

Halfway into the Hungarian electoral reform

- Electoral law already passed, law on procedure still uncertain -



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Key Findings

The new constituency map – constitutionality vs. political manipulation

Concurrent to the enactment of a new Hungarian electoral law, a brand new constituency map also came into effect. For constitutional reasons, the revision of electoral boundaries could no longer be postponed and the promise of a smaller Parliament served as yet another widely accepted argument. Eventually, a politically thoroughly manipulated electoral map has been elevated to legal status.

- The design of the new constituency map went ahead without professional and political consultations, whereas the lack of transparency raises the suspicion of political motivation.
- A possible sign of political manipulation may be the fact that the populations in districts with leftist tendencies are typically 5 to 6 thousand larger than those in rightist districts.
- According to several calculations, with equal support at the national level Fidesz would be allocated 10 more single-member mandates than its rival.
- All in all, while a substantial opposition majority may put Fidesz out of business, the new constituency map may also convert a slight governing-party handicap into an advantage.

The voting rights of non-resident Hungarian citizens

At this point, the suffrage extended to Hungarian citizens with no permanent residence in Hungary is shrouded by uncertainties. Both the number of potential voters and their turnout on election day is difficult to estimate, and the yet-to-be-passed procedural act leaves a number of urgent questions unanswered.

- At this point it is unclear whether non-resident Hungarian citizens will also have the right to participate in the nomination process. The real stumbling block may be the campaign itself: is it possible to conduct a campaign in a foreign country? How can local rules regulating political campaigns in Hungary be applied across state borders? Moreover, it is still unknown where voters outside Hungary would cast their ballot.

- Hungarians living in the country will have two (party list and single-member candidate), non-residents will only have one (party list) vote. The arrangement violates the principle of equal voting right and runs counter to international treaties on voting rights.
- The ballots cast outside the country are unlikely to determine more than 2 to 3% of all parliamentary mandates.
- The biggest risk in extending suffrage to Hungarian citizens around the world lies in the following dilemma: the law enacted with the alleged intent to unify the nation may easily backfire if a large number of resident Hungarians come to feel they have lost the opportunity to determine their own destiny.

The potential introduction of voter registration

According to earlier media reports, Fidesz is contemplating to replace an automatically generated voter registry with a system of individual voter registration for those wishing to participate in the electoral process.

- Nothing justifies its introduction as a safeguard for a clean election as Hungary's population-registry system has never been questioned in past elections
- For in Hungary a popular tendency of alienation from politics and voter apathy are major problems, and in this environment pre-registration, would only increase the number of passive citizens instead of increasing participation.

Political Capital Institute analyses the reform process of the Hungarian electoral system, its anticipated consequences and will also report on how the new framework operates once it comes into force. The project is carried out with the support of the Think Tank Fund of the Open Society Foundations.

The new constituency map – constitutionality vs. political manipulation

Reducing the current number of parliamentary seats by roughly half was one of the few concrete election promises made by Fidesz during the 2010 campaign. As the party wished to preserve a mixed system based on single-member constituencies and party lists, this inevitably led to a radical reduction of the number of electoral districts and simultaneously resulted in the expansion of district boundaries and their respective populations. The new electoral law passed on December 23, 2011, provides for 106 instead of the previous 176 single-member constituencies. As a consequence, starting in 2014, instead of the current 46 thousand, individual representatives will represent an average of 76 thousand constituents.

As the electoral districts had never been redrawn since 1990, the distribution of the number of citizens eligible to vote in each single-member constituency increased year after year. **Registry data from the latest, 2010 general election shows a 2.75-fold difference between the smallest and the largest constituencies.** While in its 2005 resolution the Constitutional Court (CC) already ruled that a disproportionality in excess of 100% (i.e. if votes required in any single-member constituency are twice as many than those required in the smallest constituency) violates the principle of the equal right to vote, it ordered changes only following the 2010 election by nullifying (in part in response to a constitutional-review petition submitted by Political Capital) a constituency map that has become grossly disproportionate over the years.

In its 2010 ruling, the CC required the legislature to enact by a supermajority “the fundamental principles, laws and guarantees” for the creation of electoral districts, while it allowed the creation of electoral maps through legislation requiring only a 50% majority. However, the provisions do not go further than stating that the number of voters in any single constituency should not deviate by more than 15 percent from the average voter numbers in all other constituencies, and county boundaries cannot be crossed. On the other hand, as the map’s creation has eventually been tied to a two-thirds act, its future modification will be unreasonably difficult. In other words, without the support of the parties currently in power there is absolutely no chance for the modification of district boundaries until the proportion of their parliamentary mandates drop below one third. **Hence the new electoral law has temporarily relieved Parliament of the burden of constitutional neglect; the legislature will face the same dilemma as soon as disproportions are reproduced owing to internal migration** – unless powers willing to put forward a proposal to move district boundaries gain a two-thirds majority.

The legislature could have prevented this threat by denying politicians the right to draw up maps and appointing an independent demarcation committee with a fixed mandate. Every four years an independent body modelled on Great Britain’s highly-effective Boundary Commission could study the need for boundary revisions and, whenever necessary, modify district boundaries under strict regulations. However, the legislative body went down a different path: **specific boundary lines are to be defined by the political will of a two-thirds majority, which is only controlled by way looser regulations.**

The design of the new constituency map went ahead without professional and political consultations, whereas **the lack of transparency raises the suspicion of political motivation**, i.e., gerrymandering.

In all probability, the designers of the new districts relied heavily on historic electoral (publicly available) databases and their work may also have been helped by other, not necessarily legally obtained data. There is strong evidence that in many regions of the country traditionally right-leaning districts were incorporated into swing districts while neighbouring left-leaning districts were merged.

A possible sign of political manipulation may be the fact that the populations in districts with leftist tendencies are typically 5 to 6 thousand larger than those in rightist districts. Hence, based on previous election data, **fewer votes are needed to win an individual mandate in a right-leaning constituency than in a left-leaning one.**

With the help of a mandate calculator developed in Excel, one can easily check whether the map is in fact manipulated. The mandate calculator follows a relatively simple logic: at the constituency level it weights national data entered by the user by the territorial distribution of 2010 list ballots and allocates mandates as stipulated by the new electoral law. As our current study is limited to demonstrating the potential distortions of the constituency map it is practical to enter data that promptly reveal the lopsided nature of the system.

Putting aside the current balance of power and hypothetically granting Fidesz and MSZP the same level of voter support, with a politically neutral map there could only be a minimum difference in the number of districts captured. However, this is not the case under the effective district arrangement. Assuming a 40% electoral support for both Fidesz and MSZP, the current governing party would receive 58 and the Socialists only 48 individual mandates (for the purpose of the current study the balance of power between the two other parliamentary parties is irrelevant). In other words, **with equal support at the national level Fidesz would be allocated 10 more mandates than its rival** (see Table 1).

Table 1: the calculation of mandates based on the new electoral law, weighted with 2010 list data (the number of individual mandates, assuming equal support for lists)

	Fidesz	MSZP	Jobbik	LMP	Total
Votes (%)	40	40	14	6	100
	↓	↓	↓	↓	
Mandates (%)	46.73	42.21	8.04	3.02	100
No. of mandates	93	84	16	6	199
Individual	58	48	0	0	106
List	35	36	16	6	93

If we reverse this logic, it may be useful to analyse the different levels of support needed to grant an equal number of individual mandates for the two parties. Leaving the proportion of votes for Jobbik and LMP unchanged, to win 53 mandates each, Fidesz would need 38.95% and MSZP 41.05% of the votes cast (see Table 2). Based on this calculation, at the level of single-member constituencies the map is tilted in the direction of Fidesz, giving the party an advantage of around two percentage points.

Table 2: The calculation of mandates based on the new election law, weighted with 2010 list data (the percentage of list votes needed to win 53 individual mandates each)

	Fidesz	MSZP	Jobbik	LMP	Total
Votes (%)	38.95	41.05	14	6	100
	↓	↓	↓	↓	
Mandates (%)	43.72	45.23	8.04	3.02	100
No. of mandates	88	89	16	6	199
Individual	53	53	0	0	106
List	35	36	16	6	93

If we were to weight these hypothetical scores with 2006 results, Fidesz would enjoy an even greater advantage. Of course, in these tests the specific figures carry little relevance and one could also run tests resulting in smaller distortions. Be that as it may, the above examples clearly illustrate that **while a substantial opposition majority may put Fidesz out of business, the new constituency map may also convert a slight governing-party handicap into an advantage.**

The voting rights of non-resident Hungarian citizens

The extension of suffrage applies not only to the well-documented population of the Carpathian Basin. In the absence of accurate statistics one can only estimate the number of emigrants and their descendents who had left Hungary following the 1920 Versailles Peace Treaty. Whenever made possible by the laws of the host country, many have held on to their Hungarian citizenship. Since the successive waves of emigration reaches into the hundreds of thousands, today the number of potential non-resident voters may be in the millions.

On the other hand, those having lost contact with the old country pay less and less attention to Hungarian political developments and their daily lives are increasingly determined by events in the country of their residence. With the exception of a public-opinion poll conducted in Romania, we have little information on the voting habits and party preferences of Hungarians living in neighbouring countries. One thing is certain, however: ethnic Hungarians living across state borders cannot be treated as a single block; in each country and community they display a wide range of political views. Moreover, following the passage of a law in Slovakia in 2010 threatening to revoke the citizenship of those taking the citizenship of another country, few votes are expected from Slovakia.

Technical details of voting rights for Hungarian citizens with no permanent residence in Hungary generated intense debate among governing-party representatives, and these citizens were eventually granted a single vote on national party lists (i.e., they have no right to vote for individual candidates). In other words, whereas **Hungarians living in the country will have two, non-residents will only have one vote**. The arrangement violates the principle of equal voting right and runs counter, among others, to The International Covenant on Civil and Political Rights, as well as The European Convention on Human Rights. However, even though Strasbourg cannot take preventive measures to put pressure on the Hungarian Parliament as no election has yet been conducted according to the new law hence no related legal redress may be effectuated, yet **a potential retroactive condemnation would still be extremely embarrassing for Hungary**. To avoid such a scenario it should be necessary to heed the findings of the Venice Commission, to be published in June 2012; a requirement for the modification of the electoral law cannot be ruled out.

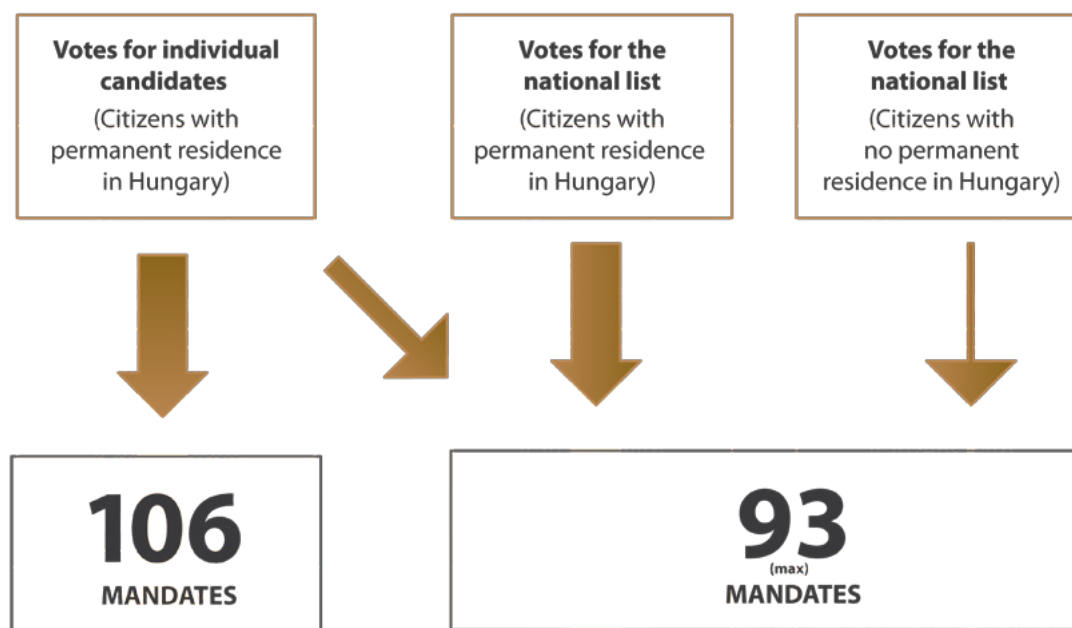
The precise details of the right to vote will be defined by a series of additional procedural issues expected to be regulated by the act on electoral procedures. For instance, the criteria for being listed on a voter registration sheet (the time, place and requirements for registering) are unknown. At this point it is unclear whether non-resident Hungarian citizens will also have the right to participate in the nomination process.

As parties can enter the race based on nominations in single-member constituencies, those without a registered residence in Hungary are unlikely to have a say. The issue of the passive voting right is also unresolved at this point, and while at first glance it appears to pose only a few problems (regulating the issue of non-resident citizens running on party lists should not be difficult) it may also lead to diplomatic conflicts. However, the real stumbling block may be the campaign itself. In the first place, is it possible to conduct a campaign in a foreign country? How can local rules regulating political campaigns in Hungary be applied across state borders? Which electoral bodies will have the jurisdiction to resolve contentious issues?

And last but not least, it is still unknown where voters outside Hungary would cast their ballot. While foreign missions can open their doors, they do not have the capacity to manage the anticipated number of voters. In addition to mail voting, the possibility of some form of electronic voting has also been raised (there is no evidence that the danger of fraud would be substantially higher in the latter case).

Out-of-country votes are expected to only have a minor impact on the final outcome of the election.

After allocating 106 single-member-constituency mandates on the first-past-the-post level along with the preferential mandates (if there are any), the remaining mandates, the number of which may reach a maximum of 93, are to be allocated (see the figure below; arrows illustrate the weight of different sources of votes). Votes cast to party lists – in and out of the country – are added together with unused votes coming from the single-member level. Not only will votes for candidates not obtaining a mandate in individual constituencies be added together with the votes for the national lists, but the votes for winners of any single-member constituency that were in excess of those required to secure the candidate's election as well. After having counted all the votes, seats are allocated to parties proportionally, using the d'Hondt formula.



The weight of votes coming from three different channels is well illustrated when one considers that at a turnout of 60%, in Hungary one can expect around 5 million votes, 2 to 3 million surplus list votes depending on the balance of powers and some hundreds of thousands of out-of-country votes. In other words, even if the number of votes cast outside the country came to an unexpected high of 700-800 thousand, these would barely amount to one tenth of the votes cast for party lists, while it is more realistic to calculate with 300 to 600 thousand out-of-country votes.

Aside from their numbers, the weight of out-of-country votes is also greatly determined by their distribution among the parties. In case the votes cast in and outside the country were distributed equally among the parties, we would possibly get the same proportion of mandates with or without the inclusion of out-of-country votes. In the case of minor differences, votes coming from outside the country could determine the fate of 1 or 3 mandates. However, in the extreme event that votes go in diametrically opposite directions in and outside the country (with large numbers voting abroad) as many as 4 or 6 mandates could go to a different party. Extreme event should be pictured as a scenario in which left-wing parties receive way more votes inside Hungary, while citizens outside the country would almost exclusively vote for right-wing parties on the scale of 400 to 600 thousand.

In other words, **by all counts out-of-country votes could have a maximum 3% impact on the total number of mandates.** Whether this proves to be significant or negligible depends on whether this impact will have a bearing on the balance of powers in Parliament defining the relationship between the government and the opposition. Perhaps the biggest risk in extending suffrage to Hungarian citizens around the world lies in the following dilemma: **the law enacted with the alleged intent to unify the nation may easily backfire if a large number of resident Hungarians come to feel they have lost the opportunity to determine their own destiny.**

The potential introduction of voter registration

When it comes to the electoral system, as a rule Fidesz declines to respond to criticism involving systemic problems and, focusing on details instead, it presents every change in technical terms. There is a good chance it will follow the same strategy in connection to the act on electoral procedures. In fact, as the bill involves complex issues, the party will find it relatively easy to sell particular issues to the general public. However, it is important to note that these procedures encompass crucial issues with potentially serious consequences for all political stakeholders, such as the issue of pre-registration that may result in the large-scale exclusion of voters.

According to earlier media reports, Fidesz is contemplating to replace an automatically generated voter registry with a system of individual voter registration for those wishing to participate in the electoral process. In addition, pre-registration could be closed as long as three months before the election date. Indeed, while registration sheets for out-of-country and minority constituencies are compiled through active registration, Fidesz' governing body has consistently promoted the idea of tying the participation of resident Hungarians wishing to vote for the party list to active registration as well.

In respect to the registration system, one can claim again that on its own it does not represent an anti-democratic measure; a similar system is in use in a number of other countries, such as Great Britain or the United States. However, apart from the fact that the practice has never been tested in the past 20 years in Hungary, pre-registration raises a number of concerns. Firstly, **nothing justifies its introduction as a safeguard for a clean election as Hungary's population-registry system has never been questioned in past elections**, i.e., in contrast to Great Britain and the United States, in Hungary there is no need for the institution of pre-registration to prevent potential election fraud. Secondly, based on leaked information, Fidesz' initial proposal called for **closing the registration process far in advance, three months prior to the election date, an unprecedented measure even by international standards**. Moreover, the measure would double the length of the campaign period that Fidesz plans to shorten anyway.

And finally, the argument that the measure would promote citizen awareness is utterly false; whereas the nature of the country's political culture and the electorate's political activism cannot be ignored in this context. **For in Hungary a popular tendency of alienation from politics and voter apathy are major problems, and in this environment pre-registration, would only increase the number of passive citizens instead of increasing participation**. In the final analysis, there is reason to believe that the pre-registration proposal intends to serve primarily Fidesz' policy interests based on the assumption that the party's traditionally more active voter base can be easily mobilized to register, while the passive and disillusioned part of the population opposing the powers that be would waive its right to vote by failing to register or missing the registration deadline.