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ARTICLE

Misjudging Electoral Autocracy: The Strasbourg Court on Minority Voting Rights in Hungary

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Abstract
The article looks at two electoral cases from the European Court of Human Rights that raise long-disputed doctrinal issues. Bakirdzi and E.C. v. Hungary deals with the preferential representation of national minorities in parliament, while Zsófia Vámos v. Hungary concerns the rights of Hungarians living beyond the borders to vote in general elections. The author argues that the Court would need to critically examine the social and political system when deciding on electoral rules in order not to miss the forest for the trees, i.e., the way authoritarian regimes manipulate elections. If this is not done, even if decisions condemn Hungary, they may have a legitimising function for the regime. Using a feminist approach that introduces critical perspectives by rewriting problematic court decisions, the article will show how these cases should have been decided and argued in light of the real facts and political context. The article highlights the future potential external constraints of an authoritarian regime and empowers the supporters of constitutional democracy in Hungary.

Keywords: electoral autocracy; preferential representation of national minorities; European Court of Human Rights; electoral cases; minority voting rights; rewriting problematic judgements

Introduction

The language of human rights is the most powerful in international relations to claim the rights of those who "have never had them" (Kapur 2006, 682). Oppressed groups and civil rights activists must use this language. It is also crucial to criticise and monitor the functioning of international human rights institutions because even those organised on a supranational basis tend to avoid confrontation with national governments (Majtényi et al. 2023). As a concerned academic and human rights activist in Hungary, I believe that in all such cases where international mechanisms fail to work properly, and international human rights institutions collaborate and legitimize an illiberal regime, the alarm should be sounded.

I examine two cases of the European Court of Human Rights (ECtHR) concerning Hungary and argue that in reviewing the electoral rules of an authoritarian regime, the Court cannot ignore the social context and the defining features of the political system. The critical approach is especially warranted in these electoral cases as they are directly connected to litigating democratic backsliding. The cases analysed in the article raise important and long-debated doctrinal questions: one deals with the preferential parliamentary representation of national minorities (the case of Bakirdzi and

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E.C. v. Hungary)[1], the other with the voting rights of Hungarians living beyond the borders of Hungary (the case of Zsófia Vámos v. Hungary).[2] I will complement the decisions and discuss what might have been reached if the ECtHR's decisions had taken into account the social and political context. This article is inspired by critical legal studies and the methodology of the critical feminist project (Hodson and Lavers 2019), which rewrite problematic judgments from a feminist perspective and provide a model for more gender-sensitive jurisprudence. This methodology requires the rooting of the case in the social and political context because only this way it becomes clear what the article seeks to demonstrate that there is a need to include the views of oppressed supporters of constitutional democracy in the decision-making of European courts on authoritarian regimes and an imperative to rethink what the values of European institutions would require from judicial decisions.

In its decision of 17 February 2015 in the case of Zsófia Vámos against Hungary, the ECtHR did not find a violation of the Convention regarding the rules that disallow voting by post for Hungarian emigrés who have not given up their address in Hungary and allow voting by post for external ethnic citizens. The vast majority (95.5%) of the latter group voted for FIDESZ-KDNP, while the vast majority of the former ones (who voted to a much smaller extent and could only vote in person, sometimes travelling hundreds of kilometres) voted for the opposition. Seven years later, on 10 November 2022, the European Court of Human Rights ruled against Hungary in the Bakirdzi case, finding a violation of the Convention on the representation of minorities in parliament. Since the judgment condemning Hungary was handed down, the case has received much more attention than the Vámos case (Chronowski and Nagy 2023; Kállai 2022c; Majtényi 2023; Szalayné and Kiss 2023; Unger 2022a; Unger 2022b). This judgment held that the rules governing the representation of national minorities in the Hungarian parliament violated the right to free elections (Article 3 of its First Protocol) in conjunction with the prohibition of discrimination (Article 14 of the Convention). Although the Court found a breach of the Convention, it did not award damages to the applicants or impose general measures on Hungary to amend the legislative framework. As a result, the Committee of Ministers cannot effectively pressure Hungary to change the electoral rules governing minority representation in Parliament.[3]

The analysis of the two cases shows that if the Court is reluctant to criticise the political system of the authoritarian state and fully ignores the domestic social context, it will by nature hand down low-quality decisions which undermine the Court's authority. By low-quality decisions I mean the de-contextualization, mistaken minimalism, seeking to avoid broader, overly politicized topics at the cost of meaningful legal analysis. Under social context, I mean in these cases, relevant issues like the size of minorities and the degree of assimilation or their exclusion, and also the questions of by whom and how external votes are collected or what percentage of external ethnic citizens vote for the governing parties. For example, in the Vámos case, the Court did not address the issue of how voting takes place beyond borders, though, by the time the decision was handed down, the various and systematic abuses of voting by postal votes had become well-known and well-documented (Majtényi 2014a). There are other cases in which the ECtHR failed to address the broader domestic institutional and social context and therefore arrived at an unacceptable conclusion. For example, in the case of J.B. and others, the ECtHR did not engage with the applicants' argument that the early retirement of judges constituted "a serious attack against the independence of the Hungarian judiciary as a whole" (para. 113)[4] (Uitz 2019) forcing around 10% of the judges, among them many court executives, into retirement (Kelemen 2012).

The lack of contextualization in these politicized cases is even surprising if we consider that contextualisation is otherwise not alien to the Court. In cases that also involved minority citizens in Central and Eastern Europe (CEE), such as the Bakirdzi case, the Court's consideration of the social context contributed to the finding of discrimination of Roma children by relying on, among others, historical and statistical evidence of the plight of Roma in Europe.[5] The Rekvényi case[6] from the 1990s is another example of a context-based balancing: the ECtHR concluded that the prohibition on police members joining political parties did not violate the ECHR because of the recent negative

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experience of Hungary with politicized police. However, taking into account the social context does not in itself guarantee a high-quality judgment.[7] For example, in Lautsi, the Court decided not to remove the crucifix from Italian public schools based on "virtually non-existent" reasoning, even though it referred to the domestic social context, e.g., the role of Christianity in Italy (Zucca 2013. p. 226). By political context, I mean the dependence of minority representation on majority policies and the authoritarian political framework. The Court must be familiar with the institutional history to some extent, including the problematic nature of the institutional system that has been set up to collect the votes of external ethnic citizens, and what constitutional obstacles there have been in the past to establishing parliamentary representation for minorities. The lack of systematic criticism can easily result in a regime-legitimizing judgment, even if the Court ultimately rules against Hungary. Moreover, a body adjudicating fundamental rights claims can reasonably be expected to build its decision on a sound fundamental rights doctrine. In this article, I argue that this did not happen in the Bakirdzi case.

Even in the case of well-reasoned judgements, authoritarian systems can live together with the European Convention on Human Rights: Hungary and other authoritarian states can choose not to implement the leading judgments of the Strasbourg Court. For example, Hungary has failed to fully implement 76 per cent of the leading decisions[8] of the ECtHR.[9] Moreover, without free media and meaningful domestic checks and balances, the judgments of the Court have little impact on the political community. The Hungarian government can use the government-controlled media to tell its citizens that the international court has ruled against the interests of the people and the compensation obtained by the complainants will be paid from their taxes. Without systemic criticism, it is even easier for an authoritarian regime to disregard the Court's decisions.

After presenting the history of the representation of minorities in parliament and the history of external ethnic citizenship following the regime change in 1989, I will describe the two decisions and their shortcomings, and I will show the social environment and the elements of the Hungarian political system that the Court should have dealt with. The Bakirdzi case will be discussed in more detail, as this case was eventually judged with more extended reasoning. As explained later, it is worth considering the two cases together to understand better the social context and the characteristics of the political regime in Hungary. Although not addressed in the decisions, the Court examined in both cases such provisions built into the electoral rules of the electoral autocracy, which were designed to ensure the regime's majority in parliament rather than to represent the interests of minorities.

1. The situation of minorities in Hungary and of Hungarians living abroad

To have a meaningful discussion about the preferential representation of minorities, it is necessary to have facts not only about the legal regulation but also about the size of the communities, their social situation and identity politics, and the main goals of the country's minority policy.

In Hungary, as in most states of CEE, the cultural-ethnic concept of the nation, rather than the tradition of the political nation, dominated public discourse in the 20th century. The reason for this can be traced back to the Peace Treaty of Trianon (1920). Before the Treaty, Hungary had been a multi-ethnic state, with almost half its population belonging to national minorities. With the Treaty, Hungary lost two-thirds of its territory and three-fifths of its population. The lost population numbered 10.6 million, of which 3.5 million were ethnic Hungarians (today, the figure for ethnic Hungarians living in former territories of Hungary is around two million). As a result of border changes, the population of what remained in Hungary also became significantly more homogeneous (Vékás 2005), and national minorities continued to shrink between the two world wars, after which the expulsion of the Germans and the Slovak-Hungarian population exchange virtually completed the homogenisation process. Under state socialism, successive censuses reported a decline in minority communities, except for the Roma minority (Halász 2022, 75).

The 1989 regime change found Hungary as an ethnically homogeneous society with only one significant minority, the Roma (Majtényi 2007), whose exclusion poses a veritable problem of social

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integration. Since the 1991 census, the number of people belonging to particular ethnic groups has been increasing, but only the 2011 data show a significant increase (Tóth and Vékás 2013). However, the main reason for this trend might be methodological instead of an actual increase: although both censuses measured multiple identities, residents in Hungary could declare a triple identity in 2001 and a double identity in 2011 (Morauszki and Papp 2014, 89). In the 2011 census, however, all those "who indicated an attachment to a particular national minority, language or culture from at least only one aspect (national minority, mother tongue, language used in family and with friends, cultural attachment) were considered to have a minority identity attachment" (Morauszki and Papp 2014, 79). In the 2001 census, 139,763 persons, or 1.37% of the population, declared the language of a minority as their mother tongue; the census allowed each person to mark three mother tongues. Three answers were also possible for belonging to a national minority, with 318,391 persons, or 3.12% of the population, declaring themselves as a minority. According to the 2011 census, people with any national minority affiliation of multiple identities made up 6.5% of the population (2011. évi népszámlálás 9. Nemzetiségi adatok 2014). Census data show that the number of persons belonging to national minorities is increasing, as is the number of people who do not answer questions on national belonging. However, for a significant proportion of minorities in Hungary, the minority language is not considered as a mother tongue e.g., Armenians, Roma (Morauszki and Papp 2014, 93), and the proportion of those who declare themselves as national minorites but consider the minority language as their mother tongue is decreasing (Morauszki and Papp 2014, 94). According to the recently published 2022 census, the two most significant minorities in terms of ethnicity, mother tongue and language used in family and friendship are the Roma (210,000) and the Germans (143,000) (A népesség főbb jellemzői 2022). Hungary can be regarded as a predominantly homogeneous country in ethnic and linguistic terms, where – notwithstanding this – the political will since the 1989 regime change has been to exaggerate and overstate the number of national minorities.

The Hungarian minority protection system, based on the cultural and personal autonomy of the 13 recognised minorities, was intended to be a kind of "model child" (Majtényi 2005) for the legislators of neighbouring states after 1989. In other words, the main motivation of legislators was not a concern for domestic minorities but for ethnic Hungarians in neighbouring countries: they wanted to create a system of minority protection in Hungary as an example for these countries so that Hungarians beyond the borders could preserve their identity (Majtényi 2006; Sansum and Dobos 2020). To apply such a model, it is helpful to have census data that show a higher proportion of minority communities. As we shall see, the government did not want to leave anything to chance when establishing minority parliamentary representation. Since the data on parliamentary elections in Hungary do not show that national minority ties play a significant role in shaping voter behaviour, a solution had to be found that would nevertheless ensure the establishment of parliamentary representation for minorities (Egry 2006, p.189).

2. The issue of external ethnic citizenship and the Vámos case

In 2010, due to Hungary's disproportionate electoral system, the Fidesz-KDNP coalition won two-thirds of the seats in parliament with 52.73% of the vote.[10] The new government declared this electoral success revolutionary, referred to in the Declaration of National Cooperation as a revolution of the ballot box. The two-third victory was repeated in 2014, 2018 and 2022 due to the construction of an authoritarian regime by adopting a new constitution and restricting the competencies of the formerly independent institutions, among other things, restricting media freedom and transforming the electoral system.

In 2010 the Hungarian Parliament adopted an amendment to the Act on Hungarian Citizenship,[11] allowing Hungarians living abroad to acquire citizenship through a new naturalisation procedure, prioritising ethnicity. The amendment abolished the residency requirement for persons of Hungarian ethnicity, thus opening the possibility of acquiring extraterritorial citizenship

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for ethnic Hungarians living abroad (Körtvélyesi 2012 p. 22). The aim was clearly to give primacy to the concept of ethnic nation in Hungarian law, and the new citizenship policy was, according to the official explanation of the Hungarian government, intended to serve the symbolic "cross-border unification" (Pogonyi 2012). In line with the idea behind the extension of citizenship, the new responsibility clause of the new constitution, the Fundamental Law (2011), refers to the cohesion of Hungarians living beyond the borders in the following way: "Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders" (Article D, Foundation). The Fundamental Law primarily addresses the Hungarians, the members of the ethnic nation, as the source of constitutional power, thus radically changing the constitutional identity of the previous constitution, which was linked to the concept of a political nation (Majtényi 2014b). Naturalisation is often described as integrating stakeholders into the political community, and this may have been the intention behind the constitution-making process. However, this cannot be easy to achieve if the citizen does not live in the country. By December 2017, the FIDESZ-KDNP government had reached its target of one million external ethnic citizens by 2018. The legislation of neighbouring countries, such as Ukraine, Slovakia, and Austria, which prohibit multiple citizenship, is a significant obstacle to achieving a higher number.

The rules for parliamentary elections were also changed, with the abolition of regional party lists and their replacement with national party lists. The electoral system was reformed to ensure that, through various means such as increasing the percentage of individual seats and gerrymandering, FIDESZ-KDNP can remain the leading governing force even after the loss of a significant share of its 2010 vote" (Győri 2012, 80). Since then, there has been a constant rewriting of the electoral rules to fit whatever logic seems to benefit the regime at the moment.

The authoritarian state was more interested in maintaining the regime's power than in protecting the interests of Hungarians beyond its borders when regulating the voting rights of external citizens. The modification of the citizenship act was adopted promptly despite calls for postponement by Hungarian politicians in Slovakia, after which Slovakia adopted a counter-law. The amendment did not offer equal status to Hungarians beyond the borders, and one of the legal twists of the legislation is that external ethnic citizens are not allowed to vote individually and are only given one party list vote, even though international conventions enshrine the principle of equal suffrage (Majtényi et al. 2018). In the elections, 106 of the 199 MPs will enter parliament as individual candidates and 93 as party list candidates. The value of the votes of external ethnic citizens is reduced because the fractional votes of individual constituencies also influence party-list mandates. Since no seats are reserved for external ethnic citizens, elected representatives do not know they represent them, and the party lists absorb their votes. Thus, the vote is hardly about representing the interests of Hungarians living beyond the border since neither they nor the elected representatives know who got into parliament with their votes or who got them into parliament. Unlike other citizens, Hungarian external ethnic citizens can also vote by post. When the new rules were adopted, the government anticipated that the fairness of voting beyond the border would be difficult to monitor and that international election observers arriving in Hungary would have less opportunity to check it. External voting has been subject to abuses ever since: to name just a few examples, there are sometimes non-secret ballots beyond the border, political activists close to FIDESZ collect postal votes, or external ethnic citizens can cast their votes at grocery store counters (Sipos 2022).

The Strasbourg procedure was initiated by Hungarian applicants living abroad, for whom the legal regulations did not provide the possibility of a postal vote in 2014, unlike for external ethnic citizens. They invoked Article 14 of the Convention and Article 3 of Protocol No. 1 to the Convention to complain that they had been discriminated against in exercising their right to vote. Two applicants also claimed that the Hungarian legislation infringed their right to participate in elections. Under the legislation, those emigrés with permanent addresses in Hungary and who are also applicants can only cast their votes at foreign representations (embassies and consulates). It

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makes difficult or impossible for many people to participate in the elections, as emigrés sometimes must travel hundreds of kilometres to the representations or even to Hungary to vote. The ECtHR did not find the regulation allowing postal votes only for external ethnic citizens to be in breach of the Convention. In reaching its decision, the Court limited itself to analyzing the legal framework and the relevant Strasbourg case law, completely ignoring the social and political context in Hungary. The Vámos case was decided after the Fourth Amendment to the Fundamental Law (2013), which made it clear that authoritarian elements had become dominant in the Hungarian legal system (Scheppele 2015).

The Court rejected the finding of discrimination after examining whether there was an objective and reasonable justification for the distinction. The Court accepted that the difference in treatment could be considered reasonable, as the criteria of a permanent address showed a link with the country. According to the Court, this is reflected in the rules that those with a permanent address are entitled to vote for the individual candidate and the party list. In contrast, those without a permanent address can only vote for the latter. It was also explained that those with such a permanent link in the country can arrange to vote in person in their constituency; if not, they can vote at embassies. In other words, in the decision, the Court concluded that the requirement of permanent residence, which excludes the possibility of voting by post for persons with a permanent address in Hungary who are abroad, is an objective criterion that pursues "the legitimate aim of organising the voting system in a rational manner" (para. 19) and serves to exempt from the prohibition of discrimination. According to the voting rules, which reflect the difference in the situation of voters in Hungary, those who have a permanent residence may vote for an individual candidate but not vote by post, and those who do not have a permanent residence may not vote for an individual candidate but may vote on a list by postal ballot. This is within the discretion of the state, according to the Court. It is unclear how the obligation to travel to one's home country or embassies is linked to maintaining a permanent residence. However, it could be argued that legislative stupidity (Eskridge and Levinson 1998) is within the state's discretion, but it cannot result in discrimination. And in its reasoning, the Court completely ignored the political context, namely that it examined the electoral rules of an electoral autocracy.

Although the legislation distinguishes between those abroad on election day based on whether they have a registered address in Hungary, the distinction is only seemingly neutral, it is directly about registered address and indirectly on political opinion. In the 2014 elections, which preceded the case and were the basis of the applications, 95.5% of external ethnic citizens voted for Fidesz-KDNP, compared to 43.5% in Hungary, and the party alliance won two-thirds of the seats. In the 2014 election, Fidesz-KDNP needed the votes of external ethnic citizens to secure a two-thirds majority. 193 793 cross-border citizens registered in the electoral roll and 128 712 valid votes were cast. In Romania, for example, in the 2014 elections and before, the Hungarian National Council of Transylvania, an NGO supported and financed by the Hungarian government, together with the Hungarian People's Party of Transylvania (then a political ally of FIDESZ-KDNP), helped to process citizenship applications and collected nearly two-thirds of the votes in Romania (Kovács et al. 2015, 25). External Hungarian citizens of Romania voted for the FIDESZ-KDNP coalition with huge majorities not only in 2014 but in all three parliamentary elections (95.49% in 2014, 96.24% in 2018, and 93.89% in 2022). The FIDESZ-KDNP won the non-external votes with the following proportions: 43.55% in 2014, 47.68% in 2018, and 52.45% in 2022. The primary reason for regulating the votes of external ethnic citizens of Hungary was presumably not their supposed interests but the acquisition of votes in favour of the regime without any meaningful legal and democratic control. Although the Court did not establish this, it could be argued that freedom of election was also infringed, in addition to the violation of the equal value of votes, since the postal ballot was introduced to secure the parliamentary majority of FIDESZ, and the regulation created a system that was opaque and open to electoral fraud.

However, the Court's decision is not surprising in light of a 2014 ruling (Oran v Turkey)[12] that found no violation of the Convention in the 2007 Turkish parliamentary elections, which ruled that

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Turkish citizens who have been living abroad for more than six months can vote for a party list but not for an independent candidate in Turkey's proportional electoral system, where MPs are elected in constituencies. The applicants in this case have alleged a violation of Articles 10 and 14 in the context of Article 3 of the First Protocol on Freedom of Election (Unger 2014, 12). (In the 2007 and 2011 elections, the Kurdish party candidates were still running as independents.) However, in this case, it seems clear and beyond dispute that such a solution violates external citizens' freedom of expression and discriminates against independent candidates based on political opinion and national belonging. It is also questionable how one can talk about the fair component of the elections in such a case.

3. The history of parliamentary representation

To understand the background of the Bakirdzi case, it is worth knowing what constitutional obstacles existed to the parliamentary representation of minorities in Hungary before the authoritarian turn. It is also important to discuss the deficiencies of the minority self-government system on which the regulation of parliamentary representation was built.

After the regime change, the legislature committed itself to parliamentary representation with the amendment of the 1989 Constitution in 1990. Paragraph 3 was added to Article 68 of the Constitution and declared the representation of national and linguistic minorities in parliament and councils. This provision was intended to be put into practice – already within the framework of the rule of law, but still using the methods of the party-state – by the Act XVII of 1990 on the representation of the national and linguistic minorities in Parliament. Under this law, the National Assembly would have elected one representative from each of the eight minorities after the parliamentary elections. This would have been done irrespective of whether the listed minority had any claim to recognition as a national minority so that the legislation would later have provided for parliamentary representation for Hungarian Jews who had not applied for national minority status, when the 1993 Minorities Act was negotiated. Minority organisations rightly complained that minority representatives would not have been elected by those belonging to the minority but would have been nominated paternalistically. The nomination committee would have consisted of representatives appointed by the parliamentary groups of the parties represented in parliament and representatives nominated by non-party members. The committee would have been obliged to seek the opinion of the organisations representing the interests of minorities.

However, Act XVII of 1990 was never applied due to the Hungarian Democratic Forum (MDF) – Free Democrats (SZDSZ) Pact concluded by the two strongest parliamentary parties on 29 April 1990, following the parliamentary elections. Under the Pact, the conservative MDF accepted the nomination of Árpád Göncz, the liberal SZDSZ candidate for President of the Republic. At the same time, the SZDSZ agreed to narrow the number of the cardinal laws (laws requiring a two-thirds majority) and decided to introduce a constructive vote of no confidence. As regards the representation of minority interests in parliament, it was agreed that minority ombudspersons would be elected during the 1990-1994 parliamentary term, who, although not members of parliament, could speak for minorities in parliament and act as national human rights institutions (e.g., with strong powers of investigation). Later, a single unified minority ombudsperson institution was established to protect the rights of all minorities. The specialised ombudsperson started its work in 1995 and, because of the social situation of minorities in Hungary, mainly investigated complaints about the discrimination of the Roma. (After 2011, the specialised ombuds institution lost its autonomy, and minority cases were transferred to a deputy ombudsperson.) In the Pact, it was agreed that instead of delegating minority representatives, as this "solution is neither democratic nor effective" (Megállapodás 1990), a new solution for minority representation, compatible with the principles of constitutionalism, would be sought.

The Parliament repealed the Act on the Representation of Minorities in Parliament by an amendment to the Constitution adopted on 19 June 1990[13] and changed the wording of Article

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68(3) of the Constitution, which no longer explicitly provided for the representation of minorities in Parliament: "The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country." This provision could also be interpreted in such a way that its provisions would be implemented by the establishment of a system of minority self-government based on the personal autonomy of minorities, which would operate in parallel with the self-governments, as declared in the following paragraph. "National and ethnic minorities shall have the right to form local and national bodies for self-government." [Article 68(4)]. Thus, the constitutional provision was understood to mean preferential representation of minorities in parliament and local government, sometimes interpreted as not necessarily meaning both together. The monitoring reports of the Council of Europe's conventions on the protection of minorities (the European Charter for Regional or Minority Languages and the Framework Convention on the Rights of National Minorities) subsequently criticised the Hungarian state for failing to solve the representation of national minorities in parliament.

In 1992, the Constitutional Court (CC) found that the Parliament had not fulfilled its legislative obligation to establish minority representation as provided for in Article 68 and had thus committed unconstitutionality by omission. The applicant complained that minorities were "not guaranteed representation either in the current Parliament or in the representative bodies of local governments".[14] The CC also called on the legislature to make good on its commitment by December 1992. Subsequently, Article 20(1) of the 1993 Minorities Act[15] provided on the issue of parliamentary representation that "Minorities have the right – as determined in a separate Act – to be represented in the National Assembly". However, a separate act regulating this issue was not adopted until the fall of the constitutional democracy in 2010. In 1994, the CC clarified its earlier decision, stating that it had already found an unconstitutionality by omission of parliamentary representation in its 1992 decision.[16] Nevertheless, the view persisted in the academic literature and among politicians that, as a result of the constitutional amendments, the CC decision did not establish the existence of unconstitutionality by omission regarding the parliamentary representation. This was the case because the CC decisions did not mention that there must also be parliamentary representation within the framework of preferential representation, or that the establishment of preferential municipal representation already ensured this. Accordingly, the legislator "merely" failed to fulfil its obligation under the Minorities Act. This was the position taken, for example, by Mihály Bihari as an MSZP (Hungarian Socialist Party) MP (Dr Bihari Mihály hozzászólása. 1998.) and constitutional judge, and by András Jakab as a researcher (M. László 2011).

Thus, from the change of regime until the fall of the constitutional democracy, despite the constitutional regulation, minorities had only two ways of entering parliament: they could either form their ethnic party and win a seat under the general electoral rules, or they could enter parliament on one of the lists of the majority parties. Minority organisations tried to use both options in the first democratic elections. In the 1990 elections, two members of the Roma organisation Phralipe, Antónia Hága and Aladár Horváth, were elected to the parliament from the party list of the SZDSZ, and later Tamás Péli joined them from the party list of the MSZP through a vacant parliamentary seat. At the same time, an ethnically organised Roma party, the Social Democratic Party of Hungarian Gypsies, also stood in the election but received a negligible number of votes and did not win a seat. Over time, as the Roma intelligentsia and civil rights activists were squeezed out of parliament, parliamentary party politics became more of a stage for the colonisation of minority politics by the majority parties. (The leader of FIDESZ's Roma satellite organisation, Lungo Drom, Flórián Farkas, was a member of parliament continuously between 2002 and 2022.) The opposition coalition, which failed in the 2022 elections, sought to change this by putting three Roma intellectuals on the common list.

Although preferential representation of minorities in parliament was not introduced before the authoritarian turn, it existed in local government until 2005. The introduction of preferential representation with plural suffrage, i.e., an additional vote for minority voters in parliamentary

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elections, was made impossible by CC Decision 34/2005 (IX. 29.).[17] The CC, based on the arguments of the President of the Republic, who had referred the matter to the CC for a preliminary review, had explained that public power could only be exercised based on democratic legitimacy. The reasoning of the CC (Korhecz and Nagy 2024, 670) also included the following: "In constitutional democracies, self-government by members of the political community is based on the principle of "one man, one vote", which realises the right to equal suffrage."

Ernő Kállai, the last independent ombudsperson for national minorities and the first Roma public dignitary, made another attempt to achieve preferential parliamentary representation for minorities in 2008, following numerous government and minority initiatives.[18] His proposal was similar in many respects to the later legislation. However, it would have allocated minority seats in a parliament of 386 members, which was considerably larger than the current one. The proposal was to create a minority electoral register for the parliamentary elections and to link it to the electoral register for minority municipal elections. Under the proposal, minority voters would have had the same number of votes. They would have had to decide whether to vote for the candidate on the minority list or the candidate on the party list. The proposal would have given one preferential seat per minority to the candidate organisation with the most votes but at least 1,000 votes (Kállai 2013, 134). However, a senior lawyer in the Office of the President of the Republic made it clear to the staff of the Ombudsman's Office in informal discussions that the President's position had not changed since the CC decision 34/2005 (29.IX.2005) and that he did not consider the proposal compatible with the constitutional framework.[19] In this decision, the CC refers to the democratic rule of law as closely linked to the universality and equality of the right to vote.

In the new order established after the 2010 elections, although the reduction of the number of MPs to 199 would have been a further obstacle to the representation of minorities in parliament, the legislator was no longer bound by the CC's former considerations of equally weighted votes.

4. Parliamentary representation in the authoritarian system

In 2010, before the parliamentary election, a parliamentary resolution was adopted proposing the "necessary and sufficient preferences" for all minorities to have the chance to be represented in parliament.[20] In May 2010, after the elections, the government, with a two-thirds majority, amended the text of Constitution 1989[21] by reducing the number of MPs from 386 to "not more than two hundred" in paragraph 1 § 1 and adding that "up to thirteen additional MPs may be elected to represent minorities" (Dobos 2021, 60).

According to Act CCIII of 2011 on the Election of Members of Parliament, only national self-governments of national minorities may nominate a national minority list with the recommendation of at least one per cent of the voters on the national minority register, but no more than 1,500. A list of at least three candidates may only include persons on the given nationality register. The lists of national self-governments may not be combined, no joint list may be drawn up, and the electoral threshold for a minority list is one-quarter of the votes required for a mandate from the party list. If a minority draws up a list but does not obtain enough votes, the minority is represented in parliament by a minority advocate (a non-voting representative). The 93 seats from the national list include the seats obtained from the minorities lists.

Before the authoritarian turn, the main obstacle to the representation of minorities in the Hungarian parliament was their low population size, as mentioned above. The solution that took this into account, some form of preferential parliamentary representation for minorities, was, according to the CC, difficult to reconcile with a parliamentary electoral system based on the equally weighted votes. After the authoritarian turn, the Fourth Amendment to the Fundamental Law in 2013 removed this obstacle by stating that CC decisions before the Fundamental Law entered into force were null and void.

In the 2014 elections, the minorities elected advocates without the right to vote and to initiate legislation. The advocates participate in the work of the parliamentary committee representing the

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nationalities, and their immunity and remuneration are the same as those of the members of parliament.[22] In their parliamentary contributions, advocates are grateful to the government for its achievements (Kállai 2017).

In 2018 and 2022, one member of the German list, Imre Ritter, was elected to parliament as a member of the German national minority. He was previously a Fidesz municipal councillor and votes with FIDESZ-KDNP on almost all issues (Kállai 2022a). His loyalty to the party is shown by the fact that he voted in favour of the legislation, known as the revenge or status law adopted in 2023, which was passed as a reaction to teachers' protests and which curtails teachers' legal status, their opportunities for lobbying and their professional autonomy. The latter, for example, will undoubtedly worsen the situation of teachers of German minority education and the quality of minority education. Certain scholars claim that the elected German MP has a distinct "thank-you" relationship with the government (Kállai 2022a).

The possibility of abuse is indicated by the fact that the Armenian Self-Government, in its resolution 16/2015 (12 March), called for the resignation of the Armenian minority advocate it nominated the previous year, claiming that he had misrepresented his ethnicity to the Self-Government (Dobos 2021 p. 61). Aladár Horváth, one of the leading figures of the Roma civil rights movement, wrote about why the new legislation means that the Roma in Hungary will not have real representation in parliament: "Firstly because Fidesz compiles the national minority list of the National Roma Self-Government, and secondly because in the domestic political constellation, a Roma ethnic or civil rights party has no chance of winning a seat." (Horváth 2022) Aladár Horváth, in an article written together with Jenő Setét, a Roma civil rights activist, explained the changes at the level of the political system, in which the political representation of Roma minorities has changed. "Twenty years ago, there were social rights for the most disadvantaged social groups; today, there are almost none; there were free media that reported on illegal and unfair situations, in which the defence and representation of Roma rights could be voiced! Twenty years ago, the marginalised Roma had the strength to fight for their rights, and the stronger, more persistent ones succeeded." (Horváth and Setét 2021) The dependence of minority self-governments and minority representation on majority politics and on the government is a very important constitutional problem that should have been taken into account in the Bakirdzi case.

5. The judgment in the Bakirdzi case

According to the judgement, the Hungarian legislation on the representation of national minorities in parliament violates the right to free elections (Article 3 of the First Protocol) in conjunction with the prohibition of discrimination (Article 14 of the Convention). The Hungarian government appealed unsuccessfully against the judgment.

In what follows, I will point out that the reasoning of the judgment is doctrinally weak and unsupported by the facts. In my view, these shortcomings in the judgment are due to an inadequate knowledge of the Hungarian political and legal system, even though a Hungarian judge was a member of the panel hearing the case. This may be partly due to the ECtHR's wish to avoid discussing the substance of the relevant provisions of the Hungarian legal system and the electoral abuses. In part, it shows that the reasoning is of a low standard and that the Court does not have sufficient knowledge of Hungarian law to render a judgment. I will give examples of how the Court either did not address the question of the applicable legislation in Hungary or presented the relevant legal provisions but ignored them in its reasoning or failed to reason on the issue of non-discrimination.

When I criticise the decision, I am not saying that it is not possible to argue that the Hungarian rules on the representation of minorities in parliament violate the Convention, but that such a decision should not be taken without consistent reasoning and proper knowledge and criticism of the Hungarian political and legal system.

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5.1. Representation of minorities in parliament and voters' free political choice

Let's start with the need for more knowledge of Hungarian legislation. When the judgment summarises the relevant national legislation, it fails to mention Article 2(2) of the Fundamental Law, which deals explicitly with the representation of minorities in parliament: "The participation of national minorities living in Hungary in the work of the National Assembly shall be regulated by a cardinal Act." The Court merely cites Article XXXIX(2) of the Fundamental Law, which refers to minorities' right to local and national self-government. However, the English text of the Fundamental Law is freely available online.

The Court's summary of Hungarian electoral law is misleading, as it states that "national minority voters can only vote for the minority list of the national minority they belong to and for single-member district candidates, whereas *other voters* (emphasis is mine) vote for a candidate in a single-member district and a party list" (para. 6). As I discussed in more detail earlier, external ethnic citizens cannot vote for individual candidates but only for party lists (Székely and Toró 2022, 207). The fact that the Court overlooked the issue of the postal vote of external ethnic citizens is all the more incomprehensible given that we are talking about more than one million external ethnic citizens of a country of less than ten million, and also because the Court already discussed the representation of Hungarians living outside the borders in the Vámos case and the Hungarian judge was a member of the panel. It isn't easy to imagine that the Court was unaware that people from abroad could not vote for an individual candidate.

The fact that citizens living beyond the border can only vote for the list, as I explained earlier, violates the principle of "one person, one vote" and the principle of equally weighted vote. To make the inequality even more apparent, if we compare the influence of the votes of Hungarian minorities in Hungary and those of external ethnic citizens, we find that the votes of minorities in Hungary carry many times more weight than those of Hungarians living beyond the border in elections. In constitutional democracies, citizenship means equal membership in the political community (Majtényi 2021). The Court avoids addressing this problem using an untrue statement. As I mentioned earlier, the primary aim for unequal suffrage is that not only the diminished value of the external vote but also the enhanced value of the minority vote may be necessary for the regime to retain power.

Paragraph 61 of the judgment criticises the legal regulation because those who registered as minorities "had neither the choice between different party lists nor any influence on the order in which candidates were elected from the national minority lists." This statement is simply false, as everyone is free to choose whether to register on the minority electoral roll or to de-register before election day to vote for the party list rather than the minority list. The judgment fails to mention that, in principle at least, the minority self-government elected by the members of the minority decides on the candidates on the minority list, their order and the composition of the list. Thus, unlike the majority voter, the minority voter has a guaranteed influence under the law on the composition of the minority list: who is on it, and in what order. In addition, the list requires the recommendation of at least 1% of the persons on it, but not less than 1500 recommendations. If one only argues on the level of the written law, then, whether such a list exists is a decision for the minority voters and the minority self-government. In the last parliamentary elections in 2022, the Roma minority self-government could not establish a list, presumably due to government interference (Kállai 2022b).

Surprisingly, the Court accepted the applicant's argument that "the number of minority voters belonging to the same national minority in Hungary was not high enough to reach the preferential electoral threshold even if all voters belonging to that national minority were to cast their vote for the respective minority list" (para. 57). The judgment does not address at all what has happened in the eight years since the application was submitted to the Court, so it does not mention that the German minority reached the preferential quota in 2018 and 2022. The judgment is also silent on the fact that Imre Ritter was elected as a member of parliament for the German minority. As the

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representation of the German minority in parliament for two terms shows, the Court, taking the example of two minorities, wrongly makes a general finding intended to apply to all 13 recognised national minorities in Hungary. It also does not mention that the elected minority representative is affiliated with the FIDESZ or that he regularly votes in parliament with the FIDESZ-KDNP.

The Court also does not deal with the legal provision cited in its judgment that any national minority that has put forward a list but has not obtained a mandate is represented in parliament by a non-voting national minority advocate. Here, the Court could have argued that the institution of an advocate does not create genuine representation.

5.2. Establishment of a breach of the principle of non-discrimination without justification

The joint concurring opinion of judges Bošnjak and Derenčinović rightly criticises the judgment for "the almost complete lack of reasoning" regarding the violation of Article 14 (para. 1). The breach of Article 14 would also have required a detailed justification based on the Court's previous case law. As Kristin Henrard explains, "The Court had already indicated in the 1968 Belgian Linguistics case that the prohibition of discrimination does not prohibit states from treating groups differently in order to correct factual inequalities" (Henrard 2016, 166.). In 1996, in the Buckley case[23] the Court facilitated positive state obligations to protect Roma identity. Later in the Chapman case[24], "the Court identified de facto duties of differential treatment towards Roma so as to 'facilitate the Gypsy way of life', in accordance with Article 8 of the ECHR" (Henrard 2016, 169.) While the Court briefly mentions the correction of factual inequalities with reference to the case of Sejdić and Finci v. Bosnia and Herzegovina[25] (para. 50), it does not explain why preferential minority representation violates the prohibition of discrimination. This means that the reasoning for the violation of the principle of non-discrimination is "virtually non-existent"[26] in the judgment.

The Court links the violation of the prohibition of discrimination to the electoral threshold for minorities and the lost votes in a way that is difficult to follow. Under Hungarian law, the electoral threshold for minority lists is one-quarter of the votes needed to obtain a mandate from the party list. The concurring opinion states, "Indeed, the system as it now stands does not guarantee the political representation of minorities in the form of a seat in Parliament. However, this is not a requirement under the relevant international standards" (para. 7). Indeed, it is challenging to justify preferential parliamentary representation for minorities without introducing some preferential parliamentary threshold since it is difficult to argue, for example, that two or even twenty minority voters, however politically active they may be, should be represented in parliament, even if in that case there would be no lost votes. Much less worrying is a rule that if a minority decides to stand for election, it will only be represented if it reaches a certain threshold of votes in parliament. In the case of preferential parliamentary representation, the minority must obtain fewer votes than the majority to win a seat; still, determining the legitimate distinction is a matter of national policy. Nonetheless, it would have been essential for the Court to examine the frame within which nation-state rules can operate. This would have required an examination of the relationship between minority rights and prohibition of discrimination in the specific case and a normative formulation of what is the minimum that can be expected from an electoral system. Furthermore, it would have been essential to ask in what cases the rules on preferential minority representation would have exempted minorities from the prohibition of discrimination. Following a comparison, the Court could even have drawn generalisable conclusions about the justifiability of the different variants of preferential parliamentary representation of minorities, especially in CEE, contributing to the doctrinal debate on minority rights.

The Court's argument that the preferential parliamentary representation of national minorities in Hungary would be contrary to the prohibition of discrimination is shocking given that this institution, which exists mainly in Eastern and Central Europe, was introduced by these countries, primarily to comply with international standards (such as Article 15 of the Framework Convention

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for the Protection of National Minorities), under pressure from European institutions. To see this, it would have been enough to read the opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities on Hungary and the decisions of the Committee of Ministers. The Third Opinion of 2010[27] also strongly and repeatedly calls for action to address the issue of parliamentary representation of minorities, and one of the recommendations of the resolution adopted in 2011 is to establish parliamentary representation of minorities.[28] And the opinion adopted in 2016[29] welcomes its establishment. The Language Charter monitoring body, the Committee of Experts' report on Hungary in 2019, stated that "the representation of regional or minority language speakers in the Hungarian Parliament is good practice in Europe."[30] Surprisingly the Court relies in depth neither on other monitoring mechanisms nor on its case law on the relationship between the prohibition of discrimination and minority rights.

5.3. Secrecy of votes and protection of personal data

The Court also argued that the secrecy of the votes was violated. At this point, the Court also mentions the fundamental problems of the regulation: "All present in the polling station at the relevant time, especially members of the relevant election commissions, would come to know that the elector had cast a vote for the candidates on the national minority list" (para. 70). The Court here finds a real problem, but for the wrong reasons, as it explains in the same paragraph: "As is apparent, the arrangement put in place for minority voters allowed for the details of how a national minority voter had cast his or her ballot to be known to everybody, and for information to be gathered about the electoral intention of minority voters as soon as they registered as such" (para. 70). The judgment does not address the data protection provisions in Hungary, including the fact that data relating to minority affiliation enjoy special protection. It would also have been worth mentioning that minority self-governments do not have access to minority voters' data after the elections and that electoral documents, including votes, are destroyed after the elections. Disclosing the ballot papers to everyone would seriously breach data protection rules.

Regarding the breach of secrecy, the dissenting opinion of Judge Ktistakis on the issue of the failure to provide just satisfaction raises the point that the non-politician applicant was expected by the Court to have the same high standard of tolerance as politicians. Next, Judge Ktistakis argues, confusingly, that since the Armenian applicant requested anonymity, the Court's reluctance to make an award for non-pecuniary damage is likely to discourage him and other members of the Armenian minority from fighting for law enforcement. However, members of minorities can fear publicity, both in the context of voting and in the context of litigation, i.e., there is no necessary correlation between the two types of fears. It is unclear why anonymity is a relevant factor in awarding damages in this case. If the Court finds the same human rights violations against the Armenian and Greek applicants, it cannot distinguish between them in whether to award them compensation. It could be argued that both applicants should be entitled to compensation irrespective of anonymity.

The judgments provide the year of birth, sex and municipality of residence of both applicants, the minority with which they identify themselves, the minority list on which they voted, the initials of the applicant who requested anonymity and the full name of the other. The personal data disclosed in the case of the applicant requesting anonymity could be used to identify the person active in minority public life and the minority list on which they voted. The purpose of anonymity would be to remove the data that could identify the person from the document disclosed, which has not been done in this case. In any event, the Court's reasoning on the protection of data on minority identity and the confidentiality of votes is not made any more persuasive because the personal data of the applicant requesting anonymity were made publicly available on the Internet. If an applicant fears misuse of his/her data and requests anonymity, it would be appropriate for his/her personal data not to appear in the judgment.

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6. Conclusion

All judicial bodies, including the ECtHR, are expected to be able to identify and interpret the facts and the relevant legislation. If a court is dedicated to acting as a kind of European constitutional court, as the conscience of Europe, it must be able to deliver high-quality judgments and proper doctrinal reasoning.

The real problems of the minority electoral system cannot be understood if we ignore the fact that the post-2010 Hungarian authoritarian regime made minority self-governments and Hungarian organisations beyond the borders more dependent on majority politics than before. The conditions for genuine representation and real political competition were absent from the outset. The parliamentary representation of external ethnic citizens and minorities in Hungary was, in fact, introduced to ensure the parliamentary majority of FIDESZ-KDNP. Neither in Vámos nor in Bakirdzi did the Court address the lack of free elections for external citizens and minorities.

Since the Convention was adopted to protect democracy and human rights in Europe, the Court should have considered the authoritarian nature of the political system and the accompanying social environment as a context of its decision regarding Hungary's electoral rules. The ECtHR failed to address the electoral system as a whole, for instance, to examine the regulation of voting by external citizens, emigrés and national minorities jointly. In the Bakirdzi case, the judgment does not even demonstrate proper knowledge of the relevant Hungarian legal framework.

Parliamentary representation of national minorities and external ethnic citizens clearly violates the right to free elections enshrined in Article 3 of the First Protocol. This was only established in conjunction with the prohibition of discrimination in the Bakirdzi case. However, the problems do not lie in the discriminatory nature of the rules of minority representation, but rather in the fact that the legislation allows governmental influence over the votes of minorities and external citizens, and grants unequal suffrage to the citizens. No wonder that the Court failed to provide any convincing argument for its findings. The Court should have declared the violation of Article 3 of the First Protocol also in the Vámos case, this time, in conjunction with the violation of non-discrimination on the grounds of political opinion.

These decisions suggest that the ECtHR does not want to see what is happening in Hungary, perhaps to avoid an open conflict with a Member State. Such reluctance leads to a situation where even judgments against Hungary provide legitimacy to the authoritarian regime. On the other hand, this reluctance also jeopardises the Court's mission to be the watcher of democracy and human rights across the continent, implying also that an influential human rights court leaves national human rights defenders alone in struggling with systemic problems.

Disclosure. None.

Notes

1 ECtHR 10 November 2022, No. 49636/14 and 65678/14, *Bakirdzi and E.C.* v. *Hungary.*
2 ECtHR 17 February 2015, No 48145/1410, *Zsófia Vámos* v. *Hungary.*
3 As it was an effective pressure, for example, in the case of the X and Others v Albania. ECtHR, 31 May 2022, No. 73548/17 and 45521/19, *X and Others* v *Albania.*
4 ECtHR 27 November 2018, No. 45434/12, *J.B. and Others against Hungary*
5 ECtHR 13 November 2007, No. 57325/00, *D.H. and others* v *Czech Republic*, ECtHR 29 January 2013 No. 11146/11, *Horvath and Kiss v. Hungary*
6 ECtHR 20 May 1999, No. *Rekvényi v. Hungary.*
7 ECtHR 18 March 2011, No 30814/06, ECHR 2011, Lautsi and others v. Italy.
8 These decisions 'require changes to laws or practices to prevent the same violation from happening again.' Countries (no date) European Implementation Network. Available at: https://www.einnetwork.org/countries-overview

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9 Hungary (no date) European Implementation Network. Available at: https://www.einnetwork.org/hungary-echr
10 Az Országgyűlés 1/2010. (VI. 16.) OGY politikai nyilatkozata a Nemzeti Együttműködésről. https://2010-2014.kormany.hu/download/d/56/00000/politikai_nyilatkozat.pdf.
11 Act LV of 1993, amended by the Act XLIV of 2010, entered into force on 1 January 2011.
12 ECtHR 15 April 2014, No 28881/07 *Oran* v *Turkey*,
13 Act XL of 1990 amending the Constitution of the Republic of Hungary.
14 35/1992 (10.VI.) CC decision (ABH 1992, 204.)
15 Act LXXVII of 1993 on the Rights of National and Ethnic Minorities
16 24/1994 (V. 6.) CC order (ABH 1994, 377.)
17 Decision 34/2005 (IX. 29.) CC (OJ 2005, 352.)
18 A kisebbségek parlamenti képviseletének koncepciója. 06 February 2008, http://www.kisebbsegiombudsman.hu/hir-161-kisebbsegek-parlamenti-kepviseletenek.html, visited 03. June 2024.
19 The author of the study was then working for a short period of time in the Specialised Ombudsperson's Office.
20 20/2010. (II. 26.) OGY határozat a nemzeti és etnikai kisebbségek országgyűlési képviseletére vonatkozó jogalkotási folyamatról.
21 Alkotmány 2010. május 25-i módosítása a Magyar Köztársaság Alkotmányáról szóló 1949. évi XX. törvény módosításáról https://mkogy.jogtar.hu/jogszabaly?docid=a1000525.TV, visited 03. June 2024.
22 Országgyűlésről szóló 2012. évi XXXVI. törvény
23 ECtHR 25 September 1996 No. 20348/92, Buckley v. the United Kingdom, Para 71.
24 ECtHR 18 January No. 27238/95 2001 Chapman v UK App, Para. 89.
25 ECtHR 22 December 2009, No. 27996/06 and 34836/06, Sejdić and Finci v. Bosnia and Herzegovina § 50
26 The term "virtually non-existent" was borrowed from Zucca (Zucca 2013. p. 226).
27 Third Opinion on Hungary adopted on 18 March 2010, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c688
28 Resolution CM/ResCMN(2011)13 on the implementation of the Framework Convention for the Protection of National Minorities by Hungary https://www.coe.int/en/web/minorities/hungary
29 Fourth Opinion on Hungary adopted on 25 February 2016, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ac04b
30 European Charter for Regional or Minority Languages d. Seventh report of the Committee of Experts in respect of Hungary point 9.

References

A népesség főbb jellemzői (országos és területi adatok). 2022. *Központi Statisztikai Hivatal.* https://nepszamlalas2022.ksh.hu/eredmenyek/vegleges-adatok/kiadvany/assets/nepszamlalas2022-vegleges-adatok.pdf. Accessed 3 June 2024.

European Implementation Network. 2024. Countries. *European Implementation Network.* https://www.einnetwork.org/countries-overview. Accessed 3 June 2024.

Chronowski, Nóra and Noémi Nagy. 2023. Kisebbségi választójog az Emberi Jogok Európai Bírósága előtt. *Közjogi Szemle* 16 (3): 106–110.

Dobos, Balázs. 2021. A nemzetiségi részvétel jellemzői az országgyűlési választásokon (2014–2018). *Parlamenti Szemle.* (2): 53–81

Dr Bihari Mihály hozzászólása. 1998. (Comment by Dr Mihály Bihari) February 16, 1998 (No. 336). https://n9.cl/rxk7l. Accessed 3 June 2024

Egry, Gábor. 2006. A nemzeti és etnikai kötődés szerepe a választói magatartás alakulásában Magyarországon a 20. Században. *Múltunk – Politikatörténeti Folyóirat.* 51 (1): 170–197.

Eskridge, William N. and Sanford Levinson (eds.). 1998. *Constitutional Stupidities/Constitutional Tragedies*, New York – London, NYU Press.

Győri, Gábor. 2012. Tovább szűkül a demokratikus akarat mozgástere. *Fundamentum.* 16 (4): 79–83

https://doi.org/10.1017/nps.2025.32 Published online by Cambridge University Press

Halász, Iván. 2022. Representation of National and Ethnic Minorities in the Hungarian Parliament. *Studia Iuridica Lublinensia.* Vol 31, No 5: 67–84

Henrard, Kristin. 2016. The European Court of Human Rights, Ethnic and Religious Minorities and the Two Dimensions of the Right to Equal Treatment: Jurisprudence at Different Speeds?. *Nordic Journal of Human Rights.* 34(3): 157–177. DOI: 10.1080/18918131.2016.1225656

Hodson, Loveday and Troy Lavers (eds.). 2019. *Feminist Judgments in International Law*. Hart Publishing, Oxford UK.

Horváth, Aladár and Jenő Setét. 2021. Húszéves emlék: a magyar politikatörténet és roma polgárjogi mozgalom egy nevezetes napja. *Kettős Mérce.* 13 December. https://merce.hu/2021/12/13/huszeves-emlek-a-magyar-politikatortenet-es-roma-polgarjogi-mozgalom-egy-nevezetes-napja/. Accessed 3 June 2024

Horváth, Aladár. 2022. Lesz-e parlamenti képviselete a cigányságnak 2022-ben?, *Kettős Mérce.* 20 January. https://merce.hu/2022/01/20/lesz-e-parlamenti-kepviselete-a-ciganysagnak-2022-ben/. Accessed 3 June 2024

Kállai, Ernő. 2013. A kisebbségi joganyag és annak változásai az elmúlt negyedszázadban Magyarországon. In *A közép-európaiság dicsérete és kritikája*, eds. Fedinec Csilla, Illyés Zoltán, Simon Attila and Vizi Balázs, 108–135. Kalligram Kiadó, Pozsony.

Kállai, Péter. 2017. Képviselő-e a szószóló? Nemzetiségi képviselet a magyar Országgyűlésben. *MTA Law Working Papers.* 4 (12): 1–12.

Kállai, Péter. 2022a. Szószóló vagy képviselő? – Ritter Imre két ciklusának összehasonlító elemzése. *REGIO: KISEBBSÉG KULTÚRA POLITIKA TÁRSADALOM* 30 (3): 78–109. https://doi.org/10.17355/rkkpt.v30i3.78

Kállai, Péter. 2022b. How to Lose (the Almost) Guaranteed Representation – Recent Developments concerning Roma Parliamentary Representation in Hungary. *ECMI Minorities Blog.* 11 March. https://doi.org/10.53779/DJPM0924. Accessed 3 June 2024

Kállai, Péter. 2022c. Preferential non-representation? Case of Bakirdzi and E.C v Hungary. *Strasbourg Observers.* December 20. https://strasbourgobservers.com/2022/12/20/preferential-non-representation-case-of-bakirdzi-and-e-c-v-hungary/. Accessed 3 June 2024

Kapur, Ratna. 2006. Human Rights in the 21st Century: Take a Walk on the Dark Side. *Sydney Law Review.* 28(4): 665–687.

Kelemen, Katalin. 2012. The final Blow to the Hungarian Law Lowering Judges, Retirement Age Struck By the European Court of Justice, *Diritti Comparati.* https://www.diritticomparati.it/the-final-blow-to-the-hungarian-law-lowering-judges-retirement-age-struck-by-the-european-court-of-j/. Accessed 13 November 2024.

Korhecz, Tamás, and Noémi Nagy. 2024. The Achilles Heel of Constitutional Jurisprudence: Conceptualization of Minority Rights by Constitutional Courts in Central and Eastern Europe. *Nationalities Papers* 52 (3): 661–84.

Körtvélyesi, Zsolt. 2012. From 'We the People' To 'We the Nation'. in *Constitution for a Disunited Nation Hungary's New Fundamental Law*, edited by Gábor Attila Tóth. Budapest Central European University Press.

Kovács, Kriszta, Zsolt Körtvélyesi and Alíz Nagy. 2015. Margins of Nationality: external ethnic citizenship and non-discrimination. *Perspectives on federalism.* 7 (1): 85–116. DOI:10.1515/pof-2015-0005

M. László, Ferenc. 2011. Dupla vagy semmi: mit nyújthat a Fidesz?, HVG. 20 October. https://hvg.hu/itthon/20111019_Jakab_Andras_valasztasi_rendszer. Accessed 3 June 2024.

Majtényi, Balázs. 2005. Mi lesz veled „bezzeggyerek"? Változóban a kisebbségi jogi szabályozás. *Fundamentum.* 9 (3): 109–120.

Majtényi, Balázs. 2006. What Has Happened to Our Model Child? The Creation and Evolution of the Hungarian Minority Act. *European Yearbook of Minority Issues.* 5(1): 397–469. https://doi.org/10.1163/22116117-90000055

Majtényi, Balázs. 2007. *A nemzetállam új ruhája: multikulturalizmus Magyarországon*. Budapest: Gondolat Kiadó.

Majtényi, Balázs. 2014a. Kékcédulás levélszavazás. *Átlátszó*, 11 April. https://atlatszo.hu/kozugy/2014/04/11/kekcedulas_levelszavazas. Accessed 3 June 2024.

Majtényi, Balázs. 2014b. Alaptörvény a nemzet akaratából. *Állam- és Jogtudomány.* 55 (1): 77–96.

Majtényi, Balázs, Alíz Nagy and Péter Kállai. 2018. "Only Fidesz" – Minority Electoral Law in Hungary. *Verfassungsblog.* 31 March. https://verfassungsblog.de/only-fidesz-electoral-law-in-hungary/. https://doi.org/10.17176/20180331-184547. Accessed 3 June 2024.

Majtényi, Balázs. 2021. Recasting Political Community: The New National Identity of Hungary. In *Engaging Authority: Citizenship and Political Community*, eds. Trevor, Stack, Rose, Luminiello, 39–56. London Rowman and Littlefield.

Majtényi, Balázs. 2023. The right answer without a reasonable argument? The shortcomings of Bakirdzi and E.C. v. Hungary. *Strasbourg Observers.* 19 January. https://strasbourgobservers.com/2023/01/19/the-right-answer-without-a-reasonable-argument-the-shortcomings-of-bakirdzi-and-e-c-v-hungary/. Accessed 3 June 2024.

Majtényi, Balázs, Júlia Mink, and Zsolt Körtvélyesi. 2023. Betrayal: The EU Fundamental Rights Agency's Unexpected Support for Authoritarianism in Hungary. *Verfassungsblog.* 2023/5/10. https://verfassungsblog.de/betrayal/. https://doi.org/10.17176/20230511-061714-0. Accessed 15 June 2024.

Megállapodás (jegyzet). 1990. *BESZÉLŐ HETILAP.* 29 April. Vol 2, Issue 17. (17. SZÁM, ÉVFOLYAM 2, SZÁM 19) http://beszelo.c3.hu/print/3364, Accessed 3 June 2024.

Morauszki, András and Attila Z. Papp. 2014. Nemzetiségi revival? Magyarország nemzetiségei a 2011. évi népszámlálás megváltozott módszertana tükrében. *Kisebbségkutatás.* (3): 73–98.

https://doi.org/10.1017/nps.2025.32 Published online by Cambridge University Press

Pogonyi, Szabolcs. 2012. Non-Resident Hungarians Get Voting Rights. *GLOBAL CITIZENSHIP OBSERVATORY*. 19 February. https://globalcit.eu/non-resident-hungarians-get-voting-rights/. Accessed 3 June 2024.

Sansum, Judit and Balázs Dobos. 2020. Cultural Autonomy in Hungary: Inward or Outward Looking? *Nationalities Papers*. 48(2):251–266. doi:10.1017/nps.2019.80

Scheppele, Kim Lane. 2015. Understanding Hungary's Constitutional Revolution. in *Constitutional Crisis in the European Constitutional Area: Theory, Law and Politics in Hungary and Romania*, eds. Armin von Bogdandy and Pál Sonnevend. Hart Publishing, UK.

Sipos, Zoltán. 2022. RMDSZ-től élelmiszerboltig: úgy gyűjtik a levélszavazatokat, mintha az életük múlna rajta. *Átlátszó Erdély*. 1 April. https://atlatszo.ro/tamogatasok/magyarorszagi-valasztasok/levalszavazatok-erdely-eurotrans-demokracia-kozpontok/. Accessed 3 June 2024.

Szalayné, Sándor Erzsébet and Kiss, Balázs. 2023. Az Emberi Jogok Európai Bíróságának ítélete a Bakirdzi és E.C. kontra Magyarország ügyben: Észrevételek a nemzetiségi választójog újabb vitájának margójára. *Jogesetek Magyarázata* (1-2), 69–80.

Székely, István Gergő and Tibor Toró. 2022. A fürdővízzel a gyereket is? A külhoni levélszavazás dilemmái három országgyűlési választás és két népszavazás tükrében. *REGIO*. 30 (3): 196–225.

A kisebbségek parlamenti képviseletének koncepciója (The concept of parliamentary representation of minorities). 06.02.2008. http://www.kisebbsegiombudsman.hu/hir-161-kisebbsegek-parlamenti-kepviseletenek.html. Accessed 3 June 2024.

Tóth, Ágnes and János Vékás. 2013. A magyarországi nemzetiségek létszámváltozása 2001 és 2011 között. *Statisztikai Szemle*. 91 (12): 1256–1267.

Uitz, Renáta. 02.01.2019. An Advanced Course in Court Packing: Hungary's New Law on Administrative Courts, VerfBlog, https://verfassungsblog.de/an-advanced-course-in-court-packing-hungarys-new-law-on-administrative-courts/, Accessed 10 December 2024.

Unger, Anna. 2014. A demokratikus választások alkotmányos és politikai ismérvei és a magyar választási rendszer. *Fundamentum*. 18 (4): 5–21

Unger, Anna. 2022a. Kedvezményes hátrány: a kisebbségek parlamenti képviseletéről – A Bakirdzi és E.C. Magyarország elleni ügye és következményei. *Jtiblog* 1 December. https://jog.tk.hu/blog/2022/12/kedvezmenyes-hatrany-a-kisebbsegek-parlamenti-kepviseleterol. Accessed 3 June 2024.

Unger, Anna. 2022b. Putting an End to Minority Voter Disenfranchising in Hungary. *Verfassungsblog*. 5 December. https://verfassungsblog.de/putting-an-end-to-minority-voter-disenfranchising-in-hungary/. Accessed 3 June 2024.

Vékás, János. 2005. Színképek: Magyarország nemzeti és etnikai kisebbségei a népszámlálások tükrében, in *Szöveggyűjtemény a nemzeti kisebbségekről*, eds. Zoltán Kántor and Balázs Majtényi, 500–530. Budapest, Rejtjel.

Zucca, Lorenzo. 2013. Lautsi: A Commentary on a decision by the ECtHR Grand Chamber, *I•CON*, 11 (1): 218–2292011. évi népszámlálás 9. Nemzetiségi adatok. 2014. *Központi Statisztikai Hivatal*. http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_09_2011.pdf. Accessed 3 June 2024.

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