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# GYPSIES WITHOUT SUPPORT: REPRESENTATION OF THE ROMA MINORITY IN THE HUNGARIAN PARLIAMENT

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ZOLTÁN ORSÓS<sup>1</sup>

**ABSZTRAKT** ■ A nemzetiségek parlamenti képviselőire irányuló kérdéshalmaz a rendszerváltás óta kiemelt szerepet kap a politikai arénában. Számos olyan kísérlet volt arra vonatkozóan, hogy a nemzetiségek képviselőire egy egységes, átfogó, strukturális szabályozást hozzanak létre, azonban a vonatkozó jogalkotás hiányát igazán csak a 2010-es parlamenti ciklus új ideológiája igyekezett megoldani. Az új választási törvény megteremtésével egyidejűleg a Kormány létrehozta a nemzetiségi, preferenciális mandátum intézményét, valamint az előző hiányában a nemzetiségi szószóló útján biztosítja a nemzetiségek parlamenti képviselőit. A tanulmány a nevezett két jogintézmény alkotmányjogi dilemmáit kívánja feltárni és vizionálni kívánja a jogalkotókra váró jogrendszer átalakítással összefüggő kihívásait megoldási javaslatokkal segítségül hívva a magyar szakirodalom leggyakrabban hivatkozott szerzőinek gondolatait.

**KULCSSZAVAK:** nemzetiségi szószóló, kedvezményes mandátum, alkotmányjog, parlamenti képviselő, roma

**ABSTRACT** ■ Since the change of regime, a set of questions concerning the parliamentary representation of nationalities has become prominent in the political arena. There have been many attempts to create a unified, comprehensive, structural regulation for the representation of nationalities. However, based on a new ideology, in the 2010 term the Parliament tried to remedy the lack of relevant legislation. Simultaneously with the framing of the new election law, the government established the institution of the preferential mandate of nationalities. Also, in the absence of such a mandate, the law ensured the parliamentary representation of ethnic minorities through the advocates of nationalities. This study aims to explore the constitutional dilemmas of the two legal institutions mentioned and examines the challenges of the transformation of the legal system awaiting the legislators. The paper utilizes the ideas of the most frequently cited authors of the Hungarian literature to propose a solution.

**KEYWORDS:** Nationalities Advocate, preferential mandate, constitutional law, parliamentary representation, Roma

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## 1. INTRODUCTION

Hungary was among the first countries to create a system to protect minority rights. Moreover, the official representation of minorities offers an individual approach to promoting Roma participation in Hungarian public life. In the 1990's Roma affairs were not represented in a comprehensive institutional framework. Since the change of the political system, the question of the parliamentary representation of national minorities has been given priority in public life. There was no official representation in Parliament that ensured the preservation of the identity and culture of the minorities. There were many attempts to create a unified, comprehensive, structural regulation for their official representation. More than twenty years have passed since then, and the political climate in Hungary has ensured the advancement and representation of its national minorities. The legislative solution was proposed in 2010. The system of preferential quotas was introduced, and the National Advocacy Institution of the Representation of Minorities was created.<sup>2</sup>

Many questions arise regarding the constitutional right to exist of the mentioned institutions, which may call into question the reality of the political goodwill.

In this essay, I will explain the background of this institution starting from its formation. Also, by analysing the case of Bakirdzi and E.C v. Hungary brought by the European Court of Human Rights (ECHR), I will illustrate why the institution does not meet the constitutional requirements. With concrete examples, I present the activities of the Roma nationality advocate as well as examine the consequences of the lack of a Roma minority advocate.

### 2.1. National Advocacy Institution

Nationalities that are included in the list of minorities and recognized by the Parliament, but do not obtain the number of votes necessary for a preferential mandate, are entitled to send an advocate to the Parliament to be represented.

Originally, the primary task of the nationality advocate was to represent the given nationality in the Parliament. The advocated rights of the nationalities were mainly grouped around policies and parliamentary bills that affected their interests and rights. Due to the legal status of the official representative of a

<sup>2</sup> ZOLTÁN ORSÓS: Roma nemzetiségi szószóló az Országgyűlésben: se vele, se nélküle? *Parlamenti Szemle*, 2/2022. 139–147.

given national minority, the advocates of nationalities do not have the right to vote in the Parliament. He or she can only speak at its sessions if, according to the opinion of the House Committee, the item on the agenda affects the interests and rights of the given minority. With the permission of the Speaker of the House – according to the general rules, after the speeches of factions – the nationality's advocate can make a speech before the parliamentary session's agenda. In addition, in extraordinary cases, he or she can also speak after the speeches of factions. They can also address questions to the Government and the members of the Government, as well as to the Commissioner of Fundamental Rights, the President of the State Audit Office and the Chief Prosecutor in matters affecting the interests and rights of nationalities within their scope of responsibilities. The nationalities advocate can also submit a proposal to the National Assembly for a resolution concerning nationalities. He or she is entitled to the rights above after taking the oath.<sup>3</sup>

## 2.2. Activities of the Roma nationality advocate

The first national advocate of the Roma minority was FÉLIX FARKAS. In the beginning, the legal institution was created to represent the nationalities. The Roma Advocate was not considered to be substantively active. Overall, the advocates were characterized by little interactivity. In particular, the Roma national advocate was strikingly inactive. He should have represented the cause of the largest nationality at the level of the Parliament, but instead, he used his institutional opportunity to speak only three times in four years. His first speech dates back to half a year after his election, where, in almost two minutes, he asked the government on behalf of the National Self-Governments living in our country (including all 13 nationalities) to disburse the increased funding as soon as possible. To fulfil his increased duties, and confirm the German advocate IMRE RITTER, he asked for the government's support to increase the budget of ethnic municipalities.

In December 2017, JOBBIK called on a former member of the National Assembly to resign due to immoral and inhumane behaviour, namely, the member and her fellow party members joked about the victims of the Holocaust. This incident was called for punishment, or at least an apology.<sup>4</sup>

<sup>3</sup> <https://www.parlament.hu/>

<sup>4</sup> Date of meeting: December 11, 2017, speaking time: 2 minutes 18 seconds, Topic: Revealed statements of JOBBIK representatives. Speeches after the agenda. <https://www.parlament.hu>

Furthermore, on behalf of the Roma nationality, he expressed his gratitude to the government<sup>5</sup> for not using the idea of equal opportunities and the concept of catching up for propagandistic aims, but rather the government took real steps and made serious opportunities to integrate Roma people. In his evaluation speech, he thanked the government for the programs (e.g. scholarship programs, Christian Roma Vocational College Network) that created the opportunity to catch up.

The advocacy activities of Félix Farkas in the period between 2014 and 2018 are neither representative in number nor content. More than three years passed between the first and the second speech. During this period he should have proposed a speech on behalf of the Roma in many cases, and it would have been necessary for him to represent himself on behalf of the nationalities.

The activity of the Roma advocate between 2018-2022 was a productive period. He spoke a total of 26 times, touching on several topics. He spoke about the importance of defending against attacks on Gypsies, and the support for domestic Gypsies. He explained his position on the issues arising in relation to the 2020 budget and emphasized the importance of nurturing and preserving Roma culture. Also, in many of his speeches, he expressed his gratitude to the government for its moral and financial support, as well as the Parliament's commitment to Roma issues.

From a constitutional point of view, however, his speech in the debates related to the 2021 census, is questionable. Félix Farkas made it mandatory to answer questions related to his nationality, mother tongue and language use. According to him, it is necessary to assess the nationalities living in Hungary from the point of view of the tasks related to the national self-government system and the determination of the future budget, since the legitimacy of the national self-governments is determined by knowing numerically how many Hungarians belong to a certain nationality. In the census, which was postponed until 2022 due to the pandemic in 2020, the questions asked about mother tongue, nationality and language use were finally allowed to be answered voluntarily. According to him, in Hungary today, even as a private individual – not only as an advocate – one can proudly assume Gypsy origin. The KSH data related to nationality generated during the 2022 population census will be a good mirror to support or possibly refute the statement.

Félix Farkas repeatedly emphasized that, thanks to the government's policy, the Roma no longer must fear discrimination, the anger of the majority society,

<sup>5</sup> Date of meeting: December 12, 2017, speaking time: 4 minutes 43 seconds, Topic: The current situation of public education. Speeches after the agenda. <https://www.parlament.hu>

and discrimination against the Roma in the labour market. The advocate's policy was characterized by the defence of the government and the derogation of the opposition. According to the president of the ORÖ (National Roma Self-Government), he did not seek consensus and problem-solving on Gypsy issues, which mostly affect the Roma, but rather presented an image that compromised the government's position. The advocate spoke about the government's commitment to anti-segregation. In his speech before the agenda, he called on the opposition to "not try to incite the Gypsies with hate speech wrapped in sympathy". Meanwhile, in 2020, in the "Gyöngyöspata Segregation Trial", Prime Minister VIKTOR ORBÁN called the decision made by the Court in the review procedure deeply unfair, according to which "members of an ethnically dominant ethnic group will receive a large amount of money without any kind of work".<sup>6</sup>

### 2.3. Why does the system not meet the constitutional requirements?

Advocates represent minorities in the Parliament. The institution of advocates differs from an "ordinary" parliamentary representation in terms of its legal status, since advocates have fewer rights. From a constitutional point of view, the question of whether the legal institution can be considered as an effective representation in the Parliament has been raised. Based on the research so far, it can be said that the legislator did not necessarily create parliamentary representation by introducing the institution of advocates, since they do not have the necessary authority to implement representation, as they do not have the right to vote.<sup>7</sup>

A representative institution that does not have the right to vote, excludes interpellation at the meetings of the National Assembly, and can only speak if, according to the Judgment of the House committee, the item on the agenda affects the rights or interests of minorities cannot be called representation. They have the right to consult in the work of the standing committee, but only if the topic affects the rights or interests of the nationalities, or if the Speaker decides so.<sup>8</sup>

<sup>6</sup> Press Secretariat <https://www.kuria-birosag.hu/hu/sajto/gyongyospatai-szegregacios-nem-vagyoni-karok-megteritesenel-karterites-megitelesenek-egyetlen>

<sup>7</sup> See more details: SÁNDOR MÓRÉ: A nemzetiségi szószólói intézmény jogi kerete és működésének első két éve. *Parlamenti Szemle*, 2/2016. 30–51, 38–39. <https://parlamentszemle.hu/wp-content/uploads/2017/09/parlamentszemle-parlamentszemle-20162-lap-szam-2016-02-02cikk.pdf>

<sup>8</sup> MÓRÉ (2016), 38–39.

If the advocate's most important task is to represent the given nationality in the Parliament, then their participation in the vote is very essential. It is impossible to represent a nationality in the Parliament without the right to vote. Nationalities are state-forming factors, which also presuppose the equality of rights of minorities. If minorities are state-creating factors and integral parts of the Hungarian nation, their right to vote in the Parliament should be guaranteed regardless of their nationality.

Although the existence of the right to vote would not necessarily solve the serious problems affecting nationalities, it could be aimed at creating legal equality relevant from a constitutional point of view and could provide a serious step forward in the political interests of nationalities. The primary purpose of the Basic Law was to ensure the participation of nationalities in the work of the National Assembly. It ensured participation in parliamentary work with the legal institution of nationalities advocates and the preferential quota system, but the actual representation of nationalities remained unresolved. It is not necessarily the stated goal of politics to give voting rights to representatives of nationalities with serious influence.

### 3. CASE OF BAKARDZI AND E.C. v. HUNGARY

Since 2014 the implementation of the electoral legislation created an individual solution for the minorities living in Hungary. By providing preferential rules, the government tried to create the possibility of specific political participation for the minorities. It should be emphasized that the new political ideology has managed to solve the set of legal questions regarding the choice of minorities that have arisen since the regime change. The Basic Law introduced in 2011 created and provided an opportunity for the political interests of the nationalities to be represented in the Parliament. In the National Creed, the government declared that the nationalities living in Hungary are an immanent part of the Hungarian political community, and expressed that they are state-forming factors.<sup>9</sup> The law gives the minorities the opportunity to establish local and national self-governments, and ensures the participation of the nationalities living in Hungary in the work of the Parliament<sup>10</sup>, regulated in a separate pivotal law.<sup>11</sup>

<sup>9</sup> Basic Law of Hungary (April 25, 2011) National creed <https://net.jogtar.hu/jogszabaly?docid=a1100425.atv#lbj57id5406>.

<sup>10</sup> CASE OF BAKIRDZI AND E.C. v. HUNGARY (Applications nos. 49636/14 and 65678/14).

<sup>11</sup> A nemzetiségek jogairól szóló 2011. évi CLXXIX. törvény <https://net.jogtar.hu/jogszabaly?docid=a1100179.tv>.



After nearly ten years, the judgment of the European Court of Human Rights (hereafter: ECHR) on November 10, 2022, called for a reconsideration of the previously created nationality election legal model. According to the board's findings, the Hungarian regulations limit the possibility of the voters of national minorities to participate meaningfully in political decision-making, and the current electoral law affecting Hungarian nationalities does not sufficiently ensure the free expression of the people's opinion during the election of the legislative body.

The court started the proceedings nearly ten years ago (2014) at the initiative of a Hungarian citizen of Greek and Armenian nationality.<sup>12</sup> The ethnic minorities objected that the legal institutions for the election of nationalities introduced in 2014 have had a disenfranchising effect on them because, based on the nationalities statistical data, it is practically impossible for some nationalities to obtain a mandate during the parliamentary elections. There are ethnic groups in Hungary whose numbers do not even reach 20,000, thus, from their point of view, they are unable to obtain the preferential mandate in the Parliament provided by the government.

In addition, they complained that as some voters belonged to nationalities, the created legal system excluded them from the possibility of voting on the national party list. Additionally, they objected that they could only vote on the list drawn up by the assemblies of the National Self-Government representing the interests of the given nationalities. The right to secrecy of the election was also violated by the plaintiffs, due to the recording of the fact of voting on the list and the possibility of voting on a single list. Moreover, the nationality list is a closed list, which does not provide sufficient opportunity for the true expression of the voters' will.

According to ethnic minorities, the Hungarian national election regulatory system is also illegal, as it causes discrimination against minority voters compared to other "ordinary" parliamentarians. When the procedure was initiated, 140 voters were registered as Greek voters and 184 were Armenian, while 22,000 votes would have been needed to obtain a parliamentary mandate. It is also clear from the indicated data that those belonging to the nationality do not reach even 1% of the number of votes required by law and it would have been mathematically impossible to obtain the required preferential quota.<sup>13</sup>

<sup>12</sup> See the list of applicants in the annex to the *Bakardzi and E.C. v. Hungary* (App. no. 49636/14 and 65678/14) ECtHR (2022) (hereinafter: Judgment).

<sup>13</sup> 2014. évi országgyűlési választási szabályok. <https://www.valasztas.hu>

### 3.1. The government's position

According to the government, their primary task is to ensure political representation for the nationalities and to increase the participation of the nationalities in political life. The government's further argument was that the principle of equal suffrage would be violated if it ensured that a voter belonging to a nationality could vote for both the nationality list and a party list at the same time. The government emphasized that it is the free decision of every voter to register as a nationality voter or not, and that this can be changed afterwards before the elections are held. The government drew attention to an important point during the procedure, namely that the plaintiffs did not exhaust their domestic legal remedies. They would have had the opportunity to appeal to the local Electoral Commission, and in case of rejection, they could have filed a constitutional complaint.<sup>14</sup>

However, the jurisprudence of the last ten years shows that the legal regulation has had the opposite effect on the desired goal, since the majority of the 13 nationalities did not even have a chance to get close to the required number of votes defined by law for the parliamentary representatives representing the nationalities' interests to be elected to the Parliament. It should be noted, however, that in 2018 the advocate of the German nationality managed to obtain a mandate for the German nationality, and since then he has been representing the nationalities' constituents in the National Assembly.

### 3.2. Court position<sup>15</sup>

One might argue that the ECHR provides the state with wide discretion when it comes to creating its election rules. It does not follow from the requirement of the principle of equal treatment provided by the European Union and laid down in the Treaty of Rome that all votes must have the same weight during the elections, just as all candidates must have the same chances of winning. He came to the same conclusion during the proceedings of the ECHR when it came

<sup>14</sup> 35/1992. (VI. 10.) AB határozat: 2011 CLI on the Constitutional Court. Act § 26 (1) para. § 26 (1) Pursuant to Article 24, paragraph (2) point c) of the Basic Law, the person or organization involved in an individual case may file a constitutional complaint with the Constitutional Court if, in the court proceedings in the case, due to the application of a law contrary to the Basic Law, a) his rights guaranteed by the Basic Law have been violated, and b) he has already exhausted his legal remedies, or no legal remedies are available to him. <https://net.jogtar.hu/jogszabaly?docid=a1100151.tv>

<sup>15</sup> ORSÓS 2022.

to the fact that the Hungarian regulations violated Article 3 of the Convention. According to the Right to Free Elections, the High Contracting Parties undertake to hold free elections at simple intervals, by secret ballot, under conditions that ensure the election of the legislative body and the expression of the opinion of the people. The article does not impose a mandatory obligation, which means the introduction of a special system. States have a wide range of discretion in this regard. “Ensures the expression of the opinion of the people” means that all citizens receive equal treatment in their right to vote and exercise it. However, it does not follow that all votes must have equal weight in the outcome of the election, or that all candidates must have an equal chance of winning.<sup>16</sup>

Based on these points, the court examined whether the applicant’s right to vote was really limited and whether the election rules created by the government excluded nationalities from political representation.

The court deemed preferential seat acquisition to be a legitimate solution. Electoral rules require parliamentary representation to achieve a certain level of reduced support and differentially prescribe a threshold of fewer votes compared to “ordinary” parliamentarians. However, the court pointed out that, considering the number of nationalities living in Hungary, the law still prescribed a higher preferential election threshold. Legally, the regulation seemed to be an excellent solution, but, in practice, it did not facilitate the actual representation of nationalities.

The court considered it worrisome that voters who vote for the nationalities list must renounce voting for the party list. The fact that voters can only vote for a single nationality list, which does not necessarily reflect their political views, hinders the true expression of the voters’ will. The judgment declared that the right to the secrecy of the election is violated, as the persons present in the polling station obviously become aware that the nationality voter casts his vote for the persons on the nationality list due to the possibility of voting for a single list. Moreover, the nationality list is a closed list, which does not provide an opportunity to express the voters’ will.

Based on these points, the ECHR did not accept the government’s position and its arguments put forward and found that, overall, the Hungarian legal regulations aimed at this specifically limit the possibilities of the nationalities to meaningfully participate in political life. Also, the system hinders the participation of the nationalities in political decision-making. Based on the ECHR’s declaration

<sup>16</sup> European Convention on Human Rights First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3. Paris, March 20, 1952. [https://www.echr.coe.int/documents/convention\\_hun.pdf](https://www.echr.coe.int/documents/convention_hun.pdf)

that the Hungarian legislator violated Article 14 on freedom of expression, it was highlighted that, according to the judgment of the Court, the term “free expression” means that elections cannot be held under any pressure and voters cannot be forced to choose to vote for this or the other party list.<sup>17</sup>

The government requested that the case should be examined by the Grand Chamber of the ECHR to change the decision of the ECHR on November 10, 2022. However, the government failed to obtain a review of the decision, and thus the original decision of the European Court of Human Rights became final on May 19, 2023, which found the part of the Hungarian electoral system concerning nationality voting to be illegal and required its change. According to this, the part of the Hungarian electoral system regulating minority and nationality voting must be rewritten. On May 23, the Parliament voted to change the electoral procedure rules, but the amending package does not include the rewriting of the parts of the electoral system affecting nationalities based on the Strasbourg ruling. The government is obliged to do so by the Strasbourg judgment, so it must comply with the legal regulations for the representation of nationalities created in 2014 until the next parliamentary elections in 2026.

#### 4. DE LEGE FERENDA

The ECHR decision created a challenge for the Hungarian legislators, since the justification of the judgment did not formulate any substantive positions regarding which legislative method and guarantee system should be used to ensure the image of nationalities without discrimination. The decision did not substantiate with specifics why the possibility of choosing between the nationality list and the party list would count as a deprivation of rights. It is because in the government’s argument, they specifically drew attention to the fact that it is only the nationality voter’s free decision to register himself in the nationality electoral register, which also provides the possibility to withdraw it before the elections are held. The solution lies in the hands of the Hungarian legislator and the political will of the government.

Based on the judgment, the most ideal legislative solution seems to be that the government provides the possibility of voting for the nationality list and for the

<sup>17</sup> European Convention on Human Rights Article 14. Freedom of expression: Everyone has the right to freedom of expression. This right includes the freedom to form an opinion and the freedom to learn and communicate information and ideas regardless of national borders and without the intervention of an authority. This Article does not prevent states from making the operation of radio, television or motion picture companies subject to licensing.

national party lists at the same time for those belonging to the nationality. From a voter's point of view, the following questions arise: why does belonging to a nationality have such a privilege and why additional rights are granted? It could create a violation of the principle of equal suffrage among the electorate, since the electorate belonging to the nationalities could thus send a representative to the legislature from two types of lists. This would result in the discrimination of voters who do not identify themselves as belonging to a nationality.

A prominent problem is the statistical impossibility of the preferential quota. That is to say, it is mathematically impossible for the 13 nationalities recognized in the law to obtain a mandate, since the number of certain minorities barely reaches 20,000. In conclusion, it can be considered a simple solution, the number of preferential quotas prescribed by law is reduced, thereby meeting the expectations supported by the ECHR. Based on the census data of the nationalities living in Hungary, the legislator should define the preferential quota as unrealistically low. To find a solution for the parliamentary representation of nationalities, the creation of a bicameral system has been formulated several times in the scholarship. It would mean a transformation of the Hungarian legislature into a bicameral one, where the second chamber would be the representative body of nationalities and other groups. However, in 2011, the legislator expressly and clearly distanced himself from this idea.<sup>18</sup>

In the end, it would not necessarily be considered a solution. It would be a solution without any reality if the institutional form of nationalities' parliamentary representation were to be abolished. Although the judgment emphasized that there is no international obligation to ensure the parliamentary representation of nationalities, based on Hungarian historical traditions this would be a step backwards, and the quoted provisions of the Basic Law exclude this option.

Overall, the decision of ECHR posed a serious challenge to the Hungarian legislators. Specific changes can be expected in connection with the regulation of the representation of nationalities. The election rules affecting nationalities and their legal institutions should be reconsidered and included in another regulatory aspect.

<sup>18</sup> SÁNDOR MÓRÉ: Újból a kétkamarás parlamentről mint intézményes megoldásról. In: NÓRA CHRONOWSKI – ZOLTÁN POZSÁR-SZENTMIKLÓSY – PÉTER SMUK – ZSOLT SZABÓ (eds.) *A szabadság szerető embernek. Liber Amicorum István Kukorelli*, Budapest, Gondolat Kiadó, 2017. 685–694.

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