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**Minority voting rights in Central and Eastern Europe,
with special regard to the parliamentary representation of
national minorities**

**PH.D. DISSERTATION
THESES**

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I.1. Problem statement, objective of the dissertation

Today, many European countries are home to communities with distinct national, ethnic, religious and linguistic identities, which constitute identifiable minorities in relation to the majority population. It is estimated that more than 100 million of the continent's population of nearly 750 million belong to a minority community.

Given the proportion of national minority communities in relation to the total population, their sociological characteristics, and their demands for representation, the following question arises: Is the majority power capable of taking into account the group-specific needs of minority community members arising from their national identity and ensuring their political participation rights? Is it necessary to take these group differences into account when exercising power?

Although the protection of minorities is an integral part of international and European human rights law, it is important to note that relevant multilateral, regional and bilateral instruments of hard and soft law are based on the initiative and agreement of states. The adopted instruments reflect the interests and mutual compromises of sovereign states. Despite the binding force of international law and soft law documents, the regulation of minority protection remains fundamentally dependent on internal state relations. This is particularly true in politically sensitive areas, such as the participation of national minorities in public life and their representation in parliament.

As a result of the encouraging activities of the UN, the OSCE and the Council of Europe in this direction, in recent decades several European states, especially those in Central and Eastern Europe undergoing political transition, have taken various measures to promote and ensure the participation of their national minority communities in national decision-making and parliamentary representation. However, ensuring parliamentary representation for national minorities is still not common practice.

The protection of minorities in Hungary came into focus after the regime change. With the adoption of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, the guarantee of individual and collective minority rights and the establishment of the institution of the Parliamentary Commissioner for National and Ethnic Minority Rights, a system of minority protection has been created which can be considered effective and has earned itself recognition at European level.

With the election of the municipal, regional and national minority self-governments, national and ethnic minorities living in Hungary have been given the opportunity to participate in public

life and to exercise a certain degree of self-government within the institutional framework of non-territorial autonomy since 1994. The lack of parliamentary representation for national and ethnic minorities living in Hungary, which the Parliament has not resolved despite the much-disputed decisions of the Hungarian Constitutional Court finding constitutional omission, has been the basis of constitutional and political disputes for more than two decades.

Following the entry into force of the Fundamental Law on 1 January 2012, the right to establish municipal, regional and national self-governments is still guaranteed – in new terminology: for the nationalities living in Hungary – and the new legislation creates opportunities for the communities to participate in the work of Parliament. The issue of the representation of nationalities in Parliament has thus once again become the focus of constitutional law and other fields of study.

In many cases, the participation and representation of national minorities in parliamentary work – taking into account the proportion of national minorities in the state's population and their territorial location – can only be achieved by granting electoral advantages to the communities. The primary aim of the doctoral dissertation is therefore to examine how the participation and representation of national minorities in parliaments at national level can be justified, and how the participation and representation of national minorities in parliament can be achieved in the light of and in compliance with the requirements set out in the electoral principles.

The doctoral dissertation is exclusively concerned with the examination of the preferential electoral rules for the election of representatives of directly elected representative bodies of the people, which differ from the general rules and are intended to promote or ensure the participation and representation of national minorities in parliamentary work.

The analysis will be carried out in the context of general equality and non-discrimination requirements, national minority (special) rights, including positive discrimination for national minorities, and electoral principles, in particular universal and equal suffrage, free elections and secret ballots. However, it is not my aim to provide a detailed dogmatic analysis and presentation of these concepts.

The objective of the doctoral dissertation is also to identify the minimum standards for the participation and representation of national minorities in parliaments and their practical functioning in multilateral, regional and bilateral hard and soft law documents, in the practice of international forums with different mandates and at different levels, in national legal norms and practices. The practical usefulness of this set of criteria is that it can be used as a basis for assessing the various institutional solutions adopted by the states examined in the doctoral dissertation (Croatia, Hungary, Romania, Serbia and Slovenia) to promote or ensure the

participation and representation of national minorities in parliament, and can also serve as a basis for assessing the institutional solutions of other states and as a guide for states wishing to institutionalise a system of parliamentary representation for national minorities. It is important to note, however, that in this doctoral dissertation I do not intend and – in view of the specific and varied historical and political development of the states and the specific situation and needs of the national minority communities living in their territories – cannot offer any universally applicable proposals for solutions.

In addition to the above, the following topics are not covered in this dissertation:

- The theoretical issues of defining a national minority or identifying persons belonging to a national minority.
- Describing and examining the different theories of representation (descriptive or substantive representation).
- Examination of the election of organs of different national minority autonomies on a territorial or non-territorial basis.
- Examination of the election of non-national parliaments and representative bodies, participation and representation of national minorities in these bodies.
- Examination of the mandate, duties and powers of national minorities in parliament, the scope of their rights, the functioning of parliament and its effectiveness.
- Examination of the representation in parliament of national minorities which, because of their population or territorial location, are represented in parliament by democratic competition (through national minority parties, as individual representatives or as representatives of majority parties) in accordance with the general electoral rules.

I.2. Research questions and hypotheses

In my doctoral dissertation, I seek answers to the following five research questions:

- *Q1*: Are there any universal or regional international hard and soft law obligations for the participation of national minorities in public life and their representation in parliaments?
- *Q2*: Do the bilateral treaties concluded by Hungary and its neighbours go beyond universal or regional commitments with regard to the establishment of parliamentary representation of national minorities?
- *Q3*: What is the justification for parliamentary representation of national minorities in the 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 states under review?
- *Q5*: What are the minimum international standards for the parliamentary representation of national minorities?
- *Q6*: Are electoral advantages granted to national minorities other than the requirement of equality of suffrage justifiable, and, if so, how?

Hypothesis of the dissertation:

- *H*: The institutional arrangements established in the Central and Eastern European states under review to promote or ensure the participation and representation of national minorities in parliaments violate, in different ways and to different degrees, the requirements of equality and non-discrimination and the electoral principles.

I.3. Methodology of the dissertation

The methodology of the doctoral dissertation is fundamentally determined by its primary objective, which is to identify the minimum standards required for the feasibility and practical functioning of the participation and representation of national minorities in parliamentary work through the analysis of case law. The doctoral dissertation is primarily case law related and empirical in its methodology. In analysing the case law, my objective is not to identify the interpretations and minimum standards adopted in the individual states, but to identify common minimum standards.

In order to identify common minimum standards, I consult multilateral, regional and bilateral international hard and soft law documents adopted in the field of minority protection. In addition to identifying the relevant provisions and recommendations of these documents, it is essential to examine the practice of various international monitoring mechanisms in detail. In particular, I consider the following to be secondary sources: the ECtHR, the OSCE High Commissioner on National Minorities, the Advisory Committee on the Framework Convention for the Protection of National Minorities, and the Venice Commission.

In addition to the examination of the provisions of international hard and soft law documents and the practice of international forums, the doctoral dissertation focuses on the practice of five Central and Eastern European states (Croatia, Hungary, Romania, Serbia and Slovenia), which have institutional solutions and electoral law advantages that promote or ensure the participation and representation of national minorities in parliamentary work. In this context, the doctoral dissertation will examine, in the context of country studies, the various institutional arrangements for the participation and representation of national minorities in parliaments in the individual states. I will draw on the provisions of state constitutions and lower-level legislation as primary sources and on the practice of national constitutional courts as secondary sources. The analyses are also complemented by the results and findings of the control mechanisms related to relevant international hard and soft law documents.

In addition to primary and secondary sources, the thesis draws on a wide international and domestic literature base as a tertiary source, which I use to interpret the documents, legal institutions and case law under examination.

In terms of methodology, the dissertation applies a descriptive jurisprudential approach to the identification of the provisions of international hard and soft law documents, national constitutions and legislation. In order to explore the content of the provisions, it is essential to explore and critically analyse the practice of international control mechanisms and national

constitutional courts that interpret them. The country studies are based on comparative methodology, in particular a functionalist approach. In line with the essence of the functionalist comparison, the dissertation examines the function of the institutional arrangements introduced in the Central and Eastern European states under study to promote or ensure the participation of national minorities in parliamentary work and parliamentary representation, according to whether they are justifiable in the system of general equality and non-discrimination requirements and national minority (special) rights and whether they are compatible with the basic principles of electoral law. The country studies analyse which institutional arrangements are most conducive to the fulfilment of a given function and what requirements they must meet in order to be effective.

Chapter II differs from the analytical methods to be followed in the doctoral dissertation, which gives an account of the legal literature's interpretations of the justifiability of the participation and representation of national minorities in public life, and at the same time presents the theoretical solutions that can be considered for the creation of parliamentary representation, and how they can be typified according to the relevant literature. The significance of Chapter II of the dissertation lies in the fact that it identifies the lines of argumentation of the relevant jurisprudence and typifies the institutional forms of representation in the five Central and Eastern European states under study.

I.4. Structure of the dissertation

The doctoral thesis discusses the research questions and hypothesis along the following structure.

Chapter II provides an account of the interpretations in the legal literature concerning the justifiability of the participation and representation of national minorities in public life, and at the same time shows what solutions can be considered theoretically for the creation of parliamentary representation, and how they can be typified according to the relevant literature. Chapter III will focus on the practice of international hard and soft law instruments and their control mechanisms in the UN and OSCE frameworks. A similar approach is taken in Chapter IV of the thesis with regard to the documents and bodies of the Council of Europe. Chapter V reviews the bilateral treaties concluded by Hungary and its neighbours and the practice of the Intergovernmental Joint Minority Commissions. Chapter VI contains country studies on Croatia, Hungary, Romania, Serbia and Slovenia. Finally, in Chapter VII, I summarise the answers to the research questions of the thesis and the main findings and conclusions that can be drawn in relation to the hypothesis.

I.5. Main results of the research

Based on the research carried out, the following findings can be made in relation to the research questions and hypothesis formulated in the dissertation.

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

A definite legal obligation for the participation of national minorities in public life can be identified by examining international hard and soft law documents and their control mechanisms. However, several forms of participation of national minorities in public life (parliamentary representation, territorial and non-territorial autonomy, various forms of consultation) are known in international practice.

In contrast, however, there is no longer a definite legal or political obligation of a universal or regional nature to establish parliamentary representation for national minorities, and international control mechanisms refer to it only as a form of participation in public life. At the same time, multilateral and regional organisations are strongly encouraging the need for states to establish parliamentary representation for national minorities. This is particularly evident in the scattered statements in practice which refer to the participation of national minorities in decision-making at the national level and emphasise the need to take into account the specific characteristics and needs of national minorities when defining the rules of the parliamentary electoral system.

Q2: Do the bilateral treaties concluded by Hungary and its neighbours go beyond universal or regional commitments with regard to the establishment of parliamentary representation of national minorities?

The basic treaties and bilateral treaties on the protection of minorities concluded by Hungary and its neighbours provide for the participation of national minorities in public affairs, political and public life in a manner almost identical to international hard and soft law documents, and do not go beyond the political and legal commitments undertaken by the states concerned. There is no distinct legal obligation to promote or ensure the participation and representation of national minorities in parliaments in the basic treaties and bilateral treaties on the protection of minorities. However, it can also be noted that the Intergovernmental Joint Minority

Commissions set up under the basic treaties and bilateral treaties for the protection of minorities have constantly addressed the issue of the representation of national minorities in parliament as a crucial and necessary means of participation in public affairs. Looking at the practice of these bilateral control mechanisms, it is reasonable to argue that parliamentary representation of the communities concerned is an indispensable element of the participation of national minorities in public life.

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

In the practice of universal and regional control mechanisms, the justification for the representation of national minorities in parliament varies from forum to forum. The UN and the Council of Europe bodies typically consider the establishment and maintenance of parliamentary representation of national minorities as an instrument for the promotion of effective equality of national minorities living in the territory of states and for the effectiveness of their legal protection. The OSCE, as a security organisation, considers the establishment of parliamentary representation of national minorities as a mechanism primarily for peace and security and social integration. However, the justification for parliamentary representation of national minorities is not exclusive to either forum, so the call for peace and security and social inclusion is similarly reflected in the arguments of the UN and Council of Europe bodies, as is the call for effective equality and the protection of rights 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 states under review?

In the jurisprudence of the constitutional courts of the Central and Eastern European states examined, the justification of the representation of national minorities in parliament - similar to the practice of universal and regional forums - is typically based on the invocation of several complementary and reinforcing arguments. One of the most typical justifications used by national constitutional courts is the requirement of equality and non-discrimination, based on the need to ensure the parliamentary representation of national minorities in order to achieve effective equality between communities. (Romania, Serbia, Slovenia) Another typical argument used in the practice of constitutional courts is the instrumental justification of the parliamentary representation of national minorities, which sees the establishment of parliamentary

representation as a means of protecting the rights and the specific status of national minorities, guaranteed by the constitution, and of achieving their effective equality and integration into society. (Croatia, Hungary, Serbia, Slovenia) The two most typical arguments in constitutional court practice are reinforced by references to multilateral, regional or bilateral international legal and political commitments. (Croatia, Hungary, Romania, Serbia, Slovenia) Less common, but used as a support for the argumentation, is the reference by the national constitutional court to the establishment of parliamentary representation of national minorities as an extended democratic justification. (Slovenia)

Q5: What are the minimum international standards for the parliamentary representation of national minorities?

Looking at the international minimum standards for the participation of national minorities in public life and their representation in parliaments, the following summary conclusions can be drawn.

Full respect for human rights and freedoms in relation to persons belonging to national minorities is essential for the effective exercise of their (political) participation rights, and thus to promote or ensure their representation in parliament. It is an indisputable requirement that members of national minorities living in the territory of their state must enjoy rights equal to those of the majority of the population, and must be guaranteed the exercise of those rights without discrimination. This requirement derives from the generally accepted fact that the protection of the rights and freedoms of national minorities and of persons belonging to such minorities is an integral part of the international protection of human rights.

States should pay particular attention to respect for human dignity, equality and non-discrimination in the design and operation of their parliamentary electoral systems. The requirements of equality and non-discrimination must apply in majority-minority, minority-minority and intra-minority relations.

A fundamental requirement deriving from the principle of equality in the context of state parliamentary electoral systems is that all segments of society should be represented in the legislative bodies. In this context, states should endeavour to adopt an electoral system that results in the most representative representation possible. A representative body with a low level of representation, elected by a mere majority of the people but not by the people as a whole, necessarily has low democratic legitimacy, which, of course, affects its decisions. In order to meet this requirement, it may be necessary to introduce a proportional electoral system,

especially in the case of national minorities with a small population and dispersed territorial coverage.

It is contrary to this requirement if the rules of the electoral system exclude persons or a group of persons from the right to vote or make it impossible for them to obtain representation because of their national minority origin. In this context, it may be noted that in cases where the requirement of non-discrimination is violated, international control mechanisms apply a particularly strict standard to situations where the basis for differential treatment is national minority origin. In the practice of the international control mechanisms, there is no reasonable and objective justification in the field of participation of national minorities in public life, and thus no justification for state measures that exclude persons or groups belonging to national minorities from participation in the political life of the state, in particular from the election of members of the legislature or from standing as candidates in elections. However, a general or alternative electoral threshold applied in a proportional electoral system which in theory promotes or ensures the representation of national minorities in parliament would also result in similar exclusion. In setting these threshold requirements, it is therefore incumbent on states to take due account of the (likely negative) impact on the participation and representation of national minorities in the electoral process.

The requirement for a parliamentary electoral system that ensures representation of all segments of society and the highest possible representativeness of the representative body is particularly important for persons belonging to national minorities living in the territory of the states, who may otherwise not be adequately represented in the legislature because of their size or other characteristics. States have an obligation to take into account the composition and diversity of society when designing their electoral systems, taking into account in particular the specific characteristics of the national minorities living in their territory. A further requirement is that states must not take measures to exclude persons or groups of persons from participation in the political life of the state on the basis of their membership of a national minority.

However, formal respect for and enforcement of the requirement of equality and non-discrimination is not (necessarily) sufficient to promote or ensure the representation of persons belonging to national minorities in parliament. While there is no doubt that ensuring equal and non-discriminatory respect for and observance of human rights, in particular the right to vote and citizenship rights, or operating a proportional parliamentary electoral system can contribute to the parliamentary representation of persons belonging to national minorities, the actual promotion or guarantee of such representation by states often requires the introduction and maintenance of specific mechanisms.

According to international practice, the issue of establishing electoral rules for parliamentary representation is an area where states have wide discretion under international hard and soft law instruments and their control mechanisms. It is also undisputed 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 seen as a matter of state sovereignty to decide on the modalities of participation in public affairs. However, any electoral system in a state must be compatible with the requirements for electoral systems arising from the requirement of equality and non-discrimination, with electoral principles and with the requirements of and derivable from the practice of international control mechanisms.

International hard and soft law documents and related practice do not require (proportional) representation of national, ethnic, religious, linguistic or other minorities. However, one of the requirements imposed on states in the design of electoral systems is to pay particular attention to the representation of national minorities in cases where voters generally decide on the basis of criteria such as membership of a national minority, ethnic group or religious denomination. In the development of mechanisms to effectively promote or ensure the participation and representation of persons belonging to national minorities in parliament, the pursuit of de facto equality between majority-minority, minority-minority and intra-minority groups, taking into account the specificities of the national minority communities concerned, may be seen as a requirement as opposed to the enforcement of formal equality, which requires positive state action. Indeed, according to the practice of international control mechanisms, the failure to treat national minorities formally on an equal footing with the majority in electoral processes and to remedy inequalities by differential treatment results in indirect discrimination. In order to promote effective equality, states may therefore apply differential treatment in a justifiable manner in order to promote or ensure the participation and representation of national minorities in public life. Indeed, it is precisely the failure to take positive action by the state which results in a breach of the requirement of non-discrimination.

State measures aimed at promoting or ensuring the participation or representation of national minorities in parliament, with a view to achieving effective equality in this respect, shall take into account in particular the number of persons belonging to the national minority community concerned and their dispersed or clustered location within the territory of the state. It is also essential for state measures to take into account that different national minorities may have different needs and aspirations. Positive state measures aimed at effective equality must also take into account the characteristics of national minorities with different characteristics.

Positive state measures taken to promote or ensure the participation or representation of national minorities in parliament do not violate the requirement of equality in majority-minority and minority relations. However, it is also clear from international hard and soft law commitments and practice that positive state action must be consistent with the principles of equality and non-discrimination. On the one hand, state measures must comply with the principle of proportionality in order to avoid infringing the rights of others and discriminating against others. On the other hand, State measures may be justified only in so far as they aim to eliminate real inequalities and are intended to remedy, reduce or eliminate obstacles or restrictions to the exercise of rights.

Although there is no explicit international hard or soft law obligation for states to take affirmative action measures to promote or ensure the participation or representation of national minorities living on their territory, there is a powerful argument for such measures. Positive state measures may be justified on the one hand 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 on the other hand by the need to ensure that elected representative bodies are as representative as possible of all segments of society and thus to ensure effective equality. The latter justification is reinforced by the fact that electoral systems which take into account the specific characteristics of national minorities contribute, on the basis of international practice, to free elections and to the best possible reflection of the diversity of society in the composition of the legislature.

A clear requirement for state measures aimed at promoting or ensuring the representation of national minorities in parliament is that mechanisms involving various positive state measures are protected by an appropriate guarantee system, primarily constitutional and lower level legal safeguards. Simple majority voting is not sufficient for the adoption and amendment of these legal instruments, and the consent of the national minorities concerned is indispensable. It is also a reasonable requirement that provisions which promote or ensure parliamentary participation or representation should be periodically reviewed by the states, which, in consultation with the national minorities concerned, should provide an opportunity to decide on any changes to these provisions in the light of experience, changes in society and the needs of persons belonging to national minorities.

Where mechanisms are established to promote or ensure the representation of national minorities in parliament, states should also ensure that the applicable electoral rules are clear and thus avoid arbitrary interpretations in their application, which could easily lead to discrimination or create opportunities for abuse of national minority rights.

Respect for the human dignity of persons belonging to national minorities and the freedom of identity derived therefrom is a fundamental requirement in the definition of the rules of the electoral system, in particular the mechanisms promoting or ensuring the representation of national minorities in parliament. It is clear from the practice of international control mechanisms that, in order to protect the effective exercise of the rights of national minority (political) participation, it is necessary in certain cases to define the scope of the subjects of these rights. The exercise of the right to vote as a non-absolute right by persons belonging to national minorities may thus be subject to prior registration, on the one hand, and to justification of exclusion from the right to vote, on the other, especially if the mechanism in question is aimed exclusively at promoting or ensuring the participation or representation of national minorities in parliament. The representation of national minorities in parliament as a legitimate aim thus constitutes 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, so that registration must be based on a decision of the person concerned, free of any coercion and of his or her own free will. It is also a requirement that the registration process should be easily accessible to all concerned, without any obstacles.

State measures to promote or ensure the representation of national minorities in parliament must ensure that the mechanism chosen fully guarantees the conditions for free elections. An essential requirement in this context is to create conditions under which national minority voters are free to choose between different alternatives, national minority parties, organisations or at least several candidates from a single national minority party or organisation. The limitation or exclusion of alternatives available to national minority voters is a violation of the principle of free elections. The rules of electoral systems set by states should not result in situations where, during elections, eligible voters are pressured to vote for a particular national minority party or candidate. In terms of its effect, this results when a state measure has an adverse effect on the position of competitors of a favoured national minority party or organisation or candidate. It is a requirement that the electoral system available for the election of members of national minority parliaments should provide an opportunity 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 secrecy of the ballot, which is closely linked to the principle of free elections. The enforcement of this requirement is also important in the context of the requirement to fully respect the freedom of identity in relation to mechanisms that promote or ensure the representation of national minorities in parliament. While the operation of a mechanism introduced by a state

may require the identification of national minority voters in order to protect the (political) participation rights of national minorities, this should not result in an unduly broad identification of those belonging to national minorities. With this in mind, it is essential that states should 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. Similar positive action measures should be taken by states in cases where the violation of the principle of secret ballot and the right to freedom of identity may have the additional negative consequence of putting the national minority voter under pressure to cast their vote in violation of the principle of free choice.

Q6: Are electoral advantages granted to national minorities other than the requirement of equality of suffrage justifiable, and, if so, how?

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

From the practice of international control mechanisms and the examined Central and Eastern European constitutional courts, as well as from the relevant literature, it is overwhelmingly concluded that the requirement of formal, numerical equality of the right to vote is absolute, i.e. states may not deviate from the principle of one person one vote when designing the rules of their parliamentary electoral system, and may not grant double voting rights to their national minority voters. According to the practice of the Venice Commission, derogation is possible in exceptional cases, only if the derogation from formal, numerical equality of voting rights respects the principle of proportionality and the objective pursued cannot be achieved by other, less restrictive measures which do not or to a lesser extent infringe the principle of equal suffrage; the granting of the right to double voting is temporary and the measure concerns only a national minority with a small population, the aim being to achieve parliamentary representation of that community.

The requirement of effective equality of the right to vote is, however, a relative requirement, based on international and national constitutional court practice and literature. States may deviate from this requirement to a considerable extent in order to promote or ensure the representation of national minorities in parliament. The legislator has a wide margin of discretion in determining the extent of the deviation from the substantive, effective equality of the right to vote. Moreover, since it does not follow that all votes must necessarily be given equal weight in determining the outcome of elections, state measures which increase the value

of the votes of national minority voters are compatible with international and national practice. The international control mechanisms and the constitutional courts of the Central and Eastern European states examined typically take the view that the principle of substantive, effective equality of electoral rights is not violated, so that state measures that provide for exceptions to the general criteria for the allocation of seats reserved for national minorities or for nominating organisations representing national minorities (exemption from the electoral threshold or alternative electoral threshold) are permissible.

H: The institutional arrangements established in the Central and Eastern European states under review to promote or ensure the participation and representation of national minorities in parliaments violate, in different ways and to different degrees, the requirements of equality and non-discrimination and the electoral principles.

The hypothesis of the doctoral dissertation is that the institutional arrangements of the Central and Eastern European states under study, which are designed to promote or ensure the participation of national minorities in parliamentary work and their representation in parliaments, violate in different ways and to different degrees the requirements of equality and non-discrimination and the principles of electoral principles. In the following, I will show, for each country examined, how its institutional arrangements violate the requirements of equality and non-discrimination and the electoral principles, or at least limit the effective implementation of the requirements concerned.

Croatia violates the requirements of equality and non-discrimination by disproportionately distributing reserved seats in the electoral system among national minorities. Under the relevant provisions, while some national minorities with a smaller population are allocated an individual seat, the larger national minorities compete with other communities for reserved seats in parliament. It can be concluded that this system strongly favours the smaller national minorities, which does not reflect the actual composition of Croatian society. The additional negative effect of seats being shared between national minorities is that it creates a competitive situation between the national minorities concerned, which differ significantly in terms of population, with the result that the national minorities with the largest population in the group are naturally outnumbered by the national minorities with the smallest population, resulting in the implicit exclusion of these communities from parliamentary representation. In this respect, the system maintained in Croatia treats national minorities which are in fact in a different position on a formally equal footing and thus discriminates indirectly against national minorities with a

smaller population, resulting in exclusion from parliamentary representation. However, the disadvantage in the electoral competition for shared seats in parliament is not the result of the decision of the voters of the smaller national minorities to join a narrow political interest group of the population, but of the decision of the legislator to determine which national minorities compete for a single reserved seat.

The Croatian electoral system also violates the requirement of secrecy of the vote. The violation of this principle is primarily the result of the availability of ballot papers of different colours and sizes for the election of national minority representatives in Croatia. Although the exercise of the right to vote requires the prior registration of national minority voters, it is up to them to decide at the polling stations which ballot paper to use, and it is often the case that the number of national minority voters in a polling station is low, making it easy to identify the national minority origin of the voter and, in some cases, the content of the ballot cast. In this context, the right to freedom of identity is disproportionately restricted, as is the right to vote in secret. The disproportionate restriction arises from the fact that, although a declaration of national minority origin to the electoral bodies is a necessary and proportionate restriction of the right to freedom of identity, the disclosure of national minority identity to third parties is neither necessary nor proportionate in order to enable a national minority voter to exercise their right to vote.

Failure to take positive state measures to protect the secrecy of the vote may also result in a violation of the principle of free choice. Voters belonging to national minorities decide at the polling station whether to cast their vote for the list of their constituency of residence or for national minority candidates. This takes place in the presence of the ballot counting committee and other voters, which may prevent the national minority voter from making a free and uninfluenced decision and casting his vote in accordance with his real political will.

In Romania, the requirement of equality and non-discrimination is violated by the fact that the rules of the electoral system distinguish between national minority organisations represented in the Chamber of Deputies and those not represented, as regards the right to stand for parliamentary elections. National minority organisations with a seat in the Chamber of Deputies may stand as candidates in parliamentary elections without having to fulfil any further conditions. However, unrepresented organisations must fulfil additional conditions in order to be eligible to stand for election to the Chamber of Deputies. This discrimination also results in a violation of the principle of free elections, as voters from national minorities are not able to choose between different alternatives in the absence of candidate organisations that are unable to fulfil the additional conditions and are therefore excluded from the electoral competition.

This feature of the Romanian electoral system limits the possibility of political diversity within the national minority communities to develop and at least to be reflected in the electoral competition.

In Romania, there are no restrictions on which voters can vote on the lists of national minority organisations, so no prior voter registration is required. National minority organisations are given the opportunity to campaign for votes outside their community, which ultimately allows them to win seats in parliament, as many national minorities can only obtain the preferential electoral threshold with the votes of non-national minority voters. However, the exercise of the right to vote free of any restrictions, in particular registration for the identification of voters belonging to a national minority, may result in a violation of national minority rights and may open the way to abuse of these rights. Ultimately, the right of national minority voters to have their seats decided by those outside the community, which would undermine the right of national minorities to participate in public life through elected representatives, would be in breach of the principle of free elections.

Hungary violates the requirements of equality and non-discrimination by not giving small nationalities a real chance to reach the preferential quota and thus obtain a preferential mandate in a system designed to promote the participation of nationalities in the Parliament. The specific features of the Hungarian system discriminate by making it more difficult for nationalities with a larger population to obtain a preferential mandate compared with the majority of voters, and by implicitly excluding nationalities with a smaller population from the possibility of obtaining a preferential mandate. In neither case are the disadvantages in the electoral process based on the nationality voters' own decision to associate themselves with a small group of political interests in the population, but on the legislator's decision to define the eligible voters for the nationality list.

Furthermore, the Hungarian legislation violates the principle of free choice by not giving nationality voters a real choice. On the one hand, because it excludes national minority voters who register for parliamentary elections from voting on party lists, and on the other hand, national minority voters could only vote for a closed list of their own nationality, and they had no influence on the order of the candidates on the list.

The Hungarian electoral system results in a breach of the secrecy of voting, as those present at the polling station at the time, especially the members of the ballot counting committee, become aware that the national minority voter has cast their vote for the national minority list. Furthermore, nationality voters may be linked to their votes during the counting of votes, especially in polling stations where the number of nationality voters is limited.

In Serbia, there are preferential rules both for the establishment of national minority political parties (1 000 voters instead of 10 000) and for the nomination of national minority lists in elections for MPs (5 000 recommendations instead of 10 000). The rules of the electoral system, by setting these thresholds in numerical terms, treat national minorities, although formally equal in terms of population, which differ significantly in terms of size, are not able to participate in the competition for preferential seats in the elections for the Parliament. The rules of the electoral system fail to take into account the specificities of national minorities, which results in indirect discrimination against national minorities with a smaller population, which also has a significant restrictive effect on competition, in violation of the principle of free choice.

The lower threshold for the registration of national minority political parties, taking into account that the Serbian Constitutional Court has interpreted that the founders of a national minority political party do not have to be members of a national minority, creates the possibility of abuse of the right of national minorities to representation in the national parliament by persons not belonging to national minorities. A similar abuse is made possible by the fact that, although the Law on the Election of Representatives in Serbia defines the concept of a list of national minorities and lays down the criteria for its registration, those criteria are incomplete and give the Republic Election Commission wide discretionary powers which may lead to arbitrary decisions. Provisions that infringe the requirement of clarity of the rules of the electoral system are open to abuse. These circumstances could ultimately result in the possibility for those outside the community to decide the fate of a seat, thus eliminating the right of the national minority to participate in public life through an elected representative.

Furthermore, Serbia violates the requirements of equality and non-discrimination by the fact that although the electoral lists of national minorities are given preferential treatment in the allocation of seats, in the electoral system only the larger national minorities have a real chance of obtaining preferential seats, while the smaller national minorities face obstacles in obtaining representation in the Parliament despite the preferences provided in the electoral system. Thus, the rules of the electoral system indirectly discriminate against national minorities with a smaller population.

In Slovenia, the requirement of equality and non-discrimination is violated by the fact that in the Parliament only the small Italian and Hungarian national communities are represented, while other, larger communities are represented only at local level or not at all in the representative bodies of the state.

Of the countries studied, Slovenia is the only one where members of national communities have double voting rights. The requirement for formal, numerical equality of voting rights, which is

in breach of the practice of international control mechanisms and can only be justified on an exceptional basis, is not in all respects in line with international requirements which narrowly allow its maintenance. According to the practice of the Venice Commission, derogation is possible in exceptional cases, only if it respects the principle of proportionality and the objective pursued cannot be achieved by other, less restrictive measures which do not or to a lesser extent infringe the principle of equal suffrage; the granting of the right to vote twice is temporary and the measure concerns only a small national minority.

Overall, it can be concluded that the institutional arrangements of the Central and Eastern European states under study, which were established to promote or ensure the participation of national minorities in parliamentary work and their representation in parliaments, violate the requirements of equality and non-discrimination, as well as the electoral principles, in different ways and to different degrees. Violations of these requirements typically result from discrimination between national minorities or their organisations, which often has a restrictive effect on competition and is associated with violations of the principle of free elections. It also happens that the lack of identification of voters or candidate organisations belonging to national minorities leads to abuses and to a violation of the substance of the right of national minorities to participate in public life, which can also be linked to a violation of the principle of free elections. The failure to take positive state measures to ensure that the requirements deriving from the principle of secret ballot are met not only results in a breach of principle, but also infringes the right to freedom of identity and may lead to a breach of the principle of free choice. For some states, it may also be considered a violation of the requirements arising from the practice of international control mechanisms.

It can be concluded from the study of all the states that none of them regularly review the institutional arrangements designed to promote or ensure the participation or representation of national minorities in parliament to ensure that the electoral system's rules reflect the country's current circumstances and the needs of the national minorities concerned. However, even if the institutional mechanism is reviewed or corrected, this is not sufficient. It is also regrettable that the ECtHR's judgments, which found violations of the ECHR with regard to national rules on participation in parliamentary work and the representation of national minorities, have not yet been implemented by amending the legal systems of Romania and Hungary.

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 Magyarázat*, 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 képviselőtéréről az EJEK 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 Magyarázat*, 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.