 2022 1.600.000,- HUF, in 2024 1.025.000,- HUF.

With regard to the violations of principles and the amounts of fines imposed for breaches of campaign rules, it can be seen that in 2018 the amount of fines was close to HUF 15 million, which is an outstanding amount considering that the total amount of fines for a general election has been consistently below one third of the total amount since then.

The situation is similar for infringements by media service providers, but with an even higher outlier in 2019. The fact that only one linear media service provider with a significant influence had to pay a fine of HUF 24,400,000 of this amount of HUF 26,498,500 is a factor in the figure.⁴⁹ The remaining amount of HUF 2,098,500 from 2019, although higher than the figures for 2022 and 2024, can be considered to be in line with the trend that can be established on the basis of the other fines.

Overall, it can be concluded that the effectiveness of electoral administrative sanctions is not, or difficult to measure. If the question is narrowed to discretionary fines, it can be concluded that sanctions will not necessarily be effective in this case either. The fines imposed in 2019 under the media remedy, show that continuous fining in the same campaign period does not lead to results and has no deterrent effect.

A comparison of the National Election Commission's reports on individual elections shows that the number of appeals is on a downward trend. In the 2018 general election, the commission dealt with 108 objections and 601 appeals; in the 2019 European Parliament election, the commission dealt with 41 appeals in addition to 49 first instance appeals; and in the 2022 general election, the commission dealt with 82 complaints and 138 appeals, and in connection with the general elections held on 9 June 2024, for choosing the members of the European Parliament, local government representatives and mayors, as well as representatives of national minority local governments in a joint procedure, 37 objections and 13 appeals were dealt with.

Observing the practice of the National Election Commission, it can also be said that the decrease in the amount of fines is also linked to the decrease in the number of appeals.

In connection with the fines imposed, it is important to note that the Election Procedure Act provides for the expiry of fines from 1 February 2025, while the Referendum Act has already contained such a provision since 1 July 2021. The new rule sets a four-year limitation period in the Election Procedure Act for all types of penalties, in line with Act CLIII of 2017 on enforcement procedures to be taken by the tax authority and also allows for the waiver of claims.

8. Conclusion

There are a wide range of sanctions in the context of election and referendum procedures. These atypical administrative procedures differ from the general administrative order and sanctioning system both in their regulation and in their main features, the legal environment being constructed taking into account the specificities of the summary nature of the procedure.

The election commissions, the Hungarian State Treasury and the State Audit Office of Hungary carry out ex officio procedures in certain specified cases and react to the fact of a violation by imposing an objective fine.

In addition to the financial sanctions, the election commissions may impose other sanctions affecting the procedure, such as the annulment and repetition of the entire election procedure or the part of it affected by the

⁴⁹ Order Kvk.VI.37.559/2019/2.HUF 500.000,-, National Election Commission Decision 83/2019 (IV.29.) HUF 3.725.000,-, 88/2019.(V. 2.) NEC decision 7.450.000,- Ft, 95/2019.(V. 7.) NEC decision 7.450.000,- Ft, Order Kvk.V.37.620/2019/2. HUF 5.450.000,-

appeal, if someone who is entitled to do so under the Election Procedure Act has lodged an objection. Without the active participation of interested parties, unlawful conduct cannot therefore be brought to the attention of the electoral commission empowered to take a decision.

The current legal environment provides a system of sanctions applicable in election and referendum procedures, which can be divided into *ex officio* and on-request procedures. The applicable sanction is always a fine in *ex officio* procedures, while several sanctions may be applied in the on-request procedures.

In many cases, the existing sanctions help stakeholders and participants in elections and referendums to behave lawfully, while in other cases sanctions are not even deterrent to unlawful behaviour.

It is also important to note that many campaigning activities that exist in practice are not covered by the Election Procedure Act, so their use and review by public authorities is outside the legal framework for elections and referendums.

Maybe that is one of the reasons why a comparison of the National Election Commission's reports on individual elections shows that the number of appeals is on a downward trend. Observing the practice of the National Election Commission, it can also be said that the decrease in the amount of fines is also linked to the decrease in the number of appeals.

For the reasons set out above, the legal environment needs to be amended on a number of points in order to make the sanctions regime for election and referendum procedures more coherent. The conduct of general elections and national referendums in the past decade and the experience gained there also provides sufficient grounds for the legislator to consider whether it is necessary to introduce additional sanctions, such as the banning of a candidate from further campaigning, in order to further enhance the material and procedural principles of elections and thus the right to vote.

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