

Right to Vote in the Case-law of the ECHR

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As the deputy clerk of Győr, I chose the models of local democracy as my research field. It has two main sides: the election systems and the self-governing tasks. Throughout my PhD studies I have been examining the relation of these two fields. In the context of the monitoring of election systems I must deal with laws and their constitutionality, alongside with their adequacy to international treaties. Hence, I am going to deal with some decisions of the European Court of Human Rights in Strasbourg. Its decisions show the way, especially in the case of former socialist countries, in which the laws are beginning to take shape both in the field of election and the definition of scope among state-region-settlement. In Hungary there is a reform going on, which is why it is crucial to acquaint you with four decisions of the Strasbourg Court, which deal with former socialist countries.

Primarily I would write about the question of the absolute right of the right of voting – language-knowledge, national or ethnic status, supply of data connected to these. There were not many and significant changes in these topics during the reforms. I would deal with those regulations that have been changed significantly in the past 2 years in a separate essay.

The Article 3 of the 1st Protocol of the European Convention on Human Rights defines the right to free election. It says: *“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”*¹

The problems with election systems are not only in connection with the above mentioned right but with the prohibition of discrimination, too, which is defined in the Article 14 of the Convention. *“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*²

The majority of the decisions deal with the national restrictions of active and passive right to vote. The restrictions are regulated differently in each respective state. The Strasbourg Court also emphasized that member states have a big scope for action in the constitutional regulation of parliamentary system, including the restrictions of their election systems. Although the origin, the basis of these rules is common, such as the independence of the representa-

¹ 1st Protocol of the European Convention on Human Rights Art. 3.

² European Convention on Human Rights Art. 14.

tives and the free will of electors, the requirements depend on the historical and political factors of states on a large scale.

Firstly I mention **the case of Podkolzina v. Latvia** where the Strasbourg Court declared the violation of the Convention. The active and passive right to vote is a subjective right, but it is not absolute. The Convention does not define the content of that right. It is the competence of the member states. The regulation has to comply with the expediency and the proportionality.

The aim is that only such people could be elected who speak the mother language, the Latvian language is acceptable. The Court criticized the lack of guarantees of objectivity.³

In Hungary until 31st December 2011 candidates had to declare whether they spoke the language of the national minority or not, however, the lack of knowledge was not a disadvantage. Before 2012 the condition was the declaration about the language-knowledge. Currently the language-knowledge is a requirement, but the candidates do not have to prove it, they only have to declare that they speak the language of the minority. The legislator maintained that the false declaration will not have any legal consequences and the language-knowledge will not be examined. As the first elections according to these rules will only be in 2014, we do not have any experiences about their use in practise.⁴ It is also true for the other elections: the lack of knowledge of Hungarian language is not a disadvantage. It can raise some problems. How can such a person represent the interests of electors? In Győr the communication and the legal functioning of the minority local government (especially with Polish, Armenian and sometimes German minority) raise problems, because they do not understand our language and our regulations. This is the reason they cannot submit applications, they cannot make contracts or their budget, they cannot make a record of their seats etc. Subsequently, it is supported to ordain the knowledge of Hungarian language.

Similarly to the case of Podkolzina v. Latvia the Strasbourg Court emphasized in **the case of Krasnov and Skuratov v. Russia** that the right to vote is not an absolute right. It can be restricted but it cannot reduce the content of the right. Information about qualification, workplace or party membership can be important in regard of voting.

Krasnov told false information about his position: is he a head of a district or not? It is significant information which is suitable for misleading the electors. On the contrary, Skuratov did not contravene the law. The Court adjudicated that being a head of department or a university professor is not so relevant in connection with voting, so this "lie" was not described as violation of the law.⁵

In **the case of Sarukhanyan v. Armenia** the applicant was an Armenian person. He applied to the Court because he was excluded from election. The reason was that he gave false data about his property.

The European Court of Human Rights laid down that the information about property can affect significantly electors in the decision. But in Armenia there

³ Application no. 46726/99.

⁴ Act L of 2010 on the election of the representatives of local government and the mayor § 9/A d)

⁵ Applications nos. 17864/04 and 21396/04.

were special conditions: there were not any authentic state registers, and authorities had not informed him about acquisition of property etc. The applicant did not fail intentionally to give information about his common property on a flat. Among these circumstances the Court declared that the lack of this data is not so relevant, so the Convention was violated by Armenia.⁶

In Hungary only the name and the dwelling of the candidate should be filled in the registration form. But I emphasize that only the name is of vital importance. The electoral board examines whether the candidate has right to vote and whether the candidate has enough nomination or not. If either of the data is not appropriate and the candidate cannot be identified or its right to vote cannot be examined, the board rejects the request for registration. No other data is compulsory, except for the candidates of minorities. In this case the candidate should have answered the question whether she or he understands the language of the national minority and accepts the representation. There are not any negative consequences of false information or in the case of the minorities the negative reply.⁷

It means that the Hungarian regulation is very liberal compared to other East-European countries. Therefore the above-mentioned process should be preserved in the future, too.

A special problem was examined by the European Court of Human Rights in **the case of Sejdić and Finc v. Bosnia-Herzegovina**. The applicants laid a complaint because they were disqualified for being candidate in an election because of their Roma and Jewish origin.

To understand the case the Constitution of Bosnia-Herzegovina must be known, which was born as a part of Dayton Peace Agreement. The Preamble declares that Bosnian, Croat and Serb people belong to the nations of federation (“constituent people”). Such people can belong to the nations of federation, who pronounce it. And there are the “others,” who belong to an ethnic minority or it has other reason, for example mixed marriage.

This is very important because only the “constituent people” have the right to be a candidate in the election of Presidency (the collective head of State) and House of People (the second chamber of the State parliament).

Both of the applicants were highly respected and were in high office in their own community. But neither of them had declared his belonging to the “constituent people.”

The Court examined the Article 14 of the Convention. It is about the prohibition of discrimination. The Strasbourg Court declared that this article does not have an independent existence, its effect can only be examined in connection with other rights or freedoms. The Court declared that “*discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. ‘No objective and reasonable justification’ means that the distinction in issue does not pursue a ‘legitimate aim’ or that there is not a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realised.’*” ‘Objective and reasonable justification’ has to be strictly interpreted if ethnic or racial discrimination emerges. The Court up-

⁶ Application no. 38978/03.

⁷ Annex XII of Regulation of Minister of Municipal No. 2009/35.

held its statement that difference in treatment cannot be justified by an objective and reasonable aim in a modern democratic society which is based upon pluralism and respect of different cultures.

The Strasbourg Court emphasized that this exclusion rule has had at least one objective which is in accordance with the general aims of the Peace Agreement, namely the restoration of peace. When the concerned constitutional provisions were passed, a very fragile cease-fire was in effect. The intended purpose of the provisions was to end a brutal conflict marked by genocide and ethnic cleansing. The nature of the conflict was such that the approval of the “constituent people” (namely, the Bosnians, Croats and Serbs) was necessary to ensure peace. *“This could explain, without necessarily justifying, the absence of representatives of the other communities (such as local Roma and Jewish communities) at the peace negotiations and the participants’ preoccupation with effective equality between the “constituent people” in the post-conflict society.”*

But after 15 years maintaining this system is not justified, it does not comply with the requirement of proportionality. Thus the Court declares the violation of prohibition of discrimination.⁸

To sum up, in connection with legal cases we can clearly ascertain the practise of the Court. On the one hand, the Strasbourg Court gives member states free hand to form their own regulation. The Court insists on that the right declared in the Article 3 of the 1st protocol of the Convention have to be a real right. The restrictions have to be effective and proportional. If it is not realized, the Court appoints the infringement of lawful rights.

On the other hand, generally the prohibition of discrimination is not examined per se, but in connection with infringement of some rights. This is true especially for the regulation of election.

The legislator has to consider not only the declaration of the Convention, but the legal cases of the Strasbourg Court, too, such as the decisions of the Hungarian Constitutional Court.

⁸ Applications nos. 27996/06 and 34836/06.