

Eötvös Loránd University
Doctoral School of Law

Balázs Kiss

**Parliamentary representation of national minorities
in Central and Eastern Europe,
with special regard to the electoral rights of minorities**

**PH.D. DISSERTATION
THESES**

Supervisors:

István Kukorelli D.Sc.

university professor, Eötvös Loránd University Faculty of Law

Elisabeth Sándor-Szalay

university professor, University of Pécs Faculty of Law

Budapest
2025

I.1. Problem Statement and Objective of this Dissertation

In contemporary Europe, numerous countries are home to communities possessing distinct national or ethnic, religious, or linguistic identities, which constitute identifiable minorities in comparison to the majority population of the country. Out of the continent's population of nearly 750 million, it is estimated that more than 100 million Europeans belong to some form of minority community.¹

Given the proportion of national minority communities in relation to the total population, their sociological characteristics and their needs in terms of representation, a legitimate question arises: is the majority power capable of taking into account the group-specific needs of citizens belonging to minorities stemming from their specific identity, ensuring their (political) participation rights, and is it necessary to give due regard to such group differences in the exercise of power?

Although the protection of minorities is an integral part of the international and European protection of human rights, it is important to note that the relevant multilateral, regional or bilateral international hard and soft law instruments are based on the initiative and agreement of states, reflecting the interests, will and mutual compromises of sovereign states. Despite the existence of legally binding international agreements (hard law) and soft law documents, the regulation of minority protection remains, in essence, dependent on the internal affairs of states. This is particularly true in politically sensitive areas such as the effective participation of national minorities in public life, their participation in parliamentary work and their representation in parliament.²

As a result of the encouraging activities of the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe (CoE) in this direction, several European states, especially those in Central and Eastern Europe that have undergone political transformation, have introduced various measures in recent decades to promote and

¹ FUEN: Autochthonous minorities in Europe. fuen.org/en/article/Autochthonous-minorities-in-Europe

² Effective participation of national minorities entails that the interests of national minorities must be effectively represented. According to Verstichel, in the practice of international control mechanisms and in the literature, the effective participation of national minorities generally encompasses the physical presence of persons belonging to national minorities as representatives in decision-making processes. In this sense, the participation and representation of national minorities can be used as interchangeable terms. See VERSTICHEL (2009) 30. However, in the present doctoral dissertation, however, the terms "participation in parliamentary work" and "parliamentary representation" are not employed in this interchangeable manner.; I merely wish to point out the duality that, among the Central and Eastern European countries examined in my doctoral dissertation, national minorities have full parliamentary representation in Croatia, Romania, Serbia, and Slovenia, while in Hungary, although it is possible to obtain full representation, most national minorities only have quasi-representation, under which a national minority spokesperson can participate in the work of the National Assembly.

secure the participation of their national minority communities in national decision-making and parliamentary representation. However, ensuring the participation of national minorities in parliamentary work and parliamentary representation cannot yet be considered a common practice.

Minority protection came into focus in Hungary following the regime change. With the adoption of Act LXXVII of 1993 on the rights of national and ethnic minorities, ensuring individual and collective minority rights, and establishing the institution of the Parliamentary Commissioner for National and Ethnic Minorities, an effective minority protection system was created that has earned recognition at the European level.

With the election of local, regional and national minority self-governments, national and ethnic minorities living in Hungary have been afforded the opportunity since 1994 to exercise a certain degree of self-government and participate in public life within the institutional framework of non-territorial autonomy. Nevertheless, the lack of representation in the National Assembly for national and ethnic minorities living in Hungary, which the National Assembly failed to remedy despite the much-debated decisions of the Hungarian Constitutional Court finding a constitutional omission, has been the subject of constitutional and political debate for more than two decades.

The participation in parliamentary work and the parliamentary representation of national minorities – considering the proportion of national minorities within the population of the state and their geographical distribution – can in many cases only be achieved through electoral privileges granted exclusively to communities. The primary objective of the doctoral dissertation, which differs in part or in whole from other works, is thus to examine how the participation of national minorities in parliamentary work in national parliaments and parliamentary representation can be justified, and how the participation in parliamentary work and representation of national minorities can be achieved while upholding and respecting the requirements set out in the electoral principles.

The doctoral dissertation exclusively examines preferential electoral rules applicable to national minorities that differ from general rules and relate to the election of representatives to directly elected representative bodies, the purpose of which is to promote or ensure the participation in parliamentary work and representation of national minorities.

The examination is based on general requirements of equality and non-discrimination, national minority (special) rights, including measures to ensure equal opportunities for national minorities, and electoral principles, in particular universal and equal suffrage, free elections and

secret ballots. It is not, however, the objective of this work to provide a detailed dogmatic analysis and presentation of these concepts.

A further objective of the doctoral dissertation is to identify, within multilateral, regional and bilateral hard and soft law documents, in the practice of international fora with differing mandates and at different levels, in national legal norms and legal practices, the minimum standards for the implementation and practical functioning of the participation in parliamentary work and representation of national minorities. The practical utility of this set of criteria lies in the fact that it can be used to evaluate the various institutional mechanisms used by the states examined in the doctoral dissertation to promote or ensure the participation in parliamentary work and representation of national minorities. Furthermore, this set of criteria can also serve as a basis for evaluating the institutional solutions of other states and as a guide for states wishing to institutionalize the parliamentary representation of national minorities. However, it is important to note that, in my doctoral dissertation, I do not wish to offer generally applicable solutions for the specific situation of national minorities living in the territory of a certain state, given the unique and diverse historical and political development of states and the specific situation and needs of the national minority communities living in their territories – offer generally applicable solutions for promoting or ensuring the effective participation of national minorities in parliamentary work and their effective parliamentary representation in all the countries concerned.

In addition to the above, a number of topics closely related to the subject of the doctoral dissertation have been raised, but due to the scope of the doctoral dissertation, they are not discussed in detail, primarily for reasons of content. These include, inter alia:

- examining theoretical issues related to defining the concept of national minorities or identifying persons belonging to national minorities;³
- the presentation and examination of different theories of representation (descriptive or substantive representation);
- the examination of the election of bodies of various national minority territorial and non-territorial autonomies;

³ The narrow focus of the doctoral dissertation can be explained in particular by the fact that defining the concept of national minority or identifying persons belonging to a national minority is not an essential, sine qua non condition for the effective protection of national minorities, and therefore also not for academic research aimed at examining legal institutions relating to the protection of national minorities. See VIZI (2016) 14. In my doctoral dissertation, however, I briefly point out the difference between the concepts of national minority and indigenous peoples, and for each of the states examined, I indicate the recognized national minorities or provide the definition of national minority as determined by the state concerned.

- the examination of elections to non-national parliaments and representative bodies, and the participation and representation of national minorities in these bodies;
- examining the phenomenon of ethno-business accompanying the election of members of parliament representing national minorities in certain states;⁴
- the examination of the mandate, tasks, powers, and scope of rights of members of parliament representing national minorities, as well as their parliamentary functioning and effectiveness;
- the examination of the parliamentary representation of national minorities which, due to their population size or geographical location, attain parliamentary representation in accordance with general electoral rules and through democratic competition (via national minority parties, as individual representatives or through representation by majority parties).

I.2. Research Questions and Hypotheses

The doctoral dissertation seeks to answer the following six research questions:

- *Q1*: Are there universal or regional international hard and soft law obligations to ensure the participation of national minorities in public life and their representation in parliament?
- *Q2*: Do bilateral agreements concluded between Hungary and its neighbouring states go beyond universal or regional commitments with regard to establishing parliamentary representation for national minorities?
- *Q3*: What is the justification for the parliamentary representation of national minorities in the legal practice of universal and regional international control mechanisms?
- *Q4*: What is the justification for the parliamentary representation of national minorities in the case law of the constitutional courts of the Central and Eastern European countries examined?
- *Q5*: What are the international minimum standards applicable to the participation of national minorities in public life and their representation in parliament?

⁴ My doctoral dissertation discusses exclusively the phenomenon of ethno-business insofar as it is a potential or actual practical consequence of the state regulations examined. However, no general recommendations are made for preventing this phenomenon, just isolated statements about its consequences.

- *Q6*: Are electoral privileges granted to national minorities that deviate from the requirement of equal voting rights justifiable, and if so, how?

Hypothesis of the Doctoral Dissertation:

- *H*: The institutional solutions established by the Central and Eastern European countries under examination to promote or ensure the participation in parliamentary work of national minorities and their representation in parliament violate the requirements of equality and non-discrimination and the fundamental principles of elections in different ways and to varying degrees. Due to their specific characteristics, these mechanisms are incapable of meeting these requirements simultaneously and consistently and are therefore unsuitable for ensuring the effective participation and representation of national minorities in the representative bodies of the country.

I.3. Methodology of the Doctoral Dissertation

The methodology of the doctoral dissertation is fundamentally determined by its primary objective, which is to identify, through the analysis of legal practice, the minimum standards required for the feasibility and practical functioning of the participation in parliamentary work and representation of national minorities. The doctoral dissertation is therefore primarily linked to the analysis of legal practice. When analyzing legal practice, my objective is not to reveal the interpretations and minimum standards adopted in individual states, but rather to establish common minimum standards.

My dissertation considers multilateral, regional and bilateral international hard and soft law documents adopted in the field of minority protection to be the primary source for identifying common minimum standards. In addition to identifying the relevant provisions and recommendations of these documents, it is essential to examine in detail the various international control mechanisms, in particular the practice of the United Nations Human Rights Committee (HRC), the OSCE High Commissioner on National Minorities, the European Court of Human Rights (ECtHR), the Advisory Committee on the Framework Convention for the

Protection of National Minorities (ACFC) and the Venice Commission,⁵ which I consider to be secondary sources.

Alongside the examination of the provisions of international hard and soft law documents and the practices of international forums, the doctoral dissertation focuses on examining the practices of five Central and Eastern European countries (Croatia, Hungary, Romania, Serbia, and Slovenia). The analysis concentrates primarily on countries where there are institutional solutions and electoral privileges that promote or ensure the participation in parliamentary work and representation of national minorities. In this context, the examine covers various institutional solutions for the participation in parliamentary work and representation of national minorities in each country through country studies. My primary sources are the provisions of the constitutions and lower-level legislation of the states, and my secondary sources are the practices of the national constitutional courts. The analyses are supplemented by the results and findings of control mechanisms related to relevant international hard and soft law documents. In addition to primary and secondary sources, the doctoral dissertation draws on a wide range of international and national literature as a tertiary source, which I use to interpret the analyzed documents, legal institutions, and legal practices.

In terms of methodology, the doctoral dissertation applies descriptive legal science methods in identifying international hard and soft law documents, national constitutions, and legal provisions. In order to explore the content of these provisions, it is essential to examine in detail and critically analyze the international control mechanisms and the practices of national constitutional courts that interpret them. To accomplish these tasks, the doctoral dissertation employs a dogmatic method within an analytical framework. The country studies are based on a comparative methodology, particularly its functionalist approach. In line with the essence of functionalist comparison,⁶ the doctoral dissertation examines the institutional solutions introduced in the Central and Eastern European countries under examination to promote or ensure the participation of national minorities in parliamentary work and representation in order to examine whether they are justifiable in terms of general equality and non-discrimination requirements and the system of (special) rights of national minorities, and whether they are compatible with the fundamental principles of suffrage. The country studies analyze which institutional solutions can best promote the fulfilment of the given function and what requirements they must meet in order to function effectively.

⁵ In connection with the nature of the control mechanisms of the bodies and institutions examined, see: SZALAYNÉ SÁNDOR (2021c).

⁶ See: FEKETE (2016) [9]., CSINK (2017) 27. and BODNÁR– POZSÁR-SZENTMIKLÓSY (2021) 226.

The methods of analysis to be applied in the dissertation differ in Chapter II, which provides an account of legal interpretations concerning the justification of the participation of national minorities in public life and their representation in parliament, and at the same time shows what solutions are theoretically possible for establishing parliamentary representation according to the relevant international hard and soft law documents and academic literature, and how these can be classified. The significance of Chapter II of the doctoral dissertation lies in the fact that the justification and models of representation presented therein can be used to identify the relevant lines of reasoning in legal practice and to classify the institutional mechanisms implemented in the five Central and Eastern European countries examined.

I.4. Structure of the Doctoral Dissertation

The doctoral dissertation addresses the research questions outlined in Chapter I and the hypothesis in accordance with the following structure.

Chapter II provides an account of the legal interpretations concerning the justification of the participation of national minorities in public life and their representation in parliament, and at the same time shows what solutions are theoretically possible for establishing parliamentary representation according to the relevant international hard and soft law documents and academic literature, and how these can be classified. Chapter III focuses on international hard and soft law documents adopted within the framework of the UN and the OSCE and the practice of their control mechanisms. Chapter IV of the doctoral dissertation does the same regarding the documents and bodies of the Council of Europe. Chapter V reviews the bilateral treaties concluded by Hungary and its neighbouring countries and the practice of intergovernmental joint committees on national minorities. Chapter VI contains country studies on Croatia, Hungary, Romania, Serbia, and Slovenia. Finally, Chapter VII summarizes the answers to the research questions of the doctoral dissertation and the most important findings and conclusions that may be drawn in relation to the hypothesis.

I.5. Main Findings of the Research

On the basis of the conducted analysis, and in connection with the research questions and hypothesis formulated in the doctoral dissertation, the following summary conclusions may be drawn.

Q1: Are there universal or regional international hard and soft law obligations to ensure the participation of national minorities in public life and their representation in parliament?

An examination of international hard and soft law documents and the practice of their control mechanisms reveals a clear legal obligation regarding the participation of national minorities in public life. At the same time, international practice recognises numerous forms of participation by national minorities in public life, including parliamentary representation, territorial and non-territorial autonomy, and various forms of consultation.

In contrast, there is no explicit universal or regional legal or political obligation to establish parliamentary representation for national minorities, and international control mechanisms refer to it only as one form of participation in public life. Multilateral and regional organizations, however, clearly encourage states to establish parliamentary representation for national minorities. Expectations regarding the establishment of parliamentary representation for national minorities can also be inferred from the practice of international control mechanisms. This is particularly evident in isolated findings referring to the participation of national minorities in decision-making at the national level and emphasizing the need to take into account the specific characteristics and needs of national minorities when determining the rules of the parliamentary election system.

Q2: Do bilateral agreements concluded between Hungary and its neighbouring states go beyond universal or regional commitments with regard to establishing parliamentary representation for national minorities?

The basic treaties and bilateral minority protection treaties concluded by Hungary and its neighbouring countries contain provisions that are virtually identical to those found in international hard and soft law documents regarding the participation of national minorities in public affairs, political life, and public life that do not go beyond the political and legal commitments undertaken by the states concerned in those treaties. The basic treaties and

bilateral minority protection treaties do not contain any explicit legal obligations to promote or ensure the participation and representation of national minorities in parliament. At the same time, it can be observed that the intergovernmental joint committees on national minorities established under the basic treaties and bilateral minority protection treaties have consistently addressed the issue of parliamentary representation of national minorities in their work, considering it a key and necessary means of participation in public life. Looking at the practice of these bilateral control mechanisms, it can be argued that parliamentary representation of the communities concerned is an essential element of the participation of national minorities in public life.

Q3: What is the justification for the parliamentary representation of national minorities in the legal practice of universal and regional international control mechanisms?

In the legal practice of universal and regional control mechanisms, the justification for parliamentary representation of national minorities varies from forum to forum. The UN and the Council of Europe typically regard the establishment and maintenance of parliamentary representation of national minorities as an instrument for promoting effective equality and legal protection for national minorities living in the territory of a state. As a security organization, the OSCE sees the establishment of parliamentary representation for national minorities primarily as a mechanism for promoting peace, security, and social integration. However, the justification for parliamentary representation of national minorities is not exclusive to any one forum, and thus the call for peace, security, and social integration appears similarly in the arguments of the UN and the Council of Europe, as do effective equality and legal protection in OSCE documents.

Q4: What is the justification for the parliamentary representation of national minorities in the case law of the constitutional courts of the Central and Eastern European countries examined?

In the case law of the constitutional courts of the Central and Eastern European countries examined, the justification of parliamentary representation of national minorities is typically based on several complementary and reinforcing arguments, similarly to the practice of universal and regional forums. One of the most common justifications advanced by national constitutional courts is the requirement of equality and non-discrimination, according to which parliamentary representation of national minorities is necessary to achieve effective equality of

communities. (Romania, Serbia, Slovenia) Another common argument in the practice of constitutional courts is the instrumental justification of parliamentary representation of national minorities, which is seen as a means of protecting the rights of national minorities and their specific status guaranteed by the constitution, as well as of achieving their effective equality and integration into society. (Croatia, Hungary, Serbia, Slovenia) In constitutional court practice, the two most common lines of argument are reinforced by references to multilateral, regional or bilateral international legal and political commitments. (Croatia, Hungary, Romania, Serbia, Slovenia) Less common, but appearing as a supporting argument, is the reference by national constitutional courts to the extension of democratic legitimacy to the parliamentary representation of national minorities. (Slovenia)

Q5: What are the international minimum standards applicable to the participation of national minorities in public life and their representation in parliament?

The following conclusions can be drawn concerning the international minimum standards for the participation national minorities' in public life and parliamentary representation,.

In order to effectively enforce the (political) participation rights of persons belonging to national minorities, and thus to promote or ensure their representation in parliament, it is essential that their fundamental human rights and freedoms are fully respected. It is an indisputable requirement that states must grant members of national minorities living within their territory the same rights as those belonging to the majority of the population and ensure that they can exercise those rights without discrimination. This requirement derives from the universally recognized fact that the protection of the rights and freedoms of national minorities and persons belonging to such minorities is an integral part of the international protection of human rights.

When establishing and operating their parliamentary election systems, states should pay particular attention to respecting human dignity and enforcing the requirements of equality and non-discrimination. The requirements of equality and non-discrimination must be upheld in relations between the majority and minorities, between minorities and minorities, and within minorities.

A fundamental requirement derived from the principle of equality in relation to the parliamentary electoral systems of states is that all segments of society should be represented in legislative bodies. In this regard, states should strive to adopt electoral systems that result in the most representative possible composition of legislature. A representative body with low

representativeness, elected by the mere majority but not the whole of the people, necessarily has low democratic legitimacy, which naturally affects its decisions. In order to meet this requirement, the introduction of a proportional electoral system may be justified, particularly for small and geographically dispersed national minorities.

This requirement is violated if the rules of the electoral system exclude certain persons or groups of persons from the right to vote or make it impossible for them to obtain representation on the basis of their national minority origin. In this context, it can be concluded that in cases raising issues of violation of the prohibition of discrimination, international control mechanisms apply particularly strict standards to situations where the basis for different treatment is national minority origin. In the practice of international control mechanisms, there is no reasonable and objective justification in the field of participation of national minorities in public life and therefore no state measures that exclude persons or groups belonging to national minorities from participating in the political life of the state, in particular from being elected to the legislature or standing as candidates in elections, can be justified. However, explicit or alternative electoral thresholds applied in a proportional electoral system designed to promote or ensure the representation of national minorities in parliament may also result in similar exclusion. When determining such thresholds, states are therefore obliged to take due account of their (likely negative) impact on the participation of national minorities in the electoral process and their chances of representation.

The requirement for a parliamentary election system that ensures representation of all segments of society and the highest possible representativeness of representative bodies is particularly important for persons belonging to national minorities living in the territory of states who, due to their number or other characteristics, may not otherwise be adequately represented in the legislature. When designing their electoral systems, states have an obligation to take into account the composition and diversity of society, and in doing so they must pay particular regard to the specific characteristics of national minorities living within their territories. A further requirement is that states must not, through their measures, exclude persons or groups of persons from participation in the political life of the state on the basis of their belonging to a national minority.

However, formal respect for and enforcement of the requirement of equality and the prohibition of discrimination are not (necessarily) sufficient to promote or ensure the representation of persons belonging to national minorities in parliament. There is no doubt that the equal and non-discriminatory guarantee and respect of human rights, in particular the right to vote and rights related to citizenship, or a proportionate parliamentary electoral system, can contribute

to the parliamentary representation of persons belonging to national minorities, but its effective promotion or guarantee by states often requires the introduction and maintenance of specific mechanisms.

The question of establishing electoral rules for parliamentary representation is an area where, according to international hard and soft law instruments and the practice of their control mechanisms, states have a wide margin of appreciation. It is also clear that international hard and soft law documents do not prescribe a specific (proportional or majority) electoral system for states. In this context, it is typically considered a matter of state sovereignty to determine the modalities of participation in public life. Any electoral system operating in a state must be compatible with the requirements imposed on electoral systems arising from the principles of equality and non-discrimination, with the fundamental principles of elections, and with the requirements set out in the practice of international control mechanisms or inferable from them. International hard and soft law documents and related practices do not require the provision of (proportional) representation for national, ethnic, religious, linguistic or other minorities. However, one of the requirements imposed on states when designing their electoral systems is that they pay particular attention to the representation of national minorities in cases where voters generally decide on the basis of criteria such as belonging to a national minority, ethnic group or religious denomination.

In developing mechanisms to promote or ensure the effective participation and representation of persons belonging to national minorities, a requirement may be formulated to go beyond the formal application of equality between majority and minority, between different minorities, and between groups within minorities, and to pursue the attainment of effective equality. This often necessitates positive measures by the state. Based on the practice of international control mechanisms, formal equal treatment of national minorities in electoral processes and failure to remedy inequalities through different treatment (may) result in indirect discrimination. So as to promote effective equality, states may apply justifiable differences in treatment to promote or ensure the participation and representation of national minorities in public life. In fact, it is precisely the failure to take positive state measures that (may) result in a violation of the requirement of non-discrimination.

State measures aimed at promoting or ensuring the participation and representation of national minorities in parliament, with a view to achieving effective equality in this regard, shall take into account, in particular, the number of persons belonging to the national minority community concerned and their dispersal or concentration within the territory of the state. It is also essential that state measures consider the fact that different national minorities may have different needs

and aspirations. Positive state measures aimed at achieving effective equality must also recognise the characteristics of national minorities with different characteristics.

Positive state measures introduced to promote or ensure parliamentary participation and representation for national minorities do not violate the requirement of equality between the majority and minorities or between minorities themselves. It is, however, clear from international hard and soft law commitments and practice that positive state measures must be consistent with the principle of equality and the requirement of non-discrimination. State measures, on the one hand, must comply with the principle of proportionality in order to avoid violating the rights of others and discriminating against them. On the other hand, state measures may only be justified insofar as they aim to eliminate actual inequalities and to remedy, reduce or eliminate circumstances that hinder or restrict the exercise of rights.

Although there is no explicit international hard or soft law obligation for states to adopt measures to promote or ensure the parliamentary participation and representation of national minorities living in their territory, there are arguments in favour of introducing such measures. Positive state measures may be justified, firstly, by the fact that the effective exercise of national minority rights may require states to take measures to ensure the effective participation of members of national minority communities in decisions affecting them, and, secondly, by the need to ensure that elected representative bodies are as representative as possible of all segments of society and thus to establish the requirement of effective equality. The latter justification is reinforced by the fact that, according to international practice, electoral systems that recognise the specific characteristics of national minorities contribute to free elections and to ensuring that the diversity of society is reflected as fully as possible in the composition of the legislature. A clear requirement applicable to state measures aimed at promoting or ensuring the parliamentary representation of national minorities is that mechanisms involving various positive state measures must be protected by an adequate system of guarantees, primarily constitutional and lower-level legal safeguards. The adoption and amendment of such legal instruments cannot be subject to a simple majority decision; the consent of the national minorities concerned is indispensable. It is also reasonable to require that provisions promoting or ensuring parliamentary participation and representation be periodically reviewed by the states, which, in consultation with the national minorities concerned, should provide an opportunity to take into account experience, social changes and the needs of persons belonging to national minorities.

When establishing mechanisms to promote or ensure the representation of national minorities in parliament, states should also ensure that the applicable electoral rules are clear and that their application avoids arbitrary interpretation that could easily result in discriminatory treatment or create opportunities for abuse of national minority rights.

With regard to persons belonging to national minorities, respect for human dignity and the freedom to express one's identity derived from it is a fundamental requirement in the electoral system, particularly when establishing rules for mechanisms that promote or ensure the representation of national minorities in parliament. The practice of international control mechanisms shows that, in order to protect the effective exercise of national minority (political) participatory rights, it is necessary in certain cases to define the scope of persons entitled to these rights. As the exercise of the right to vote is not an absolute right in relation to persons belonging to national minorities, may therefore be subject to prior registration, and exclusion from the right to vote may also be justified, in particular if the mechanism in question is aimed exclusively at promoting or ensuring the participation or representation of national minorities in parliament. The parliamentary representation of national minorities as a legitimate aim thus provides a justifiable basis for restricting the right to vote. In this context, however, the right to freedom of identity must be respected as a strict requirement, and registration must therefore be based on the free decision of the person concerned, without any coercion. It is also a requirement that the registration process be easily and fully accessible for all those concerned. In order to promote or ensure the parliamentary representation of national minorities, state measures must be taken to ensure that the mechanism chosen fully guarantees the conditions for free elections. This entails, particularly, creating conditions in which national minority voters are free to choose between different alternatives, such as national minority parties, organizations, or at the very least multiple candidates from the only national minority party or organization. Restricting or excluding the alternatives available to national minority voters violates the fundamental principle of free elections. The rules of electoral systems established by states must not result in situations where those eligible to vote are pressured to vote for a particular national minority party or candidate. In terms of its effect, this is the case if a state measure has a disadvantageous impact on the position of other candidates competing with a favoured national minority party or organization. It is a requirement that the electoral system promoting or ensuring the election of representatives of national minorities to parliament allows for the development and expression of political pluralism within the national minority community.

A fundamental requirement of the electoral system is that states must respect the principle of secret ballot, which is closely linked to the principle of free elections. The enforcement of this requirement is also important in relation to mechanisms promoting or ensuring the parliamentary representation of national minorities, due to the requirement of full respect for the freedom of identity. While the identification of national minority voters may be necessary to protect the (political) participatory rights of national minorities in the functioning of the mechanisms introduced by states, this must not result in the unwarranted collection of broad information on persons belonging to national minorities. In view of this, it is essential that, in order to enforce the requirement of secret ballot, states take the most appropriate positive measures to ensure that neither the national minority identity of the voter, nor the content of the vote cast by a national minority voter can be identified. States must take similar positive measures in cases where the principle of secret ballot and the right to freedom of expression of identity may have such additional negative consequences that, in casting their votes, national minority voters are subjected to pressure in violation of the principle of free elections.

Q6: Are electoral privileges granted to national minorities that deviate from the requirement of equal voting rights justifiable, and if so, how?

State mechanisms established to promote or ensure the participation and representation of national minorities in parliament typically deviate from the fundamental principle of equal suffrage.

The overwhelming majority of international control mechanisms and the practice of the constitutional courts examined in Central and Eastern Europe, as well as the relevant literature, indicate that the requirement of numerical equality of votes is absolute, i.e. states may not deviate from the principle of one person, one vote when establishing the rules of their parliamentary election systems, nor may they grant double voting rights to their national minority voters. In accordance with the practice of the Venice Commission, derogations are possible in exceptional cases, and only if the derogation from numerical equality of votes respects the principle of proportionality, and the objective pursued cannot be achieved by other, less restrictive measures that do not or do so to a lesser extent, undermine the fundamental principle of equal suffrage; the double voting right is temporary and the measure only affects a numerically small national minority, and the goal is to give this community representation in parliament.

By contrast, based on international control mechanisms, the practice of national constitutional courts, and the position taken in the literature, the requirement of effective equality of votes is a relative requirement. States may deviate from this requirement to a significant extent in order to promote or ensure the parliamentary representation of national minorities. The legislature has a wide margin of appreciation in determining the extent of deviation from effective equality of votes. Indeed, since it does not follow that all votes must necessarily have identical weight in determining the outcome of an election, state measures that increase the value of the votes of national minority voters are also compatible with international and national practice. International control mechanisms and the constitutional courts of the Central and Eastern European states examined typically take the view that the fundamental principle of effective equality of votes is not violated, and therefore state measures that reserve seats for national minorities or grant exemptions from general seat allocation criteria to organizations representing national minorities (explicit exemption from electoral thresholds or alternative electoral thresholds) are permissible.

H: The institutional solutions established by the Central and Eastern European countries under examination to promote or ensure the participation in parliamentary work of national minorities and their representation in parliament violate the requirements of equality and non-discrimination and the fundamental principles of elections in different ways and to varying degrees. Due to their specific characteristics, these mechanisms are incapable of meeting these requirements simultaneously and consistently and are therefore unsuitable for ensuring the effective participation and representation of national minorities in the representative bodies of the country.

The hypothesis of the doctoral thesis is that the institutional solutions created in the Central and Eastern European countries under examination to promote or ensure the participation of national minorities in parliamentary work in order to promote or ensure the participation of national minorities in parliamentary work and parliamentary representation, violate the requirements of equality and non-discrimination, as well as the principles of elections, in different ways and to different degrees. The main statement of the hypothesis is that, due to their specific characteristics, these mechanisms are unable to meet these requirements simultaneously and consistently, and are therefore unsuitable for ensuring the effective participation and representation of national minorities in the representative bodies of the country.

This hypothesis is grounded in the close interrelationship between the effective participation of national minorities and the requirements of equality and non-discrimination in international hard and soft law documents and in the literature. In my view, the enforcement of electoral principles can also be interpreted within this concept of equality.

The following part reveals how the institutional solutions of each country under examination violate the requirements of equality and non-discrimination, or at least restrict the effective enforcement of the relevant requirements and, consequently, why they are not suitable for ensuring the effective participation and representation of national minorities in the representative bodies of the country.

Croatia violates the requirements of equality and non-discrimination by distributing the eight reserved seats in parliament disproportionately among national minorities in its electoral system. Under the relevant provisions, while some national minorities with smaller populations receive one reserved seat each, national minorities with larger populations compete with other communities for the reserved seats in parliament. It can be concluded that this system strongly favours national minorities with smaller populations, which does not reflect the actual social composition of Croatia. The distribution of seats among national minorities has the additional negative effect of creating competition between national minorities that are significantly different in terms of population size. As a result, national minorities with smaller population are naturally disadvantaged compared to the dominant national minority in the group, which implicitly excludes these communities from parliamentary representation. In this respect, the system maintained in Croatia formally treats national minorities in fact different positions equally and thus indirectly discriminates against national minorities with smaller populations by excluding them from parliamentary representation. However, the disadvantage in the electoral competition for shared parliamentary seats does not result from the choice of the national minority voters with a smaller population to join a narrow political interest group, but rather from the decision of the legislature to determine which national minorities compete for a single reserved seat.

The Croatian electoral system also violates the requirement of secret ballot. This violation is primarily the result of the fact that in Croatia, national minority voters are provided with ballot papers of different colours and sizes for the election of national minority representatives. Although prior registration is required for national minority voters to exercise their right to vote, they can decide at the polling station which ballot paper to use. Furthermore, the number of national minority voters in a given polling station is often low, making it easy to identify the national minority origin of voters and, in some cases, the content of their ballots. In this context,

in addition to the violation of the secrecy, there is also a disproportionate restriction of the right to freedom of expression of identity. The disproportionate restriction stems from the fact that, while the declaration of national minority affiliation to the electoral authorities is necessary and proportionate to the right to freedom of expression of identity, the disclosure of national minority identity to third parties is neither necessary nor proportionate to enable national minority voters to exercise their right to vote.

The absence of positive state measures to protect the secret ballot may also result in a violation of the fundamental principle of free elections. This is because national minority voters decide at the polling station whether to cast their vote for the list of candidates in their constituency or for national minority candidates. This takes place in the presence of the polling station commission and other voters, which may prevent national minority voters from making a free and uninfluenced decision and casting their vote in accordance with their actual political will.

In Romania, the requirements of equality and non-discrimination are violated by the fact that the rules of the electoral system differentiate between national minority organizations with and without representation in the Chamber of Deputies with regard to standing in parliamentary elections. National minority organizations with seats in the Chamber of Deputies may field candidates in parliamentary elections without having to meet any additional conditions. However, organizations without representation must meet additional conditions in order to compete for seats in the Chamber of Deputies. This discrimination also violates the principle of free elections, as in the absence of nominating organizations unable to meet the additional conditions and are excluded from the electoral competition as a result, so national minority voters are unable to choose between different alternatives. This feature of the Romanian electoral system limits the development of political diversity within national minority communities and prevents it from being reflected in electoral competition.

In Romania, there are no restrictions on which voters can vote for national minority organizations, so no prior voter registration is required to vote. National minority organizations are given the opportunity to campaign for votes outside their communities, which ultimately enables them to win seats, as many national minorities can only reach the alternative election threshold with the votes of non-national minority voters. However, the exercise of the right to vote free from any restrictions, in particular from registration for the purpose of identifying voters belonging to national minorities, may infringe the rights of national minorities and give rise to abuses of those rights. Ultimately, it violates the right of national minority voters to free elections if persons outside the community can decide the outcome of a mandate, as this would

render meaningless the right of national minorities to participate in public life through their elected representatives.

Hungary violates the requirements of equality and non-discrimination by maintaining a system intended to promote the participation of national minorities in the work of the National Assembly, national minorities with a low population do not have a real opportunity to achieve the preferential quota that acts as an alternative electoral threshold in the electoral system and thus obtain preferential mandates. The specific features of the Hungarian system give rise to discrimination because, on the one hand, it makes it more difficult for national minorities with larger populations to obtain preferential mandates than for voters belonging to the majority, and, on the other hand, it implicitly excludes national minorities with smaller populations from the possibility of obtaining preferential mandates. In none of these cases are the disadvantages in the electoral process based on a decision by national minority voters to associate themselves with a narrow political interest group, but rather on a decision by the legislature to restrict which voters can vote for national minority lists.

The Hungarian legislation also violates the principle of free election by depriving national minority voters of any genuine electoral choice. On the one hand, this occurs because national minority voters who register for parliamentary elections are excluded from voting for party lists. On the other hand, national minority voters can only vote for a single closed list representing their own national minority and have no influence on the order of candidates on that list.

The Hungarian electoral system infringes the secret ballot in that those present in the polling station at the given time, in particular the members of the polling station commission, become aware of the fact that a national minority voter has cast his or her vote on the national minority list. Furthermore, national minority voters can also be linked to their votes during the counting process, especially in polling stations where the number of national minority voters is limited. In Serbia, preferential rules apply both to the establishment of national minority political parties (1,000 voters instead of 10,000) and to the nomination of national minority lists for the election of representatives (5,000 nominations instead of 10,000). Although the rules of the electoral system formally treat national minorities with significantly different populations equally by setting numerical thresholds, many of them are unable to participate in the electoral competition for preferential seats in parliament on account of their population size. The rules of the electoral system do not take into consideration the specific characteristics of national minorities, which results in indirect discrimination against national minorities with smaller populations and has a significant restrictive effect on competition, in violation of the principle of free elections.

The reduced threshold for registering national minority political parties, given that, according to the interpretation of the Serbian Constitutional Court, the founders of national minority political parties do not have to belong to a national minority, allows persons who do not belong to national minorities to abuse the right of national minorities to representation in the National Assembly. Similar abuse may arise from the fact that, although the Law on the Election of Members of the National Assembly of Serbia defines the concept of a national minority list and lays down the conditions for its registration, these criteria are incomplete and grant the National Electoral Commission such broad discretion that it may lead to arbitrary decisions. Provisions that violate the requirement of clarity of the rules of the electoral system open the door to abuse. These circumstances may ultimately result in persons outside the community deciding the outcome of a mandate, thereby depriving the national minority of its right to participate in public life through elected representatives.

Serbia further violates the requirements of equality and non-discrimination in that, although electoral lists of national minorities benefit from preferential treatment in the allocation of seats, but because of the alternative electoral threshold in the electoral system, only national minorities with larger populations have a real chance of getting these seats, and national minorities with smaller populations face obstacles in attaining representation in the National Assembly, even with the advantages in the electoral system. The rules of the electoral system thus indirectly discriminate against national minorities with smaller populations.

In Slovenia, the requirements of equality and non-discrimination are violated by the fact that only the small Italian and Hungarian national communities are represented in the National Assembly, while other, more populous communities are represented exclusively at the local level or not at all in the representative bodies of the country.

Among the countries under examination, Slovenia is the only one where members of national communities have double voting rights. Based on the practice of international control mechanisms, the requirement of numerical equality of votes is not in all respects in line with international requirements allowing for its maintenance in exceptional cases. According to the practice of the Venice Commission, derogations are only possible in exceptional cases, provided that they respect the principle of proportionality, and the objective pursued cannot be achieved by other, less restrictive measures that do not or less seriously undermine the fundamental principle of equal suffrage; the double voting right is temporary in nature and the measure affects only a small national minority.

Overall, it may be concluded that the institutional solutions established by the Central and Eastern European countries examined to promote or ensure the participation of national minorities in parliamentary work, parliamentary representation violate the requirements of equality and non-discrimination and the fundamental principles of elections in different ways and to varying degrees. Violations of these requirements typically result from discrimination between national minorities or their organizations, which often has the effect of restricting competition and is accompanied by violations of the fundamental principle of free elections. The lack of identification of voters or nominating organizations belonging to national minorities may also lead to abuses and to the impairment of the substantive content of the right of national minorities to participate in public life, which may also be linked to a violation of the fundamental principle of free elections. The failure to take positive state measures to ensure the requirements arising from the fundamental principle of secret ballot not only results in a violation of fundamental principles, but also infringes on the right to freedom of identity and may lead to a violation of the fundamental principle of free elections. In some states, violations of requirements arising from international control mechanisms can also be identified.

It can be concluded that none of the countries examined has implemented institutional solutions to promote or ensure the participation of national minorities in parliamentary work promoting or ensuring the participation of national minorities in parliamentary work, with a view to ensuring that the rules of the electoral system reflect the current circumstances of the country and the needs of the national minorities concerned. However, even where institutional mechanisms are reviewed or amended, the outcome is insufficient. It is also regrettable that, in this context, the judgments of the ECtHR finding violations of the national rules on the participation of national minorities in parliamentary work and their representation in parliament have not yet been implemented by amending the national legal systems of Romania and Hungary.

On the basis of all the foregoing, it is my considered view that the institutional solutions established in the Central and Eastern European countries under examination to promote or ensure the participation of national minorities in parliamentary work and their representation in parliament are unsuitable for ensuring the effective participation and representation of national minorities in the representative bodies of the country.

List of publications on the subject of the dissertation

KISS Balázs: A nemzetiségek országgyűlési képviselőinek választójogi kérdései Magyarországon. *Jogi Tanulmányok*, 2021/1.

KISS Balázs: A nemzetiségek országgyűlési jelenlétének választójogi kérdései és részvételének jellemzői a 2022. évi országgyűlési választásokon I. *Közjogi Szemle*, 2022/2.

KISS Balázs: A nemzetiségek országgyűlési jelenlétének választójogi kérdései és részvételének jellemzői a 2022. évi országgyűlési választásokon II. *Közjogi Szemle*, 2022/3.

KISS Balázs: A nemzeti kisebbségek parlamenti képviselőinek kérdése a kétoldalú szomszédsági kapcsolatokban. *Jogi tanulmányok*, 2022/1.

DOI: doi.org/10.56966/2022.3.Kiss

KISS Balázs: Az Alkotmánybíróság határozata a roma nemzetiségi listaállításról. A nemzetiségi listaállítás és a kellő felkészülési idő követelménye. *Jogesetek Magyarázata*, 2023/1-2.

KISS Balázs: Az Emberi Jogok Európai Bíróságának ítéleteiből: Bakirdzi és E.C. Magyarország elleni ügye. *Fundamentum*, 2023/1.

KISS Balázs: Gondolatok a nemzetiségek országgyűlési képviselőtéről az EJEB Bakirdzi és E.C. Magyarország elleni ügye apropóján. *Fundamentum*, 2023/2-3.

KISS Balázs: Az Emberi Jogok Európai Bíróságának ítélete a Kovačević kontra Bosznia-Hercegovina ügyben. Az egyenlő bánásmód követelménye és a központi államhatalmi szervek összetétele Bosznia-Hercegovinában. *Jogesetek Magyarázata*, 2024/1.

SÁNDOR-SZALAY, Elisabeth – KISS, Balázs: An Odd Solution – Comments on the Margins of a Recent Debate on National Minority Suffrage: ECtHR judgement in Case Bakirdzi and E.C. v. Hungary. *Pécs Journal of International and European Law*, 2022/2.

SZALAYNÉ SÁNDOR Erzsébet – KISS Balázs: Az Emberi Jogok Európai Bíróságának ítélete a Bakirdzi és E.C. kontra Magyarország ügyben. Észrevételek a nemzetiségi választójog újabb vitájának margójára. *Jogesetek Magyarázata*, 2023/1-2.