

Abstract of PhD Dissertation

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**Voter turnout and constitutional law**  
**The voting methods**

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## **I. The subject and aim of the thesis**

The subject of my thesis is the electoral participation in the view of constitutional law, examining the voting methods at the most. One cause of my subject is, that the electoral participation in Hungary is quite low in international and especially in Central European perspective. On the other hand it has to be guaranteed that all constituent can practise the right to vote independently of her/his residence, personal and income circumstances.

The right to vote is a fundamental institution of constitutional law. In this way it can be established the organs, that make the most important decisions in the life of the state. It isn't indifferent that how many citizens participate in the elections, because the representation of the people can prevail in the best way, if more and more citizen participate, and this participation reflect the social structure of the society. In my thesis I examine, if it is important to create the power, what high the turnout is. That's why we must determine what theoretical causes can base the importance of turnout. It's also a question, if the state can or must stimulate higher and higher turnout. Our answer is partly natural: the higher electoral turnout is a real aim, because in a democracy, the bigger part of the people can so participate in the election of the decision-making organ, and it can be calculated, that their opinions are taken into account. Coordinated with it I examined how and what kind of instruments can be fulfilled this aim.

It is a widespread method in the modern world to proceed an elections, that the elector turns out in a polling place on election day, and there s/he cast secretly the vote with the control of a commission without external pressure (traditional voting). But in the last decades in the world and especially in Europe numerous voting methods were created, what are different from this, which gives for the electors easier voting, much more convenience, can reduce administration work, and can increase turnout. In my thesis I care with voting methods at the most, because the newer and modern types of them haven't applied in Hungary yet, that's why it may be a model for the future legislation. I analysed the voting methods at the most in the aspect of voters absent from domicile within and out of the state. Secondly I examined, that universal suffrage makes it possible, that the absent voters may cast their votes, because the rules mustn't result that a certain part of the citizens are deprived form practising the right to vote. If we make possible to cast their votes, the turnout may increase.

In Hungary the electors can cast their votes in traditional way at present, and until 2004 the absent voters staying abroad couldn't practise their suffrage. So it is a question if we apply the new voting methods with or without the actual ones in the future. I must examine

how we can ensure the fair election, the guarantees of the process on these voting methods, and if these methods are good for increasing turnout and ensuring suffrage because of these causes. So it is an actual question from the view of absent voters from domicile both in the state and abroad, what kind of method they vote by, which can solve the problems, and really guarantee them practising the right to vote, and the guarantees prevail and the turnout may increase.

The subject of the research is very actual. By the presently applied absent voting methods (vote by certificate, vote on diplomatic missions) have brought up constitutional anxieties, and by its process (e.g. voting by mobile ballot box) difficulties. Besides the Parliament enacted a new Law on Election to the Members of Parliament, which altered our electoral system much more. The effective rules of the Law on Electoral Procedure are still based on the earlier electoral system, and it hasn't brought into harmony to the new provisions. That's why it is really actual modifying the Law on Electoral procedure, and it is a question, what kind of voting methods we will apply. The new law on election guarantees the suffrage of Hungarian citizens living beyond the borders of the state. It is a question in these citizens which voting methods can guarantee at the most to practise their suffrage. The thesis can give models for these.

## **II. The methods and the conclusions of the thesis**

We can declare, the elections have a lot of functions. One of the most important in our subject is, that it really ensures the participation of the citizens without social, income and other disparities.

Firstly I examined which have the reasons for increasing turnout, then I took the incentives what affects turnout into consideration. I analysed, if the right to vote is a subjective right, secondly if it is a connection between the growth of electoral turnout and legitimacy, thirdly if the different social groups don't turn out equally, why it is useful to impede their turnout.

1. Today the right to vote isn't permitted for certain groups of electors by the state, but every citizen has a subjective right to participate in directing the state, and so practise in dominant influence on of whom compound the representative organs. That's why it must ensure for citizens to participate in the elections, because the more citizens practise this subjective right, the more coloured body is created which reflects more opinions.

2. If the power is constituted by election, it is the question: if it is legitimate only from this or it needs a certain degree of turnout.. We can declare, if the election is fair, and the guarantees prevail, it will be legitimate independently of the degree of turnout. The turnout is only connected with legitimacy, if the election has validity conditions: if the turnout doesn't reach this level, the Parliament couldn't be established in a legitimate way. So I think not the legitimacy but supporting of the power is influenced by the degree of turnout.

3. We can observe decreasing turnout at the most in underprivileged social groups. As the parties don't consider them a possible voter, the solution of their problems can't be expected. That's why it needs their turnout shall increase.

Then I looked over the situation of turnout in Western, Central and Eastern Europe. I applied here the methods of statistical data-processing. I mean that turnout decreases in a lot of states in Western and especially in Central and Eastern Europe. The Hungarian electoral turnout is quite low in the aspect of the Central European states.

It is important to make it clear, why and when the people turn out in the elections. Applying the results of economy, I pointed out that the people turn out at the most, if it is worth for them to turn out, so the benefits of it exceeds the costs.

In the second part of the thesis I dealt with increasing turnout. I examined it especially in the case of absent voters on voting day, because they can't easily practise the traditional voting. It mustn't result that they can't practise their suffrage against their wishes.

The incentives influence electoral turnout I divided into constitutional and non-constitutional law incentives. In the behalf of wider survey I shortly dealt with non-constitutional law incentives, which I divided into social-economic and political incentives. By social-economic incentives basing the results of sociology I examined the effect of income, economic development, education, age etc. Basing the results of political sciences I examined the closeness of election result, the decisiveness of election, the campaign and party structure by political incentives. One of the most important of these is the campaign, which has an unambiguous aim to impede voting. The negative campaign can decrease turnout on the other hand.

I divided the constitutional law incentives into substantive law and procedural law incentives. By this one besides age-limit of voters and the democratic characteristic of elections, the electoral system is substantial. It is usually essential that the rules guarantee the bigger and bigger expression of the voter's will. Applying the results of political sciences I examined electoral systems. In the plurality system the voters can look ahead, who will be the

representative, so it doesn't impede turnout. The two-round majority system gives wider possibility for the voter choice. The validity limit can here impede turnout.. The plurality-majority system can impede turnout, because it is a simple system, the voter can easily understand its working, secondly the voter can vote for persons.

The proportional system is more favourable for turnout because of the free expression of the voter's will. Every vote is important, and the will of the supporters of smaller parties can be expressed. The voters can't decide who will be the representative from the candidate list of the parties. The preferential voting and free lists solve this problem. The electoral threshold decreases the turnout of the supporters of smaller parties. The mixed system can harmonized the advantages of both electoral system, so it may impede turnout.

Apart from procedural law incentives I unambiguously decided that the registration requirements has negative effect for turnout, because it makes the elector for extra work and difficulties, secondly it is strange in the Hungarian electoral system. It has a great significance of voting methods, which decides what kinds of procedural rules voters can cast their votes with.

Firstly I examined if it a proper way for increasing turnout to compulse voting. Compulsory voting means, that the citizens of certain states has a legal obligation to turn out on the voting, and if someone doesn't do this, s/he must face up sanctions. A lot of states give models for this with different extortion willingness. We pointed out two effect of compulsory voting: increasing participation and the increasing number of invalid votes. The turnout unambiguously increased, what looks from the experiences of the states before and after the introduction. The number of invalid votes also increased, because a large number of electors shrug off the sanctions. I pointed out with the method of statistical data-processing, that the participation is increasing much more than invalid votes. I suppose that the turnout and the invalid votes would also increase in Hungary. In the formal socialist states it can exist an ideological resistance with compulsory voting, because the state-enforced turnout lives in the people's memory. In 1990 the free election was considered a great achievement. So numerous person would consider the compulsory voting to be disadvantageous, and to injure this achievement. I think its disadvantages are bigger, that's why I must turn to incentives.

In the third part of the thesis I examined the voting methods of the next aspects:

1. Doesn't it mean an unproportional large burden for the electors to practise a certain voting method?
2. Can the fair election be guaranteed?
3. The subject: Can every absent voter practise the right to vote; only in the state or abroad or both?
4. Can it be applied by domiciled voters, is it favourable for them?
5. The time: Doesn't it extend the process of

election and ascertaining the results? 6. Does it give more favourable method than another methods? 7. The costs: Doesn't it extend the administration of the electoral authorities with a great degree? 8. Expected influence: Can it impede for increasing turnout?

Firstly I examined the voting methods applied now in Hungary (voting by mobile ballot box, voting by certificate, voting on diplomatic mission). I analyzed the Hungarian provisions, practice and the models of another states applying the methods of comparative law.

The physically disabled and who are staying in an institute (e.g. hospital, prison) can vote by mobile ballot box. The second case is connected with voting by certificate. I found the next conclusions: 1. The physically disabled have difficulties, because s/he has to apply in writing form, secondly s/he has to find another persons, who brings the application to the competent authorities. 2. It is more difficult to guarantee secrecy than by voting in polling place, but it can be solved, if the going-out members of the vote-counting committee pay attention for this. 3. Voting is ensured for every physically disabled. 4. It can be applied for domicile voters at the most, and in other places it is connected with voting by certificate. 5. It doesn't extend the process of the election, unless a number of applications arrive. 6. This method can't be applied by external voters. 7. It makes the administration of the electoral authorities larger, but to ensure voting it isn't so large. 8. The turnout is increasing, so the physically disabled couldn't vote without this. Although the writing form decreased the number of applications.

The absent voter within the state borders can vote by certificate. 1. This voting method results for the applier numerous difficulties, but these happen for exercising the right to vote. 2. The fair election is guaranteed with the designated polling ward and the recording of in-both-round voters. So everyone can elect only one candidate. This problem is solved by the new law on election, because the election will have only one round. It hasn't ensured the voting for own candidate, but solving this it would cause a serious administrative burden. 3. Every absent voter within the state can exercise their right to vote. The absent voter who gets to know between the two rounds to be absent on the day of the second round, can't exercise their voting right e.g. taking to the hospital. The new law on election also solve this with the one-round election. If the application is sent in registered letter, the certificate doesn't always arrive in time. 4. It can be applicable for domiciled electors, but in the territory of another polling ward. It is so favourable for them, when they don't stay far away from the vote-certificate-designated polling place. It is favourable who are staying in hospital, in custody, in social institutes, because the members of designated polling ward committee go out to there

with a ballot box, supposing that it is organised well. 5. It doesn't generally contribute to extend the election process and result ascertaining. If a numerous voter in a larger settlement want to vote by certificate, the first round of the 2010 parliamentary election showed it extended the voting period and result ascertaining with a couple of hours. 7. It results much more administration for electoral authorities, especially because of investigating double voting, as it has to hold a separate list. 8. It increases the turnout, but much administration and long queues discouraged numerous electors to vote by this method.

By external voters it is a question what causes ensure their suffrage. Firstly it is the universal suffrage, secondly in case of emigrants they contribute to material goods of the state and creating the democracy. The external voter's suffrage is connected by being affected and informed. The Hungarian solution injures the principle of equal suffrage, compared with the other elector's two votes (single-member district, national list), they have only one vote (national list). I think, it would be better if the suffrage is connected with domicile, because it is hard to keep record of the external voter, and it doesn't prevail the requirement of being affected and informed.

The presently solution for voting abroad is voting on diplomatic missions. The experiences of this are the next: 1. It is hard for the voter, if the diplomatic mission is far away from the voter's place of residence. A long queues is created in the diplomatic missions. The voting process is also complicated. 2. It is guaranteed that only the constituent can cast the vote. The secrecy is also guaranteed because of double-envelope and vote-counting in the state. 3. Numerous absent voters can exercise their suffrage. If someone doesn't know the 16<sup>th</sup> day (or in parliamentary elections the 23<sup>th</sup> day) before election day, s/he will be abroad, s/he will be deprived from voting.. In the two round system the elector who stays in Hungary on the 7<sup>th</sup> day before election day, and abroad on election day, couldn't practise the right to vote. This problem is solved by the new law on election with the one round system. 5. If numerous people apply for the list of a diplomatic mission, it extends the voting process. It also extends voting still the ballots arrives at home, especially in the second round. The legal remedies extend ascertaining the results. 7. It increases the administration of the National Election Office at the most, because it have to prepare the lists of absent voters in each diplomatic mission. It results extra burden for local election authorities to preserve the ballot box of designated polling place, and the members of this have extra work. 8. It increases turnout, because electors staying abroad can vote. Although it discourages who must have to wait for in long queues.



I examined then the methods used abroad, if it is applicable in Hungary. I used analysis by comparative law and historical perspective.

Vote by proxy means, if an elector empowers another elector to practise her/his suffrage on her/his name and behalf. (France, Unites Kingdom). The experiences are the next:

1. It must be applied for proxy voting on the interest of practising this right.
2. The proxy can vote not on the behalf of the elector, because it couldn't be controlled because of the secrecy of voting. That's why the equal suffrage injures. Secondly the free expression of the elector's will is also injured. The secret voting injures only in the proxy and the elector, but the process wouldn't work without this. It can be contained the possibility of abuse, e.g. the proxy is willing to vote on behalf of the elector, if s/he pays a certain amount. The principle of direct vote doesn't injure, because the elector doesn't vote, only empower the proxy, and only the proxy casts the vote. In this way the free will of the elector shall be expressed.
3. It ensures the proxy can exercise the absent voter's right. The proxy can practise it within the state, except according to the Belgian law, because there the proxy can be too abroad.
4. It can be applied well by absent voters e.g. staying in hospital or in custody.
5. Neither the election process nor result ascertaining extend, because it doesn't need for the process extra time.
6. It is easier for the electors staying abroad than voting on diplomatic missions, because the polling place is reachable. The proxy votes for own candidates within the state. It isn't easier for electors than voting by mobile ballot box, although it is easier for the electoral organs, because they don't have to go out to the elector.
7. It increases a little bit the administration work of the electoral authorities. It simply saves the voting on diplomatic missions.
8. It uncontentedly increases turnout, because elector's will could be expressed with this method.

Vote by post is applied in numerous states. (United Kingdom, Austria, Germany, Sweden) It can be proceed both in controlled and non-controlled environment. It needs the identification of the voter in non-controlled environment. We considered controlled environment as voting at post offices and in institutions (hospital, prisons).

1. Its application is very flexible, because the elector can apply personally, by proxy and also by postal letter. Casting the vote can result a bit problem, e.g. searching for witnesses or improper filling in the declaration of identity, but they need for prevailing guarantees.
2. The fair election couldn't be guaranteed in non-controlled environment. Nothing guarantee, if the elector cast the vote, nobody can see it or the witness gives pressure, when s/he fills in the declaration. In Great Britain the declaration of identity is changed with postal voting statement, and the elector have to give a specimen on this. The fair election is really

guaranteed by voting in controlled environment. 3. The voter can practise this method both within and out of the state. The rules of postal delivery doesn't guarantee, everyone's vote will be considered. According to the postal delivery rules the 85% of the priority letters have to arrive the day after sending day, internationally between the 7<sup>th</sup> and 21<sup>st</sup> day after sending day. 4. It can be applied in the domiciled voters. 5. Extending the election process depends how long the postal vote have to arrive at the latest. If until close of voting, it can be mixed with the other votes, and the results are ascertained in time, if after the election day, the process is extended. In the aspect of expressing the elector's will (s/he applies, because s/he won't stay on election day in her/his domicile), it is the best, if s/he can post her/his vote on election day. 6. Compared with voting by mobile ballot box, it lightened the work only of the electoral authorities. It will be harder for the physically disabled, because s/he has to find another person, who brings the letter to the post. Compared with vote by certificate, everyone can vote for their own candidate. Preparing the postal officers is very expensive, and their burden of work would increase. It is simpler for citizens, because s/he asks the letter for those place. Compared with voting at diplomatic missions, the postal voting in non-controlled environment gives more possibility, because the voter can send the letter from everywhere. Proceeding in the territory of a foreign state could be hard. It is more simpler for external voters. The postal voting perfectly guarantee within the state, that the elector can vote for own candidate. Compared with vote by proxy, it ensures that the elector's own wish will be perfectly expressed. 7. The administration of electoral organs is increased mainly in the application process. 8. From the statistical data of foreign states it obviously increases turnout.

If we apply the information technology in the election process, and casting the votes happens with the help of it, we are talking about electronic voting. The electronic voting is a new institution, its introduction happens step by step, early in experimental type, because the electors have to get to know it and to learn if the guarantees prevail. The degrees of electronic voting are voting by scanner, by electronic voting machine, and remote electronic voting e.g. voting by Internet. The experiences of this method are the next:

1. It is hard who doesn't know a lot about this voting method, the computer, or hasn't Internet connection. Although its usage is easy, because the voter can vote comfortably as well at home.
2. In non-controlled environment the fair election isn't so guaranteed, because it isn't ensured that the secrecy code is got to know someone apart from the elector. In controlled environment the fair election is guaranteed much more. The German Federal Constitutional Court pointed out, the process of voting isn't so transparent, if the elector hasn't got a special

technical knowledge. In the Netherlands the approving process wasn't so transparable, the examination of the software wasn't the subject of this process. That's why they have to withdraw the voting machines. The remote electronic voting is proceeding in non-controlled environment. By casting the vote the guarantees prevail, because of using the two secure code. The machine separates the votes from the personal data, but the machine isn't so hidden from the others, so they can see how the elector casts the vote.

3. Every absent voter either within or out-of the state can exercise their suffrage. The advantage of the voting machine, if various elections are held at the same time, it makes it simpler for disabled voters easier. 4. It could be applied in domiciled voters in own and other polling ward, e.g. in hospital, if the presumptions are created there, and it gives a more favourable solution. 5. The process of election isn't extended, because the votes could be easily sent, the result could be fastly ascertained and summed up, except it needs a physical way to send it e.g. with CD-ROM. 6. Compare with vote by certificate it is more favourable, because the elector can vote for her/his own candidate. Compared vote by mobile ballot box it is also more favourable, because the physically disabled can vote without help as well at home, but it depends on the degree of disability. Sometimes it could be a real problem the affection of the voter. It is better than voting on diplomatic missions, because it is more comfortable, the voting process isn't extended. 7. It doesn't increase the administration, except the voter has to apply for electronic voting. 8. It unambiguously increases the turnout of them, who trusts in modern technology. Who doesn't, the turnout of them may decrease.

It would be better, if it can be applied only in controlled environment. We could see, the identification of voter can be easily solved also in non-controlled environment, but nothing guarantees, that the elector doesn't give the individual identity card to another person. What gives for distrust is the danger of hacking the system and of illegitimate influence, of which it haven't been succeeded to find a reassuring solution yet.

### **III. The results of the thesis**

We must answer two questions. Firstly what method will be good for external voters, which method of voting is proper. Secondly which is overallly connected with the first one, what kind of voting methods is proper for reception, for increasing turnout, is applicable for absent voting within and out of the state.

We can declare in generally, that a perfect voting method which is equally proper for every aspect, isn't exist. So it is hard to find a method, which increase turnout, and besides every guarantee prevails, and solve the problems of the voting of numerous foreign voters.

Answering the first question, we can declare that 85-100 diplomatic missions won't ensure that every foreign voter can cast their votes, because one mission has to receive about 10.000 (if not 100.000) voters. The larger part of them fall into the surrounding countries, mainly Romania, Slovakia, perhaps Serbia, Croatia and the Ukraine. It could be a solution to create foreign polling places, but this is very expensive. It could be good the advanced voting in diplomatic missions, e.g. it begins 2 weeks before election day, and close on election day. It ensures enough time for voters cast their votes, and don't result long queues.

We reject here the proxy voting too because of the lack of guarantees. By postal voting the fair election is perfectly guaranteed in controlled environment, not in non-controlled one. It is a question how much postal offices are prepared for this, how they are favourable this system, and how they will be reliable. In some states, where dual nationality is forbidden, it won't be good for external voters: if s/he votes, her/his Hungarian nationality becomes obvious. The postal delivery rules don't guarantee that everyone's vote arrives in time and be considered it at all. Creating of separate delivery system would be very expensive. The electronic voting would complete this, but it won't be introduced because of distrust. It is a real problem the transparency of the voting process. Its apply in controlled environment would be the electronic voting on diplomatic missions, which doesn't solve the problems of numerous external voters. In non-controlled environment the voter can cast the vote everywhere. It is comfortable for her/him, and it will be arrive at bigger possibility in time, and it will be summed up. But it would be problems there too (transparability, error in system) Although external voters rely on it much more than voting on diplomatic mission, because of the votes arrive not late.

To answer the second question, the present method is the best for the physically disabled staying at home. But it could be made a little correction in postal and electronic voting, e.g. it could be changed over to anyone by voters in institutions.

Instead of voting by certificate and voting at diplomatic missions it could be introduced each method. It is hard to say, if postal or electronic voting will be better. Besides postal voting there are the transparency of elections process, larger convenience for the elector and simpler administration. Against postal voting there is the possibility of abuse in non-controlled environment.

The electronic voting gives for larger convenience, it simplifies the voting process, it fastens ascertaining the results. The disadvantage of it, there are not good transparency and the distrust because of hacking the system.

Although it is an argument for it, if the system works well, the voter can really know, that her/his vote won't be late. S/he can vote in comfortable circumstances; these are in favour of electronic voting and against postal voting. Thus with increasing of the degree of transparency applying the electronic voting looks like better. Although both the postal and the electronic voting is good for increasing turnout.

#### IV. List of publications relevant to the topic of the thesis

- *Arányossági kérdések a mai magyar választójogban.* In: Miskolci Egyetem Doktoranduszok Fóruma, Miskolc, 2001. november 6., Állam –és Jogtudományi Kar Szekciókiadványa, Miskolc, 2001, 86-97. oldal.
- *Kossuth Lajos szerepe az országgyűlési választójog népképviselativé alakításában.* In: Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, Tomus XX/1, University Press, Miskolc, 2002, 83-107. oldal.
- *Képviselet és választás John Stuart Mill A képviseleti kormány című művében.* In: Miskolci Doktoranduszok Jogtudományi Tanulmányai 2/1, Bíbor Kiadó, Miskolc, 2002, 267-293. oldal.
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- *Néhány gondolat a választási ajánlások rendszeréről.* *Collega*, VII. évfolyam, 2003. évi 1. szám, 3-7. oldal.
- *Az Európai Parlament magyar tagjainak választása.* In: Bragyova András (szerk.): *Ünnepi tanulmányok Holló András 60. születésnapjára.* Bíbor Kiadó, Miskolc, 2003, 215-233. oldal.
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- *Szavazás távollét esetén.* In: Miskolci Egyetem Állam –és Jogtudományi Kar, Deák Ferenc Doktori Iskola, Doktoranduszok Fóruma, 2003. november 6., Novotni Alapítvány Miskolc, 2003, 126-131. oldal.
- *A választási jogorvoslatok reformjának néhány lehetősége.* *Jogtudományi Közlöny*, LVIII. évfolyam, 2003. évi 12. szám, 425-431. oldal.
- *A postai levél útján való szavazásról.* *Collega*, 2003. évi 3. szám, 5-8. oldal.
- *Dezső Márta- Tóth Zoltán: Választás és választási eljárás. Rejtjel Kiadó, Bp., 2002.* *Jogtudományi Közlöny*, LIX. évfolyam, 2004. évi 2. szám, 86-88. oldal. (Könyvismertetés)
- *Az európai választások magyar szabályai az előmunkálatok tükrében.* *Magyar Közigazgatás*, 2004. évi 5. szám, 305-315. o.

- A külföldön szavazás egy módja: a postai levél útján való szavazás. *Magyar Jog*, 2005. évi 10. szám, 614-621. o.
- A kötelező szavazás hatása a választási részvételre és az érvénytelen szavazatok alakulására. *Jogtudományi Közlöny*, 2005. évi 4. szám, 161-171. o
- *A kötelező szavazásról*. In: Stipta István (szerk.): Miskolci Doktoranduszok Jogtudományi Tanulmányai 6/1, Bíbor Kiadó, Miskolc, 2005, 253-277. o.
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- *A mozgóurnás szavazásról*. In: Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, Tomus XXV/1, University Press, Miskolc, 2007, 317-336. o.
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- *Választási részvétel és legitimáció*. Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, 2009. (27. évf.), 313-329. old.
- *A választási rendszer a részvétel szemszögeiből*. Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, 2010. (28. évf.), 209-228. old.
- *Szavazás elektronikus szavazógépekkel*. Publicationes Universitatis Miskolciensis. Sectio Juridica et Politica, 2011. (29. évf.), 191-208. old.

