

# ELECTION FRAUD AND ABUSES<sup>1</sup>

ZOLTÁN TÓTH

Institute of Political Sciences  
Telephone number: (36-1) 411-6523  
E-mail: tothz@sztaki.hu

## Subject of the fraud

The outcome of elections determine the personal circle of those individuals who will exercise constitutional (parliamentary and municipal) power in a state. Admissible, and even inadmissible methods are used by parties, governments or persons in the pursuit of power. Election fraud occurs in every country in the world: there are election abuses irrespective of the number of inhabitants, the geographical size and political system of a country. It happens even in democratic states that the number of votes actually cast by the electorate and those included in the official count, are at variance. Of course, there are more opportunities for election fraud (unfair elections) in dictatorships than under democratic conditions and circumstances. It happens even in democratic states, that power is considered more important than fair play. Democracy does not in and of itself provide guarantees for fair elections. Elections are always threatened by the possibility of abuses, or of fraud being committed. No country in the world is exempt from at least some people intent on perpetrating fraud. The intention to commit a fraud is of subjective origin, so it is not foreign to people. Therefore, a political consensus embodied in constitutional rules and a solid system of rules based on firm guarantees must be established between the governing and the parliamentary opposition parties, in order to ensure that fraud may not influence the result of elections, or, in case it already took place, that the facts be made public. It may happen that a lesser or greater portion of the Members of Parliament attain their position by fraud, however, electoral law should contain guarantees annulling such mandates sooner or later.\*\*

---

<sup>1</sup> Study published by the The Hungarian Center for Democracy Research Foundation, Budapest in the political annual of Hungary, Volume I, pages 568 to 578.

\*\* The cases described in the study are from the findings of the Association of Central and Eastern European Election Officers (ACEEEO). As of 1995, ACEEEO has been monitoring elections in twenty countries.

## **The concept of election fraud**

The term “election fraud” is a collective concept in colloquial language, referring to acts that create a difference between the actual and formal election results. Fraud is not simply related to an act deemed legally criminal, but is of a broader concept: it gives rise to a deviation from the will of the electorate regarding the election process and the numerical result of voting, and deflects the result of elections from the will of voters in an unfair or illegal manner.

### **Who is the offender?**

The fundamental question regarding fraud is the identity of the perpetrator. The most serious case is when election fraud is institutionally organized by the government or party in power. In such cases, the election results may not have the legitimizing effect, and may also be generally questioned politically by foreign governments as well. Nevertheless, many conditions must be in place to implement institutionalized fraud by governmental authorities; as a result, such activities will become known sooner or later, or, ultimately, before the court of public opinion. The most dangerous form of institutionalized fraud is one committed by an organization at the apex of the election hierarchy.

A government must be held liable for the transparency of elections, if it ‘tacitly resigns’ to the fact that a ‘narrow circle’ of persons deliberately strive to falsify election results. It is another matter, that the government or the minister accountable for elections should be politically and legally scrutinized if the elections machinery produced ballots not containing the names of legally nominated parties, or questions being put to a referendum. Such problems go beyond constitutional issues, and in general raise the question of the government’s social legitimacy, and as such, have far-reaching effects significantly beyond the eventual legal consequences.

Special attention needs to be paid to situations, when a government fails to provide the legal preconditions required for the conduct and organization of fair elections. In such cases, there is no question of a wilful fraud, yet, the lack of the necessary conditions make the election results disputable. For example, no centralized state records exist to allow personal identification of the electorate; moreover, no organizational or personnel prerequisites necessary for the public administration side are established; failure to provide sufficient sums to establish the proper material conditions (ballot-boxes, ballot-paper, computerized control, transportation costs, etc.).

From a societal standpoint, a different yardstick is used to measure election fraud if the perpetrator is one, or only a few individuals. In general, such acts do not effect the result of the election since they are based on personal ambition or over-enthusiasm in the interest of a certain party, and do not exert enough power to influence results determined by several million ballots cast. (This differs from a fraud case where hundred inhabitants of a settlement elect their mayor.) Fraud committed by individual persons does not principally threaten the result of an election, but does have an effect on public confidence in law and order. Such fraud may diminish the legitimacy of elections; therefore, it cannot be tolerated, even if resorting to criminal prosecution. Applying the terms used in criminal law, it is important to clarify whether election fraud can be committed only by wilful misconduct, by reckless behaviour, or a mistake committed by the perpetrator. Practical experience shows that election fraud may be committed only wilfully. Citizens and members of election bodies are generally aware of the rules and regulations guiding elections, and should they be violated out of negligence, the actual results can be reconstructed. Obviously, 'negligent election fraud' committed by the individual citizen versus a member of an election body should be adjudged differently. A citizen may not recklessly commit an election fraud, since his/her reckless conduct might not result in influencing the election results. This, however, can only happen as part of the activity of a member of an election body. A mistake (for example, arithmetical error in aggregating the results of election minutes) may by no means point to election fraud as a criminal act, but it is another matter that such a mistake may result in ethical violation or, in the case of employment relationship, disciplinary accountability.

Behaviour, which although is in obvious contravention of provisions of the electoral law but is perpetrated without intention of fraud, even though it may result in the invalidation of elections and necessitate a new election to be held within the framework of legal remedy, should be distinguished from election fraud. For example, if the number of a ballot counting committee drops below a certain level prescribed in electoral law on the day of election, due to illness or death, and the balloting is continued despite such an event.

### **Types and methods of frauds at elections**

There are several types of election fraud, namely, primitive, intellectual or indirect. Such types and methods become effective or "successful", if the results of the election among the parties (coalitions) are balanced, that is, they are between forty five and fifty percent. If there are great differences in election results, then the fraud may not be successful since it is unable to influence the outcome of the mandates. Despite of this, fraud is fraud.

Primitive fraud is a method which is directly aimed at falsifying the result of the elections. The simplest election fraud is when the result of the election in a polling station is determined regardless of the number of ballots cast by the electorate; different data is recorded in the minutes than the results shown by the ballot count. For this method to be workable, a precondition is the common conspiracy of all members of the ballot counting committee. Should only one member expose the case (by denouncing others), the fraud can be subsequently expressly proved, since paper ballots must be kept for a definite period of time and the actual results can be reconstructed. Another method of fraud is when the election committee determines – at the time of aggregating the data from the minutes of the polling station – a result different than the result that would be attained by fairly aggregating the results at a given location. This method is also considered primitive, since the minutes taken in a polling station are made out in several copies, and may be used as proof in legal remedy proceedings. Another method also used is the falsification of the minutes containing the correct election results, however, it is also predicated on the ‘consensual conspiracy’ of the members of the ballot counting committee. A statutory guarantee to preclude this type of fraud is the requirement that the ballot counting committee and the election committee be comprised so as to represent adversarial viewpoints. In the event that nominees have their own representative in the ballot counting committee and in other committees, the opportunity to commit fraud may in principle be excluded. In some Western European countries and in the United States, different methods are applied. For example, in some states within the United States and in Great Britain, nominees do not have their own representative in the ballot counting committees, and it happens that the ballot counting tasks are performed by only one (or two) person(s); in spite of this, there is no fraud committed. It is obvious that a different type of political culture exists, and a different level of moral and material appreciation is accorded to public officials in the aforementioned countries. The majority of public officials do not even think of fraud when officially counting the votes since the social status of public officials is attractive, and the consequences of violation are grave. Furthermore, there are other (not legal) social guarantees to prevent fraud besides the liability of public officials. Such are, social openness and freedom of the press allowing for anyone to be present at ballot counting. Should such right of a person be violated, the social consequences are much graver than any eventual constitutional accountability. That method can, of course, be applied in countries where societal relations and relations with the executive branch are in balance. In countries where there is a lack of public confidence and a keen opposition between political forces exist (for example, Central and Eastern Europe during the 1990s), or as at present in Africa and in some Eastern European countries, you can only resort to ballot counting measures where the representatives of the opposing parties are also present.

The misuse of paper ballots is an obvious method of falsifying voting results. The most primitive form of this type is when one, or several members of the ballot counting committee subsequently invalidate ballots (for example, by placing an additional “x” or “+” mark on the paper ballot). This method is also detectable. It is interesting to note that every lawmaker attributes great importance to the requirement of using a pen, rather than a pencil at polling stations. Such insistence dates back, in all probability to the time when traces of erasure could not be subsequently discovered. Currently, all preconditions exist to detect all such acts of fraud. The replacement or concealment of ballot papers can easily be avoided if paper ballots are official forms subject to strict accounting procedures. The prevention of such type of fraud is not subject to the quality of the paper ballot, but to guarantees embedded into the administrative processes.

To commit fraud by transferring blank paper ballots to the outside and smuggling them back into the polling station requires a high level of organization. An essential element of this method is the uncertainty of the perpetrators, as to whether the corrupted voter would actually vote for the candidate for whom he received compensation. The organization of such fraud starts by collecting ‘dirty money’, and continues in a car or a flat near the polling station. Voters, who are recruited through a whispering campaign, know that they will be granted a certain amount of money (or durable foodstuffs). The first person acting on behalf of the organizers of the fraud places only the envelope without the ballot into the ballot-box at the polling station, and hands over the unfilled ballot to the organizers outside. The organizers then fill in the paper ballot, and the next deceiver takes it in his/her pocket to the polling station, placing it in the ballot-box, pocketing the blank ballot he/she received from the ballot counting committee. Afterwards, he/she hands it over to the organizers outside. Remuneration is granted only for blank ballot papers.

The misuse of voter registries is another form of election fraud well-known and occasionally used in the United States, Russia and Hungary alike. There is no country in the world where voting is possible without personal identification of a citizen (voter), or where the number of citizens eligible to vote could not be determined. It is well-known from the story of Gogol entitled “Dead Souls” that other citizens cast ballots in place of deceased voters. A more refined method of the misuse voter registries is as follows: voting for a special group of citizens is conducted in secret (for example, in military electoral districts), and the election result of such districts is added to the civilian results only if, it is in the interest of the government. It is a particularly good method to falsify the result of an election if there is no registry of eligible voters (due to a break-up, or separation of a country into several parts), and where the citizenry is allowed to vote on the basis of different registries (for example, bank records kept for

exchange transactions when a new currency is introduced). There are actual examples of the number of eligible voters increasing in certain countries by millions on election day.

A well-known method of election fraud is when some of the voters “move” from their own electoral district to another one, in order to be able to cast their vote for the nominee of the other district, or add their voice to a resounding answer to a referendum. An even more refined form of such type of fraud is when after registration in the voter registry of another electoral district (change in home-address) the persons in question do not take part in the election (or in a referendum), so as to invalidate the results by virtue of a low participation threshold. Therefore, it is fundamentally important for the bodies responsible for compiling voter registries to regularly monitor trends in the number of changes in home-addresses in their areas of competence, and to take organizational measures when unnatural trends are identified. In such cases, the existence of fraud is expressly proved, if those voters who moved to another electoral district, “return” to their original place of residence. In Hungary, such fraud is committed in cases of local referenda and not during general elections. Such referenda are usually held to secede from a town or municipality, so that local business taxes could be appropriated by a geographically small and sparsely populated part of it. In such cases, fraud is a means for the unlawful appropriation of a part of the public property.

For lack of appropriate guarantees and organizational measures, voting other than the place of residence of a voter (“blue paper voting”), or voting through mobile ballot-box is an especially good way to commit election fraud. The right to vote is a primary constitutional right, the exercise of which must be ensured even if an elector is not recorded in the voter registry (being recorded in the registry is a declarative and not a constitutive act). As it is also proved by the “blue paper voting” elections held in Hungary in 1947, the enforcement of such a legal principle – without reasonable guarantees and administrative organizational measures – may give rise to mass election fraud. In 1947, the legal provisions on elections prescribed and allowed that a voter, who was not staying at his/her place of residence on the day of election, could cast his/her vote elsewhere. No statutory provision was at that time in force which could have made it obligatory to control whether a voter casting his/her vote at another settlement, had actually voted at several places or not. Accordingly, administrative bodies failed to control voters who cast their vote twice or several times. Public officials of the time can partly be excused from responsibility because such election fraud was institutionally planned by a party / parties, and, for lack of computers, manual checking would have resulted in an unrealistically heavy work load.

Monitoring multiple voters is not an easy task even today, since all data submitted to the eleven thousand polling places in Hungary by voters providing proof of eligibility must be verified at one central location. Nevertheless, computers significantly reduced the workload. Even though the electorate was informed that voter eligibility would be subject to computerized verification, there were a number of people who cast votes twice, or multiple times during the 1990, 1994 and even in the 1998 elections. Technical developments allow for the detection of such cases, leading to criminal prosecution. However, the low number of offenders does not obviate the need to consistently monitor the situation as it could invite a slackening in strict enforcement.

Voting by means of mobile ballot-box may create similar conditions which might, however, be less important in magnitude. Such conditions may occur if the ballot counting committee does not have enough members to arrange for voting at the home of a voter, or to secure voting in the presence of at least two representatives of opposing parties. Voting by mobile ballot-box may potentially create dangerous conditions since voters requesting it are in general elderly or ill, who, even though are capable of making their will known, can be influenced (by threats or promises) more easily than the average person. Such conditions can only be avoided if mobile ballot-boxes are jointly delivered by the representatives of opposing parties to the home of ill or elderly citizens.

It is particularly important that the voter registry be correct and exact, especially in cases where an election is held with the participation of a small number of voters (for example, if 100 inhabitants of a settlement elect their mayor). A voter may pass away on the day of the election, or on the preceding day, thus he/she cannot be deleted from the voter registry and the result of the mayoral election may depend on only a few votes. Taking into consideration the fact that in such a case a mayor may win his/her position depending on the correctness of the voter registry, such instances should be considered where an error in the registry could materially influence the outcome of the election. It may, *ad absurdum*, occur that the number of the votes cast for and against an issue in a national referendum is the same (such as the referendum held in France on NATO membership, or the US presidential elections). The question is whether the practice in the aforementioned mayoral election example may be applicable at all in cases where several millions of votes are "facing off". The reason such practice would not be applicable is that the errors in the registry of eligible voters statistically balance one another out. An additional question may also be raised, namely, how a town of ten thousand inhabitants should relate to the correctness of the voter registry issue. The cases listed above cannot be categorized as wilful fraud, but at the least they are cases of negligence, or rather a *force majeure*, for which no individual can be held personally responsible.

The abuse of ‘nominating coupons’ before election day is another form of fraud. The law stipulates that a nominee will have his name on the paper ballot if a certain number of voters support it by their signatures. Signatures may, of course, be falsified. ‘Nominating coupons’ for this reason should contain an identification code making election fraud considerably more difficult. Such identification code may be a taxation, social security or a personal identification number. These codes are difficult to obtain in large numbers by persons campaigning for signatures, consequently the opportunity for falsification is lessened. It is much easier for those, who in their official capacity have access to such information, to obtain the identification codes illegally (for example, lawyers, physicians, public servants, etc.). Therefore, it is particularly important to record all access to such data. This problem has generally been solved in big computerized systems (such as, in vital statistics), however, outside the circle of public servants, the monitoring of data protection enforcement is somewhat shallow. There are proposals that no personal identification code or number be inscribed on the ‘nomination coupons’. Should such a proposal be accepted, the collection of ‘nomination coupons’ for an election would become unnecessary since all data (name and home address) required to obtain 750 nominations for a parliamentary candidacy could be copied from the telephone directory.

An election fraud is deemed to have taken place when a citizen supports by his/her signature more than one candidate. A special problem is to comply with legal provisions relating to the collection of ‘nomination coupons’ at off-limits locations. Legal provisions describe these locations as follows: public health institutions, workplaces and public transportation venues. Such legal provisions are aimed at protecting citizens, who have limited opportunity to manifest their will from “assertive” party workers. The violation of such provision is sanctioned by law in a manner that all ‘nomination coupons’ collected in this way are considered null and void. Enforcement of the aforementioned sanctions is limited by the practice of the election authorities, in that the sign-up sheets collected for a referendum in favour of a social group within a pre-defined profession is regarded as collected at the workplace only, if this is confirmed by several witnesses. Sign-up sheets mailed from the workplace of the members of such group to the election committee cannot be regarded as having been collected there.

The collection of ‘nomination coupons’ for money constitutes obvious election fraud. The only question is: who gets the money? An act by an individual accepting remuneration for making the nomination, has been held clearly illegal, but if the money is received by a natural or legal person, only for collecting supporting sheets, it cannot be considered as election fraud.



It has already happened, that a person who has not been able to collect the appropriate number of 'nomination coupons' was registered as a candidate (and so he/she was listed on the ballot). On the opposite side, it also occurred that a legal candidate has not been listed on the ballot. In such cases, just as in the determination of whether election fraud has taken place or not, the matter of intent is decisive. It is, however, unlawful – regardless of intent – and it implies a repetition of the election, if a candidate is not listed on the ballot owing to for example, a printing error. A similar situation is, should a candidate not legally qualified, appear on the ballot. The reason for this classification is that the result of the election would have been different if only the legally qualified candidates had been listed. It is yet a different category, when a person not entitled to be a candidate is listed as such on the ballot, however, his name can be deleted by the election committee, so the voters are able to cast their ballot being aware of the deletion.

A person, who prevents other persons from exercising their right to vote at an election, commits election fraud. Such acts can be implemented in various ways, for example, constraints, threats, etc. But it is questionable, whether an election crime can be committed by providing good faith, or bad faith information that results in a voter to be unable to cast his/her vote (for example, suggesting that the voter should cast his/her vote in another polling place, and not in his/her district, etc.).

Morally, it is an obvious election fraud, if a candidate purchases his/her mandate for money. On the other hand, there is a great variety of such cases and they must be adjudicated on their own merits. Should a candidate purchase a party's vacant mandate position for money, it is construed to be an obvious election fraud. A question may nevertheless be raised: how can a candidate alone be able to buy such vacancy for money without the cooperation of the party's leaders. Morally, this behaviour also cannot be considered any less reprehensible. It is a different issue, when a party asks for pecuniary assistance from candidates before elections are held. This type of behaviour cannot be supported morally either, but at present it does not violate the law.

### **Campaign financing**

The lack of regulations relating to the collection of campaign monies results in more debated cases in regards to equal election opportunities. The relevant legal provisions regulating the management of party funds are insufficient, and do not contain any specific rules besides the limitation of election expenditures to an amount between HUF 1 million to HUF 386 million. It is well-known from history, that in case of victory, the parties frequently reward donors contributing to the election campaign with government positions. (In hotels, recep-

tion halls are called lobby because parties in the United States often received money from donors in hotel halls.)

It would not be viable, but a legally feasible path to prohibit political parties from recruiting financial donors for their election campaigns. Equal election opportunities are essentially questioned, if the parties secretly receive 'soft' funds for their campaigns. In democracies, one should strive to maintain equal election opportunities even if it cannot be realistically guaranteed, since without it the rich would be able to buy its representatives making the whole election proceedings unnecessary, even worse, it would make this institution of democracy disingenuous. Campaign financing of parties is a global problem.

The problem is rooted in the general financing system of the parties. If the law contains only provisions on campaign financing, and the parties are able to collect money during the remaining three and a half years of the election cycle virtually without any oversight, then even if the law is "good" for campaign financing, all appeals to fairness will fall on deaf ears. The electorate has a right to know, both before and after the elections, regarding the source of wealth of its representatives, whether it comes from corporations or private individuals.

## Media

Television can be regarded to be the most efficient means in election campaigns. Due to the influence it exerts on masses of potential voters and the intensity of its message – it has the most vigorous effect on the will of the citizens, and through them, the final outcome of elections. A part of the media is in the public domain, and some of it is privately owned. The Hungarian electoral law strives to create equal opportunities among parties in the realm of public-service television channels (by way of an obligatory introduction of every political party), and parties are allowed to appear on television channels in proportion to their nomination support. The more detailed the relevant regulations are, the more equal opportunities among the parties can be increased, however, the more boring they become from the point of view of television programmers. In 1990, sixty parties in Hungary were given the opportunity to introduce themselves in a five minute spot, however, such programs became the object of cabaret talk shows. But there is another question: how can citizens learn about the details concerning the parties, if not through easily accessible programs. The use of local television channels in the election campaigns poses a special problem. In addition to national party politicians, local television channels are further influenced by the local powers. It is certainly considered an election fraud if a mayor prescribes which candidates can appear on the local television channel, but it can also be debated, when a certain mayor's 'public appearances' are far more numerous than that of the other mayoral candidates.

In this regard, Hungarian electoral law contains only an insignificant number of legal provisions as to quantity or quality. Pursuant to the electoral law, this issue should be regulated by the law on media, however, media law stipulates that regulations are to be provided for in the electoral law. This is a typical example of a loophole.

In Western Europe, there are special institutions set up for election campaigns measuring the total time of candidate appearances very precisely, regulate program broadcast time (before and after prime time, during daytime, etc.). In Hungary, probably such institutions should also be required to be introduced.

### **Vote by secret ballot**

The legal order of elections requires that the conditions of vote by secret ballot in polling stations should be secured. In Hungary, the legal provisions prescribing the same were passed in 1945. The Hungarian electoral law of 1870 contained the following remark: secretness is foreign to the spirit of the Hungarian people. The outcome is well-known: the candidates of the government party won in general elections by open voting. At present, laws not only prescribe that voting should be implemented in polling-booths, but the public administration system also guarantees the provisions for their use. (In some Eastern countries a desk along the wall is regarded as an appropriate means for a vote by secret ballot.) But what is to be done if a voter does not intend to cast his ballot in a polling-booth enabling him to vote by secret ballot, but he/she wants to cast his/her ballot in the polling station so that anybody can see him/her voting. It is certainly an election fraud if a voter uses the occasion to vote for influencing other voters present at the polling station. It is an especially grave case when such influence is exercised by a member (members) of the ballot counting committee. The lack of a ballot-box, or its handling in an unlawful manner is almost a call to commit election fraud. This is why the electoral law provides for very precise and detailed rules concerning the mode of storing, handling and counting of paper ballots.

### **Services provided for voters free of charge nowadays**

The electioneering tricks inducing voters to vote for the candidates of the government party are well-known from the novel of Kálmán Mikszáth "Two elections in Hungary". "We have also given them something to eat and drink" Mór Jókai, member of the Parliament for the government party described in one of his novels. Such election fraud was made possible because of two things: on the one hand, there was a very small number of voters (only 3% to 8% of the population), and on the other, there was open voting and the costs and expenses of food, drink and transportation could legally be written off (as provided for

by law at that time in Hungary). This method could also be used because elections in Hungary in the nineteenth century lasted two or three weeks, or even up to two months, instead of one day.

As suffrage became universal (there were already 8 million voters), the reduction of time for elections to one day, the introduction of the prohibition of alcohol sales on Election Day between the years of 1945-1989, as well as the institution of secret balloting, the number of such type of election abuses decreased radically. Nevertheless, even nowadays it is regularly objected to during mayoral elections that voters were supplied “food and drink”, and mayors in office sometimes even promise to grant welfare payments or support to their voters.

### **Campaign abuses**

Campaign abuses comprise the following elements: presenting election programs, making propaganda for a candidate, list or a party, organizing election meetings, placing election posters, collecting donations, recruiting party activists, etc. Such large-scale methods seem to be insufficient, and other methods are also used, such as, in particular, using data or facts relating to the private life of the relatives of a candidate; publishing announcement(s) on behalf of another candidate or party without his/her/its knowledge; falsely using the name or symbols of another candidate or party; pasting over a party's election posters on the posters of another party, or repainting, or making fun of the other party's posters. Such acts are generally referred to in the technical literature collectively, as negative campaigning. In some countries, negative campaigns are prohibited by law; nevertheless, they are not penalized even there. In Hungary, negative campaigning is not forbidden.

Hungarian electoral law provides for campaign silence on the day before election day. The violation of this legal provision is, however, penalized only slightly; and election bodies and courts penalize the breaches of the rules of campaign silence only to an insignificant extent. It should, of course, be judged differently, if on the eve of the election leaflets are placed in the mail-boxes of the flats of voters, or if somebody standing at the door of the polling station tried to persuade voters to vote for a certain party. It is, however, promising that a court passed a strict sentence and ordered a repeat of the election when in one of Budapest districts the campaign video of a candidate was broadcast several times “by mistake” on election day on a local cable television station. Election bodies as well as the courts should strengthen their practice and hand down severe punishment when a mass violation of campaign silence takes place and it is deemed suitable for influencing voters' decisions.

## Computers

A part of the general public deems the use of computers as providing opportunities for election fraud. It is, of course, possible to commit fraud either through data recording or software applications, by connecting to a network, or by causing hardware malfunction. (In a Northern European country, according to the computers, an ultra-radical party was leading for 30 minutes.) The fear of the unknown and the lack of appropriate guarantees give citizens the impression, for good reason, that computers may be an appropriate means for committing fraud. Serious election fraud can be committed by computers when a person or organization intending to perpetrate fraud, is willing to make an investment of funds in his/her/its computerized systems equal, or similar to that of the existing official election data processing system. In all probability, computer fraud in such cases could not be prevented. Therefore, for security reasons, it is required that in addition to computerized ballot counting, election results be also counted manually. By consistently implementing such a method, in principle it can be excluded that it would make sense to influence the computer system which processes election data, since any attempt at fraud can come to light after manually aggregating the data the day after the election. Therefore, interference with or deceiving the election computer system may lead to deceiving the general public and foreign governments for a few days only after elections.

Computer technology affords good opportunities for detecting computer fraud. The development of satisfactory software and the evaluation of election results after the processing of election data, election fraud can be unequivocally discovered. For example, in a distant country, in fifty percent of the polling stations located in small villages only the ruling party won. Since the voters in such villages constitute only 1 percent of the total population, even this type of election fraud could not influence the countrywide results. However, the fact that fraud has been committed was proved beyond any doubt, since participation in the election in the above polling places was 100%, and every vote cast was for the government party. In the absence of a computer system – through which the results of an individual polling station can be compared with that of all other polling stations in the country – fraudulent acts would never be revealed, or at best only accidentally, due to the impossibility of comparing large volumes of manually processed data. A computer system, by which the proportion of valid and invalid votes cast could be examined, is of fundamental importance. In another distant country, where the number of invalid votes cast in all polling stations was reviewed, it was easy to screen out a 30% to 40% ratio. Computer systems revealing fraud do not by themselves furnish sufficient

evidence that a fraud in fact has been committed. Nevertheless, they direct attention to the fact that by resorting to other legal remedies (such as the questioning of witnesses), specific cases of fraud can be detected and proven. It is particularly important to investigate those cases, when winning a mandate depended only on a few votes. At this moment, international observers can enter...

\*\*\*

In principle, one cannot fully exclude the possibility of election fraud. By the provision of statutory guarantees, by the consistent investigation of all legal remedy claims, by ensuring the existence of all requisite personnel, financial and organizational preconditions for the fair conduct of elections, by providing for all public officials taking part in election work to be independent of political parties, by establishing an open and transparent election process, and ensuring easy access to documents in the public interest, and using modern computer systems, election fraud can be prevented, or fraud already perpetrated can be revealed and identified. Nevertheless, in and of itself, electoral law and the fairness of the election process is not enough. It is the stability of the democratic political institutions and the appropriate functioning of governmental authorities that make an election completely fair.

The table below shows the number of crimes committed against the rules of elections (referendum) which have become known. When construing the data below, it should be considered that they show the cases which, after police investigation, are in the phase of action by the public prosecutor's office in respect of criminal proceedings. The data included in the table below are from the Statistics Office of the Central Office of the Ministry of the Interior. For lack of data source, the table does not contain the judicial outcome of crimes committed against the rules of elections.

**Statistics on election crimes**

| County    | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 |
|-----------|------|------|------|------|------|------|------|------|------|------|------|------|
| Budapest  | 8    | 3    | 0    | 0    | 9    | 3    | 0    | 0    | 6    | 2    | 0    | 0    |
| Baranya   | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Bács      | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Békés     | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Borsod    | 3    | 4    | 0    | 0    | 0    | 4    | 0    | 0    | 0    | 1    | 0    | 0    |
| Csongrád  | 0    | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    |
| Fejér     | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Győr      | 0    | 0    | 0    | 0    | 2    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Hajdú     | 2    | 0    | 0    | 0    | 392  | 2    | 0    | 0    | 0    | 1    | 0    | 0    |
| Heves     | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Komárom   | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 0    | 1    | 0    | 0    | 0    |
| Nógrád    | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Pest      | 0    | 1    | 0    | 0    | 0    | 1    | 0    | 0    | 1    | 0    | 0    | 0    |
| Somogy    | 2    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Szabolcs  | 0    | 0    | 0    | 0    | 0    | 2    | 0    | 110  | 0    | 0    | 0    | 0    |
| Szolnok   | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 10   |
| Tolna     | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Vas       | 0    | 0    | 0    | 0    | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Veszprém  | 0    | 0    | 0    | 2    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Zala      | 1    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| In total: | 17   | 10   | 0    | 2    | 408  | 13   | 0    | 110  | 9    | 4    | 0    | 10   |

Statement on election abuses reported in the period of election of the Members of the Parliament in 2002<sup>2</sup>

|        |  | Number of reports to the police |    |    |   |       |   |   |   |    |    |
|--------|--|---------------------------------|----|----|---|-------|---|---|---|----|----|
|        |  | Infringement                    |    |    |   | Crime |   |   |   |    |    |
|        | Acts not performing infringement of rights.                      | 31                              | 1  | 3  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Other violations of the law                                      | 0                               | 0  | 0  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | In total:  | 0                               | 2  | 7  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Disturbance  | 0                               | 0  | 2  | 1 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Threat of endangerment .   | 0                               | 0  | 1  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Infringement against property                                    | 0                               | 2  | 5  | 4 | 0     | 0 | 0 | 0 | 1  | 3  |
|        | In total:  | 21                              | 10 | 5  | 2 | 4     | 1 | 3 | 0 | 13 | 0  |
|        | Crime against rules of election, referendum, people's initiative | 20                              | 3  | 1  | 0 | 2     | 1 | 1 | 0 | 9  | 0  |
|        | Public menace  | 0                               | 0  | 0  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | violation of the freedom of conscience and religion              | 0                               | 0  | 0  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Incitement against community                                     | 0                               | 0  | 0  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Abuse of document  | 0                               | 1  | 0  | 0 | 2     | 0 | 0 | 0 | 0  | 0  |
|        | Use of symbol of despotism                                       | 0                               | 0  | 1  | 1 | 0     | 0 | 0 | 0 | 2  | 0  |
|        | Vandalism, bodily injury   | 1                               |    | 0  | 1 | 0     | 0 | 0 | 2 | 0  | 0  |
|        | Libel, defamation  | 0                               | 1  | 0  | 0 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Damage, theft  | 0                               | 5  | 2  | 1 | 0     | 0 | 0 | 0 | 0  | 0  |
|        | Reports in total   | 52                              | 13 | 15 | 8 | 12    | 5 | 4 | 0 | 29 | 10 |
| County | Budapest   |                                 |    |    |   |       |   |   |   |    |    |
|        | Baranya  |                                 |    |    |   |       |   |   |   |    |    |
|        | Bács   |                                 |    |    |   |       |   |   |   |    |    |
|        | Békés  |                                 |    |    |   |       |   |   |   |    |    |
|        | Borsod   |                                 |    |    |   |       |   |   |   |    |    |
|        | Csongrád   |                                 |    |    |   |       |   |   |   |    |    |
|        | Fejér  |                                 |    |    |   |       |   |   |   |    |    |
|        | Győr   |                                 |    |    |   |       |   |   |   |    |    |
|        | Hajdú  |                                 |    |    |   |       |   |   |   |    |    |
|        | Heves  |                                 |    |    |   |       |   |   |   |    |    |
|        | Jász-N-Sz.   |                                 |    |    |   |       |   |   |   |    |    |

<sup>2</sup> Data published by ORFK (National Police Headquarters) and the National Elections Office.





## SUMMARY

**Election Fraud and Abuses**

ZOLTÁN TÓTH

Few specialist articles have been written about electoral frauds and abuses. The cases described in this study are from the findings of the Association of Central and Eastern European Election Officers (ACEEEO, [www.aceeeo.org](http://www.aceeeo.org)). As of 1995, ACEEEO has been monitoring elections in twenty countries. Though the relevant literature and statistics are scarce, a patient analyst can make a secondary analysis of relevant documents of the United Nations and the Organization of European Security and Cooperation.

As the author does not intend to embarrass any countries, he avoids naming any. However, he tells readers that the major part of information is derived from Europe. As for the frequency of electoral frauds, there is no significant difference between the “old” and the new democracies. Only the institutional guarantees of the democratic rule of law (for instance, electoral procedure enshrined in a law, scope for judicial review) can offer effective protection against electoral frauds. The paper defines the notion and types of electoral fraud and puts forward recommendations as to the creation of the institutions of prevention.

The author explains the difference between what the media call an electoral fraud and how that is defined in criminal law. He offers a working hypothesis for defining the professional definition of electoral frauds. In his definition it is justified to speak of an electoral fraud “if in the electoral process or in the numerical result of voting there is an illegal deviation from the will of the voters between the formal and the actual results of elections.”

Elections are not an isolated act; they form part of a complex electoral procedure. There can be fraud in the electoral roll, the nominations, the campaign, during the casting of votes, when the votes are counted, and in the course of the remedial process. A government, electoral committees, and parties forming a parliamentary majority or a parliamentary minority, a small group of people or individuals can commit electoral frauds. The severity of frauds depends also on the number of perpetrators. The author states that an electoral fraud is always an intentional human act; negligence or action by mistake cannot constitute fraud. The author defines the following types of fraud: primitive, intellectual and that employing indirect methods. The essay enumerates the various methods that can be applied to protect electoral frauds.

## RESÜMEE

**Wahlbetrug und Wahlmissbrauch**

ZOLTÁN TÓTH

Mit dem Problem des Wahlbetrugs und Wahlmissbrauchs beschäftigen sich nur wenige Fachpublikationen. Diese Studie wurde mit Hilfe der Zusammenfassung der Wahlbeobachter-Tätigkeit des Verbandes der Europäischen Wahlexperten ([www.aceeeo.org](http://www.aceeeo.org)) durchgeführt, die sich seit 1995 auf etwa zwanzig Länder erstreckt. Die Fachliteratur und Statistik im Zusammenhang mit Wahlbetrug sind nur ziemlich spärlich vorhanden, aber die sekundäre Analyse der UNO- und OSZE-Dokumente stellt für den geduldrigen Leser eine gute Quelle dar.

Die Studie hat nicht die Absicht, bestimmte Länder bloßzustellen, deshalb enthält sie auch keine Ländernamen. Die überwiegende Mehrheit der Erfahrungen stammt jedoch aus Europa. Der Verfasser sieht hinsichtlich der Häufigkeit des Wahlbetrugs keinen großen Unterschied zwischen den „alten“ und neuen Demokratien. Einen wirklichen Schutz gegen Wahlbetrug bedeuten die institutionellen Garantien, die sich in einem demokratischen Rechtsstaat herausgebildet haben (in einem Gesetz festgehaltene Verfahrensordnung, gerichtliche Überprüfung usw.). Ziel der Studie ist die Bestimmung des Begriffs des Wahlbetrugs, die Typologisierung der Betrugsmethoden und die Herausbildung der Institution der Vorbeugung (Prävention).

Die Studie unterscheidet den umgangssprachlichen Begriff des Wahlbetrugs, den Sprachgebrauch der Medien vom strafrechtlichen Begriff, und schafft eine Arbeitshypothese zur Herausbildung des Fachbegriffes der Wahlen. Dem Verfasser zufolge bedeutet Wahlbetrug, dass „es im Wahlverfahren oder im rechnerischen Ergebnis der Wahlen eine vom politischen Willen der Wahlberechtigten gesetzwidrige Abweichung zwischen der formalisierten und objektiven Wirklichkeit gibt“.

Das Wählen ist keine homogene Tätigkeit, sondern mit einzelnen Teilgebieten des Wahlverfahrens verbunden: zu Betrug kann es in der Namensliste, in der Kandidatur, in der Kampagne, bei der Stimmabgabe, dem Zusammenzählen der Ergebnisse und beim Rechtsbehelf kommen. Begehen kann den Wahlbetrug die Regierung, das Wahlkomitee, die parlamentarische Mehrheit oder Minderheit, kleine Gruppen oder einzelne Menschen. Die Schwere des begangenen Betrugs richtet sich hiernach. Dem Verfasser zufolge kann der Begeher des Betrugs nur

ein absichtliches menschliches Verhalten sein. Fahrlässigkeit oder Irrtum begründen den Begriff des Betrugs nicht. Die Studie typologisiert des Weiteren die Arten des Begehens: sie legt primitive, intellektuelle und indirekte Methoden detailliert dar. Darüber hinaus geht sie auch auf die Arten der Vorbeugung von Wahlbetrug ein.