



Comparative study on the legal status of local representatives

Hungary

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Legislative texts used:

- Section 70 of Act XX. of 1949 on the Constitution of the Republic of Hungary
- Act LXIV of 1990 on the election of mayors and representatives of local authorities
- Act LXV of 1990 on municipal governments
- Act LXIV of 1994 on certain issues of fulfilling the position of a mayor and about the financial rewards of local representatives
- Act XCVI of 2000 on certain issues of the legal standing of local representatives

Access to Mandate

1.1 Conditions to be elected

Condition of nationality: this is not exclusive. Until accession to the European Union, passive franchise is bestowed upon only Hungarian citizens, who are of age and who reside in the territory of the Republic of Hungary. After accession to the European Union, it is bestowed upon citizens of the European Union who are of age and who reside in the territory of the Republic of Hungary. However, only Hungarian citizens may be elected to the post of mayor and to the post of the Lord Mayor of Budapest. (Section 70 Subsection 2 of the Constitution)

Age: people are considered to be of age from the date of their 18th birthday or from the date of marriage if between the ages of 16 and 18. Legal practice is somewhat ambiguous in the sense whether it requires people to be of age only on the day of election (which permits candidates still under 18 to run for office) or on the day of the submission of the application to be registered as a candidate at the latest (which currently is the 23rd day prior to voting). This latter is more defensible since there are a number of statements a candidate must make to be registered which minors are not empowered to make.

Necessity to live in the city: this is not required in practice but the regulations would provide a way for this. ["Voters who established a secondary residence besides a primary residence prior to the day preceding the announcement of the election may cast a vote at the

locality of the secondary residence if in possession of a certificate.” Section 2, Subsection 4 of Act LXIV of 1990]

Ineligibilities: “Voting rights are stripped of those who are under guardianship because of limited or no capacity to act, of those who are currently under ban from civic activities, of those who are currently serving time in detention, of those who are receiving forced health treatment ordered in criminal proceedings. Citizens of the European Union, who are not eligible to be elected as a consequence of valid regulations or a decision of a court or other authorities in the country of citizenship, may not be elected even if of age and residing in the Republic of Hungary” (Section 70 Subsection 5 of the Constitution)

It is worthwhile to note that the 2001 modification of regulations governing guardianship due to incapacitation make it possible that the court declare limited capacity to act only with regards to certain areas, such as disposal over property and assets or the execution of rights regarding health care and as a consequence of this, the person under guardianship can make legally valid statements and declarations pertaining to all matters other than the ones in which the court declared a limited capacity to act. In spite of this, the quoted section of the Constitution wholly disbars people under guardianship from voting.

Are there incompatibilities between having an occupation (or any kind of position) and being a local representative?

We have to make a distinction between the incompatibility reasons pertaining to the post of mayor (deputy mayor, chairman of the county assembly, deputy chairman of the county assembly, Lord Mayor, Deputy Lord Mayor) and those pertaining to local representatives.

The following cannot be elected to the post of mayor (Section 33/A of Act LXV of 1990)

- a) The President of the Republic, member of the Constitutional Court, ombudsman for civil rights, ombudsman for the rights of national and ethnic minorities,
- b) President, vice president and executive of the State Audit Office,
- c) Members of the Government, state secretaries, deputy state secretaries, public servants of central (state) public administration organisations,
- d) Members, chairmen and employees of the supervisory committee and board of directors of the State Privatisation and Holding Agency,

- e) Judges, prosecutors, public notaries and court executioners,
- f) Professional members of the armed and law enforcement forces,
- g) Mayors and deputy mayors of other local authorities,
- h) Members of the body of representatives at another local authority. An exception to this is a district mayor of the capital who can also be a member of the general assembly of the capital,
- i) Heads and civil servants of county and Budapest public administration offices, civil servants of those regional and local state administration organisations whose competence includes issues related to the given municipal authority and which has jurisdiction over the given municipal authority
- j) Town clerks, head clerks, district clerks, civil servants of the office of the body of representatives,
- k) Employees of the office of the regional development council with jurisdiction over the given local authority,
- l) Heads, deputy heads, business managers of state budget institutions founded by the body of representatives as well as such public employees of these organisations whose appointment or commission was granted by the body of representatives,
- m) Those who are personally involved in a business enterprise under business, employment or one-time contracts with the body or representatives or an organisation thereof to carry out local government tasks,
- n) Members of organisations established to manage public foundations founded by the body of representatives with the exception of membership on a board of trustees,
- o) CEOs, deputy CEOs, directors, deputy directors, members of the board of directors or board of managers of companies belonging to the local authority, founded by the body of representatives
- p) CEOs, deputy CEOs, directors, deputy directors, members of the board of directors or board of managers of companies in which the local authority has a stake as well as CEOs and managers of companies in contractual relationship with such a company

- q) CEOs, deputy CEOs, directors, deputy directors, members of the board of directors or board of managers of companies established by such companies in which the local authority has a stake
- r) CEOs, directors, executives, senior staff of local and regional broadcasting companies, newspaper publishers, newspaper distributors.

A full-time mayor

- a) may not enter into an business or employment relationship – with the exception of being a member of the Parliament – other than scientific, editorial, instructorial, artistic relationships and those intellectual activities under copyright protection
- b) may not become, without the express authorisation of the body of representatives
 - a. a CEO, deputy CEO, director, deputy director, member of the board of directors or of managers or of supervisors of business companies
 - b. a senior manager, member of the board of directors or of managers or of supervisors of business enterprises as well as a CEO or manager of companies in contractual relationship with such a business enterprise
 - c. an official of a cooperative
 - d. an official or member of a foundation managing organisation

[There are two legal standings of mayors. Full-time mayors are employed full-time exclusively by the local authority while mayors of social commission work part-time while keeping the employment situation they had prior to their election.]

According to the incompatibility regulations pertaining to local representatives (sections 5 to 7 of Act XCVI of 2000) the following are barred from posts of local representatives:

- a) civil servants of central (state) administrative organisations

- b) Heads and civil servants of county and Budapest public administration offices, civil servants of those regional and local state administration organisations whose competence includes issues related to the given municipal authority and which has jurisdiction over the given municipal authority
- c) Town clerks, head clerks, district clerks, civil servants of the office of the body of representatives,
- d) Employees of the office of the regional development council with jurisdiction over the given local authority,
- e) Those who are personally involved in a business enterprise under business, employment or one-time contracts with the body or representatives or an organisation thereof to carry out local government tasks,
- f) Members of organisations established to manage public foundations founded by the body of representatives with the exception of membership on a board of trustees,
- g) CEOs, deputy CEOs, directors, deputy directors, members of the board of directors or board of managers of companies belonging to the local authority, founded by the body of representatives,
- h) CEOs, deputy CEOs, directors, deputy directors, members of the board of directors or board of managers of companies in which the local authority has a stake as well as CEOs and managers of companies in contractual relationship with such a company
- i) CEOs, deputy CEOs, directors, deputy directors, members of the board of directors or board of managers of companies established by such companies in which the local authority has a stake
- j) CEOs, directors, executives, senior staff of local and regional broadcasting companies, newspaper publishers, newspaper distributors.

Local representatives may not receive fees or other payments with the exception of expense refunds for work performed in public foundations or public service companies established by the local authority.

Local representatives may not act as legal representatives and legal counsels against the local authority, its organisations and the office of the body of the representatives.

Local representatives may not act in a capacity of a local representative in professional and business matters and may not use his/her position as a local representative to illegally obtain and use confidential information.

This list is not quite complete, as such positions as the President of the Republic, a member of the Constitutional Court, president, vice president, manager of the State Audit Office are also incompatible with the post of a local representative

Both mayors and local representatives are obliged to terminate the position causing incompatibility within 30 days of either their election or of the date the incompatibility arose.

1.2 Electoral system

The system of local elections in Hungary is rather complicated with local elections held in all municipalities (villages, towns, cities, county seats), in all counties and in the capital both in the districts and on the all-capital level.

With the exception of capital districts, the electoral system is determined by the population of the municipality:

Residents of municipalities with a population of 10,000 or less elect an odd number of representatives (3 to 13, depending on the size of the population) in what is known as "a small ballot system." In a small-ballot system, the municipality is considered one constituency, all candidates are placed on the same ballot and voters have as many votes as there are candidates. The candidates will be given mandates according to their position on a descending list representing the number of votes.

In municipalities with a population over 10,000 and in the districts of the capital, there is a "mixed" electoral system: most of the representatives are elected through direct voting in the individual constituencies, but some of them come from the "compensatory" ballot compiled on the strength of the number of votes losing candidates in the individual districts obtained (fragment votes). There is no voting on the compensatory ballot. Roughly 60% of the representatives come from the individual districts and 40% from the compensatory ballots.

The number of representatives is dependent on the size of the population.

The election of the county general assembly takes place in two electoral districts: municipalities with a population of or under 10,000 constitute a separate electoral district and municipalities with a population over 10,000 another one, with the exception of county seats. The election is ballot-based, the electoral system is a proportionate one, a modified Saint Leaguë system (first divisor being 1.5) with an administrative threshold of 4%.

The 66 members of the general assembly of Budapest are elected directly, by a ballot. In this case Budapest is considered one electoral district. The method for mandate allocation is identical to the one used in county general assemblies.

The possibility of accumulating mandates

Mayors and deputy mayors – except those of county seats -- may be members of the county authority and district mayors in the capital may be members of the general assembly of the capital. Deputy district mayors can only be members of the general assembly of the capital if they had been elected as representative of an individual constituency.

A mayor may also be the representative of the given municipality's individual constituency.

Mayors, deputy mayors, chairmen and deputy chairmen of county general assemblies may become members of the Parliament.

II. Being a local representative

2.2 Financial aspects

Leading principle: Local representatives are socially commissioned (i.e. part-time) officials.

Only the posts of mayor, deputy mayor, chairman and deputy chairman of the county government, the Lord Mayor and deputy Lord Mayors of Budapest entail full-time positions.

2.2.1 Financial compensations of elected representatives

Exact denomination: For full-time mayors and deputy mayors, it is a fee which is calculated by multiplying the civil servant fee base (Ft 23,000 in 2003, which is cca. EUR 128) by a multiplier dependent on the type of municipality and the size of population, as shown:

Municipalities with a population under 1,000	multiplier 3-5
Municipalities with a population between 1,000 and 3,000	5-6.5

Municipalities with a population between 3,000 and 10,000	6.5-8
Municipalities with a population over 10,000	8-10
Local government of a district of the capital	9.5-11
Local government of a county seat	11-13
Local government of a county or the capital	11-13

The amount of the fee of the deputy mayor may not reach the amount of the fee of the mayor.

Part-time mayors and deputy mayors are paid a honorarium which is calculated by using the following multipliers:

	multiplier
Municipalities with a population under 1,000	1-2
Municipalities with a population between 1,000 and 3,000	2-4

For part-time mayors, the body of representatives

- a. may set a honorarium in municipalities with a population under 2,000
- b. sets a honorarium in municipalities with a population over 2,000

Local representatives are reimbursed the revenues lost at their place of employment because of their work as local representatives and are paid a honorarium.

The monthly honorarium of a representative may not exceed 25% of the fee or honorarium set for the mayor (base fee).

If the representative serves on a committee, his honorarium (as well as that of the others on the committee) may only exceed the base fee by 50% of the base fee.

The honorarium of committee chairmen and councils, even if they have more offices and board memberships, can only exceed the base fee by 100% of the base fee.

(That is, the honorarium of representative may only be 50% of the mayor's honorarium or fee.)

Difference between full-time and part-time exercise of mandate: this is only an issue with regards to the mayor and the deputy mayor as described above

Difference according to the kind of mandate: see section 1

Difference according to population: see section 1

Payments for meetings and representations: according to regulations governing the activities of civil servants costs accrued in relation to out-of-town duties – food compensation (daily allowance), necessary and documented other costs – are refunded.

The amount of the daily allowance is 25% of the base fee prorated for workdays as specified in the Budget Act (Ft390, EUR 1.5)

The daily allowance can be paid as a flat fee if the representative performs his work in regular, monthly out-of-town duties. The flat fee is calculated by multiplying the daily allowance by the average number of calendar days spent in a month in out-of-town duties.

If the out-of-town duty lasts less than 8 hours a day, half of the daily allowance can be charged – no daily allowance can be charged if the time in out-of-town duty remains below 4 hours.

Refunding of expenses related to the mandate

Mayors must be refunded expenses related to the mandate which were advanced by the mayor or spent as necessary expenses verified by invoices. The body of representatives might set a flat fee for cost reimbursement purposes, based on the documented costs accrued over a period of at least six months if requested by the mayor. In this case, the flat refund fee of the mayor cannot exceed 30% of its fee or 50% of his honorarium.

Local representatives must be refunded expenses related to their mandate which were advanced by the representative or spent as necessary expenses verified by invoices. Payment must be authorised by the mayor and there is no flat fee option.

Other advantages

The mayor and the deputy mayor disposes over an office and the necessary office equipment. Car use, mobile phone and other benefits are contingent on the funds available at the local authority (though in practice the funds for these are always there).

The body of representatives may issue decrees permitting the following types of benefits for local representatives:

- a) a pass to be used on public transport system in the territory of the local government, or the equivalent forint amount if so requested by the representative
- b) the use of local government services free of charge or at discount rates, with the exception of public utilities
- c) subscriptions to publications, journals, digests related to the mandate
- d) other benefits determined by the local authority

The above-mentioned benefits-in-kind are not subject to taxation.

2.2.2 Taxes

Declaration of what they own

A declaration of assets must be made within 30 days of being elected for mayors and of receiving the letter of commission for local representatives and subsequently within 30 days of every January 1. Mayors and local representatives must attach the declaration of their spouses/partners' and children's assets to their own if they share a household with them.

In case of failing to declare assets, mayors and representatives may not exercise their rights and receive benefits until such time as the declaration of assets is properly submitted.

The declaration of assets by the mayor and the representatives is public information with the exception of personal data submitted for verification purposes. The declaration of assets of the relatives is not public information.

Taxes to be paid on financial compensation

The daily allowance, the reimbursement of lost income and the honorarium are all taxable. The rate of the personal income tax is calculated on the basis of the income calculated for the year, including payments from the original place of work. (Typically, this falls into the top tax bracket of 40% which will be changed to 38% in 2004)

2.3 Working conditions of locally elected representatives

2.3.1. Compatibility between occupations

Representatives must be granted leave from their place of employment for the duration of time necessary to perform the duties of a representative.

At the request of full-time mayors, employers must grant them unpaid leaves for the duration of their occupation as mayors from their public service, civil servant, public servant positions or the employment situation current at the time of their election. This also pertains to members of a cooperative employed by the cooperative.

The time spent in office by mayors counts as public service or professional service time towards their pensions.

2.3.2 Full-time local representatives

Only mayors, deputy mayors or those of the same position category may be employed full-time as detailed here:

Mayors, the Lord Mayor, the chairman of the county assembly

- a) are employed from the time of their election in municipalities with a population of 3,000 or over and also in municipalities with a population under 3,000 if they were elected to be full-time mayors
- b) will become full-time employees of municipalities with a population under 3,000 through the modification of structural and operational rules governing the local authority if their part-time status is changed into a full-time status
- c) Deputy mayors, deputies of the Lord Mayor, vice chairmen of the county general assembly (henceforth referred to as deputy mayors) are employed from the time of the elections following a decision by the body of representatives ordering that the post be filled full-time.

2.3 Training

It is the task of the body of representatives to ensure that local representatives be trained and retrained to successfully perform the tasks entailed by their offices (Section 12 of Act XCVI of 2000)

Moreover, irregular training courses are organised by the Hungarian Administration Institution and various interest protection arms of the local government.

III: End of Mandate

3.1 Conditions

3.1.1 Dismissal: a case of destitution or recall?

The commission of the mayor, deputy mayor, chairman of the county general assembly terminates with

- a) the election of a new mayor
- b) the decree of the Parliament dissolving the body of representatives of the local authority
- c) the election of a new mayor or new Lord Mayor following the decision to dissolve the body of representatives
- d) the death of the person in office
- e) the resignation of the post
- f) the declaration of incompatibility
- g) the day a court ruling, pronouncing the mayor, Lord Mayor or chairman of the county assembly guilty of illegal activities becomes legally binding
- h) the loss of his/her franchise
- i) the day a court ruling, pronouncing the mayor, Lord Mayor or chairman of the county assembly guilty of criminal activities related to their mandates becomes legally binding
- j) the refusal to take the oath of office before the body of representatives

The commission of the deputy mayor, deputy Lord mayor, vice chairman of the county general assembly terminates

- a) on election day if not re-elected as local representative
- b) if elected as local representative, with the election of a new deputy mayor, deputy Lord Mayor vice chairman of the county assembly at the first meeting of the body of representatives

- c) the decree of the Parliament dissolving the body of representatives of the local authority
- d) the death of the person in office
- e) the resignation of the post
- f) the declaration of incompatibility
- g) the day a court ruling, pronouncing the person in office guilty of illegal activities, becomes legally binding
- h) the loss of his/her franchise
- i) the day a court ruling, pronouncing the deputy mayor, deputy Lord Mayor or vice chairman of the county assembly guilty of criminal activities related to their mandates becomes legally binding
- j) the refusal to take the oath of office before the body of representatives

The employment of a mayor is terminated

- a) together with the termination of his position, on the day of the termination
- b) by mutual consent, on the day specified by the agreement

The commission of a local representative is terminated

- a) on the day of local elections following the day of his/her election
- b) with the loss of his/her franchise
- c) with the declaration of incompatibility
- d) with his/her resignation of the post
- e) if the representative is absent from meetings of the body of representatives for a year
- f) if the body of representatives is dissolved
- g) if the body of representatives dissolves itself
- h) with the death of the representative

Hungarian electoral law is based on the principle of the free mandate and voters cannot recall representatives and officials before their term is over.

3.1.2. Death/Disease

Widows are entitled for widow allowance from social security and occasionally for a burial subsidy as a form of social support from the local authority.

3.2 Other aspects

3.2.1. Back to professional life

The issue pertains only to full time mayors, deputy mayors, etc. For the duration of their term in office, employers must grant them unpaid leaves and reemploy them with the termination of the mandate.

If the mayor, before being elected an official, was a prosecutor, a civil servant, or a professional member of the armed forces or law enforcement, he/she must be reinstated within 30 days of the termination of the mandate at his or her written request.

3.2.2 Unemployment

This issue only pertains to full-time officials.

If mayors serve at least two years in office and their mandate is terminated through failure to be re-elected, death or resignation, a severance payment equal to three month's fees must be extended to them, furthermore the newly elected body of representatives may vote for him a payment equal to three month's fees. This payment cannot be granted if the person enters into employment as member of the Parliament, deputy mayor or mayor at a different local authority.

If the deputy mayor, etc., is not elected as deputy mayor at the first meeting of the new body of representatives, but is elected in the course of the next three months, a part of the payment mentioned in the preceding paragraph, proportionate to the time spent unelected, must be refunded to the body of representatives.

3.2.3 Retirement

Full-time positions counts towards one's pension and if the person reaches the retirement age specified for his/her position, he/she can retire in accordance with the general rules of retirement.

A mayor (etc.) is eligible for age pension if –all other conditions being met -- employment is terminated through failure to be re-elected, provided the person has served for three uninterrupted years and reaches the applicable retirement age within two calendar years after

the termination of the employment or reaches the applicable retirement age with a lowered age limit. Theoretically, the amount of the pension should be lowered because of the missing time period, but the state budget provides funds for a mayoral pension until the retirement age is reached.