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PARLIAMENTARY REPRESENTATION OF NATIONAL MINORITIES IN SERBIA AND HUNGARY: MECHANISM FOR EFFECTIVE PARTICIPATION OF MINORITIES, OR TOOL FOR POLITICAL MANIPULATION?

***Abstract:** In multiethnic states, in which numerically large national, ethnic or linguistic minorities exist with a strong distinct identity, the principle of democracy requires that these groups have representatives in parliaments. However, in many multiethnic states the national-ethnic majority makes efforts to exclude or minimize the representation of minority national-ethnic groups in legislative bodies. Serbia and Hungary are nation states with relatively high percentage of citizens belonging to national-ethnic minorities, and with developed systems of the protection of minority rights. Both states enacted electoral laws facilitating the representation of national minorities in highest elected state bodies. This article describes, critically analyzes and compares the electoral rules and their practical implementation in both states, in order to answer the question whether these rules make it efficiently possible for national minorities to acquire proper representation in parliament. In order to answer this question, the results and experiences of the latest parliamentary elections – organized in 2022 in both states – will be elaborated as well.*

Key words: electoral systems, parliamentary representation of national-ethnic minorities, Serbia, Hungary, 2022 parliamentary elections.

1. INTRODUCTION

Electoral rules convert voters' ballots into seats in parliaments-national assemblies. Generally, each and every electoral system is different and individual, but one can distinguish between three basic electoral systems – models: proportional (mandates are allocated in proportion to the number of votes cast), majority (individual candidate winning more votes than others, receives a seat, usually in single member districts), and combined

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or mixed systems (applying both systems for allocating seats). All three models have advantages and weaknesses, and it depends mainly on local circumstances which electoral system best fits the individual state, its traditions and its political system. Furthermore, as Giovanni Sartori formulated, electoral systems are the most specific manipulative instrument of politics.¹ In Europe, the proportional electoral system is prevalent; the mixed systems are also relatively widespread, while the majority electoral system is only sporadically present.² What is usually emphasized by all authors is that the electoral system should serve two main goals: to display the will of the voters as accurately as possible, and also to ensure stable governance.³ However further requirements are also elaborated by various authors.⁴ Generally the electoral system should ensure visibility and representation of all relevant social groups living in the country, respect the principle of equality of citizens, and ensure the functionality and stability of the government.

In multiethnic states, besides the citizens who belong to the dominant national-ethnic majority, a relatively large number of citizens belongs to various national, ethnic, racial and linguistic groups. These groups often have a strong and distinct common identity, *i.e.*, self-consciousness. The stability of the state, peaceful coexistence and functional parliamentary democracy require that these states properly manage such diversity, *i.e.*, to protect national-ethnic minorities. The main objectives of such minority protection were straightforwardly defined by the Permanent Court of International Justice in its famous advisory opinion on minority schools in Albania in 1935: “The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.”⁵

- 1 Sartori, G., Political Development and Political Engineering, in: Montgomery, D. J., Hirschman, A. O., (eds.), 1968, *Public Policy*, New York, Cambridge University Press, p. 273.
- 2 Kurunczi, G., Electoral Systems, in: Csink, L., Trócsányi, L., (eds.), 2022, *Comparative Constitutionalism in Central Europe*, Miskolc, CEA Publishing, p. 426.
- 3 *Ibid.*, p. 427.
- 4 According to Dieter Nohlen, the electoral system should ensure legitimacy (*i.e.*, for the various social groups to recognize the electoral system and to accept the legitimacy of the power created by it); to ensure representation of all relevant groups in society, and also to be simple for voters, etc. Nohlen, D., Választási rendszerek és választási reform: Bevezetés [Electoral Systems and Electoral Reform: Introduction], in: 1996, *Választási rendszer, választójog és választás Kelet-Közép Európában*, Budapest, MTA JTI, pp. 22–23.
- 5 PCIJ, *Minority Schools in Albania*, Advisory Opinion, 1935, Series A/B, No. 64, p. 17.

International standards of minority rights do not compel states to guarantee representation in parliament of all national-ethnic minorities. Such a right (or obligation of the state) is not specifically guaranteed in the relevant UN human right conventions, nor in the two specific conventions protecting national minorities enacted by the Council of Europe.⁶ The representation of national-ethnic minorities in parliament and in other democratically elected local assemblies is an element of the right to effective participation in public life.⁷ The effective participation of national minorities in public life might be ensured, among others, by electoral rules facilitating the representation of national-ethnic minorities in central parliaments. This is clearly stated in the OSCE High Commissioner for National Minorities Lund Recommendations on Effective Participation of National minorities in Public Life.⁸ Many authors emphasize that the representation of different national and ethnic groups has positive implications for the stability of the state and quality of democracy, particularly in states with a heritage of authoritarian rule.⁹ Representation in parliaments carries also a strong symbolic power for national-ethnic minorities, even when minorities have little chance of participating in the governing coalition.¹⁰ Other authors add that the representation of national-ethnic minorities in parliament may contribute to substantially greater degree of justice, as well as internal and external peace and security, if the model of deliberative democracy is applied.¹¹ A majority of scholars are in agreement that proportional electoral systems increase minority representation,¹² however empirical studies have not always supported this claim.¹³

The positive effects of the proportional electoral system on the representation of national minorities depends, among other things, on the

6 European Charter for Regional and Minority Languages (1992) and The Framework Convention for the Protection of National Minorities (1995). Both conventions were enacted by the Council of Europe.

7 Suksi, M., Effective Participation of Minorities in Public Affairs and Public Life – European Norms and Praxis Evaluated in Light of the Lund Recommendations, in: Vizi, B., Tóth, N., Dobos, E., (eds.), 2017, *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*, Baden-Baden, Nomos, pp. 25, 27.

8 <https://www.osce.org/files/f/documents/0/9/32240.pdf>, 2.8.2022, II.B. 7–10.

9 Moser G. R., 2008, Electoral Systems and the Representation of Ethnic Minorities: Evidence from Russia, *Comparative Politics*, Vol. 40, No. 3, p. 273; Lijphart, A., 2004, Constitutional Design for Divided Societies, *Journal of Democracy*, Vol. 15, No. 2, p. 97.

10 Moser G. R., 2008, p. 273.

11 Wheatley, S., 2003, Deliberative Democracy and Minorities, *European Journal of International Law*, Vol. 14, No. 3, pp. 518–519.

12 Lijphart, A., 2004, Constitutional Design for Divided Societies, *Journal of Democracy*, Vol. 15, No. 2, pp. 99–100.

13 Moser, G. R., 2008, pp. 273, 289.

number and borders of electoral districts, *i.e.* electoral geometry, the concentration and size of each national minority, numerical thresholds, the applied mathematical formulas, etc.¹⁴ While most scholars emphasize the benefits of electoral systems facilitating the representation of ethnic-national minorities in parliaments, in the practices of several multiethnic states, the electoral systems deliberately restrict national-ethnic minorities from being represented or proportionally represented in parliament. Even in such strongholds of democracy as the United States, the struggle for ensuring adequate representation of racial minorities (primarily African Americans) has a long and turbulent history, extending as far as into the 21st century. From 1965 to 2013 under the Section 4 of the Voting Rights Act (VRA) the US federal administration was empowered to approve (preclearance) state electoral laws in order to prevent direct or indirect abridging of voting rights on the ground of race or color. In 2013 US Supreme Court ruled in *Shelby County v. Holder*¹⁵ that section 4 of the VRA, containing preclearance criteria, is unconstitutional in the light of “current conditions”, namely that in 2006 there were no conditions making federal monitoring in eleven US member states necessary.¹⁶ On the other hand, in Europe, electoral systems often contain specific rules facilitating the representation of national-ethnic minorities in parliament.¹⁷

The Republic of Serbia and Hungary both enacted preferential electoral rules facilitating the representation of national minorities in state-level parliaments. In following sections this paper analyses these preferential electoral rules. By analyzing the legal framework and its implementation, we attempt to answer the question whether these electoral rules adequately serve their end, *i.e.*, whether they ensure the parliamentary representation of all relevant national-ethnic minorities, their effective participation in parliamentary deliberation and decision-making, but also the respect of the principle of equality, ensuring stable governance. Following the first, introductory section, in the second section the system of minority representation in the National Assembly of Serbia will be elaborated and analyzed, while in the third section, the system of minority representation in

14 Pajvančić, M., 2007, Izborni sistem i pravo nacionalnih manjina na reprezentovanje [Electoral System and the Representation of National Minorities], *Glasnik Advokatske komore Vojvodine*, Vol. 80, No. 3–4, pp. 72–78.

15 *Shelby County v. Holder*, 570 U. S. 529 (2013).

16 The preclearance formula applied to Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia, as well as, certain political subdivisions (usually counties) in four other states (Arizona, Hawaii, Idaho, and North Carolina).

17 Among these are reserved seats, abolishing numerical threshold for national minority candidate lists (natural threshold), special voting districts populated by national minorities, fewer votes necessary to elect minority representatives, etc.

the Hungarian National Assembly will follow. In the fourth section, some concluding remarks will be formulated.

2. THE MINORITY REPRESENTATION IN THE NATIONAL ASSEMBLY IN SERBIA

2.1. NATIONAL MINORITIES AND THEIR PROTECTION IN THE REPUBLIC OF SERBIA

Even without Kosovo and Metohija,¹⁸ around 15% of the total Serbian population belongs to various autochthonous national minorities. The most numerous national minorities are the Hungarians (253,899 persons, or 3.53% of the total population), the Romas (147,604 persons or 2.05%), and the Bosniaks (145,278 persons or 2.02%). Other numerous national minorities are the Albanians (61,000 persons), the Croats (57,900 persons), the Slovaks (52,750 persons), the Montenegrins (38,527 persons), the Vlachs (35,330 persons), the Romanians (29,332 persons), the Macedonians (22,755 persons), the Bulgarians (18,543 persons), the Bunjevci (16,706 persons), and the Ruthenians (14,246 persons). The national minority population is largely concentrated in the Autonomous Province of Vojvodina, in the Raška/Sandžak region, and in municipalities bordering Kosovo.¹⁹ There is no law specifying and enumerating national minorities in Serbia, despite of the fact that the Law on the Protection of the Rights and Freedoms of National Minorities (LPRFNM) contains the definition of a national minority.²⁰ The policy of the Serbian authorities towards the practical recognition of the status of national minority is rather inclusive and liberal. The establishment/election of national councils – non-territorial self-governments and national minority political parties under prefer-

18 The Republic of Serbia (Federal Republic of Yugoslavia at the time) lost its sovereign control over Autonomous Province of Kosovo and Metohija following NATO bombardment in June 1999. The province, with a predominantly ethnic Albanian population, unilaterally declared independence in 2008, which was recognized by around 100 states. Kosovo is not a member of the UN, OSCE or the Council of Europe, and according to the Constitution of Serbia, Kosovo is autonomous province of Serbia. However, its status should be regulated by a specific constitutional law, which was not enacted since 2006.

19 Statistical Office of the Republic of Serbia, 2012, *Population, Ethnicity, Data by Municipalities and Cities – 2011 Census of Population, Households and Dwellings in the Republic of Serbia*, Belgrade, Statistical Office of the Republic of Serbia, pp. 14–15.

20 Law on the Protection of Rights and Freedoms of National Minorities [Zakon o zaštiti prava i sloboda nacionalnih manjina], *Official Gazette of the FRY*, No. 11/02, *Official Gazette of Serbia*, Nos. 72/09 and 47/18, Art. 2, par. 1.

ential conditions were permitted for all ethnic groups (even for those not clearly fulfilling the criteria and elements from the LPRFNM²¹).

Although it is not always clear who the beneficiaries of minority rights in Serbia are, these rights are stipulated in numerous ratified international and bilateral agreements and various domestic legislative acts.²² The spectrum of minority rights includes individual and collective rights, the right to minority non-territorial self-governance, special representation in elected assemblies (at all levels of government), affirmative action, and many rights requiring positive state action, including additional budgetary funding.²³ Although minority rights are extensively guaranteed by the Constitution and various legislative acts, the Constitutional Court of Serbia has only rarely demonstrated the capacities and willingness to interpret and protect minority rights in an expansive manner.²⁴

2.2. THE POLITICAL ORGANIZATION OF NATIONAL MINORITIES AND THE ELECTORAL SYSTEM IN SERBIA

The electoral system largely reflects the political system of the state. Political parties are important elements of the political system. However, the number of active political parties participating in elections, the role and influence of political parties beyond election campaigns, the number and percentage of citizens who are members of political parties, as well as the level of informal power of ruling political parties towards state institutions, differ from country to country. In Serbia, political parties, particularly ruling political parties, are far from being simple mediators in the electoral process offering feasible options to citizens on electoral process; they are well-organized, omnipotent societies with large memberships – factories for exploitation of political influence.²⁵ The citizens enrolling in

21 Korhecz, T., 2019, Evolving Legal Framework and History of National Minority Councils in Serbia, *International Journal of Public Law and Policy*, Vol. 6, No. 2, p. 126.

22 Advisory Committee on the Framework Convention for the Protection of National Minorities. *Third Opinion on Serbia adopted on 28 November 2013*, No. ACFC/OP/III(2013)006, p. 6.

23 Korhecz, T., Constitutional Rights without Protected Substance: Critical Analysis of the Jurisprudence of the Constitutional Courts of Serbia in Protecting Rights of National Minorities, in: Tribl, N., (ed.), 2021, *Minority and Identity in Constitutional Justice: Case Studies from Central and East Europe*, Szeged, International and Regional Studies Institute, pp. 27–30.

24 Korhecz, T., National Minorities – Constitutional Status, Rights and Protection, in: Csink, L., Trócsányi, L., (eds.), 2022, *Comparative Constitutionalism in Central Europe*, Budapest, CEA Publishing, Miskolc, p. 413.

25 Korhecz, T., Ustavno načelo podele vlasti – zakonodavna vlast, izvršna vlast i položaj političkih stranaka u Republici Srbiji [The Constitutional Principle of Separation of

the membership of ruling political parties usually expect jobs in the public sector, various immunities, privileges in using public services, and preferential treatment on tenders, etc. Having all this in mind, it is not surprising that the largest ruling political party in Serbia has around 700,000 members, which amounts to 15% of the total adult population of Serbia.

The political organization of national minorities into ethnic political parties is as old as pluralist democracy in Serbia. The largest national minorities in Serbia (Albanians, Hungarians, Bosniaks, Croats, etc.) were among the first to establish and register their political parties in 1990 and 1991. These political parties regularly participated in elections on all levels of territorial organization (central, provincial and local elections), competing to grasp political power, but also to acquire political legitimacy to speak and act on behalf of the respective national minority, to outbid other competing ethnic political parties from the same national minority.²⁶ From 2009 Serbian law on political parties established a specific category of political parties – “national minority political parties”.²⁷ The registration of such political parties is easier²⁸ and the status of national minority party allows them to take part in the elections for national councils, and participate in central, provincial and local elections under preferential conditions. Unfortunately, legal provisions on national minority political parties prescribe no mechanisms for precluding various manipulations. Every group of citizens may establish and register a national minority political party, irrespective of whether the founders belong to a national minority. The only criteria is that the activities of the party have to be specifically related to the representation and protection of the particular national minority, in accordance with the founding act, statute and program of the

Powers – Legislative Power, Executive Power and Position of Political Parties in the Republic of Serbia], in: Simović, D., Šarčević, E., (eds.), 2018, *Parlamentarizam u Srbiji*, Sarajevo, CJP Fondacija za javno pravo, pp. 131–132.

- 26 Zuber, C. I., Muš, J. J., 2013, Representative Claims and Expected Gains, Minority Council Elections and Intra-Ethnic Competition in Serbia, *East European Politics*, Vol. 29, No. 1, pp. 62–63.
- 27 “National minority political party, according to this law, is a political party whose activities, beyond the features from Article 2 of this Law, are specifically directed at the presentation and representation of the interests of one national minority, and the protection and development of the rights of the persons belonging to that national minority, in accordance with the Constitution, law and international standards, regulated by the founding act, program and Statute of the political party.” Art. 3 of the Law on Political Parties [Zakon o političkim strankama], *Official Gazette of the RS*, Nos. 36/09 and 61/15.
- 28 The registration of a national minority political party requires 1,000 members, while, for the registration of all other parties the minimal number of members is 10,000. Art. 9 of the Law on Political Parties.

political party.²⁹ Hence, it is not surprising that 68 out of 115 registered political parties in Serbia are registered as national minority political parties.³⁰ Despite all possible manipulations, one can claim firmly that there are three national minorities in Serbia that are politically well-organized, with ethnic political parties capable to acquire support from the ethnic-national community that they represent in election on various levels: the Hungarian, the Bosniak, and the Albanian. Other national minorities, although they have also established their national minority political parties, have not been able to mobilize the community they wish to represent, or they have done so only sporadically, mainly on the local level.

The influence and position of political parties in Serbia is linked to the proportional electoral system, which has existed in Serbia since the beginning of the 21st century.³¹ With few exceptions on the local level, this system has favored well-organized political parties; they nominate the lists of candidates and organize campaigns where the individual candidate on the list is usually not visible. In practice, voters actually choose between political parties and their leaders. This system has resulted fragmented assemblies with many political options, while on the other hand, it has boosted the informal power and importance of political parties and their leaders in political processes, making the personal qualities and integrity of candidates less important.

2.3. NATIONAL MINORITIES AND THEIR REPRESENTATION IN THE NATIONAL ASSEMBLY – RESULTS OF THE 2022 ELECTIONS

The elections for the deputies in the National Assembly of Serbia are organized in accordance with the rules of the proportional electoral system, with the country being a single electoral district. Since 2000 all nine parliamentary elections have been organized, in accordance with such electoral system.³² The main features of this system have remained constant for more than two decades. Voters choose between lists of can-

29 Art. 3 of the Law on Political Parties.

30 The Register of political parties in August 2022 contained 68 national minority political parties belonging to 16 different national minorities: 10 Bosniak, 7 Slovak, 7 Russian, 7 Roma, 6 Hungarian, 6 Albanian, 4 Vlach, 4 Bulgarian, 3 Macedonian, 3 Bunjevac, 2 Croat, 2 Romanian, 2 Ruthenian, 2 Greek, 2 Montenegrin, and 1 Goranac (<http://mduls.gov.rs/wp-content/uploads/Izvod-iz-Registra-politickih-stranaka-22.07.2022.pdf>, 11. 11. 2022).

31 Between 2004 and 2016 in the Autonomous Province of Vojvodina the mixed electoral system was used to elect the members of the Provincial Assembly.

32 Horváth, L., 2020, A parlamenti választási rendszerek nemzeti kisebbségi vonatkozásai a Nyugat-Balkánon – harminc éve a demokrácia árnyékában? [The Parliamentary

didates nominated by political parties, or exceptionally by groups of citizens. The lists of candidates can participate on elections if they have been supported by 10,000 validated voter signatures. Voters choose one of the lists and cannot vote on individual candidates on the lists (no preferential vote). The 250 seats in the National Assembly are distributed among the lists of candidates meeting the numerical threshold, *i.e.*, which acquire the specified percentage of votes cast in the elections (5%, *i.e.*, 3% after 2020) proportionally, according to the D'Hondt method. This system has been amended several times in the past twenty years, but never substantially;³³ the main changes were related to the status and position of lists nominated by national minority political parties.

According to the current electoral rules, national minorities can be represented in the National Assembly under preferential conditions via the participation of national minority lists nominated by national minority political parties, *i.e.*, by the way of benefits that lists nominated by national minority political parties enjoy in the electoral process.³⁴ These predilections were introduced due to obligations stipulated by the Constitution of Serbia.³⁵ The first benefit is that the electoral lists of minority political parties must be supported by at least 5,000 voter signatures, as opposed to the 10,000 signatures required for other lists of candidates.³⁶ This benefit was introduced very recently, and it was applied first in the 2022 parliamentary elections. The next benefit is related to the numerical threshold, which lists of candidates must reach in order to participate in the distribution of seats in the National Assembly. The national minority list can participate in the distribution of seats in the National Assembly without reaching the numerical threshold (previously 5%, as of 2020 3% of cast valid votes) if it acquired the number of votes necessary for a single seat. This number is at least 0.4 percent of the votes cast for party lists

Electoral Systems in Western-Balkans and National Minorities – Thirty Years in the Shadow of Democracy], *Kisebbségi Szemle*, Vol. 2020, No. 2, p. 20.

- 33 The main changes were related to the obligatory representation of less the represented sex on the list (at least one in three candidates on the list must be a woman), the fixation of the ranking of candidates on the lists when mandates are allocated, the ban on elected members of the National Assembly putting their mandates at the disposal of the political party nominated them in advance, lowering the numerical threshold from 5% to 3%, etc.
- 34 Arts. 137–140 of the Law on the Election of National Deputies [Zakon o izboru narodnih poslanika], *Official Gazette of the RS*, No. 14/22.
- 35 Constitution of the Republic of Serbia [Ustav Republike Srbije], *Official Gazette of the RS*, Nos. 98/06 and 115/21, Art. 100, para. 2. stipulates that in the “National Assembly equal representation of sexes and representatives of national minorities are guaranteed in accordance with the law.”
- 36 Art. 139 of the Law on the Election of National Deputies.

reaching the numerical threshold; in practice this is somewhere between 8,000 and 15,000 votes, depending on the number of voters participating in the election, as well as on the number of votes acquired by lists remaining below the numerical threshold.

This benefit was introduced by way of amendments of the law in 2004,³⁷ after the 2003 parliamentary elections. Earlier, lists nominated by national minority political parties had no such benefit, making it practically impossible for them to reach the numerical threshold, forcing them to enter coalitions with major Serbian political parties.³⁸ The third benefit introduced for the national minority lists nominated by national minority political parties was enacted in 2020,³⁹ and it was first applied in elections of 21 June 2020. If we simplify this novelty it means that the number of acquired vote by the national minority list shall be multiplied with 1.35 in the process of distributing seats between lists. This mathematical formula makes possible for national minority list to acquire one seat even if it acquired less than 0.4% of votes, or, but also to acquire for example 5 or 6 seats and not only 4 seats with the same number of votes.

Despite various amendments making the system for the representation of national minorities more sophisticated in recent decades one question still remains vague even nowadays. Namely, upon which conditions can one list acquire the status and preferences of national minority list. Despite of the fact, that the Law on Political Parties introduced the category of the national minority political party, it is not unequivocal that all lists of candidates nominated by national minority political parties can acquire the status of the list of national minorities on elections. According to the relevant provisions of the law the National Electoral Committee (*Republička izborna komisija* – RIK), determines with its decision the status of the national minority list upon the initiative of the minority political party (parties) nominating such list.⁴⁰ According to the current regulation the RIK can reject to recognize the status of national minority list in the case “that there are circumstances which obviously indicate the intention to circumvent the law”.⁴¹ The RIK is specially empowered to consult the national council of the relevant national minority in the case of suspicion.⁴²

37 Amendments on the Law published in the *Official Gazette of the RS*, No. 18/04.

38 On 28 December 2003 election the coalition list of major political parties (*Zajedno za toleranciju*) of several political parties, including minority political parties of Hungarians, Bosniaks and Croats was not able to reach the threshold of 5% and acquired 4.2% of votes.

39 Amendments to the Law published in the *Official Gazette of the RS*, No. 12/20.

40 Art. 137, par. 2 of the Law on the Election of National Deputies.

41 *Ibid.*, Art. 138.

42 *Ibid.*, Art. 137, par. 3.

Against the negative decision of the RIK, representatives of the nominated list may launch an appeal to the Administrative Court.

In practice, the RIK has in some cases refused to pronounce the list nominated by political parties registered as national minority political parties, on the grounds of potential fraud, but it never consulted the relevant national council. In these cases, the RIK refused to recognize the status of national minority list nominated by national minority political party because it found that the practical activities of the parties in question were not related to the protection of the respective national minority and its identity, or that the candidates on the nominated lists were not members of the respective national minority and they were not registered as national minority voters for the election of national minority self-governments – national council. In these cases, the national minority political parties lodged an appeal with the Administrative Court. The Administrative Court regularly reversed these decisions in the course of the 2016,⁴³ 2020⁴⁴ and 2022⁴⁵ elections, stating that the law provides no power to the RIK to analyze the practical activities of these national minority political parties, nor does the law stipulate that the candidates on the lists or the citizens supporting the list should be registered as national minority voters. This way the court practically required the RIK to recognize the status of national minority list to all lists nominated by national minority political parties, provided that these lists had been supported by the stipulated number of validated signatures of citizens.⁴⁶

The position of the Administrative Court remained the same even after the 2022 amendments openly granted the RIK the power to refuse to recognize the status of national minority list in the case “that there are circumstances which clearly indicate the intention to circumvent the law”. It is obvious that according to the Administrative Court’s interpre-

43 In its Decision UŽ 138/16 of 13 April 2016 the Administrative Court reversed the decision of the RIK refusing to recognize the status of national minority political party (list) to the Serbian Russian Movement (Srpsko ruski pokret). In its decision UŽ 111/16 of 12 April 2016 the Administrative Court also reversed the decision of the RIK regarding the status of Republican Party (Republikanska stranka – Republikánuš párt) as the national minority political party of Hungarians.

44 In its Decision UŽ 107/20 of 19 June 2020 the Administrative Court reversed the decision of the RIK refusing to recognize the status of national minority political party (list) to the Russian Party (Ruska stranka).

45 In its Decision UŽ 31/22 of 21 March 2022 the Administrative Court reversed the Decision of the RIK refusing to recognize the status of national minority list to the Russian Minority Alliance (Ruski manjinski savez).

46 In its decision UŽ 29/22 of 20 March 2022 the Administrative Court rejected the appeal of the Russian Party (Ruska stranka) on the grounds that it enclosed less than 5,000 valid signatures in the process of nominating the national minority list.

tation, the fact that candidates on the list are presumably not members of the respective national minority is not a circumstance that “clearly indicate[s] the intention to circumvent the law”. According to the available RIK documents⁴⁷ from the 2007 parliamentary elections, when the numerical threshold for national minority political parties and lists was first abolished, the Hungarian, the Bosniak and the Albanian national minority political parties were continuously able to successfully participate in elections and gain seats under preferential conditions; however, with the exception of the Bosniak minority, only a single national minority political party from each national minority respectively succeeded in gaining seats in the National Assembly. Less numerous national minorities in Serbia were usually unable to gain seats in parliament despite preferences guaranteed to national minority political parties.⁴⁸ For example, the Montenegrin national minority political party has participated in elections regularly, but without any success.

In the April 2022 parliamentary elections, in total eight national minority lists were promulgated by the RIK. One Hungarian, two Bosniak, two Albanian, one Ruthenian-Croatian, one Roma, and one Russian. The Hungarian, Savez Vojvođanskih Mađara list collected around 60 thousand votes and gained five seats (four fewer than in the 2020 elections). The Bosniak Muftijin amanet list received around 35 thousand votes and gained three seats (one less than in the 2020 elections). The second Bosniak list, SDA Sandžaka won 20 thousand votes and two seats in parliament (one less than on the 2020 elections). The Zajedno za Vojvodinu Croatian-Ruthenian list won 24 thousand votes and two seats. From two competing Albanian lists, the Koalicija Albanaca Doline won 10 thousand votes and one seat. The list Ruski manjinski savez Russian-Greek list won around 9,000 votes and gained no seats. The Romska partija Roma list acquired around 6,000 votes and was left without any seats.⁴⁹

The results of the 2022 elections for the National Assembly showed that the latest amendments to the Law on election of deputies to the National Assembly – whose aim was to facilitate the nomination of national

47 <https://www.rik.parlament.gov.rs/extfile/sr/9392/Izvestaj%20o%20ukupnim%20rezultatima%20izbora%202020l.doc>, 11. 11. 2022.

48 Burazer, N., 2016, *Reforma sistema reprezentacije nacionalnih manjina u Narodnoj skupštini Republike Srbije* [The reform of the national minority representation in the National Assembly of the Republic of Serbia], Beograd, Konrad Adenauer Stiftung, pp. 5–7.

49 For the results of the April 2022 elections, see Report on the Complete Results of the Election for People's Deputies in the National Assembly [Izveštaj o ukupnim rezultatima izbora za narodne poslanike Narodne skupštine], RIK, 5 July 2020. (<https://www.rik.parlament.gov.rs/extfile/sr/9392/Izvestaj%20o%20ukupnim%20rezultatima%20izbora%202020l.doc>, 11. 11. 2022).

minority party lists and achieve parliamentary representation of national minorities in the National Assembly (and to prevent abuses) – made no substantial changes or progress in the representation of national minorities in the National Assembly. The number of promulgated national minority lists did not increase despite of the lowered number of required signatures of support, nor did any other less numerous national minority gain parliamentary representation.⁵⁰ What remained a bottleneck of the electoral system is the issue of which list can be declared as a national minority list, hence there are no requirements that candidates on the list be members of the national minority (or any of them), nor that citizens supporting the list with signatures are also members of the national minority (or any of them). The efforts of the RIK to eliminate abuses and “suspicious” national minority political parties and their lists, based on Article 138 (Abuse of Rights), was overruled by the Administrative Court, while the court failed to determine the boundary between “use” and “abuse”. The practical analysis of the registration of national minority political parties and their participation in elections indicates that preferences aimed at supporting the representation of national minorities in assemblies are often used by political actors having little if any link to national minorities in Serbia.⁵¹

On the other hand, the Constitutional Court of Serbia generally demonstrated strong deterrence towards the electoral provisions facilitating the representation of national minorities in representative bodies at the state, provincial and local levels, stating that the legislator has wide freedom to determine concrete preferences for national minorities in order to make it easier for them to gain representation in assemblies.⁵² In accordance with this position, the Constitutional Court has regularly dismissed initiatives contesting the constitutionality of legislative provisions in cases where the initiative contested them from the position that they violated the principle of equal voting for all, to the advantage of national minorities,⁵³ or because they were asserted that they are insufficient to ensure the representation for many national minorities.⁵⁴

50 The only exception is the election of the president of the Democratic Community of Vojvodina Croats, Tomislav Zigmanov as a deputy, who was elected as a candidate of the national minority Zajedno za Vojvodinu list, nominated by the Croatian party and a Ruthenian national minority party. This national minority list was actively and openly supported by the Liga Socijaldemokrata Vojvodine, Vojvodina regional party, which did not participate in the election for the National Assembly.

51 Burazer, N., 2016, pp. 6–7.

52 Korhecz, T., 2021, pp. 41–42.

53 Order IU 110/2004 of July 2004, Order IU 334/2004 of 2 December 2004, Order IU-97/2008 of 18 December 2008.

54 Decision IUz-52/2008 of 21 April 2010, Decision IUp-42/2008, of 14 April 2011.

3. MINORITY REPRESENTATION IN THE NATIONAL ASSEMBLY IN HUNGARY

3.1. NATIONAL MINORITIES AND THEIR PROTECTION IN HUNGARY

Unlike in Serbia, in Hungary national minorities are explicitly defined and enumerated in the legislation.⁵⁵ There are altogether 13 nationalities⁵⁶ enjoying the status of nationality; these are the Roma, the German, the Slovak, the Romanian, the Croatian, the Serbian, the Polish, the Ukrainian, the Ruthenian, the Bulgarian, the Armenian, the Greek and the Slovenian national minorities. The law stipulates a rather complicated procedure, involving public initiative, the Hungarian Academy of Sciences and the National Assembly for enlarging the list. According to the latest 2011 census, approximately 6% of the total Hungarian population declared their belonging to various nationalities in Hungary. The most numerous national minorities, whose number exceed 10,000 persons are the Roma (315,583 persons), the Germans (185,696 persons), the Rumanians (35,641), the Slovaks (35,208 persons), the Croats (26,774), and the Serbs (10,038 persons).⁵⁷ The nationalities in Hungary are not concentrated in particular regions or counties of Hungary, and, with the exception of the Germans, they only exceptionally constitute a local majority within local self-governments (municipalities and towns). As is the case in Serbia, rights and freedoms of nationalities in Hungary are widely guaranteed in the Fundamental Law of Hungary (constitution)⁵⁸ but also in various ratified international agreements and other laws of Hungary.⁵⁹

55 Act No. 179 of 2011, on the Rights of Nationalities [2011 évi CLXXIX Törvény a Nemzetiségek jogairól].

56 As of 2010, the constitutional term “national or ethnic minorities” has been replaced in the Fundamental Law and other laws of Hungary with the term “nationality”. The term “nationality” was used widely in Hungarian legislation prior to 1920.

57 Pap, A., Recognition, Representation and Reproach: New Institutional Arrangements in the Hungarian Multiculturalist Model, in: Vizi, B., Tóth, N., Dobos, E., (eds.), 2017, *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*, Baden-Baden, Nomos, p. 111.

58 Fundamental Law of Hungary [Magyarország Alaptörvénye], enacted on 25 April 2011.

59 Nagy, N., 2022, *Szemérmes alkotmánybíráskodás A nemzetiségek védelme az Alkotmánybíróság gyakorlatában* [Shamefaced Constitutional Adjudication, The Protection of Nationalities in the Practice of the Constitutional Court], Budapest, NKI, pp. 7–9.

3.2. PARLIAMENTARY REPRESENTATION OF NATIONALITIES IN HUNGARY AND THE RESULTS OF THE 2022 ELECTIONS

Since 1990, the members of the Hungarian National Assembly have been elected in accordance with the combined/mixed electoral system. However, following the 2010 elections and the enactment of the Fundamental Law of Hungary, the electoral system was amended substantially. The number of seats was reduced from 389 to 199. As of the 2014 elections, a majority of members, 106 of them, are elected in single member electoral districts in one round elections, where the candidate that collects the largest number of votes is elected.⁶⁰ The remaining 93 members are elected from party lists exceeding the numerical threshold of 5%, and nationality lists (reaching the preferential numerical threshold). However, in the process of distribution, the number of acquired votes of party lists is increased by the “lost or fragmentary votes” cast for the respected party candidates in the single member districts.⁶¹

The first post-communist, democratic Constitution of Hungary, *i.e.* the 1989 constitution of “democratic transition”, contained no provisions guaranteeing parliamentary representation of national minorities in the National Assembly of Hungary (Országgyűlés), however it stipulated that “The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.”⁶² The 1993 Law on the Protection of National and Ethnic Minorities went a step further, stipulating that national minorities would have representation in the National Assembly, but added that the matter would be regulated by special law.⁶³ The “right” to representation of national minorities in National Assembly has been before the Constitutional Court of Hungary several times. Although the Constitutional Court was not always unequivocal concerning the content of the aforementioned constitutional provision on the representation of national minorities, it rejected any interpretation of the provision of the former Hungarian Constitution that there is a constitutional obligation to enact a law facilitating the representation of national minorities in the National Assembly.⁶⁴ Furthermore, it declared that the

60 Arts. 7–8. of the Act No. 203 of 2011 on the Election of Parliamentary Deputies [2011 évi CCIII törvény az országgyűlési képviselők választásáról].

61 *Ibid.*, Arts. 15–16.

62 Art. 68, par. 3. of the Act No. 20. of 1949 on the Constitution of the Republic of Hungary [1949. évi XX törvény a Magyar Köztársaság Alkotmánya].

63 Art. 20, par. 1. of the Act No. 77 of 1993 on the Rights of National and Ethnic Minorities [1993 évi LXXVII törvény a nemzeti és etnikai kisebbségek védelméről].

64 Kukorelli, I., 2018, A nemzetiségek jogállása a rendszerváltozás éveiben – kísérletek országgyűlési képviseletük szabályozására [The Legal Standing of Nationalities

5% numerical threshold for all parties (including national minority parties) does not violate the Constitution.⁶⁵

Even though the topic of the representation of national minorities was often subject of political and scholarly debates, juridical disputes between 1990 and 2010, and even several times on the agenda of the National Assembly – the relevant electoral laws were not amended until 2011.⁶⁶ The 2011 Fundamental Law of Hungary (constitution), like its predecessor, also lacked provisions stipulating the right to the representation of national minorities in the National Assembly. However it contains a provision that the participation of nationalities in the National Assembly will be regulated by cardinal law.⁶⁷ Finally, in 2011, the National Assembly enacted the Act on the parliamentary elections.⁶⁸ This Act was first applied in the 2014 elections. The current electoral Acts stipulate a specific system of representation of nationalities in the National Assembly, with a key role allocated to nationality self-governments and registered nationality voters. Basic rules of that system stipulate the following. On behalf of each nationality (out of thirteen) the respective elected State Level Nationality Self-Government (SLNSG) is empowered to nominate the nationality electoral list if the list is supported by at least 1% of registered voters of that nationality.⁶⁹ A SLNSG can nominate only one list, and law excludes the possibility that two or more SLNSGs nominating a joint list. Active and passive voting right in the process of election of nationality members of the National Assembly is recognized only to registered nationality voters. Candidates on the list nominated by the SLNSG must be registered as nationality voters of the respective nationality. Furthermore, only registered nationality voters can cast votes for the nominated nationality list.⁷⁰

in Years of Transition – Attempts to Regulate Their Parliamentary Representation], *Parlamenti Szemle*, Vol. 3, No. 1, pp. 15–16; Mór, S., 2015, A nemzetiségek országgyűlési képviselőinek egyes kérdései Magyarországon [Some Questions About the Representation of Nationalities in the National Assembly], *Magyar Jog*, Vol. 62, No. 10, p. 588; Nagy, N., 2022, pp. 41–42.

65 Constitutional Court of Hungary Decision No. 1040/B/1999 of 17 December 2001, Reasoning III.7.

66 Pap, A., 2017, pp. 102–103; Kukorelli, I., 2018, p. 16.

67 Art. 2 (2) of the Fundamental Law. The “Cardinal Law” (sarkalatos törvény) is a law requiring qualified 2/3 majority vote in National Assembly.

68 Act No. 203 of 2011 on the Election of Parliamentary Deputies] [2011 évi CCIII. törvény az országgyűlési képviselők választásáról].

69 *Ibid.*, Art. 9.

70 In the Register of Voters, citizen must be registered as a “nationality voters” in order to vote in nationality self-government elections. If such nationality voters also apply to vote in the parliamentary elections for the nationality list they need to be regis-

The voters belonging to the respective nationality must be specially registered in order to vote for the national minority list in the parliamentary elections. Within the framework of the mixed electoral system, nationality voters can vote in their individual constituencies for individual candidates (like all other voters), but they can vote only for the respective nationality list, and not for the party lists. The national minority list can gain seats in National Assembly even without reaching 5% numerical threshold. If the national minority list cannot collect enough votes for a single seat (natural threshold), it can obtain one (each list can acquire only one seat this way) seat under a specific mathematic formula, namely: if the list won at least $\frac{1}{4}$ of the votes necessary for a single seat. If the national minority list won less than $\frac{1}{4}$ of the votes necessary, it will not gain seat and the first candidate on the list will become nationality advocate in the National Assembly. Nationality advocates are not full members of the National Assembly. The nationality advocate cannot participate in the work of the Parliament in a deciding capacity or vote in plenary sessions, but they still have rights similar to members:⁷¹ they enjoy immunity,⁷² are full members of the parliamentary committee for nationalities, can address the National Assembly in matters affecting the nationality, etc.⁷³ The nationality advocate cannot be the president or a member of the SLNSG.⁷⁴ Critics of the representation of nationalities via nationality advocates emphasize that their democratic legitimacy is weak: they are more delegated to the National Assembly rather than elected.⁷⁵ Namely, there is no minimal number of votes necessary for their election, they became nationality advocates regardless of the number of nationality votes the list receives.

So far, three elections have been organized within the above-described rules on the preferential representation of nationalities in Hungary: in 2014, 2018, and 2022. These elections proved that the preferential rules effectively helped only the German nationality to elect its own member of the National Assembly. In 2018 and 2022, the same candidate, Imre Ritter, was elected as nationality member of the National Assembly with around

tered as such. Art. 86. of the Act No. 36 of 2013 on the Electoral Process [2013 évi XXXVI törvény a választási eljárásról].

71 Art. 29. of the Act No. 36 on the National Assembly [2012 évi XXXVI. törvény az Országgyűlésről].

72 The immunity of the members of the National Assembly and nationality advocates imply, among other things, limited possibility to charge them for criminal acts and misdemeanors, without the approval of the National Assembly.

73 *Ibid.*, Arts. 29–29A.

74 *Ibid.*, Art. 29A (5).

75 P. 64.

25 thousand received votes in both elections. Alongside with the German nationality, objectively, only the largest nationality in Hungary, the Roma, had a realistic chance of electing its member to the National Assembly (to collect more than 20 thousand votes of registered nationality voters). But unlike Germans, Roma nationality voters registered as nationality voters for the National Assembly elections in relatively modest numbers.⁷⁶ The less numerous nationalities, objectively having no chance to elect full member of the National Assembly, were not motivated to register for the National Assembly elections, but rather choose to elect from nominated political party lists. The position of the nationality advocate is guaranteed by the mere nomination of the list.⁷⁷

As mentioned above, in the latest 2022 elections for the members of the National Assembly only the German nationality elected its member of the National Assembly, while an additional 11 nationalities nominated nationality lists, and having no enough votes to elect members, the first candidate on each list became a nationality advocate. In the 2022 elections the largest nationality, Roma elected no member or nationality advocate to the National Assembly. What happened was that the deeply divided and definitely fragmented Roma SLNSG was unable to regularly nominate a nationality list. After the National Assembly elections were called in late 2021, the Roma SLNSG formally determined the candidates on the Roma nationality list, but an unsatisfied member of the SLNSG lodged an appeal with the court due to alleged irregularities. The High Court rejected the appeal, while the Constitutional Court invalidated the final court decision and the appealed acts of the Roma SLNSG following a constitutional appeal.⁷⁸ This way the Roma SLNSG remained without the list of candidates, hence subsequent attempts to enact new list failed in February 2022. This way the Roma nationality voters had no opportunity to elect nationality member or even a nationality advocate.

76 For example, in 2018 out of 49 thousand German nationality voters, 33 thousand registered specially for National Assembly elections. The corresponding figures for the Roma nationality were 151 thousand and 33 thousand, respectively.

77 Dobos, B., 2021, A nemzetiségi részvétel jellemzői az országgyűlési választáson (2014–2019) [The characteristics of the Participation of National Minorities in Parliamentary Elections (2014–2019)], *Parlamenti Szemle*, Vol. 6, No. 2, p. 64; Pap, A., 2017, pp. 104 and 133.

78 The Constitutional Court invalidated the court decision on the grounds that it failed to protect the constitutional principle of legal certainty, violated by the act of the Roma SLNSG regulating the procedure for the nomination of nationality candidates, while the act was amended just prior to the decision making about the candidates. With its decision the Constitutional Court also invalidated the respective acts of the Roma SLNSG. Decision No. 3002/2022 of 13 January 2022, paras. 27–31.

4. CONCLUDING REMARKS

Both Serbia and Hungary respectively enacted electoral systems facilitating the representation of national minorities in the national assemblies. Provisions in both countries stipulate various preferences for national minority candidates in elections for the national assembly, making them easier to acquire seats in the legislature. Also common for the two states is that these electoral preferences resulted in tangible benefits only for sizable well-organized national minorities. On the other hand, the electoral system offers no real chance of effective representation to smaller and less-organized national minorities. As a result, sizable, strong minorities usually became more visible and more influential, while more vulnerable minorities are still left without the opportunity to elect their own members into the national assemblies. Furthermore, in both states, electoral rules exclude, or at least make difficult to mirror, the existing plurality within a respective national minority.

Along with similarities between the solutions and their effects in these two countries, important differences between systems are also present.

In the case of Serbia, the representation of national minorities in National Assembly is facilitated via a system of preferences allocated to the national minority electoral lists nominated by registered national minority political parties. National minority political parties have a central role in the representation of national minorities in the Serbian National Assembly. This system allows to every voter, regardless of their national belonging, to support the nomination of such a list, to be a candidate on such a list, or to vote for such a list without the declaration of ethnic belonging or registration in the (existing) special register of minority voters. The status of national minority list with all potential benefits is dependent almost entirely on the status of the political party (national minority political party) nominating the list. The vulnerability of the relevant provisions lies in the fact that these provisions provide weak tools to prevent possible abuses in practice. There are strong indications that it is possible to register a national minority political party, and also to nominate national minority lists without real support of persons belonging to that national minority. Such “efforts” were exceptionally successful on state level elections.⁷⁹ The

79 In the 2012 parliamentary elections the list “Nijedan od ponudjenih odgovora” successfully gained seats in the national assembly as a national minority list, although the elected MPs or their activities had no clear connection to the Vlach national minority or its protection. The various Russian national minority lists participating in 2016, 2020, and 2022 also had very weak links to the Russian national minority in Serbia, but much more with the sympathy and Serb sentiments toward Russia. These

existing register of national minority voters and elected national councils of national minorities plays almost no role in the electoral process.

On the contrary, at the center of the Hungarian model of national minority representation in the National Assembly are the elected SLNSGs, and the register of nationality voters. The nationality list of candidates are exclusively nominated by the respective SLNSG, with the support of registered nationality voters, while the precondition for active and passive voting right is the registration as a nationality voter. Critics of the Hungarian system emphasize that such a system unreasonably restricts any involvement of non-registered voters in the electoral procedure, excludes plurality and competition within each nationality, and that even with all preferences only few nationalities out of thirteen in Hungary have a chance of electing a full member deputy to the National Assembly.⁸⁰ The specificity of the Hungarian model of representation are nationality advocates, a type of substitute for nationality member of the National Assembly, for all nationalities that were unable to elect a single full member. The main weakness of the institution of the nationality advocate is their inferiority compared to full status members, but also the lack of the democratic legitimacy.

Following the analyses above, one can suggest that in the course of promoting the electoral system, both states might borrow certain solutions from the other. The Serbian model might be upgraded with provisions regarding the existing registers of minority voters and national councils in the process of nomination of national minority lists. For example, new provisions might stipulate that the national minority list must be supported minimally by a minimal number or percentage of (out of 5,000) registered voters of the respective national minority, and the majority of candidates should also be registered voters, members of the respective national minority. The respective national council should be consulted in all cases when the RIK determines the status of national minority list. These solutions, if precisely stipulated by electoral laws, might minimize potential future abuses. On the other hand, the participation of less sizable national minorities can be ensured through the institution of national minority advocates, from the lists that does not win enough votes to reach the numerical census.

On the other hand, the Hungarian model might be upgraded in a way to extend the possibility to nominate candidates on the national minority list by nationality political parties or by a group of registered minority voters.

lists did not have enough votes to gain seats in the National Assembly, but they successfully participated in local elections in many towns.

80 Dobos, B., 2021, p. 63.

Furthermore, it might be useful to allow voters to choose from candidates on the respective list, therefore determining who will be elected as member or nationality advocate. It might be reasonable to extend the passive voting rights to candidates not belonging exclusively to the respective nationality.

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PARLAMENTARNA ZASTUPLJENOST NACIONALNIH MANJINA U SRBIJI I MAĐARSKOJ: MEHANIZAM ZA DELOTVORNU PARTICIPACIJU MANJINA ILI SREDSTVO ZA POLITIČKU MANIPULACIJU?

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APSTRAKT

U višenacionalnim državama, u kojima živi značajan broj pripadnika nacionalnih, etničkih i jezičkih manjina, sa snažnim, posebnim identitetom, princip demokratije zahteva da ove grupe imaju svoje predstavnike u parlamentima tih država. I pored toga, u mnogim multietničkim državama, nacionalna-etnička većina čini napore da isključi ili minimalizuje predstavljanje nacionalnih etničkih grupa u zakonodavnim telima. Srbija i Mađarska su nacionalne države sa relativno visokim procentom onih građana koji pripadaju nacionalnim etničkim manjinama, te imaju razvijen sistem zaštite manjinskih prava. Obe države su usvojile izborne zakone koji olakšavaju zastupljenost nacionalnih manjina u najvišim predstavničkim telima. Ovaj članak prikazuje, upoređuje i kritički analizira izborna pravila i njihovu primenu u praksi u obe države, s ciljem da odgovori na pitanje da li ova pravila efikasno omogućuju nacionalnim manjinama da steknu odgovarajuću zastupljenost u parlamentu. Da bi se odgovorilo na ovo pitanje, polazi se od rezultata i iskustva parlamentarnih izbora koji su održani 2022. godine u obe države.

Ključne reči: izborni sistem, zastupljenost nacionalnih manjina u parlamentu, Srbija, Mađarska, parlamentarni izbori u 2022.

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