



National-minority voting system in Hungary contravened right to free elections

Today's **Chamber** judgment¹ in the case of [Bakirdzi and E.C. v. Hungary](#) (application nos. 49636/14 and 65678/14) concerned the voting rights of the applicants, registered as national-minority voters for the 2014 parliamentary elections in Hungary.

The European Court of Human Rights found that the system that had been put in place to ensure the political representation of national minorities in Hungary had ended up limiting their political effectiveness and threatened to reduce, rather than enhance, diversity and the participation of minorities in political decision-making. It also doubted that a system in which a vote could be cast only for a specific closed list of candidates (i.e. without the possibility of expressing a preference for (a) particular candidate(s)), and which required voters to abandon their party affiliations in order to have representation as a member of a minority ensured "the free expression of the opinion of the people in the choice of the legislature".

The Court held, unanimously, that the combination of restrictions on the applicants' voting rights had constituted a **violation of Article 3 of Protocol No.1 to the Convention (right to free elections)** taken in conjunction with **Article 14 (prohibition of discrimination)** of the European Convention on Human Rights.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants, Kalliopé Bakirdzi and E.C., are Hungarian nationals born in 1959 and 1990. They live in Budapest.

There are 13 national minorities in Hungary recognised under the Rights of Nationalities Act. Ms Bakirdzi belongs to the Greek national minority and E.C. to the Armenian national minority. Under the Fundamental Law of Hungary, national minorities have to be able to participate in the work of Parliament. On that basis, the Election Act introduced a system of minority representation in 2014, whereby self-identified members of national minorities may register as national-minority voters. They vote for the lists 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.

Each national minority has a closed candidate list on a separate ballot. The minority voter's only possibility is to vote or not vote for the single list of his or her national minority (with no influence on the candidate order). Under the Election Act, the national-minority lists benefit from a preferential threshold – that is they need fewer votes to gain a seat in Parliament – i.e. one-quarter of the number needed for the ordinary electoral lists. In the 2014 elections, the threshold to gain a seat for national-minority candidates was 22,022 votes (dividing the total number of national votes cast by 93 – the number of seats that could be acquired from the national list – then dividing by four).

All 13 recognised national minorities registered lists for the 2014 elections, and a total of 35,289

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

voters registered as national-minority voters. None of the national-minority lists obtained enough votes to win a national-minority seat.

Complaints, procedure and composition of the Court

Relying on Article 3 of Protocol No.1 to the Convention (right to free elections) taken alone and in conjunction with Article 14 (prohibition of discrimination) of the Convention, the applicants complained that the system of national-minority voting amounted to discrimination of their voting rights.

They submitted that, although the intention of the Hungarian authorities had been to promote the participation of national minorities in the legislature, the system had had the opposite effect, leading to their disenfranchisement, since their lists had had no prospect of attaining the prescribed quota. They further submitted that they had only been able to vote for their respective national-minority lists and had had no choice between candidates presented on those lists. They also maintained that through limiting their choice, the secrecy of the vote had been violated.

The applications were lodged with the European Court of Human Rights on 4 July 2014 and 1 October 2014 respectively. The Court examined them jointly in a single judgment.

Judgment was given by a Chamber of seven judges, composed as follows:

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Ioannis **Ktistakis** (Greece),
Davor **Derenčinović** (Croatia),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the aim of introducing a statutory scheme with a preferential threshold for minority representatives had been to ensure political representation of national minorities in Hungary. However, national-minority candidates had to attain the requisite number of votes only from the ballot of national-minority voters belonging to the same minority group as themselves, which placed them in a very different situation to other candidates who could obtain votes from the total eligible electorate. Similarly, other members of the electorate were free to associate with any other like-minded electors for the advancement of political beliefs, whereas national-minority candidates and voters were limited to their national community. This disadvantage in the electoral process was not based on the national-minority candidates' or voters' own choice to associate with a small political interest group of the population but had arisen from a governmental decision.

The Court acknowledged that the preferential threshold for national-minority candidates had been intended to act as a counterweight to this system. Nonetheless, 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 required number of votes to gain a seat in Parliament for a national-minority candidate was 22,000.

The Court considered that, although the Convention did not require States to adopt preferential thresholds in respect of national minorities, consideration needed to be given, when setting up a

quorum for national-minority groups, whether that threshold requirement made it difficult for a national-minority candidate to reach the required number of votes for a national-minority seat.

Regarding the applicants' submission that voting for the minority lists deprived them of the opportunity to cast a meaningful ballot, the Court noted that, as a consequence of being registered as national-minority voters, they could only vote for their respective national-minority lists as a whole or abstain from voting for the national-minority list altogether. Therefore, they had no choice between different party lists nor any influence on the order in which candidates were elected from the national-minority lists. The Court considered that the right to vote was supposed to give voters the opportunity to choose candidates or party lists which best reflected their political views, and election regulations should not require voters to espouse political positions that they did not support. In practical terms, the applicants could not express their political views or choice at the ballot box; they could only show that they sought representation in political decision-making as members of a national-minority group. The Court doubted that a system in which a vote could only be cast for a specific closed list of candidates, and which required voters to abandon their party affiliations in order to have representation as a member of a minority, ensured "the free expression of the opinion of the people in the choice of the legislature". In addition, it found that, since they had only one choice as voters, their electoral choice was indirectly revealed, depriving them of the right to full secrecy.

The Court considered that once it had been decided to set up a system intended to eliminate or reduce instances of inequality in political representation, it was only natural that that measure should help to enable national minorities to participate in the choice of the legislature on an equal footing with others, rather than perpetuate the exclusion of minority representatives from political decision-making at a national level. In this case, the system that had been put in place limited their political effectiveness as a group and threatened to reduce, rather than enhance, diversity and the participation of minorities in political decision-making.

The Court held that the overall effect of the combination of the restrictions on the applicants' voting rights constituted a violation of Article 3 of Protocol No. 1 taken in conjunction with Article 14 of the Convention.

Just satisfaction (Article 41)

The Court held, by six votes to one, that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants. It held, unanimously, that Hungary was to pay Ms Bakirdzi 7 000 euros (EUR) and E.C. EUR 7 260 euros in respect of costs and expenses.

Separate opinions

Judges Bošnjak and Derenčinović expressed a joint concurring opinion. Judge Ktistakis expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.