

Conclusions of the summary report on the courts' jurisprudence in cases related to election proceedings and referendum proceedings

The jurisprudence-analysing working group was formed in 2017. Members of the working group were partly Curia judges partly external members, including representatives of the National Election Committee, the Constitutional Court, the Media Council and university researchers.

The working group analysed 700 court decisions given in cases related to elections and referenda. The analysed sample included decisions related to the 2014 general (Parliamentary), local government and mayors' elections as well as court decisions related to national and local referenda held since the entry into force of the Fundamental Law of Hungary.

The report summarizing the results of the jurisprudence-analysis consists of 250 pages and has three main Parts: Part I deals with election cases, Part II analyses referendum cases, Part III examines the general procedural rules applicable both to election and referendum proceedings.

The Parts dealing with elections and referenda follow the structure of the respective statutory procedures: first the function and the specific features of the respective procedures are presented, then the various stages of the procedures (e.g. candidacy, voting, counting the election results) are dealt with in detail. The related Constitutional Court decisions are also analysed in these Parts.

From among the common rules, mention has to be made about the issue of campaign activities including, on the one hand, political advertising and public service advertising and, on the other hand, the limits of acceptable criticism of public figures.

In its analysis the working group delineated political advertising from public service advertising according to the different advertising places, namely: linear media, printed press, internet press products and social media.

As to the limits of acceptable criticism of public figures, the working group analysed not only domestic court decisions and Constitutional Court decisions but, by applying the comparative approach, also the relevant case law of the European Court of Human Rights and the US Supreme Court. The summary report made an in-depth analysis of the distinction between value judgments and statements of fact violating personality rights and reached the conclusion that the enforcement of the principle of 'purity of elections' posed a limit to knowingly made lies even if the lie was related to the activities of a public figure.

Finally, the summary report analyses the relationship between the former Act on Election Procedures and the new procedural laws having entered into force on 1 January 2018 (code of administrative procedure, code of civil procedure) from the aspect of their applicability in remedy proceedings.