International Standards on the Right to Participation of Minorities in Public Life and Representation of Minorities in the Hungarian and the Italian Parliaments

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Abstract: Norme internazionali sul diritto delle minoranze alla partecipazione alla vita pubblica e rappresentanza delle minoranze nel parlamento in Ungheria ed in Italia – The article first gives an overview on the international standards relevant to the right of national minorities to participate in public life, especially to minorities' representation in legislative bodies. International instruments, OSCE and Council of Europe expert recommendations recognize various procedures that may guarantee for minorities an effective participation in public life: there is not any specific requirement to grant minorities representation in national parliament. Both in Hungary and in Italy in the past decade there have been substantial electoral law reforms and different solutions have been introduced for facilitating the parliamentary representation of minorities. In Hungary the new model of so-called nationality (minority) advocates offers representation in parliament without voting rights for all recognized minorities. In Italy the territorially concentrated autochthonous minorities get legally granted facilitation in gaining a seat in parliament. Nevertheless both arrangements leave open many questions regarding equality among minority communities, the principle of equal voting rights, and the effectiveness of minority representation in parliament.

Keywords: National minorities; Political rights; Electoral law; Effective participation; International norms on minority rights.

1. International Standards on Political Participation of Minorities

Amongst the other widely acknowledged cultural, linguistic or educational minority rights, the right of persons belonging to minorities to participate in public life has also gained a strong legitimacy under international law during the 1990s.[1]

In line with the individual language of existing human rights standards, the right of persons belonging to minorities to take part in decision-making without any discrimination was recognised as a cornerstone element in this context. The crucial international human rights documents guarantee to all citizens the right to participate in their country's political life, as Art. 21 of the Universal

[1] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990. Available at www.osce.org/odihr/elections/14304; European Charter for Regional or Minority Languages of 5 November 1992 (in force 1 March 1998) ETS 148.; Framework Convention for the Protection of National Minorities of 1 February 1995 (in force 1 February 1998) 2151 *UNTS* 243.

Declaration of Human Rights[2] formulated that: "1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2) Everyone has the right of equal access to public service in his country. 3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

The International Covenant on Civil and Political Rights[3] and the European Convention on Human Rights[4] contain similar provisions. However these commitments only recognise the prohibition of discrimination without any minority-specific dimension.

The specific right to participation in the public life of minorities has been formulated in the international documents on minority rights since the 1990s. Looking at the deep concerns of states on this issue, it is not surprising that these documents use a rather general and cautious language. For example Art. 15. of the FCNM reads as: "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."[5] This provision does not say anything about how such participation should be guaranteed or what are the "necessary conditions for the effective participation". Ghai underlined that the functions of participation "may range from lobbying at one end to making decisions at the other".[6]

In a European context, there are two key documents which may help in interpreting minorities' rights to participation: In 1999 the OSCE HCNM published the Lund Recommendations and the FCNM Advisory Committee also issued a detailed commentary on the question.[7] It seems to be clear that political rights are essential for the protection and promotion of group interests. This implies that people belonging to minorities should not only have the right to full equality before the law in their political rights without any form of discrimination but it also sheds light on their special needs in influencing public affairs. "Having a voice" in public affairs may be interpreted on a broad scale from presence, and consultative rights, to other forms of weak or strong influence on public affairs. Both expert documents stress the importance of "effective participation" in public life: i.e., minorities should have more participatory rights than just having the

[2] GA/RES/3/217 A (III) 10 December 1948.
[3] International Covenant on Civil and Political Rights 16 December 1966 (in force 23 March 1976) 999 *UNTS* 171.
[4] Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (in force 3 September 1953) 213 *UNTS* 221.
[5] Similar provisions are contained in other documents, e.g., para. 35 of the CSCE Copenhagen Document. 29 June 1990. Available at www.osce.org/odihr/elections/14304
[6] Y. Ghai, *Participation as Self-Governance*, M. Weller (ed.) *Political Participation of Minorities*, Oxford, 2010, 616.
[7] *Commentary No. 2. The Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs.* adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities on 27 February 2008. ACFC/31DOC(2008)001

right to express their political opinions openly, either through freedom of speech or via voting rights. The FCNM Advisory Committee highlights the great variety of forms of effective participation, "such as exchange of information, dialogue, informal and formal consultation and participation in decision-making".[8] Considering their participation in decision-making, the FCNM AC analyses various forms including special representation in organs of the state (executive, legislative, public service, etc.); electoral systems that ensure adequate representation; institutions for consultation; control or dominance of decision-making processes; participation through sub-national forms of government and participation through autonomy arrangements, etc. It is quite obvious that these forms of participation are interpreted within the domestic realm.

The OSCE High Commissioner on National Minorities in the 1999 Lund Recommendations elaborated a number of different forms of participation: Special representation in executive, legislative organs of the state; electoral systems that ensure adequate representation; mechanisms to ensure that interests of minorities are considered in state agencies and institutions to advise on minority issues; institutions for consultation; control or dominance of decision-making processes.

States are free to choose from amongst the different institutional solutions as to the best fitting answer to the particular situation of minorities in their country. It seems to be clear that neither FCNM, nor other international instruments consider representation in legislative bodies as a *sine qua non* requirement for minorities' effective participation in public life. Moreover, it is important to recall a decision of the European Commission of Human Rights on the admissibility of the complaint of the *Südtiroler Volkspartei* against the 1993 electoral reform in Italy. The Commission concluded that states are not required to establish specific measures for political representation of minorities. The Commission noted that: *"the electoral law in issue applies to all candidates and the Convention does not compel the Contracting Parties to provide for positive discrimination in favour of minorities."*[9]

Against this background, participation in elected bodies at national level depends exclusively on domestic legislation. National parliaments are not only the main legislative bodies but also the core institutions of political representation. But it is also important to note that the FCNM, just like relevant OSCE documents use the term "effective participation", so if participation of minorities in national parliament is granted or facilitated, it could also be expected to provide an effective tool for minorities to participate in decision-making. Measuring effectiveness in this regard is still open to debate.

In the followings the general conditions of the representation of minorities in national legislative bodies will be explained and the relevant legal regulation in Hungary and Italy will be analysed. Both countries have a long legal history of

[8] *Ibid.*

[9] The European Commission of Human Rights Decision on the Admissability of Application No. 25035/94 by Silvius MAGNAGO and SÜDTIROLER VOLKSPARTEI against Italy, 15 April 1996

minority rights protection measures, and both countries have recently adopted specific provisions for minorities' parliamentary representation.

2. Participation in Elected Bodies

Participation in the work of the parliament is exceptionally important for minorities. Under the general rules of electoral procedures, minorities usually face difficulties in gaining seats in the parliament as small minority communities cannot mobilize enough voters to pass the threshold, or in other cases the minority community itself may be politically weak and passive.

States can help and facilitate the representation of minorities in parliament through various measures. The measures targeting directly and exclusively minorities in this aspect shall be distinguished from general rules applying to other social groups. In Europe, we may assume that the basic requirements for political participation (such as citizenship, the right to vote and stand for election, freedom of association) are granted also for members of minorities. In exceptional cases, there is no need for further measures to guarantee seats in parliament for minorities. In North Macedonia or in Montenegro, Albanian minorities produce different competing parties through electoral competition. In other cases, minorities are pushed to create so-called umbrella parties based upon the strategy of "unity towards the outside with simultaneous differentiation within"[10] – this is the case of the *Südtiroler Volkspartei* in Italy or the *RMDSZ* - Democratic Alliance of Hungarians in Romania.

In any case, the selection of electoral system is crucial and three big groups of systems can be distinguished: plurality-majority systems, semi-proportional systems and proportional systems. The plurality-majority system is based on a 'winner-takes-all' approach. This election system is usually disadvantageous for minorities and they will be left out from parliament, except for the case when they live in overwhelming majority in some of the electoral districts. But even in such cases affirmative ethnic-national gerrymandering[11] may be an appropriate tool for facilitating minority representation in parliament. Proportional systems focus on representativeness and may be able to appropriately reflect the ethnic composition of the population. Plurality-majority systems tend produce a strong and stable majority for government whilst proportional systems tend to produce, often fragile, coalition governments. However minority parties can get better involved in coalition governments and in this way may also participate in the executive decision-making.

Finally, semi-proportional electoral systems are a mid-way between the proportionality of proportional electoral systems and the majoritarianism of plurality-voting systems. However, in any case for demographic reasons, none of the above mentioned electoral systems can *per se* guarantee the representation of

[10] *Ibid.*, 390.

[11] Here I use the term affermative ethnic-national gerrymandering as a reformulated term of the *racial gerrymandering*, used in many cases in the USA for designing electoral districts with Afro-American majority.

minorities in parliament, simply because most minority communities are too small to gain enough votes to get seats in parliament.[12] In this context minorities need special measures to grant them representation in parliament. However, not all states adopt such measures: either for constitutional restrictions or because the politically most 'important' minorities are already represented by their minority parties in the parliament. Furthermore, majority political parties may include persons belonging to minorities on their list of candidates. Mainstream parties may put minority representatives on their list either out of political calculation or because some candidates have multiple identities or a personal vocation to represent a minority.[13] There are voting systems which even promote the integration of minority interests. The integration of minority representatives in general political parties can also be motivated by putting persons belonging to minorities on eligible places on party lists. Moral or political deals between parties and minority organisations might exist in setting quotas for minority candidates.[14]

2.1. Preferential measures for minority representatives

In states, which recognise ethnic, religious or linguistic minorities, there can be special mechanisms in place to guarantee or promote minority representation in the parliament. The possible measures include reduced requirements for registration; privileged funding for minority parties; favourable delimitation of constituencies; lowered threshold and reserved seats. Electoral systems based on proportional representation frequently include provision for a certain threshold that must be passed by a party in order to enter the parliament. It is a logic element to favour political stability, stable government majority and to avoid a breakage of parliament into extremely small political groups, which could hinder the efficient work of the legislature. Thresholds always represent a challenge for minorities, especially when they represent only a small percentage of the population. As a matter of fact, minorities may be deprived of any political representation by their own minority parties if thresholds are applied without any modification. Thresholds may be even defined purposely for excluding certain minorities from the parliament e.g., the 10% threshold in Turkey, effectively introduced to prevent Kurdish parties to enter in parliament.

In order to overcome this problem, many States apply a specific threshold for minority parties at national parliamentary elections. For example in Poland, minority parties are completely exempt from the voting threshold.[15] However such exemptions have to be justified because they may be seen as privileging minorities and offering "stronger" political rights to them. Marko argues this is not necessarily the case as the introduction of a threshold itself represents an

[12]See *ibid.* p. 390-392.
[13] C. Casonato, *La tutela delle minoranze etnico-linguistiche in relazione alla rappresentanza politica: un'analisi comparata*, Trento, 1998, 4.
[14]W. Kymlicka, *Multicultural Citizenship*, Oxford, 1995, 133-134. Cfr. also A. Verstichel, *Participation, Representation and Identity*. Antwerp, 2009, 399-400.
[15] L. A. Pap, *Representation or Ethnic Balance: Ethnic Minorities in Parliaments*, in *Journal of Eastern European Law*, 2000, 261-339.

exemption from the strict proportionality principle. The logic of thresholds is to prevent "too small" parties from parliamentary representation to guarantee government stability. In Marko's line of reasoning, this logic does not legitimize the exclusion of minority parties by threshold requirements. The exemption from the exemption is not a privilege but a constitutional need under a proportionate electoral system. Under proportionate voting system, exemptions from electoral thresholds are a necessary condition to meet the demands of equal protection.[16]

Some States have introduced the reservation of a certain number of seats in parliament for securing the representation of minorities. This measure is a real guarantee for effective minority representation in parliament and there are many different mechanisms to grant reserved seats. One important issue in this regard is the number of reserved seats compared to the size of assembly and in relation to the size of minority population. Another important question in this context the special voting rights assigned to the minority representatives. Verstichel identified different voting rights models in different countries.[17] For example laws on issues affecting minorities or minority rights must pass with a qualified majority e.g., two thirds in Croatia. Even if due to their low number, minority representatives are not able to block the adoption of a law, it becomes more difficult to obtain a qualified majority and thus encourages compromise. Other voting rules might require a special voting, on a "cross-community" basis provides an effective veto right to all groups, see typical power-sharing arrangements, e.g. Belgium.[18] Even small minority communities may have veto rights in parliament without a territorial power-sharing system. In Slovenia, the representatives of the Hungarian and Italian minorities, occupying reserved seats in parliament, based on Art. 64 of the Constitution, must give their consent to laws and other acts of the National Assembly which concern issues regarding the rights of minorities. These veto rights procedures are nevertheless in general considered to be a last resort because of the serious political complications that will entail.[19] Moreover, veto rights do not resolve minority problems alone. As Marko pointed out this is true to the extent that minorities can only prevent laws from being adopted which would violate their interests but cannot force laws to be adopted in their interests.[20]

In this broader context, it is interesting to see the specific provisions aimed at facilitating the parliamentary representation of minorities in Hungary and in Italy.

[16] J. Marko, *General Presentation on the Representation and Participation of National Minorities in Decision-Making Processes*, 2 December 1997, www.coe.int/T/E/Human_Rights/Minorities/1._GENERAL_PRESENTATION/PDF_JP%20Brdo%20publication%201997.pdf

[17] Verstichel, *op. cit.*, 431.

[18] F. de Varrennes, *Towards Effective Political Participation and Representation of Minorities*, UN Working Paper, E/CN.4/Sub.2/AC5/1998/WP4

[19] Verstichel, *op. cit.*, 433.

[20] J. Marko, *General Presentation on the Representation and Participation of National Minorities in Decision-Making Processes*, 2 December 1997, www.coe.int/T/E/Human_Rights/Minorities/1._GENERAL_PRESENTATION/PDF_JP%20Brdo%20publication%201997.pdf

3. Hungary and the Representation of Minorities in Parliament

In Hungary, the situation of minorities was seen as an important political issue since the 1989 political transition,. The first law on minority rights was adopted in 1993 and the intention behind the 1989 constitutional regulations on minorities and the subsequent Act 77 of 1993 on the Rights of National and Ethnic Minorities (Minority Act), was to find a solution for the particular situation of a large number of small, scattered, in large part assimilated national minorities and the significant Roma community a divided community, dispersed throughout the territory of the country.[21] Furthermore while all other minorities are well integrated into society, Roma often live in socially marginalized communities, in suburban areas and often face discrimination in different areas of everyday life. The primary goal of the legislator was not to offer a general remedy to all problems related to minorities but much more to establish appropriate institutional structures for guaranteeing the survival of minority identities, cultures, languages and assuring the political participation of minority communities.[22] The leading principle was to offer a chance to these weak communities to revive their identity, to organise themselves and to preserve their culture and language. The aim of minority policy in the new democratic Hungary was adjusting assimilation processes characterising previous periods.

3.1. Cultural autonomy and political representation

The explicit aim of the Minority Act was the establishment of a personal cultural autonomy (Arts. 21-54).[23] The organizational consequence of this, and thus the essence of the entire regulation, is a system of minority self-governments endowed with legal status. In principle minority self-governments are designed by the law as legitimate representative bodies of minority communities, elected by the members of that community. They are invested with administrative and political powers to run minority institutions, to consult with state authorities and to participate in decision-making on issues relevant for minorities.[24]

[21] The Roma community in Hungary is composed of three main groups, according to their mother tongue the Hungarian-speaking Romungro (89,6 per cent), the Romani-speaking Gypsy (4,7 per cent) and the Romanian-speaking Boyash (5,7 per cent) groups. E. Kállai, *The Hungarian Roma Population During the Last Half-Century* in E. Kállai (ed.) *The Gypsies/the Roma in Hungarian Society*. Budapest, 2002, 35-51. and I. Kemény, *Linguistic Groups and Usage among the Hungarian Gypsies/Roma* in E. Kállai (ed.) *The Gypsies/the Roma in Hungarian Society*. Budapest, 2002, 28-34.

[22] Cf.: Report submitted by Hungary pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of Minorities, 1999. Council of Europe, ACFC/SR(1999)010. PART ONE - Introduction.

[23] Personal cultural autonomy here means that all and only the members of a minority community are entitled to elect their autonomous body (or bodies) – having competence by law in cultural issues and for the political representation of the minority (both at local and at national levels). A fundamental element here is the principle of free choice of identity: every person is free to declare his/her minority identity and to participate in the political and cultural life of the minority community through cultural autonomy arrangements.

[24] Cfr. B. Dobos, *Between Importing and Exporting Minority Rights: The Minority Self-Governments in Hungary* in L. Salat et al. (ed.), *Autonomy Arrangements around the World: A Collection of Well and Lesser Known Cases*, Cluj-Napoca, 2014, 275-298.; B. Vizi, *Minority Self-*

Nevertheless, the 1993 Minority Act did not guarantee the parliamentary representation of minorities. Neither the electoral laws – prescribing a relatively high threshold of 5% – nor the Minority Act recognised the right of minorities to parliamentary representation.

The Constitutional Court adopted a decision in 1992, that held that a constitutional omission has occurred when the political representation of minorities was not legally granted. The 1949 Constitution, in force until 2011, set forth under Art. 68 that "[t]he national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages. (3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country."[25]

In 1992, before the adoption of the Minority Act, the Constitutional Court decision declared the omission, and in 1994,[26], it once more reaffirmed this position, underlying that the recognition of minorities as state constituent elements entails their political representation.[27] Apparently, the Court did not see the minority self-governments as appropriate political representative bodies. However this approach was rather ambiguous as it did not explicitly mention "parliamentary representation," but referred to "general representation," thus, the legislation in question could be regarded as completed by 1993. The obligation for parliamentary representation was stipulated by the 1993 Minority Act under Art. 20 but was never actually instituted, and the debate remained open as there was no direct constitutional obligation on this issue. Furthermore Hungary was repeatedly criticized by international bodies and civil society actors for not meeting its self-induced obligations.[28] The issue was lingering and dozens of consultations and meetings were held over the two decades since the 1989-1990 political transition till 2011.

Following the landslide victory of the right-wing FIDESZ at the 2010 parliamentary elections, the new government obtained a solid two thirds i.e., constitutional majority in the Parliament. The new parliamentary majority wanted to change the post-transition political structures of the country and

Governments in Hungary - a Special Model of NTA? in T. Malloy – A. Osipov – B. Vizi (ed.) *Managing Diversity through Non-Territorial Autonomy : Assessing Advantages, Deficiencies and Risks*. Oxford, 2015. 31-52.

[25] Act 20 of 1949.

[26] Legal Defence Bureau for National and Ethnic Minorities, Minority Rights Group International, & Serbian Institute of Budapest, "Submission to the 100th session of the Human Rights Committee: Shadow report to Hungary's fifth Periodic Report under the ICCPR" (2010).

[27] 35/1992. (VI. 10.) AB határozat, ABH 1992, pp. 204–205.

[28] A. L. Pap, *Recognition, representation and reproach: New institutional arrangements in the Hungarian multiculturalist model* in B. Vizi – N. Tóth – E. Dobos (eds.) *Beyond International Conditionality*, Baden-Baden, 2017, 103-110.

adopted a new constitution – the Fundamental Law.[29] The new constitution introduced significant symbolic changes affecting also the position of minorities in Hungary. The term "minority" was replaced by the historical expression of "nationality". In coherence with the new constitutional framework the 1993 Minority Act was replaced by the end of 2011 by the Act on the Rights of Nationalities (hereafter Act on Nationalities).[30]

The Act on Nationalities was adopted as a cardinal act i.e., requiring two-third majority in the parliament which maintains the traditional importance of minority issues in the Hungarian constitutional structure. The new law drew great attention both in Hungary and at international level. The Act on Nationalities did not change the fundamental principles of minority rights protection of the 1993 Minority Act, it is a more complex, a more detailed piece of legislation.[31]

The Act on Nationalities puts a strong emphasis on the concept of cultural autonomy.[32] The Act recognises collective rights and also autonomy as a manifestation of collective rights.[33] In this sense the law distinguished cultural autonomy from nationality self-governments, it embodies a great variety of collective rights – including the establishment of a nationality self-government. The self-government, as an elected body is rather the materialization of cultural autonomy, a representative forum and an administrative tool to realise cultural autonomy.

The Act on Nationalities gives on different policy issues the right of consultation or the right of agreement to nationality self-governments, such rights are granted in relation to public education, cultural self-government affecting the nationality concerned (Arts. 27 and 33-49).[34]

3.2. Parliamentary representation of minorities – from elected deputies to nationality advocates

After several unsuccessful legislative attempts and a two-decade long political debate, for the first time since the 1989-1990 political transition, the second Orbán

[29]English version: The Fundamental Law of Hungary (adopted on 18 April 2011) < www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> (accessed on 07 April 2017)

[30] Act 179 of 2011 on the Rights of Nationalities.

[31] Appendix 1 of the law lists the 13 nationalities which ex lege are entitled to collective rights, while for enjoying individual rights the law requires a subjective self-identification with one of these nationalities. The nationality communities recognised by law are the same as before: Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian.But this enumeration is not exclusive: the Act allows – in the same way as in the previous law – for any other minority group to apply for recognition as a minority if it fulfils the conditions under Art. 1 (2) and is supported by at least 1000 citizens who profess to belong to it (Art. 148(3)).

[32] In this sense it is similar to the approach of the Croatian law on minorities.

[33] Art. 2. (3) „national a collective nationality right that is embodied in the independence of the totality of the institutions and nationality self-organisations under this Act through the operation thereof by nationality communities by way of self-governance"

[34] However this is not an absolute veto right, according to the law each parties have 30 days for issuing their opinion which may be postponed by another 30 days, after which if the nationality self-government did not declare its position the court may take a decision in substitution.

government adopted and actually implemented legislation that set forth the parliamentary representation (or at least, presence) of minorities.

The Fundamental Law does not contain any specific provisions concerning the parliamentary representation of nationalities – it merely states that the participation of nationalities in the work of Parliament must be ensured. The detailed regulations are laid down in two laws on the electoral system approved by the Parliament in 2011 and 2013, respectively.[35] Nationalities are entitled to win preferential seats in the 199 member Parliament as part of the contingent of 93 seats that are distributed based on national lists. If any of the nationality lists wins a preferential seat then the seats that must be allocated between party lists will be reduced by the corresponding amount. Nationality lists can only be nominated by national-level nationality self-governments. This means that the parliamentary representation of minorities is based upon representation through minority self-governments, which implies that other players, such as parties, have no influence on the composition of the list and cannot nominate candidates. Only a single preferential seat can be won by each national minority and to win more than one seat, a nationality list can compete for additional seats based on the general election rules that require securing enough votes to take the five per cent threshold. The law does not recognise the expression of multiple identities – a citizen can choose to vote either for a party list nominated according to the general election rules or, if they is registered in the nationality voter roll, for one of the nationality lists. One can only enrol in one minority register. This provision is rather problematic because it forces the citizen to choose between their political preferences and their minority identity representation in the parliament. Nevertheless, the German minority community was successful in 2018 in mobilizing their electorate to elect the first member of parliament, representing a nationality community.

According to the Act 36 of 2013 on Electoral Procedures, the rules for registering in the nationality voter rolls are not different from the rules applicable to nationality self-government elections – essentially, a principle of free self-identification prevails in this context.[36] According to the Act 203 of 2011 on the Election of the Members of Parliament, a national list can be nominated either as a regular party list or a nationality list. Nationality lists can be nominated by national-level nationality self-governments and such a nomination requires the endorsement of at least one per cent of nationality voters enrolled in the central registry, though the maximum necessary number is 1,500 subscription of supporting citizens. A candidate on the list must be someone who is also enrolled in the central registry as a person affiliated with the given nationality (national

[35] Act 203 of 2011 on the Election of the Members of Parliament Articles 7-18., Act 36 of 2013 on Electoral Procedure Articles 86-87.

[36] According to Art. 86 of the Act 36 of 2012 on the National Assembly requests for registration as a nationality voter shall contain: a) an indication of the nationality; b) a declaration by the voter, in which the voter professes to belong to said nationality; c) an indication of whether the voter also requests to be registered as a nationality voter with regard to the election of Members of Parliament.

minority), and, moreover, a list must contain at least three candidates. It is important to underline that the law does not allow for two or more national (level) nationality self-governments to nominate a joint list. In addition, all organizations representing minority interests, others than the nationality self-governments are excluded from the possibility of nominating lists for the parliamentary election. The law requires a minimum number of votes necessary to win a seat. According to the law, one quarter of the number of votes necessary for gaining a seat in the parliament for parties is required for minority lists. In 2014 and in 2018 it effectively implied that some 20,000 to 25,000 votes were needed for minority parliamentary representation. This is clearly a preferential number in respect to the generally applicable rules,[37] nevertheless, given the demographics of minorities in Hungary, only the Roma and the German minorities have a chance at actually succeeding in passing this threshold.[38] This means that for the other 11 minority communities the nationality advocate remains the only option for parliamentary representation.

3.3. Nationality advocates

The legal status of the nationality advocate is now reviewed. The advocate just like a member of parliament representing a nationality, cannot be the president or member of a nationality self-government, even if they were nominated by the latter.

Article 18 of the Act 203 of 2011 on the Elections of Members of Parliament reads as follows: "(1) Any nationality, which drew up a nationality list but failed to win a mandate by such list, shall be represented by its nationality advocate in Parliament. (2) The nationality advocate shall be the candidate who ranked first on the nationality list."

The nationality advocate may freely choose to take oath either in Hungarian or in their minority language.[39] According to the Act 36 of 2012 on the National Assembly (Parliament), the nationality advocate may speak during plenary sessions but with certain limitations.[40]

[37]Art. 16, Act 36 of 2012 on the National Assembly.

[38] Imre Ritter, the candidate of the German Nationality Self-Government gained his parliamentary seat by getting 26477 votes in 2018, while only 5703 Roma voted for the Roma candidate. https://www.valasztas.hu/

[39] Act 28 of 2008 on taking oath by elected public servants.

[40]The House Committee (*Házbizottság*) is in charge of parliamentary procedures and is made up of the Speaker of Parliament, their deputies and the leaders of the parliamentary groups and they assesses whether a given issue pertains to the rights or interests of nationalities. The fact that the House Committee is vested with the right to decide whether a given item on the agenda affects the rights and interests of nationalities constitutes an obvious limitation of the advocate's powers. According to Act 36 of 2012 on the National Assembly Art. 11, within the framework of the provisions of the Rules of Procedure, the House Committee shall (…) specify the items on the orders of the day affecting the interests or rights of nationalities (…) According to Art. 13 the chair of the committee representing the nationalities may initiate with the Speaker the convening of the House Committee in the interest of the House Committee identifying an item on the orders of the day as an item affecting the interests or rights of nationalities. The Speaker shall decide on convening the House Committee. The chair or its deputy may attend the meeting of the House Committee in these cases.

The nationality advocate may even submit proposals for a decision to Parliament and submit questions to the government, members of the cabinet, the Prosecutor General, the president of the National Audit Office or the Commissioner of Fundamental Rights on issues pertaining to the rights and interests of nationalities.

According to the Act on the National Assembly (Parliament), a parliamentary committee has to be set up specifically representing nationalities. This committee submits initiatives and proposals that serve the interests and rights of national minorities, issues opinions on relevant proposals, and is also involved in monitoring the government's work relating to nationalities.[41] This is the only parliamentary committee in which the nationalities advocate is a voting member.[42] The advocate and their status, apart from the limitations on their right to vote, and their competencies are limited to nationality affairs, is equal to that of other members of parliament e.g., they receives remuneration, has an expense account, enjoys immunity,.

The nationality advocate, or a member of parliament who is a member of a nationality and obtained their seat as a nominee on a nationality list, may speak and submit bills and other documents in their native language. If Parliament or one of its committees takes up their proposal it is then debated in Hungarian.

In general, the solution adopted by the Hungarian legislator for the representation of minorities is rather complicated. The electoral procedure is questionable as it has introduced severe limits to competition between different

[41] Act 36 of 2012 on the National Assembly Art. 22 (1) The committee representing the nationalities shall be an organ of the National Assembly acting in the field of the interests and rights of nationalities, in charge of putting forward initiatives, making proposals, delivering opinions, and contributing to supervising the work of the Government, exercising the powers specified in the Fundamental Law, in Acts, in the provisions of the Rules of Procedure laid down in a resolution and in other resolutions of the National Assembly. (2) The committee representing the nationalities shall take a position on the report prepared by the Government on the state of the nationalities, and on the annual report of the Commissioner for Fundamental Rights. (3) The members of the committee representing the nationalities shall be the Members obtaining mandate from a nationality list, and the nationality advocates. (…)

[42] Art. 29 (1) of the Act 36 of 2012 on the National Assembly: The nationality advocates shall have equal rights and obligations, they shall perform their activities in the interest of the public and the nationality concerned, and they shall not be given instructions in that respect. (2) The nationality advocate may speak at the sitting of the National Assembly if the House Committee considers that the item on the orders of the day affects the interests or rights of nationalities. In an extraordinary matter, following the debate on the items on the orders of the day, the nationality advocate may speak in the manner determined in the provisions of the Rules of Procedure laid down in a resolution. The nationality advocate shall have no right to vote at the sittings of the National Assembly. (3) The nationality advocate shall participate with a right to vote in the work of the committee representing the nationalities, and he or she may – on the basis of the decision of the chair of the standing committee or of the committee on legislation, or if the House Committee decides so in the framework of its decision according to paragraph (2) – attend, in a consultative capacity, the sittings of the standing committees or of the committee on legislation. (4) The nationality advocate may address questions to the Government, the member of the Government, the Commissioner for Fundamental Rights, the President of the State Audit Office and the Prosecutor General about matters within their functions and affecting the interests or rights of nationalities. Section 29/A (1) The nationality advocate shall be entitled to immunity. The rules pertaining to the immunity of Members shall apply to the immunity of the nationality advocate.

minority organisations. The privileged position of the nationality self-governments in the selection of candidates does not seem to be fair. Moreover, the legal position and the competencies assigned to the nationality advocates are also very complex and do not guarantee effective participation in the parliamentary decision-making process. In this context, it may be better to talk about the parliamentary representation of minorities rather than their participation in legislative competencies.[43]

4. Parliamentary Representation of Minorities in Italy

The Italian Constitution only recognises linguistic minorities, as stated under Art. 6. „*The Republic safeguards linguistic minorities by means of appropriate measures.*"[44] The omission of national or ethnic identity in this context reflects the particular approach of the Constituent Assembly in 1946-1947 who saw citizenship as a neutral and the only legitimate link between the individual and the state. This civic concept of the nation and the state was meant to see only one nation – the Italian as the only political community, a *demos*. However, at the same time it recognised different linguistic, cultural groups within the population. The legal measures mentioned in the Constitution were only aimed at the preservation of this cultural, linguistic identity. However the 'appropriate measures' for a long time remained unclear. At regional level there have been attempts to safeguard the rights of linguistic minorities, especially in the regions having a special status under the Constitution. The Constitutional Court noted in its decision in 1975 that "the principle of the protection of linguistic minorities (…) undoubtedly presents something different and something in more in respect to the equality of citizens (…) The protection of minorities (…) means (…) a need for a special, differential treatment in application of Art. 6. of the Constitution".[45] However, at the national level the Italian legislator adopted a specific law on the rights of linguistic minorities as late as 1999[46] focusing on the linguistic minority rights (hereinafter Act on Linguistic Minorities). In Italy there are as many as 12 different minority groups living in very different regions each with a different social, demographic and administrative context.[47] The particular situation of larger geographically compact minorities e.g., German speakers in South Tyrol, the Francophone community in Valle d'Aosta or the Slovene community in Friuli-

[43] S. Móré, *A nemzetiségi szószólói intézmény jogi kerete és működésének első két éve*, in *Parlamenti Szemle*, 2016/2, 30-51.
[44] Constitution of the Italian Republic *Gazzetta Ufficiale* 27 dicembre 1947, n. 298, in English accessible at: <https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf>
[45] Corte costituzionale italiana 86/1975. *Gazzetta Ufficiale* 23 aprile 1975, n. 108.
[46] Act n. 482 of 15 December 1999. *Gazzetta Ufficiale* 20 dicembre 1999, n. 297.
[47] F. Palermo, – J. Woelk, *Diritto costituzionale comparato dei gruppi e delle minoranze*, Milano, 2010, 281-316. In total around 2,5 million people (cca. 4,5% of the population) belongs to traditional national or linguistic minorities. The 1999 Act on Linguistic Minorities under Art. 2. recognises „to protect the language and culture of" Albanians, Catalans, Germans, Greeks, Slovenes, Croats and „those who speak French, Franco-Provancal, Friulan, Ladin, Occitan and Sard".

Venezia-Giulia, is regulated under the special autonomous arrangements in place in these regions. In the case of the German and Slovene communities, there are also bilateral international treaties in force granting special rights to them. Indeed they are often called "superprotected minorities", even if there are significant differences between their legal status and their specific rights. There is another group of minority communities which are recognised by the Act on Linguistic Minorities in a similar way but they live in ordinary regions and under very different legal protection measures.[48] The Constitution focuses exclusively on the linguistic characteristics of minorities hence the protective measures adopted at national and at regional level show a great variability on how the special needs of minorities for participation in public, political life are reflected in legislation. The Italian Government in 1999, in its first report submitted to the Council of Europe under the monitoring procedure of the Framework Convention, listed a number of measures promoting the political representation of minorities: "As regards participation in political life, since Article 51 of the Constitution provides that "all citizens of either sex shall be eligible for public office and for elective positions on conditions of equality, according to the rules established by law", other measures currently in force are designed to encourage the participation of the recognised linguistic minorities. The most important measures are the following: "Section 7 of Law No 277 of 4 August 1993 establishes that the fixing of the single-member constituencies for the election of Deputies in the areas in which recognised linguistic minorities exist must facilitate their inclusion in the smallest possible number of constituencies. Section 7 of Law No 276 of 4 August 1993 makes the same provision in respect of the election of Senators. (…) Section 12 provides that it is possible to form unions between the various lists of candidates submitted by parties or political coalitions which represent those minorities. In addition, Section 22 contains special rules on the allocation of seats between candidates from the linguistic minority's list."[49]

In the past 20-25 years the Italian electoral system has been through substantial changes in various forms. Nevertheless, the preferential treatment afforded by the electoral law in 1993 was targeting large linguistic minorities living in regions with special status. The electoral law overlooked the problems related to the representation of small minority communities living in regions under ordinary statues. This particular distinction has not changed in the intervening time.

4.1. Recent guarantees for linguistic minorities under the electoral system introduced by the 2015-2017 electoral reforms

In recent years, there has been a heated debate about the electoral system in Italy. The 2015 legislative reform on the electoral system – affecting only the elections

[48] There are also other minorities, like the Rom and Sinti who are not recognised by the law at all.

[49] *Report submitted by Italy pursuant Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities*, 3 May 1999, ACFC/SR(1999)007 p. 73.

of deputies in the lower chamber – was adopted by the Act n. 52 of 6 May 2015 (often referred to as *Italicum*).[50] Like previous electoral legislation, since 2005 (so-called *Porcellum*)[51] this law introduced a threshold for party lists and a double turn election mechanism, and a "winning premium" at national level for the winner party, aimed at securing a stable governing majority. Although the Constitutional Court found many provisions of the Act unconstitutional,[52] the provisions relevant to the political representation of linguistic minorities remained unchanged by the Constitutional Court's decision. The normative framework was rather disadvantageous for minorities, minority parties and minority candidates – the introduction of a threshold and a second round in the elections would make almost impossible for small minority communities to have any chance to gain a seat in the Parliament. The Constitutional Court's decision on deleting a second round in this sense was seen as a positive development for minorities. Nevertheless, as a consequence of the Constitutional Court's decision the parliamentary parties adopted new legislative regulations, finally reaching a viable and so-far durable consensus on the so-called *Rosatellum*[53] (named after its drafter MP Ettore Rosato).

One of the main questions under the new electoral system is the delimitation of electoral districts. In the regions of South Tyrol (Trentino Alto-Adige/Südtirol) and Valle d'Aosta/Valleé d'Aoste, the Act creates single-member electoral districts. This kept in place the existing preferences for minority candidates in these regions. Strong minority parties in a single-member district are more easily able to win than in plurinominal districts. For the rest of the country, under the law the territory of the country shall be divided into plurinominal electoral districts. The delimitation of these districts however is required to take into account the geographic distribution of historical linguistic minorities (those listed in the Act on Linguistic Minorities). Article 3(1)d of the 2017 Electoral Act states that the geographic delimitation of the electoral districts shall take into account the need to include minorities in as few districts as possible. Moreover, the same provision states under para. (1)e that in Friuli-Venezia Giulia, a plurinominal electoral districts should be created in a way to favour the access to parliamentary representation of the Slovene minority living there.[54] The 2017

[50]Legge del 6 maggio 2015, n. 52 Disposizioni in materia di elezione della Camera dei deputati. *Gazzetta Ufficiale*, 8 maggio 2015, n. 105.

[51] Legge 21 dicembre 2005, n. 270 Modifiche alle norme per l'elezione della Camera dei deputati e del Senato della Repubblica. *Gazzetta Ufficiale*, 30 dicembre 2005, n. 303

[52] Communica Stampa della Corte Costituzionale, 25 gennaio 2017.

[53] Legge 3 novembre 2017, n. 165, "Modifiche al sistema di elezione della Camera dei deputati e del Senato della Repubblica. Delega al Governo per la determinazione dei collegi elettorali uninominali e plurinominali"

[54]This provision was introduced by the so-called Italicum in 2015 and remained unaltered in the subsequent 2017 electoral law. Cfr. M. Monti, *Rappresentanza politica preferenziale delle minoranze e uguaglianza del voto: considerazioni alla luce della recente disciplina del c.d.* Rosatellum *e del sindacato della Corte in materia elettorale*, in *Federalismi.it* 2018, 2-3. https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=35838 and F. Guella, *Le garanzie per le minoranze linguistiche nel sistema elettorale c.d. Italicum*, in *Rivista AIC* 2015, www.rivistaaic.it/le-garanzie-per-le-minoranze-linguistiche-nel-sistema-elettorale-c-d-italicum.html, 8-9. Provision in accordance with Art. 26. of the Act on Slovene Linguistic

Electoral Law relied on *Italicum*, when it introduced a new approach by requiring a favourable redrawing of electoral districts for minorities over the entire territory of country. It offers – even if rather slight – new chances for minorities living in ordinary regions to gain a seat at the parliamentary elections. Besides, the new law keeps also the preferential guarantees for the regions with special status, where special regional legislation provides protective measures for linguistic minorities. At counting the final results of the elections the electoral offices shall not take into account only those party lists that reached the 3% threshold at national level but in the regions with special statues also the party lists of minorities living in the region and reaching 20% of the votes in that region.[55] The new electoral law intends to preserve the traditional representation of the South Tyrolean German speakers and the French speaking community of Val D'Aosta/Valleé d'Aoste. Both communities are large enough, well organised and politically mobilised to be usually able to gain seats in the Parliament. The fact that the new law specifies also the linguistic minorities (i.e. the Slovenian community) in Friuli Venezia Giulia in this aspect completes the list of regions with special statute, where potentially a linguistic minority may gain a seat in parliament (either in the Chamber and in the Senate) under preferential conditions. In fact, the special guarantees for favouring minority candidates in the regions with special statue seems to be a stable element in Italian electoral system.[56] This means that the above-mentioned three minority communities get a political guarantee for parliamentary representation, i.e. the preferential electoral provisions offer only the *possibility* for minority candidates, they still need a substantive electoral support to gain a seat in parliament.

5. Conclusions

Both Hungarian and Italian constitutional systems recognise the specific needs of minorities to protect their identity. However, the two legislative systems translate this constitutional duty in a different way to the political representation of minorities at national level. The new constitutional structure, developed from democratic transition in Hungary gives a strong, but symbolic position to minorities recognising them as state constituent elements. The question of parliamentary representation of minorities was finally resolved in 2010 in a rather ambiguous way. Even under the preferential provisions in practice only the German and Roma minorities have a chance to gain a seat in parliament. The position of nationality advocates can hardly be seen as an effective tool for minorities to participate in decision-making, however it offers to all – irrespective

Minority. Norme a tutela della minoranza linguistica slovena della regione Friuli-Venezia Giulia. *Gazzetta Ufficiale* 8 marzo 2001, n.56.

[55] This preferential treatment was already introduced in 2005, by Art. 1(12) of the Electoral Act n. 270 of 21 December 2005.

[56] *Elezioni politiche del 4 marzo 2018 – Il dossier*. Ministero dell'Interno, Dipartimento per gli Affari Interni e Territoriali, Febbraio 2018, www.interno.gov.it/sites/default/files/4_marzo_2018_dcse_dossier_politiche.pdf.

of their demographic size – minority communities a presence, a representation in the national legislative body.

On the other hand, the Italian constitutional regime for a long time refrained from recognising the particular political needs of minorities, even if the large minority communities could regularly gain seats during the troublesome electoral history of democratic Italy without introducing special measures. The electoral reform introduced first by the *Italicum* in 2015 and later confirmed by the *Rosatellum* in 2017 takes also into account the special situation of minorities, however it does not establish a granted representation for minorities – it is limited only to a few preferential measures that favour territorially concentrated minority communities living in regions with special autonomy (namely French-speaking Val D'Aostans, German-speaking South-Tyroleans and Slovene-speakers in Friuli Venezia Giulia). In this way it offers a political guarantee for full parliamentary representation of these regional linguistic minorities, but separates these communities from other linguistic minorities, who do not have a chance for political representation in the national legislative body.

Looking at the international legal norms on the matter and on the debates emerged in Hungary and Italy over the representation of minorities in parliament, it may still be concluded that minority rights related to the preservation and promotion of minority identity are closely related to the minority's access to political representation in decision-making bodies. The constitutional recognition of the cultural, linguistic rights of minorities does not *per se* guarantee participation in political life. And if national legislation grants or facilitates minority representation in national parliament in any form it may easily lead either to an unbalanced distinction between different minority groups or to granted, but weak presence in decision-making body. Each state needs to find a balanced approach to solve the conundrums of equality, right to effective participation in political decision-making and the principle of non-discrimination. Italy and Hungary – based on their historical, political, social differences – adopted two different, but under international standards, equally viable solutions in this regard.