EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BAKIRDZI AND E.C. v. HUNGARY

(Applications nos. 49636/14 and 65678/14)

JUDGMENT

Art 3 P1 (+ Art 14) • Free expression of opinion of people • Discrimination • Shortcomings of the national minority voting system affecting secrecy of vote, voters' free political choice and making it impossible for a national minority candidate to win a seat in Parliament • Rule requiring a national minority candidate to be endorsed by voters of the same minority • National minority candidate unable to win a seat where the total number of voters of the same minority is below the preferential electoral threshold • National minority voters allowed to vote only for their respective national minority lists and not for political party lists • Electoral choice of a national minority voter likely to be indirectly revealed to everybody, especially at polling stations where the number of registered national minority voters is limited • System limiting the opportunity of national minority voters to enhance their political effectiveness as a group and threatening to reduce diversity and participation of minorities in political decision-making

STRASBOURG

10 November 2022

FINAL

03/04/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Bakirdzi and E.C. v. Hungary,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Ioannis Ktistakis,
Davor Derenčinović, *judges,*
and Liv Tigerstedt *Deputy Section Registrar,*

Having regard to:

the applications (nos. 49636/14 and 65678/14) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Hungarian nationals, Ms Kalliopé Bakirdzi and E.C. ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Hungarian Government ("the Government") of the applications;

the decision not to have the second applicant's name disclosed;

the parties' observations;

Having deliberated in private on 4 October 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the voting rights of the applicants, registered as national minority voters for the 2014 parliamentary elections. It raises issues under Article 3 of Protocol No. 1 to the Convention.

THE FACTS

2. The first applicant, Ms K. Bakirdzi, was born in 1959 and lives in Budapest. The second applicant, E.C., was born in 1990 and lives in Budapest. The first applicant was represented by Mr D.A. Karsai, and the second applicant by Mr A. Czech, both lawyers practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The first applicant belongs to the Greek national minority and the second applicant to the Armenian national minority.

5. The facts of the case may be summarised as follows.

I. GENERAL BACKGROUND OF THE CASE

6. There are thirteen national minorities in Hungary recognised under Act no. CLXXIX on the Rights of Nationalities (the Rights of Nationalities Act). Under the Fundamental Law of Hungary, national minorities living in Hungary are to participate in the work of Parliament (see paragraph 13 below). On the basis of this provision, Act no. CCIII of 2011 on the Election of Members of Parliament (the Election Act) introduced a system of minority representation in 2014 (see paragraph 14 below). Members of national minorities may register as national minority voters on the basis of self-identification. The request to be registered as national minority voter must contain the indication of the national minority, the voter's declaration that he or she belongs to the national minority and an indication that the voter intends to vote as a national minority voter at the national elections (see paragraph 15 below). National minority voters can only vote for the minority list of the national minority they belong to and for single-member district candidates, whereas other voters vote for a candidate in a single-member district and for a party list.

7. For the national minority voting, each national minority has a separate closed candidate list, submitted by the national minority self-governments, that appear on a separate ballot. National minority lists must contain at least three candidates. The names of the candidates and their order are decided by the assembly of national minority self-governments. The list needs to receive supporting signatures from at least one per cent of the voters included in that minority's register, but not more than 1,500 signatures.

8. The minority voter's only possibility is to vote or not to vote for the single closed list (without influence on the candidate order) presented in respect of his or her national minority.

9. Under section 16(d) of the Election Act, the national minority lists enjoy a preferential threshold. The threshold is reached at one-quarter of the votes needed for ordinary mandates from the electoral list (standard electoral quota). The preferential quota only applies to the first seat of the national minority in Parliament. The number of seats that can be gained from the national list (*országos lista*) must be reduced by the number of seats allocated to national minorities. Should the national minority fail to win a seat, the first candidate on the national minority list is appointed as a non-voting parliamentary spokesperson.

II. THE 2014 PARLIAMENTARY ELECTIONS

10. As members of recognised national minorities, both applicants requested registration as national minority voters on the electoral roll before the 4 April 2014 parliamentary elections, by virtue of section 85(1) of Act no. XXXVI of 2013 on Election Procedure (the Election Procedure Act).

11. All thirteen recognised national minorities registered lists for the elections. There were a total of ninety-nine candidates, and a total of 35,289 voters registered as national minority voters, as follows:

National minority	Number of registered voters	Number of candidates
Bulgarian	104	5
Greek	140	3
Croatian	1623	9
Polish	133	7
German	15,209	27
Armenian	184	3
Roma	14,271	6
Romanian	647	3
Rusyn	611	11
Serbian	349	7
Slovak	1317	5
Slovenian	199	3
Ukrainian	502	10

12. The threshold to gain a seat in Parliament for national minority candidates could be reached in the 2014 elections by obtaining 22,022 votes (dividing the total number of national votes cast by ninety-three – the number of seats that could be acquired from the national list – then dividing by four). None of the national minority lists obtained enough votes to win a national minority seat.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

13. The Fundamental Law provides:

Article XXIX

"...

(2) National minorities living in Hungary shall have the right to establish their self-government at both local and national level.

..."

Section 26

"(1) Under Article 24 § 2(c) of the Fundamental Law, persons or organisations affected by a particular case may submit a constitutional complaint to the Constitutional

Court if, as a result of the application of a law contrary to the Fundamental Law in the court proceedings conducted in their case,

(a) their rights secured under the Fundamental Law were violated; and

(b) the possible remedies have already been exhausted or no possible remedies exist.

(2) By way of derogation from subsection (1), Constitutional Court proceedings may, exceptionally, also be initiated where:

(a) as a result of the application of, or the coming into effect of, a legal provision contrary to the Fundamental Law, a violation of the rights [of persons referred to in subsection (1)] has occurred directly, without a court decision; and

(b) no possible remedy to redress the violation exists, or the petitioner has already exhausted the possible remedies."

14. The Election Act provides as follows:

Drawing up national lists
Section 9

"(1) National self-governments of national minorities may draw up national minority lists.

(2) Drawing up any national minority list shall be subject to recommendations by at least one per cent of voters on the electoral register as national minority voters but to not more than one thousand five hundred recommendations.

(3) A national minority list may include candidates who are on the electoral register as voters of the particular national minority.

(4) A national minority list shall include at least three candidates.

(5) Joint national minority lists may not be drawn up by two or more national self-governments of national minorities.

..."

Voting
Section 12

"(1) Voters with residence in Hungary may vote for

(a) one candidate in any single-member constituency and

(b) one party list.

(2) Voters with residence in Hungary who are enrolled on the electoral register as national minority voters may vote for

(a) one candidate in any single-member constituency and

(b) the list of their national minority or, in the absence thereof, one party list.

(3) Voters without residence in Hungary may vote for one party list.

..."

Determination of election results
Section 14

"...

(3) No mandate may be won from a national minority list which failed to reach the number of votes required for winning a preferential national minority mandate (hereinafter "preferential quota") determined by section 16(d).

..."

Section 16

"Mandates which may be won from a national list shall be distributed using the following procedure:

(a) Pursuant to section 15, the surplus votes for any political party entitled to win a mandate under section 14(1) and (2) shall be added to the number of party-list votes for the particular political party (hereinafter "number of votes for party lists");

(b) The number of votes for party lists shall be aggregated (hereinafter "total number of party-list votes");

(c) The total number of party-list votes and the votes for national minority lists shall be aggregated (hereinafter "total number of national-list votes");

(d) The total number of national-list votes shall be divided by ninety-three, and the result shall be divided by four; the preferential quota shall be the integer of the resulting quotient;

(e) If the number of votes for a particular national minority list exceeds or is identical to the preferential quota, the particular national minority list shall win one preferential mandate; one national minority list may win one preferential mandate; the number of allocated preferential mandates shall be deducted from the number of mandates which may be won from the national list;

(f) Mandates remaining after the procedure described in subsection (e) shall be distributed among

(fa) party lists entitled to win mandates under section 14(1) and (2), and

(fb) national minority lists which won preferential mandates, where the number of votes reaches the number of votes corresponding to the percentage defined by section 14(1);

..."

National minority spokespersons
Section 18

"(1) Any national minority which drew up a national minority list but failed to win a mandate from that list shall be represented by its national minority spokesperson in Parliament.

(2) The national minority spokesperson shall be the candidate who ranked first on the national minority list."

15. The Election Procedure Act provides as follows:

Section 85

"(1) Voters with a Hungarian address may – with the exception of subsection (2) – request that

a) their belonging to a national minority;

b) their request for assistance in voting; or

c) a prohibition of releasing their personal data

be listed or deleted in the central electoral register."

41 Request for registration as a national minority voter
Section 86

"A request for registration as a national minority voter shall contain:

a) an indication of the national minority;

b) a declaration by the voter, in which the voter professes to belong to the indicated national minority;

c) an indication of whether the voter also requests to be registered as a national minority voter with effect extending to elections of members of parliament."

Section 87

"A request for registration as a national minority voter shall be rejected if the voter is already enrolled in the central electoral register as a national minority voter."

...

Chapter XII
Legal remedies
94 Submitting objections
Section 208

"Objections may be submitted by voters listed in the central electoral register, candidates, nominating organisations and natural and legal persons and associations without a legal personality affected by the case, referencing a breach of a legal regulation pertaining to the election or the fundamental principles of election and election procedure (hereinafter: legal violation)."

...

Section 218

"(1) The election commission shall decide on the objections based on the available information.

(2) If the election commission sustains the objection, it shall

a) establish the fact of the legal violation;

b) order the violator to cease the violation;

c) repeal the election procedure or the part thereof affected by the legal violation and order it to be repeated;

d) have the power to issue a fine in case of violations of the rules of election campaigns and violations of the obligations described in Sections 124 (2) and 155.

...”

Section 220

“If the election commission does not sustain an objection, it shall dismiss it.”

97 Appeals
Section 221

“(1) Affected natural and legal persons and associations not having legal personality may file an appeal against the election commission’s first instance decision.

(2) No appeal shall lie against a ruling recorded in minutes, a decision passed by the election commission having proceeded at second instance, and against the decision of the National Election Commission.”

98 Judicial reviews
Section 222

“(1) Affected natural and legal persons and associations not having legal personality may seek the judicial review of the second instance decision of the election commission and the decision of the National Election Commission.

(2) Judicial review shall only be conducted if the right of appeal has been exhausted in the election proceedings, or appeal is excluded under this law.”

Adjudication of appeals, requests for judicial review and constitutional complaints related to elections
Section 233

“(1) Constitutional complaints challenging court rulings issued on the basis of this Act in proceedings for legal remedy regarding the resolution of an election body can be submitted to the Constitutional Court within three days from the publishing of the contested resolution.”

II. RELEVANT COUNCIL OF EUROPE DOCUMENTS

16. The Code of Good Practice in Electoral Matters (Guidelines and Explanatory Report) was adopted by the European Commission for Democracy through Law (the Venice Commission) at its 51st and 52nd Plenary Sessions (5-6 July 2002 and 18-19 October 2002). The relevant provisions provide as follows:

2.4. Equality and national minorities

“aa. Parties representing national minorities must be permitted.

bb. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.

cc. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority."

4. Secret suffrage

"a. For the voter, secrecy of voting is not only a right but also a duty, non-compliance with which must be punishable by disqualification of any ballot paper whose content is disclosed.

b. Voting must be individual. Family voting and any other form of control by one voter over the vote of another must be prohibited.

c. The list of persons actually voting should not be published.

d. The violation of secret suffrage should be sanctioned."

Explanatory report
2.4. Equality and national minorities

"22. In accordance with the principles of international law, the electoral law must guarantee equality for persons belonging to national minorities, which includes prohibiting any discrimination against them. In particular, the national minorities must be allowed to set up political parties. Constituency delimitations and quorum regulations must not be such as to form an obstacle to the presence of persons belonging to minorities in the elected body.

23. Certain measures taken to ensure minimum representation for minorities either by reserving seats for them or by providing for exceptions to the normal rules on seat distribution, e.g. by waiving the quorum for the national minorities' parties do not infringe the principle of equality. It may also be foreseen that people belonging to national minorities have the right to vote for both general and national minority lists. However, neither candidates nor electors must be required to indicate their affiliation with any national minority."

4. Secret suffrage

"52. Secrecy of the ballot is one aspect of voter freedom, its purpose being to shield voters from pressures they might face if others learned how they had voted. Secrecy must apply to the entire procedure – and particularly the casting and counting of votes. Voters are entitled to it, but must also respect it themselves, and non-compliance must be punished by disqualifying any ballot paper whose content has been disclosed [footnote omitted].

53. Voting must be individual. Family voting, whereby one member of a given family can supervise the votes cast by the other members, infringes the secrecy of the ballot; it is a common violation of the electoral law. All other forms of control by one voter over the vote of another must also be prohibited. Proxy voting, which is subject to strict conditions, is a separate issue.

54. Moreover, since abstention may indicate a political choice, lists of persons voting should not be published.

55. Violation of the secrecy of the ballot must be punished, just like violations of other aspects of voter freedom.

..."

17. Article 15 of the Council of Europe's Framework Convention (ETS No. 157), which entered into force on 1 February 1998, reads as follows:

> "The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them."

18. The relevant excerpt from the commentary adopted by the Advisory Committee on the Framework Convention on 27 February 2008 reads as follows:

> " ii. Design of electoral systems at national, regional and local levels
>
> 80. The participation of persons belonging to national minorities in electoral processes is crucial to enable minorities to express their views when legislative measures and public policies of relevance to them are designed.
>
> 81. Bearing in mind that State Parties are sovereign to decide on their electoral systems, the Advisory Committee has highlighted that it is important to provide opportunities for minority concerns to be included on the public agenda. This may be achieved either through the presence of minority representatives in elected bodies and/or through the inclusion of their concerns in the agenda of elected bodies.
>
> 82. The Advisory Committee has noted that when electoral laws provide for a threshold requirement, its potentially negative impact on the participation of national minorities in the electoral process needs to be duly taken into account. Exemptions from threshold requirements have proved useful to enhance national minority participation in elected bodies."

19. In a Report of 15 March 2005 on electoral rules and affirmative action for national minorities' participation in the decision-making process in European countries, the Venice Commission, having analysed the practices of certain member States, recommended five specific measures to promote the representation of minorities. Two of the measures concerned have a bearing on the question of electoral thresholds:

> "68.
>
> ...
>
> d. Electoral thresholds should not affect the chances of national minorities to be represented.
>
> e. Electoral districts (their number, the size and form, the magnitude) may be designed with the purpose to enhance the minorities' participation in the decision-making processes."

20. The Joint Opinion of the Venice Commission and the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) on the Act on the Elections of Members of Parliament of Hungary was adopted by the Council for Democratic Elections at its 41st meeting (Venice, 14 June 2012) and the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012). The relevant parts read as follows:

"... Article 12(2) of the new Election Act stipulates that voters registered in the electoral roll as minority voters may vote for a candidate in a single-mandate constituency and the list of their nationality or, in the absence thereof, for a party list. This provision limits the choice of minority voters in the proportional race on election day, especially when there is only one list competing for the vote of the respective minority. The choice of ballot is done when registering in the nationality register ..."

III. OTHER RELEVANT INTERNATIONAL MATERIAL

21. General Comment No. 25 of the Human Rights Committee on The right to participate in public affairs, voting rights and the right of equal access to public service (Art.25) (16 June 1996, CCPR/C/21/Rev.1/Add.7) contains the following remarks:

"20. ... States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists. This implies that voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process. Waiver of these rights is incompatible with article 25 of the Covenant ..."

22. The 1999 Lund Recommendations on the Effective Participation of National Minorities and Explanatory Note of the OSCE High Commissioner for National Minorities provides as follows:

B. Elections

"...

9. The electoral system should facilitate minority representation and influence.

• Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.

• Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.

• Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.

• Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance."

...

Explanatory note

"...

9. The electoral system may provide for the selection of both the legislature and other bodies and institutions, including individual officials. While single member constituencies may provide sufficient representation for minorities, depending upon how the constituencies are drawn and the concentration of minority communities, proportional representation might help guarantee such minority representation. Various forms of proportional representation are practised in OSCE participating States,

including the following: “preference voting”, whereby voters rank candidates in order of choice; “open list systems”, whereby electors can express a preference for a candidate within a party list, as well as voting for the party; “panachage”, whereby electors can vote for more than one candidate across different party lines; and “cumulation”, whereby voters can cast more than one vote for a preferred candidate. Thresholds should not be so high as to hamper minority representation.

...”

23. The relevant excerpts from the OSCE/ODIHR Election Observation Mission Report on the Parliamentary Elections of 6 April 2014 (Warsaw, 11 July 2014) read as follows:

“... There are 13 recognized national minorities in Hungary. According to the 2011 census data, the largest minority groups are Roma and Germans. Certain sources suggest that the numerical size of the Roma population is underestimated. Other groups make up less than one per cent of the population. Measures to ensure national minority representation in parliament have long been debated in Hungary. The Elections Act provides for national minorities to vote for a national minority list. In order to take part, citizens had to register as a national minority voter and thus choose between voting on the national minority list proposed by the national minority self-government or the national list. The vast majority of national minority groups the OSCE/ODIHR LEOM [Limited Election Observation Mission] met with expressed dissatisfaction at having to choose between these two lists. Some Roma leaders campaigned against minority registration and created the Hungarian Roma Party to compete in the national list elections. Furthermore, the election of the minority self-governments predates the new Elections Act, thus voters were not aware that these bodies would be given the sole competence to form national minority lists. Given that only one option was available on these ballots, voters’ choice was limited and their secrecy of the vote was undermined [footnote omitted]. While all 13 national minorities registered lists, none obtained enough votes to win a minority seat. As a result, they will each be represented by a spokesperson in parliament with no right to vote and their competence will be limited to discussing minority issues. Authorities should ensure that special measures for national minority representation allow for competition between national minority candidates and meaningful participation of national minorities in parliamentary decision-making, while ensuring the secrecy of the vote. Genuine consultation with national minorities should be sought in this process ...”

24. The relevant part of the OSCE /ODIHR Election Observation Mission Report on the Parliamentary Elections of 8 April 2018 (Warsaw, 27 June 2018) reads as follows:

“... The NEC [National Election Commission] registered 13 national minority lists with a total of 89 candidates, including 48 women. The nomination of candidates for national minority lists lacks transparency, in particular because there are no established and public procedures regarding the manner by which the self-government selects the candidates. Moreover, an individual choosing to participate in the election as a minority voter has no opportunity to choose among alternative national minority candidates or lists. These measures do not guarantee genuine participation of national minorities in political life, contrary to OSCE High Commissioner on National Minorities (HCNM) recommendations [footnote omitted]. Consideration could be given to reviewing legislative and practical measures aimed at achieving genuine participation of national minorities in elected politics...”

25. The relevant part of the OSCE /ODIHR Election Observation Mission Report on the Parliamentary Elections of 3 April 2022 (Warsaw, 29 July 2022) reads as follows:

> "...Notably, an individual choosing to participate in the election as a minority voter has no opportunity to choose among alternative national minority candidates or lists. The measures currently in place do not guarantee genuine participation of national minorities in political life, contrary to recommendations made by the OSCE High Commissioner on National Minorities (HCNM) [footnote omitted].
>
> *Further efforts should be undertaken by the authorities to ensure that measures for national minority representation promote meaningful participation of national minority representatives. Genuine consultation with national minorities should be sought in identifying effective measures*.
>
> ..."

THE LAW

I. JOINDER OF THE APPLICATIONS

26. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF PROTOCOL NO. 1 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

27. The applicants complained that the system of national minority voting constituted a discriminatory interference with their voting rights. They relied on Article 3 of Protocol No. 1 to the Convention taken alone and in conjunction with Article 14 of the Convention.

Article 3 of Protocol No. 1 provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

1. The parties' submissions

28. The Government argued that the applicants should have appealed before the regional election commissions against the decisions of the local

election commissions to register them as minority voters. Should the regional election commissions have dismissed their appeals, they could have challenged those decisions before the courts. Under section 26 of the Constitutional Court Act, the applicants could have lodged a constitutional complaint against the decisions of the courts if they had applied an unconstitutional legal provision.

29. The Government also put forward an argument that the applicants could have lodged an objection to the decision of the polling station commission to the relevant election commission, and subsequently to the National Election Commission, concerning alleged election irregularities. The decision of the National Election Commission could have been challenged before the *Kúria,* whose decision in turn could have been the subject of a constitutional complaint.

30. The applicants disagreed. They contested the argument that their deregistration from the minority voting list could have remedied their grievances. As regards a constitutional complaint under section 26 of the Constitutional Court Act, the applicants submitted that the Government had failed to clarify which legal provision should have been challenged under that procedure. In any event, since an objection to the decision of the polling station commission necessarily concerned the counting of ballots and not the application of an allegedly unconstitutional legal provision, the latter issue could not be challenged before the Constitutional Court under the procedure referred to by the Government.

2. The Court's assessment

31. As regards the Government's argument relating to an appeal against the decision of the local election commissions to register the applicants as national minority voters, the Court notes that the decisive issue in the present case is the alleged restriction imposed on the applicants' voting rights as registered national minority voters, and not the fact that they were registered as national minority voters. For the Court, the remedy proposed by the Government cannot be regarded as an appropriate avenue which could have secured the applicants the possibility of having the issue of the alleged infringement of their voting rights determined.

32. In so far as the Government relied on the possibility of lodging an objection to the decision of the polling station commission, the Court notes that an objection could be lodged alleging the breach of election rules or election principles by the polling station commission. However, the applicants did not allege that their grievances stemmed from the unlawful conduct or decision of the election administration bodies, but from the legislation governing minority voting itself. Accordingly, such proceedings did not offer the applicants an effective remedy in respect of the breaches alleged.

33. The Government's objection of non-exhaustion of domestic remedies must therefore be dismissed.

34. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

35. The applicants submitted that although the intention of the Hungarian authorities had been to promote the participation of national minorities in the legislature through introducing national minority voting, the effects of the measure were the contrary, leading to the disenfranchisement of that group, since they had no prospect of attaining the preferential quota prescribed by the relevant legislation. Considering actual population statistics, it was impossible for national minorities to gain a seat in Parliament.

36. The applicants further submitted that the fundamental element of free elections was a real choice between the competitors of the political racecourse. They, however, did not have a genuine choice. First, national minority voters were excluded from voting for national party lists. Second, they could not cast a ballot for anybody other than candidates of their national minority group. They argued in this respect that having an identical ethnic origin did not lead to having identical political views.

37. The applicants maintained that through limiting their choice to casting a ballot for the closed national minority list, the secrecy of the vote had also been violated. Once they were identified as national minority voters, it was immediately known to everybody how they had voted.

38. In the applicants' view, the measure was discriminatory since – because of their status of belonging to a national minority – they had been treated differently from other voters.

39. The Government maintained that the regulation of the national minority seats constituted positive discrimination, since a national minority member of Parliament needed to acquire fewer votes than members of Parliament elected from the national lists. This preferential rule had the legitimate aim of enhancing the political participation of minorities.

40. The principle of equal suffrage would be violated if a minority voter could vote both for the minority lists and for a national party list. Avoiding the casting of multiple votes by national minorities was also a legitimate aim justifying the restriction on their right to vote for the national lists.

41. Furthermore, it was the voters' free choice to register as minority voters, which in any event could always be subsequently changed.

2. The Court's assessment

(a) General principles

(i) Concerning Article 3 of Protocol No. 1

42. The Court reiterates that Article 3 of Protocol No. 1 enshrines a characteristic principle of democracy and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113, and *Ždanoka v. Latvia* [GC], no. 58278/00, § 103, ECHR 2006-IV). The role of the State, as ultimate guarantor of pluralism, involves adopting positive measures to "organise" democratic elections "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" (see *Mathieu-Mohin and Clerfayt*, cited above, § 54).

43. According to the case-law of the Court, the words "free expression of the opinion of the people" mean that elections cannot be conducted under any form of pressure in the choice of one or more candidates, and that in this choice the elector must not be unduly induced to vote for one party or another. The word "choice" means that the different political parties must be ensured a reasonable opportunity to present their candidates at elections (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 108, ECHR 2008, and *X. v. Iceland*, no. 8941/80, Commission decision of 6 December 1981, Decisions and Reports (DR) 27, p. 145).

44. Article 3 of Protocol No. 1 does not create any obligation to introduce a specific system such as proportional representation or majority voting with one or two ballots. The Contracting States have a wide margin of appreciation in that sphere. Electoral systems seek to fulfil objectives which are sometimes scarcely compatible with each other: on the one hand, to fairly and accurately reflect the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. In these circumstances the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies essentially the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election. It does not follow, however, that all votes must necessarily have equal weight as regards the outcome of the election or that all candidates must have equal chances of victory. Thus, no electoral system can eliminate "wasted votes" (see *Riza and Others v. Bulgaria*, nos. 48555/10 and 48377/10, § 137, 13 October 2015).

45. With regard to electoral systems, the Court's task is to determine whether the effect of the rules governing parliamentary elections is to exclude some persons or groups of persons from participating in the political life of the country (see *Aziz v. Cyprus*, no. 69949/01, § 28, ECHR 2004-V) and whether the discrepancies created by a particular electoral system can be considered arbitrary or abusive or whether the system tends to favour one

political party or candidate by giving them an electoral advantage at the expense of others (see *X. v. Iceland*, cited above).

46. With regard to the level fixed by electoral thresholds, the Court has previously found that high thresholds may deprive part of the electorate of representation. However, that circumstance alone has been found not to be decisive. Such thresholds can work as a necessary corrective adjustment to the proportional system, which has always been accepted as allowing for the free expression of the opinion of the people (see *Yumak and Sadak*, cited above, § 112; see also *Federación Nationalista Canaria v. Spain* (dec.), no. 56618/00, 7 June 2001). Electoral thresholds are intended to promote the emergence of sufficiently representative currents of thought (see *Magnago and Südtiroler Volkspartei v. Italy*, no. 25035/94, Commission decision of 15 April 1996, DR 85-A, p. 112) and make it possible to avoid an excessive fragmentation of Parliament (see *Partija "Jaunie Demokrāti" an Partija "Mūsu Zeme" v. Latvia* (dec.), nos. 10547/07 and 34049/07, 29 November 2007).

47. Concerning closed party lists, the Court has found that while this system entailed a restriction on voters as regards the choice of candidates, the restriction could be justified in an electoral system, having regard to the constitutive role of political parties in the life of democratic countries (see *Saccomanno and Others v. Italy* (dec.), no. 11583/08, § 63, 13 March 2012).

48. The Court set out the test to be applied when examining compliance with Article 3 of Protocol No. 1 in *Ždanoka* (cited above, § 115). It also held that the level of its own scrutiny will depend on the particular aspect of the right to free elections (see *Davydov and Others v. Russia*, no. 75947/11, § 286, 30 May 2017).

(ii) Concerning Article 14

49. According to the Court's case-law, a difference of treatment is discriminatory, for the purposes of Article 14 of the Convention, if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". Moreover, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The Court further observes that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and the Protocols, since it protects individuals, placed in similar situations, from any discrimination in the enjoyment of the rights set forth in those other provisions (see *Aziz*, cited above, §§ 34-35).

50. Where a difference in treatment is based on race or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible. The Court has also held that no difference in treatment which is

based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures. That being said, Article 14 does not prohibit Contracting Parties from treating groups differently in order to correct "factual inequalities" between them. Indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may, without an objective and reasonable justification, give rise to a breach of that Article (see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 44, ECHR 2009, with further references).

(b) Application of the above principles to the present case

51. The applicants have focused on three features of the minority voting system: the preferential quota system (see paragraph 52 below), the alleged absence of a free choice for national minority voters (see paragraph 60 below) and the alleged violation of the secrecy of vote (see paragraph 67 below).

52. First, the applicants argued that they had no prospect of attaining the preferential quota prescribed by the legislation.

53. The Court notes in this respect that, quite differently from the above-mentioned cases concerning electoral thresholds (see paragraph 46 above), the present case concerns a statutory scheme with a preferential threshold for minority representatives, introduced as a response to the constitutional concern of ensuring the political representation of national minorities in Hungary.

54. The Court has previously held that the forming of an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights (see, in the context of Article 11, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 93, ECHR 2004-I). The former Commission found that the Convention did "not compel the Contracting Parties to provide for positive discrimination in favour of minorities" (see *Magnago and Südtiroler Volkspartei*, cited above). In *Partei Die Friesen v. Germany,* the Court observed that the Council of Europe's Framework Convention, while acknowledging the margin of appreciation enjoyed by the State in electoral matters, put an emphasis on the participation of national minorities in public affairs (see Article 15 of the Framework Convention in paragraph 17 above). However, the possibility of exemption from the minimum threshold was merely presented as one of many options in this context. The Advisory Committee on the Framework Convention expressed the opinion that the potentially negative impact of minimum thresholds on the participation of national minorities in the electoral process needed to be duly taken into account. It considered that exemptions from threshold requirements had proved useful for enhancing national minority participation in elected bodies (see the commentary adopted by the Advisory Committee on the Framework Convention on

27 February 2008, § 82, in paragraph 18 above). The position of the Venice Commission was likewise that electoral thresholds should not affect the chances of national minorities to be represented (see paragraph 16 above). The Court took the view that the States Parties to the Framework Convention enjoyed a wide margin of appreciation in how to approach the Framework Convention's aim of promoting the effective participation of persons belonging to national minorities in public affairs as stipulated in Article 15, and that the Convention, even interpreted in the light of the Framework Convention, did not call for a different treatment in favour of minority parties in that context (see *Partei Die Friesen v. Germany,* no. 65480/10, § 43, 28 January 2016).

55. In the present case, the Court notes that the preferential threshold was part of a system where national minority candidates could attain the requisite number of votes only from the ballot of national minority voters belonging to the same minority group as themselves. This in fact placed them in a significantly different situation compared to other candidates – whether representing political parties or independent – who could obtain votes from the total eligible electorate. Consequently, the statutory scheme also impinged upon the right of the applicants as national minority voters to associate for political purposes through the vote, in that their candidate could only be endorsed by members of the same national minority. In comparison, other members of the electorate were free to associate with any other like-minded electors for the advancement of political beliefs.

56. The Court finds it relevant that this disadvantage in the electoral process was not based on the own choice of national minority candidates or voters to associate with a small political interest group of the population (compare and contrast, *Partei die Friesen,* cited above, § 40), but rather the legislature's decision to restrict who could cast a ballot on national minority lists.

57. The Court is mindful that the preferential threshold for national minority candidates was also intended to reduce the effect of this system. Nonetheless, it cannot but accept the applicants' related argument that the number of minority voters belonging to the same national minority in Hungary was not high enough to reach the preferential electoral threshold even if all voters belonging to that national minority were to cast their vote for the respective minority list. In fact, in 2014, 140 voters were registered as Greek minority voters and 184 as Armenian minority voters, whereas the requisite number of votes to gain a seat in Parliament for a national minority candidate was 22,000.

58. It is clear that States may condition access to parliamentary representation upon the showing of a modicum of support and the Convention does not require States to adopt preferential thresholds in respect of national minorities. However, when setting up a quorum for national minority groups, consideration needs to be given whether that threshold requirement makes it

more burdensome for a national minority candidate to gather the requisite votes for a national minority seat than it is to win a seat in Parliament from the regular party lists and whether – in turn – that electoral threshold has a negative impact on the opportunity of national minority voters to participate in the electoral process on an equal footing with other members of the electorate (compare the commentary adopted by the Advisory Committee on the Framework Convention point 82, set out in paragraph 18 above).

59. While, as the Court held before, not all votes must necessarily have equal weight as regards the outcome of the election, and no electoral system can eliminate "wasted votes" (see paragraph 44 above), the national legislator needs to assess whether the statutory scheme creates a disparity in the voting power of members of national minorities, as the applicants, in order to avoid that the potential value of votes that might be cast for national minority lists becomes diluted.

60. Second, the applicants also submitted that voting for the minority lists deprived them of the opportunity to cast a meaningful ballot. They pointed out that free elections necessarily implied a free choice for voters.

61. The Court notes that in practice, as a consequence of being registered as national minority voters, the applicants could only vote for their respective national minority lists as a whole or abstain from voting for the national minority list altogether. Thus, they had neither the choice between different party lists nor any influence on the order in which candidates were elected from the national minority lists.

62. The Court reiterates that closed lists in themselves cannot be considered to unduly restrict the political opportunity of voters (see paragraph 47 above). Indeed, even if closed lists tend to limit the field of candidates from which voters might choose, they still allow them to distribute their vote between the different party lists corresponding to their political preferences.

63. However, in approaching the closed national minority lists in the present case, the Court finds it essential to examine the extent and nature of their impact on the applicants' voting rights. It also considers that the right to vote encompasses the opportunity for voters to choose candidates or party lists which best reflect their political views, and election regulations should not require voters to espouse political positions that they do not support.

64. From this perspective, the fact that national minority voters could only cast their votes for candidates fixed on the national minority list, irrespective of their political viewpoint, distinguishes the present situation from electoral systems with closed lists.

65. In practical terms, while the system set up for national minority voters did not pressure the applicants in the choice of one or more candidates, it did not allow them to genuinely reflect their will as electors, or to cast their ballot in the promotion of political ideas and programmes of political action, or to associate for political purposes through the vote. In other words, the applicants, as national minority voters, could not express their political views

or choice at the ballot box, but only the fact that they sought representation in political decision-making as members of a national minority group.

66. The Court has doubts that a system in which a vote may be cast only for a specific closed list of candidates, and which requires voters to abandon their party affiliations in order to have representation as a member of a minority ensures "the free expression of the opinion of the people in the choice of the legislature".

67. The Court lastly turns to the applicants' third argument, that the secrecy of their vote had been violated.

68. The Court considers that a voting system must ensure that voting is conducted by secret ballot allowing the electorate to exercise their vote for a preferred candidate freely and effectively, in accordance with their conscience and without undue influence, intimidation or disapproval by others. It also serves the larger public interest in ensuring free and fair elections. In practical terms, the matter of for whom an elector has cast his or her vote at a given election shall not be made known to the public. The voting system must assure voters that they would not be compelled directly or indirectly to disclose for whom they have voted.

69. There is no allegation from the applicants that the procedure in the polling stations did not ensure the secrecy of their votes but rather that since they had only one choice as voters, their electoral choice was indirectly revealed to everybody.

70. As noted above, should an elector choose to register as a national minority voter of a specific minority, he or she has only one choice, and in practice would be given a ballot paper with the candidates of the national minority list, instead of the ballot paper offering a choice between the different candidates of political parties. Hence, all present in the polling station at the relevant time, especially members of the relevant election commissions, would come to know that the elector had cast a vote for the candidates on the national minority list. Similarly, national minority voters could be linked to their votes during the counting procedure, especially at polling stations where the number of registered national minority voters was limited. As is apparent, the arrangement put in place for minority voters allowed for the details of how a national minority voter had cast his or her ballot to be known to everybody, and for information to be gathered about the electoral intention of minority voters as soon as they registered as such. In other words, the right to full secrecy was not available for the applicants as national minority voters.

71. The Court considers that voters who decide to cast their votes as national minority voters should be protected in the same manner as the election rules protect the right of voters who decide to cast their votes in favour of a political party or an independent candidate. Thus, secrecy is required to be maintained for both categories of persons. However, the

national minority list voting system was not available for the applicants without compromising the right to secrecy.

72. The above characteristics of the domestic legislation resulted in the applicants' being substantially limited in their electoral choice, with the obvious likelihood that their electoral preferences would be revealed, and that the system fell with unequal weight on them because of their status as national minority voters.

73. The Court reiterates that any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another (see *Yumak and Sadak,* cited above, § 111, and *Py v. France*, no. 66289/01, § 46, ECHR 2005). That consideration must apply with even greater force when a Contracting State attempts to introduce a fairer system of representation. The Court is also mindful that there is no requirement under the Convention of different treatment in favour of minority parties. It nonetheless considers that once the legislature decides to set up a system intended to eliminate or reduce actual instances of inequality in political representation, it is only natural that measure should contribute to the participation of national minorities on an equal footing with others in the choice of the legislature, rather than perpetuating the exclusion of minority representatives from political decision-making at a national level. In the present case, the system that was put in place limited the opportunity of national minority voters to enhance their political effectiveness as a group and threatened to reduce, rather than enhance, diversity and the participation of minorities in political decision-making.

74. The Court thus finds that the combination of the above restrictions on the applicants' voting rights, considering their total effect, constituted a violation of Article 3 of Protocol No. 1 taken in conjunction with Article 14 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

76. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

77. The Government contested these claims.

78. The Court considers that its finding of a violation constitutes sufficient just satisfaction and accordingly makes no award under this head.

B. Costs and expenses

79. The first applicant claimed EUR 7,000 plus value added tax (VAT) for the costs and expenses incurred in the proceedings before the Court. This sum corresponded to 30 hours of legal work billable by her lawyer at an hourly rate of EUR 200 plus VAT. The second applicant claimed EUR 7,260 plus VAT for the costs and expenses incurred in the proceedings before the Court. This sum corresponded to 48.3 hours of legal work billable by her lawyer at an hourly rate of EUR 150 and 0.3 hours of legal work billable at an hourly rate of EUR 15, plus VAT.

80. The Government contested these claims.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 7,000 to the first applicant for the proceedings before the Court, plus any tax that may be chargeable to her. It also considers it reasonable to award the sum of EUR 7,260 to the second applicant for the proceedings before the Court, plus any tax that may be chargeable to her.

FOR THESE REASONS, THE COURT

1. *Decides,* unanimously, to join the applications;

2. *Declares*, unanimously, the applications admissible;

3. *Holds*, unanimously, that there has been a violation of Article 3 of Protocol No. 1 to the Convention taken in conjunction with Article 14 of the Convention;

4. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants;

5. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,000 (seven thousand euros) to the first applicant, plus any tax that may be chargeable to her, in respect of costs and expenses;
(ii) EUR 7,260 (seven thousand two hundred and sixty euros) to the second applicant, plus any tax that may be chargeable to her, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, by six votes to one, the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 10 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint concurring opinion of Judges Bošnjak and Derenčinović;
(b) partly dissenting opinion of Judge Ktistakis.

M.B.
L.T.

JOINT CONCURRING OPINION OF JUDGES BOŠNJAK AND DERENČINOVIĆ

1. While we agree with the substance of the judgment, as well as with the second and third arguments concerning freedom of choice and the secrecy of the ballot, there are some parts of the reasoning we cannot support. This is the reasoning with respect to the threshold requirement for a national minority in the context of Article 3 of Protocol No. 1 to the European Convention on Human Rights (hereafter "the Protocol") and the almost complete lack of reasoning when it comes to the violation of Article 14 of the Convention.

2. Regarding the threshold requirement, it has been correctly pointed out that "the Convention does not require States to adopt preferential thresholds in respect of national minorities" (see paragraph 58 of the judgment). However, this is contradicted by the part that follows, which stresses that "when setting up a quorum for national minority groups, consideration needs to be given whether that threshold requirement makes it more burdensome for a national minority candidate to gather the requisite votes for a national minority seat than it is to win a seat in Parliament from the regular party lists" (ibid.). This line of reasoning does not stop there but continues along the same path by stating that, even though "as the Court held before, not all votes must necessarily have equal weight as regards the outcome of the election, and no electoral system can eliminate 'wasted votes'..., the national legislator needs to assess whether the statutory scheme creates a disparity in the voting power of members of national minorities, as the applicants, in order to avoid that the potential value of votes that might be cast for national minority lists becomes diluted" (see paragraph 59 of the judgment).

3. The said reasoning seems to go well beyond the guarantees established by the Protocol. It must not be forgotten that States' margin of appreciation in this regard is very broad, and that a violation of the Protocol will be found only in cases where the freedom of choice of the voters or the secrecy of the ballot were at stake. Such a restrictive approach in drafting the Protocol is understandable, bearing in mind the lack of consensus and the diversity of legislative approaches governing elections in member States. Therefore, suggesting that the implementation of a measure concerning something that is not a human right *per se* may amount to a violation in the context of freedom of elections cannot reasonably be justified. A domestic policy concerning minority groups' participation in elections, including the issue of the preferential threshold, may be subjected to scrutiny and criticism by the relevant international actors (such as the Advisory Committee on the Framework Convention and the Venice Commission), but to hold that such a policy amounts to a violation of the Protocol seems to be quite far-fetched.

4. The reasoning concerning the preferential threshold for national minorities clearly departs from the standards of interpretation adopted by the Court in the case of the Frisian political party Die Friesen against Germany

(see *Partei die Friesen v. Germany*, no. 65480/10, 28 January 2016). In that case, in which the Court found no violation, the applicant argued that the electoral system of the German *Land* of Lower Saxony was discriminatory under Article 14 taken in conjunction with Article 3 of Protocol No. 1 to the Convention, in so far as it applied a 5% threshold to the 2008 parliamentary elections (ibid., § 24). The Court observed that the party Die Friesen had attained merely 0.3% of the overall votes and therefore had not received sufficient votes to claim a parliamentary seat (ibid., § 34).

5. In *Partei Die Friesen*, the Court reached several conclusions that are relevant to this case also:

- the Framework Convention for the Protection of National Minorities (hereafter "the Framework Convention") emphasises the participation of national minorities in public affairs;

- States enjoy a wide margin of appreciation in how to approach the Framework Convention's aim of promoting the effective participation of members of national minorities in public affairs;

- the European Convention does not compel States to provide for positive discrimination in favour of minorities;

- no clear and binding obligations can be derived from the Framework Convention to exempt national minority parties from electoral thresholds.

6. Although the Protocol does not oblige States to provide for positive discrimination in favour of minorities, Hungary introduced such positive discrimination through a preferential quota system in the domestic legislation, meaning that the threshold for minority lists and candidates is one-quarter of that for ordinary party lists. By establishing this more favourable threshold for minorities, the authorities went beyond the current requirements under the relevant international legal standards.

7. Indeed, the system as it now stands does not guarantee the political representation of minorities in the form of a seat in Parliament. However, this is not a requirement under the relevant international standards, including the Framework Convention. Instead, the requirement is simply to promote the effective participation of members of national minorities in public affairs (Article 15). This effective participation is ensured, as was highlighted in the Government's observations, through the spokespersons in Parliament. Section 18 of the Election Procedure Act provides that should the national minority fail to win a seat, the first candidate on the national minority list is appointed as a non-voting parliamentary spokesperson. That being so, the authorities do not fall short of their obligations under the relevant international law, which provides a very broad margin of appreciation in election-related matters.

8. As to the "wasted votes" argument, it is to be noted that the members of national minorities are free to choose whether to vote for the party list or the minority list. In this regard, if they think that voting for the minority list would be a waste of their vote, they can always opt to vote for the party list.

Moreover, even assuming that once the members of a given minority decide to vote for their minority list, their freedom of choice is *de facto* somehow restricted, there is nothing in the Protocol that requires the Contracting Parties to provide for all votes, including those of minorities, to be given equal weight as regards the outcome of the election. Furthermore, the reality of "wasted votes" is a feature of almost any election system, and a requirement to eliminate or even reduce such votes would not only run contrary to the strict scope of the Protocol but would also place an unreasonable, if not impossible, burden on the authorities.

9. In the present case, a violation was found unanimously with regard to the two major issues. The first is the lack of choice of the members of national minorities once they decide to vote for the minority list (because they can only cast their vote for the candidate(s) of their respective national minority, and not for the other list(s)). The second issue is the secrecy of their votes. The fact that members of national minorities do not have a meaningful choice when they decide to vote for the minority list *de facto* implies that their vote could be indirectly known to the public, a situation that is in contravention of the Protocol. In our opinion, these two arguments, to which we fully subscribe, were quite well reasoned and sufficient to establish a violation of the Protocol. Therefore, the part of the reasoning concerning the issues of electoral thresholds and "wasted votes", for the reasons explained above, seems to be quite far-fetched and, in our opinion, not really necessary in the context of this case.

10. Regarding Article 14, we support the finding on the merits because it seems to us that there was no justified reason to differentiate the position of national minority voters (lack of choice, secrecy of the ballot) from that of the electorate as a whole. However, the reasoning of the judgment lacks any analysis of the application of the general principles to the facts of the case. We note this with concern, given that a finding of a violation of that provision requires careful balancing and in-depth analysis as to the possible difference in treatment, the existence of a comparable group, the subject matter, and other relevant elements. A failure to provide at least elementary reasoning makes it very difficult to understand how fundamental safeguards against discrimination in the election context have been applied in this case.

PARTLY DISSENTING OPINION OF JUDGE KTISTAKIS

I voted against points 4 and 6 of the operative provisions, to the effect that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that may have been sustained by the applicants, as concluded by the majority.

The present case has allowed the Court to elaborate on its case-law on ballot secrecy and to conclude, *inter alia*, that the Hungarian national minority list voting system was not available for the applicants without compromising their right to secrecy (see paragraph 71 of the judgment). Taking into consideration the fact that the applicants were not politicians or members of a political party but simply voters, it is hard in my opinion to accept that the Court's finding of a violation alone can constitute sufficient just satisfaction. Moreover, as members of recognised national minorities, the applicants should not be discouraged in a democratic society from raising their complaints before the national and international courts. Taking into consideration the fact that the second applicant, E.C., actually requested anonymity, our reluctance to make an award for non-pecuniary damage seems likely to discourage him and other members of the Armenian minority from fighting for their rights as recognised by the Convention.

APPENDIX

List of applications

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence
1.	49636/14	Bakirdzi v. Hungary	04/07/2014	**Kalliopé BAKIRDZI** 1959 Budapest
2.	65678/14	E.C. v. Hungary	01/10/2014	**E.C.** 1990 Budapest