

New Electoral Law, Part II: Redefining proportionality

Last week we analysed how Fidesz would change suffrage rules by giving Hungarian citizens abroad the right to vote and how it restricts ballot access. In Part II of our electoral law analysis we take a look at the more technical aspects of the new election law, analysing how changes to electoral system will affect seat distribution, voting behaviour and future majorities. We argue that Fidesz tinkers with the system in a way that will increase the likelihood of emerging victorious from a battle with a fragmented but overall strong opposition.

Any electoral system and especially a complex one such as the Hungarian (which ranks on par with our language in terms of its difficulty, though there are actually people who understand the latter) will create a variety of incentives for voters and parties. Many of these incentives will play out differently based on the prevailing distribution of voter preferences, both at the national and the single-member district level.

There is no way of setting up rules so that they always favour one party, at least not in a democracy. Any free and fair election is always a risk for the incumbents. That said, Fidesz' proposal would tweak the system to the nigh maximum degree possible to favour its own prospects in the near future. In light of the system's complexity, some of the proposals may turn on their creators, but that is a calculated risk.

Proportional?

Government representatives have stressed that the changes proposed will make the electoral system more proportional. Save for one exception among the many changes that have been introduced, this is plainly untrue.

The system will favour larger parties, and especially the largest party a lot more. It will increase the likelihood of a victory by a minority party that is stronger than any single party in the majority opposed to it. If the scenario of a major party facing several smaller parties is not familiar, then you might want to take a pre-release peek at the 2014 (or earlier) election results, for that will be the most likely outcome then.

Let's start with the most important factor in terms of decreasing proportionality. Fidesz will actually increase the share of the least proportional aspect of the system, that is single-member constituencies. While MPs elected in single-member districts make up ~45% seats in Parliament today, that ratio will rise to 53%, or 106 seats out of 200.

Correspondingly, the ratio of the seats distributed based on proportional representation (PR) and the so-called compensations lists (seats awarded for parties on the basis of votes received by its losing candidates in single-member districts) will decline, rendering the system less proportional on the whole.

One-off balloting

Another aspect causing less proportionality is the abolition of the second round of balloting. For most of our readers a single round of elections is probably the norm, two rounds of balloting are in fact unusual internationally. The most prominent example is France, which provided the model for Hungary's mode of selecting single-member constituency MPs.

While a single shot to make a decision is certainly not wrong, therefore, it bears emphasising that it not only favours larger parties but changes the entire logic of how voters choose. The run-off allows for the possibility to rethink candidate-selection preferences based on the outcome of the first round.

This possibility is gone and – before casting their only ballot for a single-member district candidate – voters will have to weigh whether she stands any chance of winning or whether by supporting their first choice they actually ensure the possibility that their least preferred candidate carries the district. This calculus is especially pernicious with regard to the compensation list, which constituted 15% of parliamentary seats until now, though its future share is still unclear.

Beware of presents

Retaining the compensation list seemed like a generous measure. It will not only fail to fulfil its function without the run-off, however, but in fact create perverse incentives for the parties involved, especially the current opposition, which is no doubt what the proposal intends.

As we noted above, the compensation list seeks to reward votes submitted for losing candidates in single-member districts, thus ensuring that most votes are not “wasted”. The logic is that in the first round voters select the party of their choice – this is only the pre-selection phase after all – while in the second round they rally around the candidates that are still standing and select those they have the least aversion to, which may or may not be their first round choice.

Compensation votes are only distributed based on the first round results, when voters are free to follow their heart's desire, including supporting small parties. Even if their second preference would be a major party candidate who would stand a better chance of winning with their support, they still have the run-off to line up behind her.

Compensation turned on its head

If you take the run-off out of the equation, however, and award the district to the vote-getter with the highest tally in the first and only round, then the logic changes completely: by voting her first preference, a small party voter increases the likelihood of a disliked major party candidate winning (or a preferred major party candidate losing) the district.

If she is rational, therefore, she will vote for the second choice immediately, to avert the worst outcome, that is a disliked candidate carrying the district. If many voters are rational, that could cost small parties quite a bit of representation (LMP won 11 of its 15 seats from the compensation list),

Now, many voters are not in fact rational, but vote straight party line, and especially small parties more concerned about gaining any representation (if any actually make it onto the ballot, cf. HPID 2011/41) might encourage their voters to stick with their candidates so they can snatch up a few more seats thanks to the compensation list.

This will benefit the political side with the most voters who support their candidates as their first preference – even if this party does not even come close to having an actual majority. While the opposition voters are fragmented between various candidates, the united bloc sweeps many districts where its results are weaker than those of its opponents combined.

A forced marriage?

In essence then, the opposition parties will have to make up their minds about running together with joint candidates already before the election. To make things even more tricky, joint candidates are likely to require a joint list, too, since the current law – and this rule will likely be retained – mandates that the votes for losing joint single-member district candidates (ordinarily the source of compensation list votes) do not accrue to separate party lists, but only to a joint list. If there is no joint list, the vote is wasted.

Unless they want to forfeit crucial compensation list seats, opposition parties therefore either have the choice of dividing the electoral districts and not running competing candidates in any district where they have a shot at winning – a workable, but very complicated solution – or, more likely, to run a joint list. Especially for LMP, which is wedded to its dislike of the Socialists, that would be difficult to swallow. If you add a new Gyurcsány or other leftist list to the mix and realise how explosive it gets, then you can see why Fidesz might think that this is such a great idea.

And a bit of proportionalisation

Yet among all the dubious and obviously self-serving measures, there is one move that has genuinely made the system more proportional and favours the smaller parties at the expense of the major party/parties. Fidesz' proposal would abolish regional lists and replace them with a national list.

While previously the national list was only used in the distribution of the compensation list seats, the new method would also use it to distribute seats for party list votes. Until now, party list votes were translated into seats at the county level. This meant that while the official threshold to win seats was a 5% vote share, it effectively was a lot higher in many counties with few seats to distribute.

Despite surpassing five percent in a given county, smaller parties often failed to pick up even a single seat because with only 4-6 seats to distribute, a result under 10% was not enough to capture even one. In effect, then, these votes were to a great extent wasted (they contributed of course to the five percent national result necessary to enter Parliament).

That is no longer the case and smaller parties' share of the PR-based seats will be a lot closer to their share of the votes, which is kind of the idea behind PR lists. Kudos to Fidesz for this welcome exception to the general trend of discriminating against the smaller players.

Gerrymander in da house?

Finally, little has been said thus far about one of the key outstanding changes: the borders of electoral districts. In a 2005 decision, the Constitutional Court had already struck down the current borders due to population imbalances (followed up by a 2010 ruling quashing the entire legal framework for determining boundaries), so a redrawing has become a judicially-imposed necessity. But of course the drop in the number (if not ratio) of districts makes redistricting inevitable in any case.

This will provide further opportunities to subtly shift voters between districts to as to maximise...well, whatever it is that the political cartographer seeks to maximise. Gerrymandering, as the process is called, is of course a fairly widespread though democratically very dubious phenomenon.

It is highly useful, however, when the ruling party alone gets to decide where the boundaries lie and whom they benefit. Fidesz could make an important gesture by giving the opposition some veto rights in this regard, but in light of its practice hitherto we wouldn't put much money on such an offer being made.

Tailored for 2014

The new electoral system appears as if tailored for 2014 when Fidesz will most likely be the largest party facing three or more competitors. Even until now the electoral system made it possible for a minority party to win elections – see for example the Socialists in 1994 – but the envisioned changes will tilt the balance even more in favour of the party that won the most votes.

While Fidesz won slightly over two-thirds of the mandates with “only” 53% of the votes in 2010, in the next election even a lower share would suffice to achieve this. That said, a two-thirds majority is most probably no longer the goal.

More importantly, the electoral system gives Fidesz an even larger buffer in terms of losing votes and nevertheless retaining its majority. Unless the opposition unites or a new, major competitor emerges, Fidesz might drop as much as 20% - which is almost as much as MSZP lost between 2006-2010 – and still emerge with a majority despite having polled only around 30%. This is not necessarily a likely scenario, but the mathematical possibility shows just how vast Fidesz’ buffer is: a tally over 40% (which would still mark a big drop in support) provides a very high probability of a parliamentary majority under abovementioned conditions.

While Fidesz can’t rest easy in light of growing popular dissatisfaction and ominous signs in the economy, in terms of the election laws it has done all it can to buttress a future victory.