

**National University of Public Service
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**Plural Voting and Representation of Minorities Yesterday and
Today**

Summary of PhD Thesis

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Table of contents

1. Explanation of the scientific problem, research questions, hypothesis and aim of the research.....	1
2. Research methods.....	2
3. Short description of the analysis to be found in each chapters	6
4. Conclusions, recommendations and practical applicability of the research results	8
6. New scientific statements of the thesis	15
References	16
List of the Author's Publications Related to the Topic of the Thesis	17
Curriculum Vitae of the Author	18

1. Explanation of the scientific problem, research questions, hypothesis and aim of the research

At a first glance, we would think that the concept of plural voting is entirely clarified, hence we can see that the Hungarian Constitutional Law literature does not deal much with the concept. Even scholarly works on the right to vote use the concept as given without further explanation: the case when some vote may cast more votes than others or the case when some voters' vote worth more than others'.¹ However, if we make an in-depth analysis in a historical and international context, we start to question whether we can define a sole and unified concept of plural voting, hence the concept seems to be more complex than to be defined with one sentence. The main scope of this research is to define the concept and functions of plural voting – with respect to its historical examples, its application of nowadays and its theoretical forms as well. Other main goal of the dissertation is to explore the relationship between plural voting and national minorities (or nationalities).

Related to these we seek an answer to the research question:

Q1: Is the concept of plural voting homogenous?

We also examine the followings:

Q2: In what forms may plural voting occur?

Q3: What functions may plural voting have?

We can answer these questions only after the clarification of the main conceptual basis and the theoretical background of the research, with special regard to the literature on plural voting and on the representation of minorities.

Examination of the plural voting's history in a Hungarian and international context is one of the core parts of this thesis and crucial to find an answer to our research questions.

It is also crucial to explore the practice of international courts or organs and the Hungarian Constitutional Court related to equal suffrage and plural voting. With the help of all these we get closer to the contemporary content of plural voting. We also have to examine at this point whether the Constitutional Court shall be entitled to refer to its decisions made before the Basic Law of Hungary and its Fourth Amendment entered into force or not. It is also to be clarified whether the Constitutional Court refers back to those decisions or not.

Regarding this we pose the following research questions:

Q4: Does the Basic Law of Hungary show a decisive difference compared to the former Constitution of the Hungarian Republic by ensuring the opportunity to require Hungarian residence for the 'fullness' of suffrage?,

and

Q5: Can the practice of the Hungarian Constitutional Court on the right to vote from between 1990 and 2011 still be applied?

After all these we can draw some conclusion regarding the historical and contemporary nature and characteristics, meanings and functions of plural voting. It is very important to distinguish the motivations and goals of introducing plural voting from the different types of plural voting. To fully answer our research questions, it is also important to explore, how does

¹ See: PAPP I. (2003): 750., TÓTH (2013): 193., KURUNCZI (2019): 44., G. KARÁCSONY – SMUK (2014):166. cited by: KURUNCZI (2019): 44., BODNÁR (2014): 107.

plural voting occur in contemporary Europe, with special regard to the content, aim and form of plural voting. In some cases, it is easy to decide, whether we see plural voting or not. In other situations, it is much harder to distinguish between plural voting and other legitimate or illegitimate non-applications of the principle of equality of vote. Regarding this we introduce and analyse the plural voting of ethnic minorities applied in Slovenia, the representation of future generations' interest and children's suffrage. Analysis of the equality of vote of Hungarian citizens having no residence in Hungary and of national minorities constitute a core part of the research. After all these, we get a clear picture on nowadays existing types and functions of plural voting as well.

The least obvious issue discussed in this dissertation is the parliamentary representation of minorities and their equality of vote. That is why this topic is analysed separately. We outline the models of parliamentary and other political participation of minorities. After that we outline the ways of representing the minorities' in Hungary out of the parliament. We also take a look at the history of the issue of parliamentary representation of minorities in Hungary. We focus on the parliamentary representation of the national minorities living in Hungary, to which topic a lot of dilemmas are related. Persons declaring themselves as a member of one of the acknowledged minorities can register to the so-called nationality (minority) electoral roll regarding the parliamentary elections. In this case they may vote on the list of their national nationality self-government instead of a party list. At a first glance, this measure seems to be in favour of the equality of vote, but if we make a deeper analysis, the case is not such obvious. A preferential quota has to be met to gain a preferential mandate on a nationality list. The problem is that most of the minorities are so low in population that they do not have the chance to reach this preferential quota.² Shall they not pass this preferential quota, merely a nationality spokesperson having less competences than an MP will represent them in the Parliament.

In this dissertation we examine the following research question related to this:

Q6: Does the equality of vote of voters being registered in a nationality electoral roll as voter of a nationality having lack of chance to pass the preferential quota injure?

We need to examine the number of persons belonging to each of the minorities, their electoral participation and the nature of the nationality spokesperson's institution to seek an answer to this question. Legal-dogmatic analysis will not be enough to find an answer. It is also necessary to examine, to what extent are minority spokespersons have an actual impact on the legislative agenda and whether their presence in the legislation helped to a better representation of minorities' interest. The parliamentary activity of spokespersons' during the 2014-2018 cycle will be a subject to quantitative and partly qualitative analysis to answer this question.

We examine the following hypothesis regarding this

H1: Parliamentary spokespersons' presence in the Hungarian parliament led to an increase in presence of minority related issues on the legislative agenda.

2. Research methods

We need to mix the methodology of different branches of science to answer the research questions and hypothesis posed above. In order of that, we mix methods of legal science and political science. Methods of legal history also have to be applied when examining the history of plural voting in Europe and in Hungary. During this we examine laws, proposals of laws, their reasoning and the circumstances of their creation and/ or adoption. At this point

² KURUNCZI (2013): 92., SZALAYNÉ (2014): 13.

comparative method also has to be applied in order to explore the historical types and functions of plural voting.

After all these, we examine the equality of suffrage from the point of view of Constitutional Law, applying methods of legal science. We analyse and compare the respective international treaties and the requirements set by them, the practice of the European Court of Human Rights and the compulsory and advisory documents of other international fora. The relation of the Hungarian constitutional development and the Constitutional Court after the change of regime to plural voting will be analysed as well. The applicability of the Constitutional Court's decisions adopted before the Basic Law entered into force is a crucial methodological question related to this.

Following this, we will have a comprehensive picture on the question, how plural voting occurs in the relevant international documents and in the practice of the European Court of Human Rights, other international bodies and the Hungarian Constitutional Court. Having all these knowledge, we can explore how plural voting occurs nowadays in Europe, explaining plural voting of minorities, children's suffrage, out-of-country voting of non-resident citizens in Hungary, and plural voting as a means of epistocracy. While we can conclude a legal-dogmatic analysis regarding plural voting of minorities and suffrage of Hungarian citizens having no residence in Hungary, children's suffrage and plural voting as a means of epistocracy are merely theoretical constructions, so we can analyse only the proposals of scholars writing on these issues. Deciding whether children's suffrage and the right to vote of citizens having a residence in Hungary compared to citizens having no residence in Hungary constitutes plural voting or not constitutes a core question of this dissertation. After all these, we can draw conclusions related to types, aims and functions of plural voting nowadays.

The least obvious issue discussed in this dissertation is the parliamentary representation of minorities and the equality of vote. That is why this topic is analysed separately. We outline the models of parliamentary and other political participation of minorities to have a basis of comparison. After that we outline the ways of representing the minorities' interest in Hungary besides parliamentary representation. Analysis of proposals aimed at establishing a special parliamentary representation of minorities since the change of regime in Hungary is also an important basis for comparison. It is necessary to examine the parliamentary representation of minorities established in 2014 and to compare the institution of nationality spokespersons and MPs from a legal perspective. Through these we can get an answer to the question whether nationality spokespersons perform representation in a legal sense or not. As a next step, the nationality spokespersons' activity during the 2014-2018 cycle and the occurrence of minority-related issues on the legislative agenda is analysed. This helps us to answer whether the presence of spokespersons in the parliament (descriptive representation) led to an increase of occurrence of minority-related issues on the legislative agenda (substantive representation).³

The activity of nationality spokespersons was analysed based on the data to be found on the webpage of the National Assembly. Data concerning the occurrence of the issue of nationalities on the legislative agenda among parliamentary questions (interpellations, questions and urgent questions), laws, and the subsidies provided to the nationalities' culture and self-governance before and after 2015 was analysed.⁴

³ On the concept of substantive and descriptive representation see PITKIN (1967).

⁴ The 2015 Central Budget was the first Central Budget adopted during the first parliamentary cycle of nationality spokespersons.

During the research on the changes in the number of interpellations, questions, urgent questions the search tool of the webpage of the Hungarian National Assembly⁵ was used. The research includes the interpellations, questions and urgent questions of the past (2014-2018) and the (2010-2014) parliamentary cycle. The justification of the comparison with the 2010-2014 cycle is that there has not been passed long time by, and the composition of the legislation was similar to the following one. One of the differences between the two cycles is that nationality spokespersons take place in the parliamentary activity as well. However, the comparison is a little complicated due to the fact that in 2012 a new act on the National Assembly has been adopted, and in 2014 a new Standing Order has been passed as well.⁶ At the same time the number of MPs decreased from 386 to 199.⁷ As a consequence of these it is worth to compare the two cycles.

We applied a deductive approach during the identification of minority-related questions, urgent questions and interpellations. A dictionary had been made on the stems connected to minorities and a search on these words was made.⁸ During this, we made a list on words one of which has to be present in each minority-related speech. But we shall not forget that the words may occur in the text in a suffixed form. That is why the substitute character ‘*’ was used.⁹ This keyword-based search in itself was not enough to classify a text as minority-related. That is why interpellations, questions and urgent questions were checked manually and classified concerning their nationality-related content based on their titles. In absence of title or if the title did not provide satisfactory information, the content of the question was taken into account as well. Merely questions related to the rights, history, culture, representation and identity of the 13 acknowledged nationalities living in Hungary were taken into account as minority-related speeches.

In case of interpellations the database of the Hungarian Comparative Agendas Project¹⁰ provides information as well. During the analysis it has to be considered that the CAP Policy

⁵ Országgyűlési napló ciklusonkénti adatai – Országgyűlés – Felszólalások keresése 2010-2014

https://www.parlament.hu/web/guest/orszaggyulesi-naplo-elozo-ciklusbeli-adatai?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=olyD8Dkn&_hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fwebpar.paramform%3Fp_ckl%3D39%26p_modul%3DNAPLO_ALT_LEKER%26p_szulo%3D-6 (27 April 2020)

Felszólalások keresése 2014–

<http://www.parlament.hu/felszolalások-keresese> (31 March 2018)

Irományok egyszerűsített lekérdése 2010-2014

http://www.parlament.hu/iromanyok-elozo-ciklusbeli-adatai?p_auth=px4pswMr&p_p_id=pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&_pairproxy_WAR_pairproxyportlet_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fwebpar.paramform%3Fp_ckl%3D39%26p_modul%3DIROM_LEKERD_EGYSZ%26p_szulo%3D-3 (31 March 2018),

Irományok lekérdése 2014–

<http://www.parlament.hu/iromanyok-lekerdesezese> (31 March 2018)

⁶ 10/2014 (II. 24.) Parliamenary resolution – Standing Orders

⁷ Act 203 of 2011 on the election of the Members of the Parliament 3.§ (1)

⁸ SEBŐK et. al. (2016): 19.

⁹ The dictionary contained the words nationality, minority and the official and commonly used names of nationalities living in Hungary as follows : nemzetiség*, kisebbség*, romá*, roma*, cigán*, ruszin*, német*, lengyel*, ukrán*, szlovák*, szerb*, szlovén*, horvát*, örmény*, görög*, bolgár*, vend*, rác*, tót*, sváb*, oláh*.

¹⁰ BODA – SEBŐK (2015), BODA – SEBŐK (2018), Interpellációk (1865-2018) | MTA TK CAP

<http://cap.tk.mta.hu/interpellacio> (29 April 2020),

Topics Codebook is domain-based, not issue-based. In addition, one text can get only one code, based on the dominant topic of the text.¹¹ The most relevant subtopic connected to this research is ethnic minorities, ethnic discrimination and racism. That is why we will consider the data belonging to this subtopic.

The data on laws related to minorities is analysed based on the data to be found on the webpage of the National Assembly, the parliament of Hungary. Hence the Committee of Nationalities Living in Hungary has to deal with all proposals being in connection with minorities, we consider the adopted laws among these proposals.¹² Data concerning the parliamentary cycles between 1990 and 2018 are examined based on the Law database of the Hungarian Comparative Agendas Project.¹³ We also use the Minority Legislation Database of the Hungarian Academy of Sciences Centre for Social Sciences Institute for Minority Studies.¹⁴ It is important to add, that the latter source does not contain data regarding the full 2014-2018 cycle and while the CAP-database considers merely laws definitely dealing with minority rights, ethnic discrimination and racism under this subtopic, this other database uses other methodology and considers all laws related to minorities to any extent. That is why we might see different numbers.

The data on the subsidies provided to the minorities with regard to minority rights, culture, education and self-governance are analysed based on the Hungarian Comparative Agendas Project's Database on Budgets and Final Accounts.¹⁵ We made a keyword-search on the rows of the central budget. The amount of these subsidies is summed up, furthermore the proportion of these compared to the other earmarks counted as well. During this analysis were only budgetary subsidies with regard to minority rights, nationalities' culture, education and political participation considered. Although it has to be kept in mind that expenditures on minorities may be higher, hence it is possible that such moneys were spent on minorities which do not occur in a separate budgetary row.

After all these, we can get an answer to the questions whether nationality spokespersons are representatives or not, and to what extent can a vote cast on a nationality list be considered as an equal vote when the minority is so low in population that they have no chance to gain a preferential mandate. Do voters being not registered in the minority electoral roll have plural voting? Last, but not least, we will have a broad overview on concept, functions and methods of plural voting in a historical and international perspective.

The presented data are originally from the research "Hungarian Comparative Agendas Project, 2014-2017" funded by OTKA (ÁJP K 109303), the data are published by the Hungarian Academy of Sciences Centre for Social Sciences. Neither the OTKA nor the leaders of the project are responsible for the content of the presented analysis.

¹¹ Közpolitikai témakörök kódkönyve (A magyar közpolitika dinamikája)

<http://cap.tk.mta.hu/kozpolitikai-magyar> (21 December 2015)

¹² A bizottság által benyújtott irományok 2014- – Országgyűlés

<http://www.parlament.hu/web/magyarorszagi-nemzetisegek-bizottsaga/a-bizottsag-által-benyujtott-iromanyok> (31 March 2018),

A bizottság által tárgyalta irományok 2014- - Országgyűlés

<http://www.parlament.hu/web/magyarorszagi-nemzetisegek-bizottsaga/a-bizottsag-által-targyalta-iromanyok> (31 March 2018)

¹³ Törvények (1790-2018) és törvényerejű rendeletek (1949-1989) | MTA TK CAP

<http://cap.tk.mta.hu/torveny> (29 April 2020)

¹⁴ Nemzetiségi adatbázisok | Keresés a jogszabályok között

http://mtatki.ogyk.hu/jogszabaly_adatok.php (8 July 2017)

¹⁵ Költségvetések és zárszámadások (1868-2018) | MTA TK CAP

<https://cap.tk.mta.hu/koltsegvetes1991-2013> (29 April 2020)

3. Short description of the analysis to be found in each chapters

The thesis consists of ten chapters. The *first chapter* titled '*Introduction, outlining of the problems, research questions and hypotheses*' provides an introduction to the topic of plural voting and minorities and the dilemmas related to it, furthermore the aims of the research, the research questions and the hypothesis.

The *second chapter*'s title is '*Conceptual foundations*' and it clarifies the concepts being essential to get an answer to the research questions and to conclude our research, such as plural voting, the right to vote, minority and nationality. The plural voting is fully clarified by the end of the thesis, hence one of its main aims is to clarify the concept.

The *third chapter* titled '*Literature review and theoretical background*' deals with the theoretical background of the research and with the overview of the main literature related to it. We outline the literature on the right to vote as a fundamental right, with special regard to the works of Eszter Bodnár and Gábor Kurunczi. The literature on plural voting is analysed as well – starting with John Stuart Mill, following with public law scholars of the first half of the 20th century in Hungary and ending with contemporary political philosophers, who usually still build on Mill's thoughts. The literature on the theories regarding the relationship between the substantive and descriptive representation of minorities is also introduced, which is necessary to analyse the representation and the equality of the voting right of minorities living in Hungary.

After that the *fourth chapter*, titled '*Data and methods*' clarifies the methodology of the research, which builds on the mixture of different sciences methods and the processed data are also introduced.

The title of the *fifth chapter* is '*The history of plural voting*'. Plural voting's history in a European and international context is analysed at this point, what is necessary to answer our research questions. We compare the practice of European countries and we also overview, how the institution occurred in Hungary from the beginning of the 20th century until the change of regime. Based on all these, we can answer, what meaning did plural voting in Hungary and in other European countries from a historical perspective have, and whether we can spot some differences. The proposal of Count Gyula Andrássy jr. as a minister of interior is analysed thoroughly, since it is closely connected to minorities. However, his aim was not ensuring a preferential representation to them, but preventing them from having an increased influence on the composition of the Parliament and gaining power.

The *sixth chapter* is titled '*The equality of vote and plural voting*'. International requirements on the right to vote, including universal and regional international treaties, the practice of the European Court of Human Rights and the recommendations of the Venice Commission are examined. The relation of the Hungarian constitutional development to plural voting is also explored, including the practice of the Constitutional Court. At this point we cannot neglect to investigate question to what extent the Constitutional Court is allowed to refer to its decisions adopted based on the preceding Constitution related to the right to vote, especially to the equality of votes and the absolute prohibition of plural voting. After this, we can draw our conclusion on the nature and characteristics of plural voting, including the question what different meanings and functions are and were related to it over time. Differentiating the motivations and goals of plural voting from its types is core issue related to this.

The title of the *seventh chapter* is '*Occurrence and types of plural voting nowadays*'. In this chapter, we outline, in what contexts, with what goals and in what forms does plural voting occur in contemporary Europe. In some cases, it is easy to decide, whether we see plural voting or not. In other situations, it is much harder to distinguish between plural voting and other

legitimate or illegitimate non-applications of the principle of equality of vote. Regarding this we introduce and analyse the plural voting of ethnic minorities applied in Slovenia, the representation of future generations' interest and children's suffrage, hence the dilemma of plural voting usually occurs related to these institutions in the literature. The next subject to our analysis is the limitation of the entirety of the right to vote based on the strength of the connection between a citizen and the state (the right to vote of citizens who do not have a residence in the country). The literature and the legal practice rarely mentions plural voting related to this. At the same time, during the first half of the 20th century it was considered as plural voting when the conditions of suffrage were different in single member districts and proportional districts. This conflicts with the fact that neither the Constitutional Court, nor the European Court of Human rights did name this type of voting as plural voting. A key task of this thesis is to resolve this actual or seemingly existing dilemma. That is why this question is thoroughly analysed, including the rules on the relation of suffrage and residence in Hungary, the practice of the Constitutional Court, furthermore the recommendations of the Venice Commission and OSCE Office for Democratic Institutions and Human Rights. A high emphasis is put on the analysis of the voting methods, the dilemmas occurring in the Constitutional Law literature on the equality of vote of such citizens who do not have a residence in the territory of Hungary. By the end of this chapter we will have a broad picture on contemporary types and functions of plural voting.

The parliamentary representation of minorities in Hungary meets a lot of dilemmas related to the equality of votes. It is worth to examine it in a separate chapter, hence the issue is not obvious at all. Before that, in the *eighth chapter* titled '*European models of representation of minorities*' the practice of European countries regarding special parliamentary representation of minorities is introduced, just like the ways of minorities' political participation besides parliamentary representation. All this is needed to lay foundations of the next chapter and to have a basis for proposing alternatives to the current Hungarian system.

The title of the *ninth chapter* is '*Participation of the nationalities living in Hungary in the work of the National Assembly and the equality of suffrage*' and deals with the dilemmas related to these issues. First of all, the ways of minorities' participation in public life besides parliamentary representation in Hungary are introduced respecting existing and former ways. Although, we put an emphasis on the parliamentary representation of minorities related to which a lot of problems occur. In this chapter it is analysed whether the equality of votes of voters of minorities having no chance to gain a preferential mandate is violated or not. Population and electoral participation of minorities is outlined to perform this, and the nature of the nationality spokesperson's institution is analysed as well. Legal-dogmatic analysis will not be enough to find an answer. It is also necessary to examine, to what extent are minority spokespersons have an actual impact on the legislative agenda and whether their presence in the legislation helped to a better representation of minorities' interest. The parliamentary activity of spokespersons' during the 2014-2018 cycle will be a subject to quantitative and partly qualitative analysis to answer this question.

The *tenth chapter* of the thesis contains the conclusions of the thesis, furthermore the answers to the research questions and the hypothesis. Furthermore, the practical applicability of the research's findings is introduced, just like the de lege ferenda recommendations and the possibilities for continuing this research.

4. Conclusions, recommendations and practical applicability of the research results

As a whole we can say, that even though the literature usually refers only shortly to plural voting, its concept is not homogenous, it has and had different meanings over time, and is applied based on many different grounds.

In a historical context we saw that plural voting may occur in a way that it is obviously stipulated in the law that some voters are entitled to cast more votes than others or their votes openly worth more than other voters' votes. Count Gyula Andrassy jr. was aimed at introducing such kind of plural voting in 1908 so that literal voters would have been classified into three groups based on some educational, occupational and age criteria, being able to cast one, two or three votes. At the same time, illiteral voters would have had merely indirect suffrage.

We can interpret the plural voting occurring in Andrassy's proposal as the narrowest definition of plural voting. The broadest definition of plural voting is the case when someone interprets the case when the number of voters in the electoral constituencies is very different. The Andrassy-proposal's main aim was to balance the effects of general suffrage so that national minorities and members of lower social classes cannot have a decisive influence on decision-making.

Plural voting has a hidden or covert form as well. In such cases the law does not stipulate explicitly that certain voters' vote weigh more or some voters are entitled to cast more than one, but still, some of them can cast more vote than others. Such plural voting was introduced in Hungary by the Act 19 of 1938. This electoral law introduced secret-ballot voting, and at the same time, it defined the conditions of having suffrage differently in single member districts and proportional districts. Hidden or covert plural voting means a type of plural voting between the narrowest and broadest definition of plural voting. The main aim of this act was to balance the effect of general suffrage and to prevent to anti-regime forces like far-right parties from gaining power. The standpoint of the standpoint of Ödön Polner, a renown constitutional lawyer from the first half of the 20th century is interesting, but nowadays it may be looking weird and is constitutionally unacceptable. He considered the suffrage of married woman as the plural voting of their husbands.¹⁶ We also saw that during this time the interpretation of unequal distribution of voters among electoral constituencies was interpreted as a form of plural voting. This fits the broadest definition of plural voting.

Regarding our first research question (Q1), that is whether the concept of plural voting is homogenous, we can say that it is not, hence we found out that plural voting may have different meanings:

- Plural voting has a broadest definition when we practically consider any case when the equality of votes does not prevail as plural voting, so the unequal distribution of population or voters among electoral districts as well. This definition was widely used in the Hungarian Constitutional Law literature during the first half of the 20th century.
- In case of the more narrow definition of plural voting the law does not stipulate explicitly that some voters may cast more votes than others, but the electoral laws lead to the situation, that some voters can cast more votes than others (hidden or covert plural voting).

¹⁶ POLNER (1938): 16.

- The narrowest meaning of plural voting is when voters are explicitly put into electoral classes and they are entitled to cast one, two or more votes according to this.

Our second research question (Q2) was in what forms plural voting may occur. It can occur

- Openly, when it is clearly stipulated in the law that some voters are entitled to cast more votes than others, and
- In a hidden or covert form, when the conditions of suffrage are different in different types of constituencies in a mixed electoral system, so some voters are entitled to cast a vote in both types, while others can vote only in one type of the constituencies.

The conditions of casting more votes are in some cases conditions related to age, education and occupation. Plural voting in this form means an alternative to censuses. Even though this form of plural voting is unacceptable in a liberal democracy under the rule of law, political philosophers are still thinking about the necessity of such a plural voting. Besides this, we can find proposals for giving parents more votes than to persons having no children since the first half of the 20th century.

After these, we took an overview of the international requirements pertaining to the equality of vote and plural voting, and the constitutional development of Hungary regarding it, including the practice of the Constitutional Court. We outlined that the equality of votes means two requirements according to the practice of the Hungarian Constitutional Court: Equal value and weight of votes from the perspective of voters. The Constitutional Court defined the equal value of votes from the perspective of voters as the prohibition of plural voting. They consider as plural voting, if some voters can cast more number of votes than others or are entitled to vote more times than others.

We also mentioned, that the respective General Commentary of the UN Human Rights Commissions identifies the prohibition of plural voting with the principle of one-man-one vote, while the Venice Commission defines three elements of the equality of votes: the equality of the number of votes, equal power of votes and the prevalence of the equality of opportunity regarding voting.

It also has been shown that the Hungarian Constitutional Court builds on the recommendations of the Venice Commission related to electoral law in a decisive manner. We also saw that the Constitutional Court does not consider the equality of vote as a fundamental right, but as a guarantee of a fundamental right: the right to vote. This body consequently refers to its practice based on the former Constitution when referring to the fact that the equality of votes is a ‘special equality rule’ compared to the prohibition of discrimination and applies the test of comparability and justifiability related to it. Other important question is, how all this relates to the requirement of application of fundamental rights without discrimination. Related to this, we can conclude, that there are cases when we make restrictions regarding general suffrage by excluding some groups (citizens having no or lack of competence or some convicted persons). At the same time, the existence of a certain age limit under which people may not have suffrage means that these people are not excluded but having no suffrage before this age at all. So if we restrict general suffrage, this definitely means the restriction of the right to vote as a fundamental right of citizens.

Our standpoint is that the case is the same respecting the equality of votes. The equality of votes is a ‘special equality rule’ compared to the prohibition of discrimination, as the Constitutional Court usually refers to it. The body also declared that the equality of votes is not

a fundamental right, just a constitutional guarantee of a fundamental right of citizens. Our point is that the right to vote of citizens cannot prevail without the prevalence of the equality of votes. If we take a look at the historical examples, we can see that plural voting can serve as a neutralization of general suffrage.

We also pointed it out that the Constitutional Court refers to its practice based on the former Constitution related to the right to vote, even though the Basic Law (the constitution in effect) rules the right to vote differently, hence it allows to give the ‘fullness of suffrage’ only to citizens living in Hungary. Moreover, it allows to define further conditions for eligibility. The Constitutional Court saw this, and dealt with it in its practice after the Basic Law entered into force, but stated that this would not mean a decisive change, so it still refers to its former respective practice, including the absolute prohibition of plural voting. They tried to resolve the fact that residence in Hungary may be required for the ‘fullness of suffrage’ so that they declared that the equality of votes and the prohibition of plural voting ‘logically’ has to be examined separately in single member constituencies and regarding national lists. At the same time, they did not explain, why this would be logical, what raises a lot of questions, with special regard to the fact that they declared in the same decision that the equality of votes has to be examined respecting the electoral system as a whole. In addition, if we take a look at the history of plural voting, we can see that not only the Constitutional Law literature of the first half of the 20th century considered the system of the Electoral Law of 1938 as plural voting, but we call it as plural voting nowadays as well. As a consequence of these our point of view, the Constitutional Court should have had give and explanation and a more detailed reasoning, why they do not consider the fact that residence in Hungary may be required for the ‘fullness of suffrage’ as a relevant change compared to the preceding Constitution, and why we should examine the prohibition of plural voting separately in single member constituencies and regarding national lists.

Our point is that if we accept that the Act 19 of 1938 introduced hidden or covert plural voting, we also have to accept that this regulation contains plural voting, the plural voting of citizens living in Hungary as a legitimate form of plural voting. At the same time, neither international courts or bodies, nor the Constitutional Court called this as plural voting. Still, we can have doubts regarding the fact, that the Constitutional Court would be entitled to refer to its practice based on the preceding Constitution related to the right to vote and the prohibition of plural voting, hence the rules of the Basic Law of Hungary contain decisively different rules compared to the former Constitution.

The reason that international courts or other bodies did not consider it as plural voting may be that the case when the suffrage is stipulated to different conditions in different types of districts in a mixed electoral system was considered as plural voting mainly only in the Hungarian Constitutional Law Literature. Foreign scholars usually talk about cases of plural voting when it is explicitly stipulated in the law that some voters may cast more votes than others.

We argue, that the fact that voters having no residence in Hungary can cast a vote only on a partly list, while those having residence in Hungary are entitled to vote both on an individual candidate and on a national list, constitutes a form of plural voting similar to the system set by the Act 19 of 1938, but in a legitimate form.

After all these, we can answer our fourth research question (Q4) that is whether the rules of the former Constitution and the Basic Law show a decisive difference related to suffrage because the Fundamental Law declares that the ‘fullness of suffrage’ may be stipulated to a residence in Hungary. The answer is yes.

As a consequence of this, we can answer our fifth research question (Q5) that is whether the practice of the Constitutional Court on the right to vote and the absolute prohibition of plural voting between 1989 and 2011 is applicable nowadays or not. The answer is that it is not applicable anymore.

After all these, contemporary types and functions of plural voting were explored. We concluded that plural voting nowadays occurs in different forms. Plural voting today occurs related to two practical and two theoretical questions. One practical form is the problem of plural voting of citizens having residence in Hungary compared to those having no residence in Hungary. The other existing form of plural voting is the plural voting of minorities which only exists in Slovenia, and was almost introduced in Croatia, and which is applicable according to the Venice Commission's practice merely in exceptional cases and in a provisional manner.

We also saw that theoretical concepts of plural voting occur in the Constitutional Law literature and in democratic theory as the means for ensuring intergenerational justice and as a means of ensuring epistocracy. Related to the first one, usually two issues emerge: the children's suffrage and the plural voting of younger voters.

Many different ways of children's representation are outlined in the literature, as like as the decreasing of the age limit of the right to vote, plural voting of parents or suffrage ensured to children but practiced by the parents. The scholars of the field of Constitutional Law do not agree in the question whether the latter can be considered as plural voting or not. In our point of view, this is plural voting of parents in practice even if we could construct a theory which argues that it is children's suffrage practiced by their parents. And if we would accept that this is the suffrage of children, the solution when parents have could cast one extra vote irrespectively of the number of their children would definitely violate the equality of the children's vote hence the more siblings would someone have, the less his vote would count. For example, a sole child would have one vote, a child having one sibling would have half vote, and a child having two siblings would have one third vote.

Plural voting occurs in one more context related to intergenerational justice, aimed at weakening the strength of the votes of the members of the older generations. Supporters of such kind of plural voting argue that the more from someone's life expectancy is passed by, the less the decision made by the elected bodies will affect them. This idea is constitutionally unjustifiable and cannot be applied in a democratic state under the rule of law.

This is also true to the case when authors outline systems of plural voting as a means of epistocracy, the rule of the knowers, and therefore an alternative to censuses.

We can see that plural voting nowadays occurs in various forms:

- In practice:
 - As a means of preferential representation of minorities, furthermore
 - As a means of restricting the right to vote based on the closeness of the citizens' relation to the state.
- And in theory
 - As a safeguard of the representation of future generations' and children's interest and demographic sustainability,
 - As a means of ovreweighting the vote of voters belonging to younger generations and
 - As an alternative to censuses related to literacy, education of taxation.

As a conclusion of all these to our third research question (Q3), that is what functions plural voting may have, we can give the answer that plural voting can have many functions:

- A means for the repression of members of national minorities,
- A means for preferential representation of national minorities,
- An alternative to censuses to ensure the rule of more educated and as a balance of disadvantages of democracy, and to avoid the tyranny of the majority, and sometimes even to avoid extremist or anti-system politicians to gain power,
- A safeguard of the rule of those having certain merits, such as being well informed, conscious citizens,
- A guarantee of intergenerational justice, including
 - a safeguard of sustainable development and protection of future generations' interest and demographic sustainability, and
 - a guarantee of the enforcement of the interest of the younger generation which will probably bear the consequences of public decisions for a longer period of time.
- A guarantee of smaller influence of citizens who are less closely connected to the state and thus bearing the public decisions' consequences less (e.g. citizens living abroad), and
- As a means of overweighting the votes of more popular voters who are found to be more suitable for public decisions by other voters.

Even though members of nationalities living in Hungary do not have plural voting, a lot of dilemmas occur regarding their parliamentary representation and their equality of vote, including the question of plural voting.

Persons declaring themselves as members of one of the acknowledged minorities can register to the so-called nationality (minority) electoral roll regarding to the parliamentary elections. In this case they may vote on the list of their national nationality self-government instead of a party list. At a first glance, this measure seems to be in favour of the equality of vote, but if we make a deeper analysis, the case is not such obvious. A preferential quota has to be met to gain a preferential mandate on a nationality list.

Although the parliamentary representation of minorities is ensured in Hungary, based on the census data and the data of elections we can see, that only two minorities (Roma and Germans) have even the chance to reach the preferential quota and send an MP having full rights into the Parliament. Shall they not pass this quota, a nationality spokesperson having much less competences than MPs will represent them in the Parliament. This means that minorities having lack of chance to reach this quota elect for a different mandate than the other minorities when casting their votes on a nationality is. This fact raises questions relating to the equality of vote. Regarding this, we have to remember that the Constitutional Court differentiates between procedural and substantial equality of votes and considers such circumstances as low voter participation or the existence of parliamentary threshold as not impacting the principle of equality of suffrage. Still, in our point of view, the fact that in case of 11 of the 13 minorities we initially know that they have no chance to send an MP having full rights to the Parliament is not a procedural, but a substantial question, and cannot be compared to the case when a party list does not pass the threshold.

At this point we have to refer to the fact that parliamentary representation of minorities does not mean a ‘general’ exercise of power based on popular sovereignty, but a special representation of minorities just like Zoltán Szente,¹⁷ a preparatory document made in the Ministry of Justice of Hungary in 1999¹⁸ and the decision of the Croatian Constitutional Court related to plural voting of minorities¹⁹ pointed it out. It is also important to emphasise that nationality spokespersons’ competences are very different from MPs competences, and their legal status is much closer to a delegate of their national nationality self-government having consultative powers than to an MP.

Our sixth research question (Q6) also has to be examined, that is whether the equality of vote of members of minorities having lack of chance to reach the preferential quota is injured. At a first glance, if we consider the above outlined arguments, we would say that their equality of vote is injured, hence they have no chance to get into the Parliament.

At the same time, we have to consider that voters are free to decide whether they want to vote on a party list or on a nationality list, which practically means to give up their vote on one type of national list. The question is to what extent is giving up of the right to vote on a party list a conscious decision. Voting is not compulsory, so voters can freely decide even not voting or voting just in one type of constituencies. Even though one could consider to give up the right to vote on a party list just to make a nationality spokesperson to gain a mandate as unreasonable, it can still be of symbolic importance for the voter as an expression of his identity.

We also saw that from a legal perspective, representation performed by spokespersons cannot be considered the same as the representation performed by MPs. But when examining whether the institutional change establishing the descriptive representation of minorities in the Hungarian parliament enhanced their substantive representation, we saw a lot of beneficial outcomes. It came to light that the number of minority-related interpellations, questions and urgent question did not increase during the 2014–2018 cycle compared to the 2010–2014 cycle, or where we saw an increase, it was due to one actual issue. We cannot see an increase in the number of minority-related laws either. It was also explored that spokespersons are much less active as an average MP, what we could have expected due to their narrower competences than MPs.

We can see that our hypothesis (H1) according to which parliamentary spokespersons’ presence in the Hungarian parliament led to an increase in presence of minority related issues on the legislative is rejected.

At the same time, deeper analysis of the activity of nationality spokespersons and the motions of the Committee of Nationalities Living in Hungary showed us that spokespersons are still able to achieve outcomes in questions being important to minorities.

However, in the light of dilemmas occurring related to the equality of vote of voters belonging to minorities and respecting the principle of equal mandate it would be worth to improve the rules of the parliamentary representation of minorities. Application of different rules regarding minorities being higher and lower in number should be taken into consideration. Guaranteed seats or full exemption from the electoral threshold would not be an applicable solution due to the low proportion of minorities within the population if their representatives would have equal mandate compared to MPs elected based on popular sovereignty. At the same

¹⁷ See: SZENTE (2011): 89.

¹⁸ See: PAP (2007): 243-244.

¹⁹ See: The Constitutional Court of the Republic of Croatia Nos. U-I-3597/2010, U-I-3847/2010, U-I-692/2011, U-I-898/2011, U-I-994/2011 Zagreb, 29 July 2011
[https://sljeme.usud.hr/usud/praksWen.nsf/e540ceb6cd1e4ec0c1257de1004aa1f3/477e6dbf66aeaa69c1257e5f003d81f8/\\$FILE/U-I-3597-2010.pdf](https://sljeme.usud.hr/usud/praksWen.nsf/e540ceb6cd1e4ec0c1257de1004aa1f3/477e6dbf66aeaa69c1257e5f003d81f8/$FILE/U-I-3597-2010.pdf) (28 April 2020)

time, if their mandates would not be equal, then the dilemmas regarding equal mandate occurring today would not be solved. Minorities are not only low in number, but they also live very dispersed in Hungary, so a separate electoral constituency could not be a solution, unless a virtual constituency or more virtual constituencies would be created to them. It is also obvious that they are not capable of getting into the Parliament on their own, without preferential rules applying to them.

According to our point of view, due to the practical viability of the recent system of parliamentary representation of minorities the recent system should be improved. It could be a solution if national nationality self-governments would be entitled to establish joint nationality lists. We also have to consider that the election of national nationality self-governments is surrounded by many guarantees against possible abuses. That is why the abolition of the registration of minority voters into the minority electoral roll regarding the parliamentary elections and putting nationality lists and party lists on the same ballot should be deliberated as well. In this case the problem regarding the secret-ballot voting would be resolved as well. The problem mentioned in the latter is that now a voter registered into the minority electoral roll gets a ballot containing only the name of his own national nationality self-government (but this is still based on their own decision to register into the minority electoral roll extended to the parliamentary elections). At the same time, this would not work without a preferential quota either, hence no minority parties could get into the Parliament since the change of regime in Hungary.

Our opinion is that the key of the solution is related to the legal status of spokespersons and to their different competences compared to MPs. This is based on the fact, that according to us, nationality spokespersons are not actual representatives, their legal status is barely more than consultative persons who do not take part in actual decisions but still may have some impact on the decision. That is why we argue that the best way to improve the rules regarding parliamentary representation of minorities which have no chance to gain a preferential mandate should not choose between expressing their minority identity and between their party preference. At a first glance we probably would think about whether this would violate the equality of suffrage or not. Our standpoint is that this would not mean plural voting due to the different character of the institution of nationality spokesperson from the institution of MP, and its consultative nature.

6. New scientific statements of the thesis

The new scientific statements of the thesis are the followings:

1. I defined that plural voting cannot be considered as a homogenous concept and had many different forms and functions over time and in different countries: the plural voting has a broadest, a narrower and a narrowest interpretation. Broad interpretation of plural voting was applied during the first half of the 20th century.
2. I shed light on the fact that according to the broadest interpretation of plural voting all cases when the equality of suffrage does not prevail can be considered as plural voting (an example is the different size of constituencies).
3. I pointed it out that the so-called covert or hidden plural voting when the preconditions of the right to vote are defined differently in single member constituencies and proportional ones can be considered as the narrower interpretation of plural voting. This narrower meaning of plural voting was applied in the Hungarian Constitutional Law literature in the beginning of the 20th century, and scholars dealing with legal history are still using it. At the same time, neither the Constitutional Court of Hungary, nor international courts or other international bodies apply this interpretation.
4. I proved that the rules ensuring the suffrage of Hungarian citizens having no residence in Hungary can be considered as ones ensuring plural voting and as a consequence of that, the practice of the Constitutional Court based on the former Constitution on the equality of vote and the absolute prohibition of plural voting should not be referred to anymore.
5. I have shown that the case when the rules classify voters explicitly into electoral classes in which ones different number of votes can be cast has to be considered as the narrowest interpretation of plural voting.
6. I shed light on the fact that plural voting may have different functions: repression of minorities; preferential representation of minorities; an alternative to electoral censuses; safeguard of the rule of persons having proper merits (for example well informed, conscious citizens); guarantee of intergenerational justice including ensuring sustainable development, the future generations' interest or a means of ensuring the now living younger generations' interests who are expected to bear the consequences of public decisions for a longer time; limitation of the right to vote based on the closeness of voters' connection with the state and overweighting the vote of voters who are more popular among other voters and considered to be more suitable to make public decisions.
7. I also proved that although some dilemmas emerge related to the equality of vote of voters registered to the minority electoral roll and to the equality of mandate of nationality spokespersons and MPs, the current system is suitable to ensure an effective representation of minorities, the descriptive representation of minorities led to effective substantive representation of their interest.
8. I confirmed that due to the different legal status of nationality spokespersons and MPs it would not mean plural voting if members of minorities having no chance to reach the preferential quota would be entitled to cast a vote both on a nationality list and on a party list, at the same time, it would mean a solution for the dilemmas mentioned in the previous paragraph.

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Curriculum Vitae of the Author

Ágnes Molnárné Balázs was born on the 26th of January 1991 in Pásztó. She started primary school in the Primary School of Mátraszőlős and finished it in Dózsa György Primary School in Pásztó. She visited the Mikszáth Kálmán Secondary School in Pásztó, from where she graduated with an excellent evaluation and where she gained an ECDL certificate as well. She gained a B2 level complex language exam in German in 2008 and in English in 2010.

She graduated from the Pázmány Péter Catholic University as an international administration manager (BA) in 2013 with an excellent evaluation. The title of her thesis was 'Legal fundamentals of the relationship between Hungarians abroad and the kin-state – With special respect to suffrage'. In 2012 she gained a B2 level complex PROFEX language exam in legal and administrative English. She worked at the Local Government Office of the Town Pásztó as an intern during the summer of 2012. In 2012 she gained a C1 level complex PROFEX language exam in legal and administrative English.

After that she graduated from the program Public Administration (MA) of the Faculty of Science of Public Administration of the National University of Public Service in 2015 with an excellent evaluation. She worked as an undergraduate assistant at the Department of Constitutional Law during the academic year 2013/2014 and at the Department of European and Comparative Public Law during the academic year 2014/2015.

She won Scholarship Granted by the Republic for the 2014/2015 academic year and she gained the Scientific Scholarship for Students and Professional Award of the University in 2015. She won the special award of the deputy of the commissioner of fundamental rights responsible for the protection of rights of minorities at the 32nd National Scientific Students' Associations Conference in April 2015. Her work was titled 'Plural voting and minorities in Europe'. She wrote her MA thesis with the title 'Equality of the right to vote – Dilemmas and borderline cases'. She worked as an intern at the Office of Immigration and Nationality between June and July and at the Research Centre of National Policy between November and December of 2014. In February of 2015 she started to work as an intern at the 'Comparative Agendas Hungary' project of the Hungarian Academy of Sciences, Centre for Social Sciences, Institute for Political Science. She took part in the work of the Magyary Zoltán College for Advanced Studies between 2013 and 2017 as a tutored person, then as a member and after that as a senior member.

She entered the Doctoral School of Science of Public Administration of the National University of Public Service in 2015 and she gained a pre-degree certificate in July 2018. She graduated from the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University as a lawyer in 2021. During the summer of 2018 she worked as an intern at the National Election Office. In 2012 she gained a C1 level complex PROFEX language exam in legal and administrative German.

She took part in the education of students already as a doctoral student, but she also has been taking part in the talent development of students as well. She led a research group in the Magyary Zoltán College for Advanced Studies during the academic year 2015/2016 along with Attila Horváth Dr., the director of the organisation. She became the instructor-secretary of the Students Scientific Student Circle of Constitutional Law and Comparative Law in autumn of 2015. Later she became the tutor of the organisation. She was a deputy of the tutor of the Scientific Student Circle on Elections during the spring semester of 2018. She took part in the education and the edition of educational materials at the Institute of Constitutional Law of the National University of Public Service's Faculty of Science of Public Administration and Governance between September 2017 and January 2018. She is an assistant lecturer of the Department of Constitutional Law and Comparative Public Law (the former Institute of Constitutional Law) since September of 2018.

She won a scholarship in the New National Excellence program of the minister responsible for education for the 2017/2018 and for the 2018/2019 academic year. In the first year, she investigated the effective participation of minorities in public life and in the second year she explored dilemmas of general suffrage. She took part as a researcher in the Elections and Democracy Ludovika Research Group at the National University of Public Service between October 2017 and May 2018. In the second half of 2018 she took part in the Kisényi Géza Research Group.

She performs a broad international research activity besides the taking part in the Comparative Agendas Project. She has research relations with the Faculty of Public Policies of the Silesian University in Opava as well. She cooperated with them in a research on the history of sociology as a science between October and December of 2015, and she went there for a two-week research stay in the autumn of 2017. She cooperates with the university until nowadays.

She usually takes part in relevant international conferences such as Annual Conferences of the Comparative Agendas Project (in 2017 in Edinburgh, in 2018 in Amsterdam, in 2019 in Budapest). She performed her individual research on the impact of nationality spokespersons on the legislative agenda and on the correlation between the public policy content of party manifestos and the legislative agenda. At the 2018 annual conference of the European Political Science Association in Vienna she performed her article written together with her co-authors Miklós Sebők and Attila Horváth on electoral reforms. This article was published in the European Journal of Public Policy in 2019. The doctoral candidate usually takes part at the conferences of the Central European Political Science Association as well.