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## Principles and Practice of Nationality Law in Hungary

The European enlargement has certain impact on nationality law. The case of Hungary may illustrate how migratory movements, Diaspora policy, national identity and legal regulation would be challenged by accession to, or fear of exclusion from, the wider European Union. This complexity can only be partially described in following pages<sup>1</sup>, through the short history of nationality policy, its major principles and legal practice.

### *History of nationality policy in the past seven decades*

Nationality policy can be divided into the following epochs according to important reforms in historical<sup>2</sup>, legal and international circumstances: (a) post-WW II period of 1945–48 (b) 1948–1956 (c) 1956–1989 (d) 1989–1993 (e) 1994–2005.

(a) The Agreement on Armistice concluded in Moscow (1945)<sup>3</sup> annulled all modifications of nationality related to territorial changes to the state border of Hungary between 1939–1944.<sup>4</sup> It meant *loss of Hungarian nationality* for millions living under the new sovereign power of adjacent states. The Peace Agreement after WW2 defined the border of the state<sup>5</sup> as that which existed in the last day of

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<sup>1</sup> Based on a conference paper on Hungarian nationality law presented to the Austrian Academy of Sciences (30 June – 1 July 2005, Vienna).

<sup>2</sup> In nutshell: the first Act on Hungarian Nationality was adopted in 1879, the second in 1947, the third in 1957 and the fourth passed in 1993.

<sup>3</sup> Concluded in Moscow, 20 January 1945 and it was published in Act V of 1945.

<sup>4</sup> Due to the occupation of ex-territories of the Hungarian Kingdom in Czechoslovakia, Trans-Carpathia, Romania and Yugoslavia various acts and governmental regulation were adopted – inter alia – on citizenship issues (Acts VI of 1939, XXVI of 1940, XX of 1941, Decree 2.200 of 1939).

<sup>5</sup> Concluded in Paris, published in Act XVIII of 1947, entered into force by Government Decree 11.800 of 1947.

the peace. Temporary regulation on nationality<sup>6</sup> between 1945 and 1948 considered all persons residing in the actual territory of Hungary in 1945 as nationals unless they could obtain another nationality. Furthermore, this was the period of *deprivation of nationality*<sup>7</sup> through bilateral agreements (e.g. Czech-Slovak State population exchange as lawful ethnic cleansing, expulsion of German minority to Germany). Non-returned, presumed war criminals, opponents to the Republic, and enemies of democratic state were deprived of their nationality by domestic regulation together with confiscation of their property in 1946–1948.<sup>8</sup> Finally, communists who had emigrated and wanted to return to Hungary<sup>9</sup> were rehabilitated. In brief, nationality was a political tool of exclusion during this epoch.

(b) The *civil rights and equality of child* birth out of wedlock was introduced in 1946<sup>10</sup>, but only the Act on Hungarian Nationality passed in 1948 provided acquisition of nationality through family and personal status changes in a coherent way. Thus equal treatment for children born out of wedlock was ensured. Moreover, the Act intended to *register all nationals* who resided abroad but without proper executive rules, techniques and consular office relations. The Act *legitimated Hungarian nationality* of pending, undocumented persons if they resided in Hungary during a certain period.

(c) This epoch meant *emancipation of spouses* on the basis of the New York Convention (1957) on married women<sup>11</sup> and its principle was inserted into the third Act on Nationality adopted in 1957. Due to the *strong powers of political discretion* the executive rules of the Act were not published (e.g. emigrants had to renounce nationality together with social insurance rights when obtaining a passport according to a confidential order). After the revolution in 1956 and mass emigration, a wide *amnesty* was proclaimed for returnees together with registry of nationals staying abroad permanently.<sup>12</sup>

(d) It was a time of marching towards a rule of law, Constitutional reform and a new Act on nationality. At first the *ban of the deprivation of nationality* was regu-

<sup>6</sup> For instance, see the Decree of the Prime Minister 5.700 of 1945.

<sup>7</sup> See details in Czech-Slovak-Hungarian Agreement published in Act XV of 1946 or Government Decree 12.200 of 1947.

<sup>8</sup> In particular Act X of 1947 and Act XXXVI of 1948.

<sup>9</sup> For instance the Decree of the Prime Minister 9.590 of 1945.

<sup>10</sup> Act XXIX of 1946.

<sup>11</sup> Published in Law-Decree No.2 of 1960.

<sup>12</sup> Law-Decree No. 11 of 1955, No.7 of 1956, Ministerial Decree of the Interior 2 of 1956, 11 January.

lated in the modified Constitution<sup>13</sup>. Because of this, the legal title for loss (of disident persons) and deprivation of citizenship as arbitrary ceasing of nationality for unlawful departure, used from 1939–1989, were abolished by the amended Constitution. Parallel to this, *rehabilitation of expatriated nationals* who arbitrarily were deprived from nationality was regulated upon request as the initial steps of democratic Hungary.<sup>14</sup>The Geneva Convention (1951) inspired the *preferential naturalisation* of refugees that was introduced into the nationality law. The fourth Act on Nationality passed in 1993 made preconditions for *naturalisation more restrictive*, but ethnic and family preferences intended to compensate for this. The executive rules on proceedings provide neither legal remedy against, nor explanation of rejection. Hungary terminated bilateral agreements which excluded *dual citizenship* in the region in 1989–1993.

(e) The last decade was the period of undertaking international obligations, accession to the EU and sharp political debates on ethnic Hungarians living beyond the borders. The Act on nationality in force was amended three times<sup>15</sup> due to ratification of the European Convention on Nationality (1997) and the UN Convention on Stateless persons (1954).<sup>16</sup>Furthermore, the circle of preferential naturalisation began to stretch towards EEA citizens without stormy objection and to ethnic Hungarians after vivid debates<sup>17</sup>. The last amendment of the Act<sup>18</sup> defeated of granting nationality *ex lege* for all ethnic Hungarians living in adjacent states.

### *Major rules of acquisition and loss of nationality*

Hungarian nationality can be acquired on the basis of legal titles as follows:

- by birth from a Hungarian national (*ius sanguinis*);
- by presumption if baby was born from an unidentified or settled stateless parent in Hungary (*ius soli*),
- by naturalisation, re-naturalisation, and
- by declaration.

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<sup>13</sup> Act XXXI of 1989 introduced a substantially new Constitution but formally it was only a modification.

<sup>14</sup> Provisions of Act XXVII of 1990 and Act XXXII of 1990 were inserted into the third Act on Nationality in 1993.

<sup>15</sup> Act XXXII of 2001 and LVI of 2003 modified the Act on Nationality LV of 1993.

<sup>16</sup> These were published in Acts II and III of 2003.

<sup>17</sup> Bill on modification of Acts on Nationality as well as Entry and Residence of Foreigners in Hungary No. T/15818. It was submitted to the Parliament in April 2005 by the Government.

<sup>18</sup> Act XLVI of 2005 on modification of the Act LV of 1993 on Hungarian nationality and Act XXXIX of 2001 on entry and residence of aliens in Hungary was passed on 6<sup>th</sup> June 2005. It enters into force on 1<sup>st</sup> November 2005.

Basic, *non-preferential* requirements for *naturalisation* shall be required by:

- permanent residence in Hungary for 8 years in possession of obtaining a permanent residence permit or EEA citizens' residence permit;
- clean criminal record and no current criminal proceedings;
- proven means of livelihood and residence;
- naturalization doesn't violate national interest of Hungary, and
- successful examination taken on basic constitutional issues in Hungarian language.

Requirements for *preferential* naturalisation are as follows:

- (a) Permanent residence requirement can be reduced to 5 years if:
  - applicant was born on Hungarian territory or
  - established residence in Hungary before reaching legal age or
  - is stateless
- (b) Permanent residence requirement can be reduced to 3 years if:
  - applicant declares him/herself an ethnic Hungarian, or
- (d) Permanent residence requirement can be waived if:
  - applicant is a minor and his/her application was submitted along with a qualified parent, or
  - applicant is a minor and has been adopted by a Hungarian citizen.
  - applicant is considered of “overriding interest” to the Republic of Hungary by the President or Minister of Foreign Affairs.

Requirements for *re-naturalisation* are based on:

- permanent residence permit of the applicant whose nationality was terminated;
- clean criminal record and no current criminal proceedings;
- proven means of livelihood and residence, and
- naturalization doesn't violate national interest of Hungary.

Requirements for *declaration* submitted to the President of the Republic of Hungary are met:

- if the applicant was deprived of the nationality according to previous acts, or
- applicant was born in Hungary and has not acquired other nationality of his/her parents by birth provided that at the time of his birth he resided in Hungary, s/he lives continuously in Hungary for at least 5

years at the time of submission of the declaration, and s/he is no older than 19 years, or

- applicant was born to a Hungarian national mother and foreign father before 1<sup>st</sup> October 1957 and did not become a Hungarian national by birth.

The Minister of the Interior issues a certificate on the acquisition of nationality, and final refusal of the declaration may be revised by the Metropolitan Court of Budapest.

As can be seen, the regulations creates special groups of people eligible for naturalisation:

- ethnical preference in naturalisation provided for *ethnic Hungarians*;
- re-naturalisation of *ex-nationals*;
- rehabilitation of *expatriated nationals* who can acquire terminated nationality by declaration;
- *recognised refugees and stateless persons* residing in Hungary prior to naturalisation for a shorter period;
- genuine link principle of *bringing up children* in Hungary;
- *child of immigrant*, stateless parent residing long-term in Hungary or unknown parent shall be considered a Hungarian national until this presumption is no longer rebutted;

On the principle of family unification, *spouse and adopted child* are also preferentially treated in naturalisation.

Loss of nationality shall be based on

- *Renunciation*: the national residing abroad may renounce his/her nationality if s/he possesses another nationality or relies on the probability of its acquisition,
- *Withdrawal*: if s/he acquired nationality by naturalisation violating the law, in particular by misleading authorities by submitting false data or omitting data or facts, without 10 years elapsing since naturalisation.

### *Statistical trends*

Undoubtedly, data on trends of acquisition and termination of citizenship are materials of public interest according to Act LXIII of 1992. Despite this fundamental right<sup>19</sup>, defined in 1989, statistical data related to the acquisition and ter-

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<sup>19</sup> Art. 61 of the Constitution provides right to free expression and obtaining information of public interest as well as free dissemination thereof.

Year	Naturalisation/ re-naturalisation	Removal
1958	170+182 = 352	124
1959	128 +205 = 333	135
1960	136 +201 = 337	226
1961	126+ 249 = 375	323
1962	100+315 = 415	796
1963	1164	904
1964	n.d.	n.d.
1965	658	448
1966	738	798
1967	560	578
1968	469	471
1969	375	522
1970	416	739
1971	461	869
1972	745	2071
1973	427	1328
1974	399	1249
1975	425	1280
1976	453	1194
1977	548	1220
1978	546	1181
1979	598	1280
1980	589	1325
1981	1176	1086
1982	1641	1027
1983	1173	1462
1984	783	1446
Total	16 156	24 082
Yearly average	622	926

mination of Hungarian citizenship have been available in part, in various structures only since 2001.<sup>20</sup> Because of this, neither long-term analysis, nor similar data structures exist. Demographic-history exclusively contains certain statistics on naturalisation, re-naturalisation and removal from the nationality.

During the period between 1958–1984 the *number of cases* of emigration proves higher than immigration<sup>21</sup>.

<sup>20</sup> Twice modified Art.19 of the Act on Hungarian Nationality adopted in 2001 and 2003 (see the Act XXXII of 2001, LVI of 2003).

<sup>21</sup> The table is made on the basis of Tóth Pál Péter: *Haza csak egy van? Menekülők, bevándorlók, új állampolgárok, 1988–1994*. Budapest: Püski, 1997.

There was no change in citizenship law during this time. Legal and political practice could explain why the emigration or removal rate was higher after 1967. Furthermore, marriage to males from restrictive European states with prohibited dual citizenship meant removal upon request by female spouses from Hungary, which occurred in a relatively large proportion.

Data related to acquisition of nationality since 1985 on the basis of various legal titles are not always available. The upper table can be continued till 1994 with additional information on *share of cases*.<sup>22</sup>

Year	Naturalisation/ re-naturalisation		Removal/ Renunciation	
1985	850		842	
From them	Czechoslovak	32	Czechoslovak	3
	Yugoslav	10	Yugoslav	20
	Austrian	6	Austrian	159
	Romanian	198	Romanian	–
	Soviet	440	Soviet	2
	East-Germ.	78	East-Germ.	13
	Non-European	4	Non-European	–
1986	948		1236	
	Czechoslovak	40	Czechoslovak	6
	Yugoslav	8	Yugoslav	61
	Austrian	–	Austrian	119
	Romanian	345	Romanian	–
	Soviet	366	Soviet	–
	East-Germ.	126	East-Germ.	11
	Non-European	10	Non-European	3
1987	1 012		1510	
	Czechoslovak	46	Czechoslovak	8
	Yugoslav	11	Yugoslav	22
	Austrian	1	Austrian	156
	Romanian	408	Romanian	–
	Soviet	331	Soviet	1
	East-Germ.	144	East-Germ.	25
	Non-European	6	Non-European	1

<sup>22</sup> The table is made on the basis of Tóth Pál Péter, op. cit.

Legal title for loss of nationality was changed in 1993; thus renunciation replaced removal of nationality.

Year	Naturalisation/ re-naturalisation		Removal/ Renunciation	
1988	897		1358	
	Czechoslovak	33	Czechoslovak	10
	Yugoslav	19	Yugoslav	36
	Austrian	2	Austrian	177
	Romanian	412	Romanian	–
	Soviet	237	Soviet	1
	East-Germ.	111	East-Germ.	8
	Non-European	29	Non-European	5
1989	n.d.		n.d.	
1990	3 170		1184	
	Czech/Slovak	63	Czech/Slovak	2
	Yugoslav	21	Yugoslav	18
	Austrian	11	Austrian	169
	Romanian	2661	Romanian	1
	Soviet	156	Soviet	1
	East-Germ.	35	East-Germ.	70
	Non-European	96	Non-European	1
1991	5 893		441	
	Czech/Slovak	25	Czech/Slovak	2
	Yugoslav	22	Yugoslav	3
	Austrian	18	Austrian	80
	Romanian	5114	Romanian	–
	Soviet	306	Soviet	–
	Stateless	13		
	Non-European	186	Non-European	1
1992	21 880		1 149	
	Czech/Slovak	249	Czech/Slovak	7
	Yugoslav	1	Yugoslav	3
	Austrian	7	Austrian	211
	Romanian	2062	Romanian	–
	Ex-Soviet	4		
	Ex-Soviet	569	Ex-Soviet	–
	Stateless	7		

Legal title for loss of nationality was changed in 1993; thus renunciation replaced removal of nationality.



Year	Naturalisation/ re-naturalisation		Removal/ Renunciation	
	Non-European	60	Non-European	3
1993	11 521		2 084	
	Czech/Slovak	55	Czech/Slovak	5
	Yugoslav	309	Yugoslav	–
	Austrian	20	Austrian	314
	Romanian	9956	Romanian	–
	Ex-Soviet	843	Ex-Soviet	–
	Stateless	7		
	Non-European	75	Non-European	3
1994	9 238		1 688	
	Czech/Slovak	40	Czech/Slovak	7
	Yugoslav	888	Yugoslav	–
	Austrian	1	Austrian	346
	Romanian	6254	Romanian	–
	Ex-Soviet	1730	Ex-Soviet	–
	Stateless	1		
	Non-European	120	Non-European	2
Total	55 409		11 492	
Yearly average	5 541		1 149	

Since the 1990s, statistics show a growth of successful naturalisation cases. Why? In part due to the increasing number of ethnic Hungarian applicants from adjacent states, and in part changing interpretations of legal rules in force. The Constitutional reform establishing the rule of law in the Hungarian Republic also influenced the legal practices of the Ministry of the Interior: if an applicant met the legal requirements the minister almost automatically proposes the President to grant naturalisation. This “self-limitation” practice of power of discretion, however, could not compensate the more restrictive preconditions of naturalisation adopted by the Act on Hungarian Nationality in 1993. Furthermore, the number of non-European applicants grew but has remained marginal since the 1990s.

What is the *ratio of cases, applications and persons concerned*? The following table may help to assess the possible proportions and to understand the mixture of data on nationality.<sup>25</sup>

<sup>25</sup> [www.bmbah.hu/statisztikak.php](http://www.bmbah.hu/statisztikak.php)

	1998	1999	2000	2001	2002	2003	2004
Application for naturalisation, re-naturalisation (cases)	3593	3160	3963	4282	4453	4916	5761
From them applicants with (%)							
Romanian citizenship					61	60	63
Yugoslav/Serbian citizenship					17	15	13
Ukraine citizenship					11	15	13
Other European					6	14	14
Non-European					5	5	3
Stateless					1	1	1
Naturalised, re-naturalised persons	6203	6066	7538	5934	3890	n.d.	n.d.
Application for re-obtaining nationality upon declaration of expatriated, prior national (persons)	232	200	208	194	212	151	144
Application for Certificate of existing nationality (persons)	3934	4264	3935	3924	4401	4803	5984
Reinstatement of nationality (persons)	–	–	–	1	1	1	1
Application for renunciation of nationality (cases)	893	728	748	684	609	463	236
Accepted waivers of nationality (persons)	1070	995	955	791	857	n.d.	n.d.

Briefly, Hungary became a *country of immigration primarily for ethnic Hungarians*. This development occurred along 3 major channels:

- (a) foreigners acquire Hungarian nationality through naturalisation;
- (b) prior nationals, expatriated persons re-obtaining Hungarian nationality after historical loss by declaration or re-naturalisation, and
- (c) expatriated nationals or their descendants living abroad prove Hungarian citizenship through a verification procedure of existing citizenship (Certificate on Nationality) in growing number. The statistics indicate the existence of “latent nationals abroad” in great extent.

Finally, the *ratio of naturalisation according to legal titles* is available only in 2002. The total number of persons naturalised was 3890 (100%). Its sub-groups were as follows:<sup>26</sup>

<sup>26</sup> [www.bmbah.hu/statisztikak.php](http://www.bmbah.hu/statisztikak.php)

Type of legal titles	Act on Nationality	Person	%
Non-preferential applicant (“basic decision”)	4 § (1)	244	6.27
Preferential (“applicant was born in Hungary”)	4 § (4) a.	3	0.0
Preferential (“applicant as minor immigrated to Hungary”)	4 § (4) b.	2	0.0
More preferential (“applicant’s spouse is Hungarian national”)	4 § (2) a.	325	8.35
More preferential (“applicant’s minor is Hungarian national”)	4 § (2) b.	49	1.25
More preferential (“applicant is a recognised refugee”)	4 § (2) d.	17	0.4
Most preferential (“applicant is a minor”)	4 § (5)	9	0.2
Most preferential (“applicant is a minor adopted by a national”)	4 § (6)	30	0.7
Most preferential (“ethnic Hungarian”)	4 § (3)	2447	62.9
Re-naturalisation	5 §	764	19.6

As it can be seen, the “main rule” and “exception” means in legal practice the exact opposite of general grammar or logics. Beyond ethnic immigration from the Carpathian basin, the family unification and repatriation (rehabilitation) of prior nationals has formed the mainstream of newborn nationals by law.

### *Major principles in nationality law*

The universally adopted principles on nationality law are fully respected with the exception of neutral definition of nationality as laid out in the European Convention (Art 4). The genuine link (effective relationship) to the country of citizenship, as well as multiple citizenship is hardly differentiated in the case of Hungary.

The Constitution contains only a few provisions of *guarantee* relating to Hungarian citizenship<sup>27</sup>, while the other rules pertaining to formation and cessation are settled in the act adopted by a two-thirds majority vote. This repre-

<sup>27</sup> Act XX of 1949 on the Constitution of the Hungarian Republic, as it was reformed by the Act XXXI of 1989 established the rule of law including an Article on Hungarian citizenship.

sents the compulsion of *consensus* which makes regulations<sup>28</sup> difficult to amend (it happened on four occasions in the course of twelve years). Strangely enough, there is no such restriction relating to international agreements pertaining to citizenship. The *prohibition of arbitrary deprivation* of citizenship and the prohibited withdrawal of the *right to change* citizenship are included in the Act on Hungarian Nationality and in the Constitution. This expresses the relative respect of freedom of the individual will and includes the human right to the preservation of citizenship. Therefore, withdrawal of citizenship is an exemption, whereas the more common procedure is waving citizenship if one lives abroad, and thus would presumably not become stateless<sup>29</sup>.

*The equality of rights of citizens* ensures that citizens should have the same legal standing irrespective of the legal title of the acquisition of citizenship. The European Convention on Nationality requires participating states to refrain from discrimination against their citizens, irrespective of their acquisition of citizenship by birth or by any other means (Paragraph (2) Article 5).

*Discrimination is forbidden* among Hungarian nationals, irrespective of the legal title under which their citizenship was granted. The Act on Hungarian Nationality makes only one exception in the field of withdrawal of citizenship: for it may not be applied to persons who acquired citizenship by birth. (For, in the course of the procedure of naturalisation, applicants could hardly commit fraud or behave in a wild manner in order to obtain citizenship fraudulently.)<sup>30</sup>

Domestic law insures the granting of citizenship to *children* by birth (*ius sanguinis*) as well as the legal standing of *married women* and children of the appropriate maturity as their own right, by declaration. Hungary stands against the termination of statelessness by preferential naturalisation, granting citizenship, and, as in the case of *refugees*, encourages preventing statelessness. Moreover, the Act on Nationality assists family reunification (in respect to legal standing) by different preferences of naturalisation.

*The prevention of statelessness*, which has been referred to in several examples above, restricts both the right of the individual to self-determination and the sovereignty of the state (successor state) in accordance with the conventions of the UN and the Council of Europe. In fact, there is only one legitimate reason for withdrawal of citizenship: if it was acquired in

<sup>28</sup> Act LV of 1993 on Hungarian Citizenship in accordance with the Constitution. It entered into force on 1st October 1993 and has been amended four times.

<sup>29</sup> The Act of Nationality was liberalised in 2001 thus even the criminal proceedings under way represent no obstacle to resignation (Act XXXII of 2001).

<sup>30</sup> Act LX of 1993 on Hungarian Nationality, 9.§.

a (manifestly) fraudulent manner. The UN endorsed a separate Convention on the Reduction of the Cases of Statelessness (1963) as it may occur in a wide range of situations and eliminating it is not a simple task.

The regulatory *principles* and the citizenship system in Hungary are in harmony with international legal theories, as the aforementioned points demonstrate. Hungary is a signatory of all conventions of great significance that define the framework of the development of the law.

Hungarian regulation is specific to the extent that it grants *preference* to former Hungarian nationals and ethnic Hungarians in acquiring citizenship. On the other hand, it tolerates *multiple citizenship*, in favour of ethnic Hungarians. The *bilateral agreements regulate several legal relationships with respect to persons of multiple citizenship*. The European Convention for example, settles the military service of persons of double citizenship and, as a general provision. It declares (Article 17) that persons having a second citizenship are entitled to the same rights and obligations on the territory of the participating country as any citizen of the participating state, except for diplomatic and consular protection and the application of the rules of international private law.

The *principle of genuine link* requires a factual, genuine and close relationship between the state and its citizen, and it has been deeply discussed with regards to dual citizenship and the cessation of expatriated Hungarians or Diaspora members nowadays. The International Court transformed a well established principle into an international standard by declaring that, in the case of doubt, only formally existing citizenship may be neglected. It is used not only when judging double citizenship but also when judging citizenship in foreign relations. The relationship between the citizen and the government also includes the protection of the citizen by the state when staying abroad. Citizenship is a kind of legal relationship, the basis for which is an actual social bond, a relationship bound to a real way of life, interests, emotions, coupled with mutual rights and obligations. It is a legal expression of the fact that the individual who obtains this citizenship, directly through the law or as a result of action by the authorities, is in fact more closely related to the people of the state whose citizen he is than to the people of any other state.<sup>31</sup> The genuine link principle is strongly targeted by desire or political promise for granting nationality *ex lege* for ethnic Hungarians living across the borders.

Hungarian law has generally accepted multiple citizenship. It has not made obligatory – except for the period between 1949–1989 – the terminating

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<sup>31</sup> Lichtenstein v. Guatemala, 1995 WL 1 (ICJ) is known as Nottebohm case.

the other citizenship in naturalisation. In the case of children, it was never an issue whether they were granted citizenship on the basis of the territorial principle. The infamous Nottebohm-case, however, provides assistance only in judging nominal citizenship, and it demonstrates how difficult it is to simultaneously belong to two countries in an effective way. Therefore the provision of the European Convention on Nationality, otherwise neutral concerning the issue at hand, has increased in value. It indicates, in an indirect manner, that no state was able to rule out the emergence of multiple citizenship through its internal regulation. Therefore the minimum expectations of the state legally granting multiple citizenship is limited (Art 14–16). For this reason, multiple citizenship is not to be tolerated in each and every case. However, the state must remain within the rules of termination discussed above in order to terminate it. It may only demand the forfeiting one citizenship as a condition of retaining the other, if it is possible and reasonable.

Hungarian citizenship shall be certified with a *valid document* (identity card, passport, citizen's certificate). In case of doubt, attestation is done by the authorities or a certificate is issued. Upon request, the Minister of the Interior issues a citizen's certificate on the existence of citizenship, its cessation or that the person concerned has never been a Hungarian national. The certificate is valid for one year from the date of issuance. A lawsuit disputing the certificate's assertions may be initiated before the Municipal Court (by the person interested, his lawful representative, the public prosecutor as well as the guardian authority). If doubt is raised as to whether the person in question is a Hungarian citizen, in a legal procedure the competent authorities request verification from the Minister of the Interior.<sup>32</sup>

### *The ethnic preference*

In order to clarify the ethnic preference, allow me to summarise its nature in a broader context. Hungarian citizenship and migratory rules have been equally based on ethnic principles, at least in part. What are the major elements of these provisions in force<sup>33</sup>?

- i. *Issuing visa.* Although the list of states and *visa obligation* criteria became part of the Community competence, bilateral agreements on visa-free travelling were maintained until the accession. Furthermore, visa issuance, including the national visa (in the terminology of the Schengen regime) has been re-

<sup>32</sup> Act on Hungarian Nationality 10–12. §.

<sup>33</sup> Tóth, Judit: Hungarian citizenship – contribution to debates on nationality. In Multicultural Centre – Prague [www.mkc.cz](http://www.mkc.cz).

formed in favour of Hungarian minorities living in adjacent, third countries. The text of visa agreements is neutral but the desire to reform them can reflect certain ethnic, national priorities towards Romania, Ukraine and Serbia-Montenegro<sup>34</sup>. In brief, the visa policy has to serve, as much as possible, allowing kin-minority free-visiting entry into Hungary in order to compensate the EC law and security requirement.

- ii. Bilateral agreements ensure preferential preconditions of residence in Hungary, on the basis of minority protection, in general, and in order to provide lawful study and work of minority members in Hungary. Like visa regulations, the residence permit authorisation<sup>35</sup> is ethnically neutral, but in practice *commuting workers, seasonal workers, trans-border, informal traders, as well as youth attending secondary schools and universities* in Hungary are recruited from ethnic minorities living across the borders. For instance, all forms of the authorisation procedure are available only in Hungarian (with the exception of the visa questionnaire, which is available in foreign languages). Hungary and Poland in the EU Commission working group have endorsed Acquis under preparation for a small border crossing for inhabitants in the border zone providing frequent entry and limited period of residence.<sup>36</sup>
- iii. The set of *benefits and allowances for minorities* across the borders. Despite stormy political debates, in 2001 the Parliament adopted an Act introducing a specific certificate for ethnic Hungarians living in Slovakia, Romania, Ukraine, Slovenia, Serbia-Montenegro and Croatia. Because of constitutional and international inconsistency, the law was modified in 2003 terminating some individual benefits (employment, social insurance and public health) in Hungary that were available with the possession of the Ethnic Hungarian Certificate.<sup>37</sup> In December 2004 an additional support system for community building was adopted.<sup>38</sup> Naturally, this set of

<sup>34</sup> Before accession Hungary had agreements on visa-free travelling to six neighbours, and a voucher system was defined with Ukraine. Due to legal harmonisation agreements were modified introducing visa requirement to Ukrainian, Serbian citizens, while agreement with Romania was restricted.

<sup>35</sup> Act XXXIX of 2001 on entry and residence of aliens in Hungary, its executive rules (Government decree 170 of 2001, 26 September) together with further technical and procedural provisions by Decrees of Ministers of the Interior, Foreign Affairs, Justice and Public Health.

<sup>36</sup> Before accession Hungary terminated these agreements with Ukraine and Romania.

<sup>37</sup> Act LXII of 2001 on Hungarians Living in Neighbouring States. It was amended by the Act LVII of 2003. Its executive rules on financial, technical and procedural issues can be found in about ten Government and Ministerial decrees.

<sup>38</sup> Act II of 2005 on the Homeland Fund that covers various community-building projects for kin-minorities living in adjacent states.

direct, ethnically based, assistance of Diaspora law can legalise and inspire migratory movements toward Hungary.

- iv. *Long-term resident status*<sup>39</sup>. Instead of three years continuous, lawful stay in Hungary prior to submission of the application, a former Hungarian citizen or a foreigner with an ancestor who possessed Hungarian citizenship can submit a request for a long-term resident permit on the basis of a non-defined but shorter previous, lawful residence. The discretionary power of the immigration office includes evaluating the ethnic membership of the applicant.
- v. *Preferential naturalisation*. Family reunification as preferential treatment has been developed not only in immigration (visa, residence permit and long term resident authorisation) but in citizenship law as well. More preferential naturalisation may be granted to a person whose ancestor was a Hungarian citizen as long as s/he makes a declaration of Hungarian ethnic membership. In this case, the applicant has to reside continuously in Hungary for at least a period of one year with possession of the long-term resident permit instead of a period of eight years preceding the submission. Another harsh political debate on ex lege or discretionary naturalisation of all ethnic Hungarians living in adjacent states without long-term resident status occurred last autumn. From a legal point of view the genuine link to the state of requested citizenship was endangered by the referendum on “dual citizenship”, which took place on 5<sup>th</sup> December 2005. Finally, the motion failed. The majority of voters rejected the ex lege, super-preferential naturalisation of ethnic Hungarians living across the borders. However, new cleavages developed in the political community between the government and the opposition, domestic Hungarians and those abroad, as well as patriots and cosmopolitans. Finally, the amendment of the Act passed in June 2005 provides simple, formal, proceedings and a shorter waiting period for ethnic Hungarians.<sup>40</sup>
- vi. *Never-ending citizenship*. There are millions of hidden, Hungarian, citizens all over the world as their *legal bondage to Hungary was never terminated*. Although deputies have urged the reform of citizenship of expatriated

<sup>39</sup> A foreigner having an open-ended, permanent residence permit is subjected to numerous national regulation, rights and obligations. For instance, eligible for employment, accession to free public education, and family allowances.

<sup>40</sup> What are the achievements of the modification? In possession of the permanent residence permit, the ethnic Hungarian can submit an application for naturalisation. An examination on constitutional issues is not necessary for applicants who attended a public school with curricula in Hungarian (e.g. in neighbouring states). Length of proceedings is up to about 19 months.



persons and their descendants numerous times, regardless of the absence of social, economic, family contacts, or of formal registration, Hungarian citizenship has been smoothly inherited *ius sanguinis* since 1929.

There are some additional components of migration and citizenship law, which may trump the ethnic principle.

- i. *Multiple citizenship* has been tolerated purely to favour the Diaspora (expatriated, emigrated nationals and loss of population due to peace agreements). Successful applicants for Hungarian citizenship are thus not required to forego their previous citizenship. Since the first Act on Hungarian Citizenship in 1897 this principle continued with the exception of bilateral agreements on exclusion or prevention of dual citizenship concluded on the basis of socialist friendship<sup>41</sup>. The Hungarian party terminated these agreements in 1993.
- ii. As in many countries, *re-naturalisation* is a preferential naturalisation for prior citizens: the period of residence for those in possession of long-term resident status is practically absent, and s/he is exempt from the examination on constitutional knowledge. Naturally, these applicants are ethnic Hungarians.
- iii. *EU citizens* also benefit in naturalisation, although it remains little known among the public. It is wrapped into a technical provision of the Act modified just before accession to the EU<sup>42</sup>. For the purpose of the Act on Citizenship “resident” shall mean a foreigner who resides in Hungary and has been granted a long-term immigrant or refugee status, or as a national of another Member State of the EU who has an EEA residence permit. (Section 23). This interpretative regulation opened the door for easy naturalisation of EU citizens as compared to third country nationals. In practice, Hungarian citizenship is attractive as a second citizenship for ethnic Hungarians who have citizenship in one of the Member States of the EU – such as expatriates, emigrants, expelled Hungarian nationals, or “honourable Hungarians” living with a Hungarian spouse or family members. Furthermore, this gesture could mean a nation build-

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<sup>41</sup> Although the nationality law since 1879 has tolerated multiple nationality, exclusion of dual citizenship was the rule between 1946 and 1989 through bilateral agreements with Romania, Soviet Union, Poland, Bulgaria, East Germany, Mongolia and Czechoslovakia. Lawful emigrants, mixed couples and their children had to choose the nationality of the country of residence and terminate the others.

<sup>42</sup> Art 4 of the Act LVI of 2003, and it entered into force with the Act promulgating the Treaty on the Accession of the Hungarian Republic to the European Union.

- ing policy toward kin-minorities living in candidate or newly accessed countries in the neighbourhood.
- iv. *Recognised refugees* have also received preferential naturalisation since 1989. The starting point is formally related to the Geneva Convention in which naturalisation is noted as an instrument of durable solution. In the case of Hungary this provision was also an ethnically motivated gesture due to the fact that a majority of recognised refugees in 1989–1993 were kin-minority from across the borders. Gradually, the composition of asylum seekers has changed and this benefit has survived in parallel with a decrease in the number of recognised refugees in recent decades. Some believe that asylum could legalise the “law of return” to the motherland.<sup>43</sup>
  - v. The continuous principle regarding migrants’ integration has been the *ethnic approximation*. The long-term residence permit and naturalisation are accessible for Hungarian speaking, working, self-sufficient and non-dangerous persons. Who are they? In 90–95% of all applicants, these applicants come from the neighbourhood. They are ethnic Hungarians and bilingual family members.<sup>44</sup>
  - vi. The well-known principles of naturalisation (such as no one shall be arbitrarily deprived of his nationality or his right to change nationality, respecting the freedom of the individual, unity of the family, and the reduction of cases of statelessness and protection of personal data) are systematically ensured in regulation as well.

### *Conclusion*

The term nation has been interpreted and inserted into regulation as part of the cultural/ethnic/linguistic community, and its substance is not definable by law<sup>45</sup>. This is the basis of contradictions between laws and the Constitution. On one side, Art.6 of the Constitution refers to the kin-state’s re-

<sup>43</sup> Maryellen Fullerton: Law of Return? In Fullerton-Sik-Tóth (eds.): *Refugees and Migrants: Hungary at a Crossroads – Yearbook of the Research Group on the International Migration*. Budapest: Institute for Political Science of HAS, 1995. 110–123, and Tóth Judit: Egy amerikai kutató írásának margójára. [To the margin of an American reseracher’s paper] In Sik Endre – Tóth Judit (eds.): *Migráció és politika*. [Migration and Politics] Budapest: MTA Politikai Tudományok Intézete, 1997. 137–139.

<sup>44</sup> Judit Tóth: Who are the Desirable Immigrants in Hungary under the Newly Adopted Laws? In Fullerton-Sik-Tóth (eds.), op. cit. 57–68

<sup>45</sup> Judit Tóth: Diaspora in Legal Regulations: 1989–1999. In Kiss, I. – McGovern, C. (eds.): *New Diasporas in Hungary, Russia and Ukraine: Legal Regulations and Current Politics*. Budapest: Open Society Institute/COLPI, 2000. 42–95.

sponsibility for kin-minority living across the borders<sup>46</sup>. However, the definition of membership in a minority or ethnic community is vague, and various preferential provisions legally discriminate others despite the fact that the state is party to dozens of international treaties.

Furthermore, minorities living in Hungary form a distinct component of state power, in possession of subjective and collective rights according to the Constitution, although verification of their membership in the given ethnic or national entity cannot be defined in the same manner. Due to this logic, neither statistics on membership of minorities living in Hungary, nor hard data analysis of immigrants coming to and enjoying legal preferences<sup>47</sup> in Hungary are available. “Historic traditions and the distinction between ethnic and civic nationhood are increasingly irrelevant for explaining legislative changes” – said R. Bauböck<sup>48</sup>. Despite a standard level of immigration, in the case of Hungary this visible irrelevance is taking a much longer time to disappear than in the EU<sup>49</sup>. The recent and failed referendum (5 December 2005) on ex lege citizenship being granted to ethnic Hungarian minorities living in adjacent states provides clear evidence of this.

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<sup>46</sup> Kántor – Majtényi – Ieda – Vizi – Halász (eds.): *The Hungarian Status Law: Nation Building and/or Minority Protection*. Sapporo: Slavic Research Center, Hokkaido University, 2004.

<sup>47</sup> Judit Tóth: *Diaspora Politics: Programs and Prospects*. In Kiss, I. – McGovern, C. (eds.), 96–141.

<sup>48</sup> [www.migrationonline.cz/news](http://www.migrationonline.cz/news)

<sup>49</sup> Tóth, Judit and Sik, Endre: *Joining an EU identity. Integration of Hungary or the Hungarians?* In Spohn, W. and Triandafyllidou, A. (eds.): *Europeanisation, National Identities and Migration. Changes in Boundary Constructions between Western and Eastern Europe*. Routledge Advances in Sociology. Routledge, 2003. 223–244.