



European
University
Institute

ROBERT
SCHUMAN
CENTRE FOR
ADVANCED
STUDIES

EUDO CITIZENSHIP OBSERVATORY

COUNTRY REPORT: HUNGARY

Mária M. Kovács, Judit Tóth

Revised and updated April 2013



<http://eudo-citizenship.eu>

European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

Report on Hungary

Mária M. Kovács, Judit Tóth

Revised and updated April 2013

EUDO Citizenship Observatory
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School
Country Report, RSCAS/EUDO-CIT-CR 2013/18
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

© Mária M. Kovács, Judit Tóth

This text may be downloaded only for personal research purposes.
Additional reproduction for other purposes, whether in hard copies or electronically,
requires the consent of the authors.

Requests should be addressed to eudo-citizenship@eui.eu

The views expressed in this publication cannot in any circumstances be regarded as
the official position of the European Union

Published in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
cadmus.eui.eu

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported, at various times,
by the European Commission grant agreements JLS/2007/IP/CA/009 EUCITAC and HOME/2010/EIFX/CA/1774 ACIT
and by the British Academy Research Project CITMODES (both projects co-directed by the EUI
and the University of Edinburgh). The financial support from these projects is gratefully acknowledged.

For information about the project please visit the project website at <http://eudo-citizenship.eu>

Hungary

Mária M. Kovács, Judit Tóth

1. Introduction

The preference for the naturalisation of ethnic Hungarians has been considered to counterbalance the troubled history of a nation artificially split among various states and as a tool for preserving cultural identity in the twentieth century¹. The principle of ethnic preferentialism has been observed directly in citizenship legislation and migration law through regulations for visas, residence and employment permits, and asylum status (Tóth 1995). Due to the ideology of a ‘threatened Hungarian ethnic identity’ the relationship between the social and economic integration of migrants, migration law, naturalisation and citizenship has never been publicly discussed (Fullerton, Sik & Tóth 1997). Hungarian authorities need not give reasons for refusing an application for naturalisation and there is no legal remedy against a negative decision. This is justified by referring to the sovereign of the state and, in cases of rejection, by a presumption of the applicants’ missing ethnic and cultural ties to Hungary. An extension of preference in naturalisation for European Union citizens was smoothly passed in 2003, partly because of the supposed ethnic proximity of applicants in adjacent states.² Provisions supportive of family unity in nationality law are widely accepted, and so are the discretionary powers in naturalisation proceedings that determine who is not to be allowed to join this rather homogeneous society (Tóth 2005).

On the other hand, there are some contentious components of the citizenship regulations in contemporary Hungary:

Naturalisation and its preconditions, above all the registration of permanent residence, are criticised as being time-consuming and expensive, and the requirements for documentation as too bureaucratic. In other words, ethnic Hungarians, being the largest group of applicants, did not see themselves as beneficiaries when it came to the attitude of the authorities or to procedural provisions. For this reason the last amendments in 2010 facilitated the preconditions of acquisition and the procedure for ethnic Hungarians through accelerated naturalisation.

Moreover, certain privileges of Hungarian citizenship were extended to EU citizens and migrants under the scope of Community law as part of the EU accession process (Tóth 2004a). However the term ‘European/Union citizenship’ has been missing in legislation.

The role of naturalisation in the process of migrant integration has been unclear. While the applicant is required to be highly integrated in a cultural, economic and social sense, integration programmes do not exist at all, which means that integration can

¹The Austro-Hungarian Empire was dissolved after WWI; ethnic Hungarians lived in the seven adjacent states of Hungary after 1920 with the exception of the short period of annexation by Hungary on trans-border areas during WWII.

²Act LVI of 2003 amending the Act LV of 1993 on Hungarian Nationality. It entered into force with the accession of Hungary to the European Union on 1 May 2004.

only be achieved by individual effort. The applicant must also not endanger public order and is investigated in this regard in various ways.

Citizenship as a basket of various rights and obligations is basically considered by the general public as a historical, cultural, ethnic and emotional issue without awareness of its existing legal and normative status and its neutral significance in a democratic rule-of-law system. For this reason, public opinion is strongly divided into 'normativists' and 'nation-builders', representing different standpoints concerning voting rights, principles for the acquisition of citizenship, dual citizenship and never-ending citizenship for emigrants in the diaspora. This cleavage is more visible due to the extension of voting rights to non-resident (trans-border) citizens in 2012.

As for ethnic Hungarians, the right to have the family and given name and the name of the applicants' prior place of residence and birthplace in their original ethnic language was finally introduced in amendments related to the naturalisation and registry process.³ It causes a certain confusion in the registration of foreigners and citizens since registration is, in theory, based on the authenticity and unaltered nature of existing identity documents. Moreover, this right is exclusively reserved for ethnic Hungarians; it does not apply to non-Hungarian versions of names, for instance those of naturalised refugees or stateless migrants belonging to a linguistic minority, which would be registered in the dominant language of their countries of origin.

2. History of Hungarian policies on citizenship since 1945

Although the first Act on Hungarian Nationality (1879) became increasingly restrictive through amendments adopted during the two World Wars, its *ius sanguinis* principle has remained dominant up to the present day. This Act was in force until 1948. The history of Hungarian policies on citizenship since 1945 can be divided into the following periods:

1945-1948: The Armistice Agreement concluded in Moscow (1945)⁴ annulled all the modifications to citizenship that had come about as a result of territorial changes to the Hungarian state between 1939 and 1945.⁵ Millions of former Hungarian citizens who ended up under the jurisdiction of neighbouring states lost their Hungarian citizenship. The Peace Agreement fixed the borders of the Hungarian state as they had existed on the last day before the war began.⁶ Between 1945 and 1948 temporary regulations on citizenship considered all those residing in Hungary in 1945 to be citizens except for those holding citizenship of another state. Bilateral agreements on population exchange initiated by Czechoslovakia and the expulsion of Germans resulted in the deprivation of citizenship for those falling under these measures.⁷ Individuals who had

³ Act XXXII of 2001 and Act XLIV of 2010 amending the Act LV of 1993 on the Hungarian Nationality, Government Decree 224 of 2010, 4 August that modifies the executive rules of the Act (No. 125 of 1993, 22 September), Decree of the Ministry of the Interior No.6 of 2003, March 7.

⁴ Concluded in Moscow on 20 January 1945 and published in Act V of 1945

⁵ See the annexation of the Hungary in Czechoslovakia, Trans-Carpathia (Ukraine), Yugoslavia and Romania including re-acquisition of the Hungarian citizenship for inhabitants of occupied territories *ex lege*.

⁶ The Peace Agreement was concluded in Paris and published in Act XVIII of 1947. It entered into force by the Government Decree No. 11.800 of 1947.

⁷ See details in Czech-Slovak-Hungarian Agreement published in Act XV of 1946 and the Government Decree No. 12.200 of 1947.

not returned to Hungary following the conclusion of the war were deprived of their citizenship and, between 1946 and 1948, their property was confiscated.⁸ Finally, the citizenship status of communists who had fled Hungary during the interwar years was settled.⁹

1948-1956: In 1946 a reform of the legal status and civil rights of children born out of wedlock established their full equality,¹⁰ but only the new Act on Hungarian Nationality (1948)¹¹ provided a coherent legal framework for the acquisition of citizenship through changes in family and personal status. The Act provided for the equal treatment of children born out of wedlock and stipulated that all nationals residing abroad should be registered, without, however, creating techniques for registration in the absence of consular relations. The Act recognised the pending Hungarian citizenship of undocumented persons who had been residing in Hungary for a given number of years.

1956-1989: This period witnessed the emancipation of spouses on the basis of the New York Convention on the Nationality of Married Women of 1957,¹² the principles of which were inserted into the third Act on Nationality adopted in 1957.¹³ The executive rules of the Act were published only in part and were implemented by confidential order, such as the one requiring emigrants to renounce their citizenship and social insurance rights. Following the 1956 revolution and the mass emigration it triggered, a broad amnesty was proclaimed for returnees and a registry of nationals permanently abroad was established.¹⁴

1989-1993: After 1989, Hungary started reforms to establish the rule of law and constitutionalism. In 1989 the prohibition of deprivation of citizenship was regulated in the reformed Constitution.¹⁵ At the same time the citizenship of expatriate nationals who had been deprived of citizenship arbitrarily was restored upon request.¹⁶ The Geneva Convention of 1951¹⁷ inspired the preferential naturalisation of refugees that was inserted into the citizenship law. The fourth Act on Nationality, passed in 1993,¹⁸ made preconditions for naturalisation more restrictive, but preferences based on ethnic and family ties were intended to compensate for this. Between 1989 and 1993 Hungary terminated bilateral agreements with former socialist states that excluded dual citizenship.¹⁹

⁸ In particular, the Act X of 1947 and Act XXVI of 1948.

⁹ For instance, Prime Ministerial Decree No.9.590 of 1945.

¹⁰ Act XXIX of 1946.

¹¹ Act LX of 1948 that was the second in the list of acts on Hungarian Nationality.

¹² Published in Law-Decree No.2 of 1960 (law-decrees were passed by the Presidium of the People Republic in 1949-1989).

¹³ Act V of 1957.

¹⁴ Law-Decree No.11 of 1955, No.7 of 1956, No.11 of 1956; Ministerial Decree of the Interior No.2 of 1956, January 11

¹⁵ Act XXXI of 1989 introduced substantially a new Constitution in the form of the amendment.

¹⁶ The rationale of individual request was to compensate the historical injustice for each expatriated person, taking into account the *ius sanguinis* instead of *ex lege* regulation in the Act XXVII of 1990 and Act XXXII of 1990. Their provisions were inserted into the third Act on Hungarian Nationality in 1993.

¹⁷ Published in Law-Decree No.15 of 1989.

¹⁸ Act V of 1993.

¹⁹ These agreements were concluded with the Soviet Union, the GDR, Czechoslovakia (in whose case the dissolution of the state was interpreted as termination of the agreement), with Romania (since 10 February 1990

1994-2009: This period is marked by Hungary's accession efforts to international conventions, cooperation and to the EU and by political debates on the status of ethnic Hungarians living outside Hungary's borders. During this time the Act on Hungarian Nationality was amended three times²⁰, due to the ratification of the European Convention on Nationality of 1997 (ratified in 2001), the UN Convention on the Legal Status of Stateless Persons of 1954 (2001), the UN Convention on the Reduction of Statelessness of 1961 (2009), and recently the European Convention on the Avoidance of Statelessness in relation to State Succession of 2006 (2009).²¹ Eligibility for preferential naturalisation was extended to EU citizens and a super-preference and a specific status²² was adopted in favour of ethnic Hungarians in the shadow of the Schengen restrictions (Tóth 2003).

Since 2010 Hungary has had an accelerated naturalisation for ethnic Hungarians with a shorter preparatory procedure due to the amendment of the Act on Nationality together with executive provisions²³. It has been implemented since 1 January 2011 for applicants without any residence requirement in Hungary; thus the most preferential naturalisation is based on the 'cultural/linguistic tie' principle of nation building. The overture of this new epoch was the hasty adoption of the Basic Law²⁴ that replaced the Constitution. It extends the policy of ethnic preference (Article D)²⁵ beyond the citizenship law, for instance to voting rights (Article XXIII).

In the period under discussion there were three major breaks with basic principles in citizenship law. Although from 1879 onwards Hungary tolerated *multiple citizenship*, between 1946 and 1989 the main rule was the exclusion of dual citizenship through bilateral agreements with socialist states. Mixed couples had to choose one citizenship for their child. Decades of *arbitrary deprivation* of citizenship (1939-1989) were terminated when the modified Constitution abolished this possibility. International principles of *human rights* relevant to citizenship were inserted into the law, while a governing circle of ethnic preferences was defined as a core element of domestic legislation after 1989, raising the issue of discrimination towards non-ethnic applicants (Tóth – Körtvélyesi, 2011).

3. The current citizenship regime

The *Basic Law* (2011) contains a guarantee relating to citizenship, i.e. the prohibition of arbitrary deprivation '*if it has been acquired by birth or by other lawful mean*' (Subsection (3))

its application was suspended due to one-sided termination), with Bulgaria, Poland and Mongolia (with these states a consensual termination was published in acts).

²⁰ Act XXXII of 2001, Act LVI of 2003 and Act XLVI of 2005.

²¹ Published in Act III of 2002, Act II of 2002, Act XCVIII of 2008 and Act XV of 2009.

²² Act LXII of 2001 on 'Ethnic Hungarians Living in Neighbouring Countries'. It was amended by Act LVII of 2003 together with executive rules in ten Government and Ministerial Decrees.

²³ Act XLIV of 2010 and Government Decree 224 of 2010, 4 August.

²⁴ It was published on 25 April 2011 and entered into force on 1 January 2012.

²⁵ Article D: 'With a view to the unity and togetherness of the entire Hungarian nation, Hungary feels responsible for the fate of ethnic Hungarians living across the borders. Hungary supports subsistence and development of the Hungarian communities, facilitates their efforts to preserve the Hungarian identity, fosters the implementation of their individual and community rights, establishment of their self-governments, promotes their weal in homeland, and it supports their cooperation with one another and connections to Hungary.'

of Article G). Moreover it provides that a ‘*child of Hungarian citizen acquires Hungarian citizenship by birth. Other legal basis of acquisition of Hungarian citizenship may be determined in statutory law that is passed by a two-thirds voting majority*’ (Subsection (1) of Article G). Other details on citizenship are to be settled in legislation to be adopted also by a two-thirds voting majority but this requirement does not apply to the ratification of international agreements on citizenship.

The Act on Hungarian Nationality ensures the *equality of rights* of citizens. It guarantees that all citizens have identical legal standing irrespective of the legal title of acquisition of citizenship. The 1997 European Convention on Nationality obliges participating states to refrain from discrimination between their citizens, whether they are nationals by birth or have acquired citizenship subsequently. Discrimination is forbidden among Hungarian nationals, irrespective of the legal title under which their citizenship was granted. The Act contains only one exception with regard to withdrawal of citizenship, which only applies to citizens by naturalisation.

Hungary as a party state in all important international agreements – and following certain soft-law regulations – intends to prevent *statelessness* and provide protection for stateless persons²⁶. Hungary has been the first country in the region to adopt, through an amendment in 2007, separate and detailed legislation on the determination of statelessness, which not only elaborates upon the procedural criteria, but also creates a separate legal identity and protection status for stateless persons. In 2007–2010, the total number of applicants was 109, and out of them only 56 migrants were recognized as *de jure* stateless persons in Hungary; the others, in need of protection, had to choose other legal channels. (Gyulai, 2010) The right to change citizenship is also included in the Act on Nationality. The possibility to withdraw citizenship applies only as an exception. The more common procedure is renunciation by a person who lives abroad and thus would presumably *not become stateless*. Measures aimed at the prevention of statelessness restrict the right of the individual to self-determination and the sovereignty of the state with the conventions of the UN and the Council of Europe. The only legitimate reason for the withdrawal of citizenship is if it was acquired in a manifestly fraudulent manner. Moreover, in the case of renunciation the person must prove that he or she has obtained another citizenship or its acquisition is probable.

Domestic law ensures the granting of citizenship at birth by descent (*ius sanguinis*) while *ius soli* is applied as an auxiliary principle for abandoned or stateless children. The Act on Nationality supports family unity (with respect to legal status) by various *preferences* for the naturalisation of spouses and (adopted) minors. Refugees and stateless persons are also given priority for admission to citizenship. Hungarian regulations grant preferential treatment to persons who are former Hungarian nationals and to ethnic Hungarians in the process of acquiring citizenship.

Hungary tolerates *multiple citizenship*, and the state strives to create rules and enter into agreements to avoid conflicts between different legal systems. A person acquiring Hungarian citizenship by naturalisation need not renounce his or her prior citizenship. The

²⁶ Recommendation No. R (99) 18 of the Committee of Ministers of the Council of Europe on the avoidance and the reduction of statelessness (1999) also influences legislation. This recommendation recalls partly the principles already formulated in the European Convention on Nationality insofar as they have relevance for the avoidance and reduction of cases of statelessness, but some of these principles are further elaborated through specific and concrete guidelines. It is referred to in the Explanatory Report to the Bill (Act II of 2007 on entry and residence of third country nationals).

circle of bilateral agreements and the European Convention of 1997 regulate several legal relationships with respect to persons of multiple citizenship (e.g. with regard to military service or taxation). Furthermore, those having another citizenship are entitled to the same rights and obligations in the territory of Hungary as other nationals with exception of employment in the police or security services (Tóth 2004a). On the other hand, any Hungarian citizen who also holds citizenship of another country shall be regarded as a Hungarian citizen for the purposes of the application of Hungarian law unless statutory acts regulate otherwise.²⁷ However, the *principle of genuine link*²⁸ appears selectively requiring factual, effective and close relationship between Hungary and the applicant for naturalisation or other modes of acquiring citizenship, regardless of his or her existing other citizenship. First, for those in possession of Hungarian citizenship and living abroad the genuine and effective link to Hungary is irrelevant. Since 1929, millions of (lawful) emigrants and their descendants have preserved their Hungarian citizenship despite acquiring a second or third citizenship, and despite the absence of close relations (or any relation whatsoever), or cultural and ethnic affiliation to Hungary. Second, the newly adopted accelerated naturalisation means massive exception from the genuine ties requirement because applicants' ethnic proximity (descendant of formal national or probable origin from Hungary and supposed Hungarian language knowledge)²⁹ is enough, the residence of the applicant in Hungary is required neither prior to submission nor during the application period.

Hungarian citizenship shall be certified with a valid document (identity card, passport, citizen's certificate). In case of doubt, it must either be attested to by the authorities or a certificate must be issued. Upon request, the responsible minister issues a certificate on the existence of citizenship or its cessation, or verifies that the person concerned has never been a Hungarian citizen. The certificate is valid for one year from the date of issuance. The certificate's contents may be contested before the Metropolitan Tribunal of Budapest by the person concerned, his or her lawful representative, the public prosecutor as well as the person's guardian.³⁰

The regulatory principles of the citizenship system in Hungary are essentially in harmony with *international norms*. Hungary is a signatory to all important conventions which define the framework of the development of the law. However, some shortfalls in prevention of statelessness and procedural guarantees are still apparent.³¹

²⁷ Art 2 (2) in the Act on Hungarian Nationality

²⁸ This principle is a legal expression of the fact that the individual who obtains this citizenship – directly through the law or as a result of the action of the authorities – is in actual fact more closely related to the state whose citizen he or she is than to any other state (Liechtenstein v. Guatemala, 1955 WL 1 (International Court of Justice), generally known as the Nottebohm case).

²⁹ Art 4 (3) in the Act on Hungarian Nationality

³⁰ Act on Hungarian Nationality, Art 10-12

³¹ Regardless of the European Convention on Nationality (1997) reasoning in citizenship decisions is completely absent and accession to legal remedy is missing in most of the cases by virtue of law; concerning the UN Convention on the Legal Status of Stateless Persons (1954), its Art 23-24 was applicable in 2002-2012 only for migrants that lawfully entered Hungary; Art 1(2)a, (4), Art 3 and Art 8(4) of the UN Convention on the Reduction of Statelessness (1961) are not implemented by law in Hungary.

4. Current modes of acquisition and loss of citizenship

There are seven legal titles of acquisition of Hungarian citizenship with different requirements:

The child of a Hungarian citizen obtains Hungarian citizenship by birth (*ius sanguinis*) regardless of the place of birth.

The child of a stateless immigrant in possession of a permanent residence permit or an abandoned child of unknown parents shall be considered a Hungarian citizen unless or until this presumption is rebutted (e.g. when he or she obtains a foreign citizenship due to the clarification of his or her parent's identity and citizenship). There is no time limit for rebuttal; presumption of Hungarian citizenship on the basis of *ius soli* is therefore conditional (*conditional acquisition*).

The Hungarian citizenship of exiled nationals who were deprived of their citizenship between 1945 and 1990 shall be restored upon request. A declaration addressed to the President of the Republic reinstates the citizenship of the exiled national immediately when it is made. Acquisition of citizenship is also possible by declaration in case the applicant was born in Hungary and has not acquired another citizenship through his or her parent by birth, provided that, at time of the person's birth, he or she was residing in Hungary, he or she has lived without interruption in Hungary for a period of at least five years by the time of submission of the declaration and he or she is not older than nineteen years (i.e. within one year from reaching legal age). Another ground for acquisition applies if the applicant was born from a Hungarian citizen mother and a foreign father before 1 October 1957 and did not become a Hungarian citizen by birth (*acquisition by declaration*).

Presumptive paternity ensures citizenship by law for a child born out of wedlock if a parent who declares paternity or a judgement recognises paternity/maternity, or if the parents marry subsequently (*acquisition by family law facts*).

Upon request the *restitution* of citizenship is ensured if the applicant could not obtain a new citizenship within one year of his or her renunciation of Hungarian citizenship. Only a few such cases are dealt with annually.

Naturalisation implies a long procedure and depends on various preconditions.

Re-naturalisation is applicable for a person whose Hungarian citizenship was terminated and who proves their knowledge of the Hungarian language. Applicants should have a clean criminal record according to the Hungarian law and that the applicant is not being indicted in any criminal proceedings before the Hungarian court. In addition, the applicant should not be a threat to the public order and national security of Hungary. The residence requirement for these applicants was waived in 2010.

In the absence of detailed statistics³² it can be said that the absorbing level of Hungary through the naturalisation and re-naturalisation was strongly limited in the recent past in

³² In 2011 the share of citizenship applications was as follows according to the OIN data: applications for naturalisation 1174, declaration to the President 83, renunciation 131, restitution 1, request for citizenship certificate 2212. It is an example of a data set that is changing.

comparison to the foreign residents in Hungary: its rate was only 3-6 percent per year (Table 1 based on Office of Immigration and Nationality Affairs (thereinafter: OIN) data).

Table 1: The number of naturalised persons per year

Year	2005	2006	2007	2008	2009	2010
Number of naturalised, re-naturalised persons	9 981	6 564	9 398	8 132	5 959	5 513

Basic, non-preferential cases of naturalisation shall meet all the following requirements:

permanent and continuous residence in Hungary for eight years in possession of a permanent residence permit (for third country nationals) or EEA citizen's registry of residence;

a clean criminal record according to the Hungarian law and not being indicted in any criminal proceedings before the Hungarian court;

proven means of stable livelihood and accommodation in Hungary;

naturalisation is not considered to be a threat to the public order and national security of Hungary; and

successful examination of basic constitutional issues in Hungarian language. If the applicant attended a Hungarian language primary or secondary school or university either in Hungary or in another state they are exempted from the exam. This exemption is also available for the overwhelming majority of applicants who attended public schools in the neighbouring states or in Hungary. Exemption is provided for persons who are legally incompetent or with limited capacity; over 65 years of age at the time of submission of the application; and to persons who are able to verify incapability of taking the exam due to suffering in a permanent and irreversible illness.

The requirements for *preferential naturalisation* differ from the regular procedure:

The permanent, continuous residence is reduced to five years if the applicant was born in Hungary or has established residence in Hungary before reaching legal age or is stateless;

the permanent, continuous residence is reduced to three years, if the applicant has been married to a citizen for three years, or he or she has a minor child who is a Hungarian citizen, or if the applicant has been adopted by a Hungarian citizen or is an officially recognised refugee.

Permanent residence, together with the proven means of stable livelihood and accommodation in Hungary and examination, is not required for an ethnic Hungarian applicant's naturalisation if his or her ascendant was a Hungarian citizen or whose Hungarian origin is presumed, and if he or she can demonstrate knowledge of Hungarian (applicants with disabilities are exempted from the language exam). The preconditions of a clean criminal record, absence of being indicated in criminal proceedings before the Hungarian court and of any threat to the public order and national security of Hungary shall be also fulfilled. Due to the deleted residency

requirement and faster procedure it is considered as *accelerated naturalisation* introduced through the amendment of the Act on Hungarian Nationality in 2010.

Certain requirements can be waived as follows:

1. The criteria of continuous residence in Hungary may be waived in the case of minors, if the minor's application for naturalization is submitted together with that of the parent's or if the minor's parent was granted Hungarian citizenship.
2. Minor children may be naturalised if adopted by a Hungarian citizen irrespective of where their residence is located.
3. By recommendation of the minister in charge of naturalization and nationality, the President of the Republic may grant exemption from the requirements of clean criminal record, absence of pending procedure at Hungarian court and of threat to the public order and national security of Hungary - if naturalizing the applicant is in the overriding interest of Hungary.

The permanent residence authorisation is based on a person being habitually and lawfully present in the country without interruption for some years previously. The permanent residence status is an accumulative term due to the amending acts, including immigration or settlement permit, recognised refugee status; or exercised right of free movement and residence in the territory of Hungary if the applicant's address is registered.³³

Loss of citizenship shall be based on:

Renunciation: a citizen residing abroad may renounce his or her citizenship if he or she possesses another citizenship or relies on the probability of its acquisition.

Withdrawal: Hungarian citizenship may be withdrawn only if a person who has acquired citizenship by naturalisation has violated the law on citizenship, in particular by misleading the authorities by submitting false data or omitting data or facts. In practice, however, there has not been a single case where this provision would have been applied. As holding another citizenship is not a condition for this sanction, it could result in statelessness. Ten years after naturalisation, Hungarian citizenship may no longer be withdrawn. (This is a theoretical entitlement with no underpinning practice. The OIN and the President have never implemented this provision.)

5. Specific rules for members of the kin-minority

Since the constitutional reform in 1989, there has been a debate on *kin-state and kin-minority connection*, how it could be met as a constitutional obligation of the public power.³⁴ The Basic Law reformulates this constitutional and political goal on behalf of “the unified Hungarian nation” in Art D. Accordingly, ties of ethnic individuals and their communities within their home countries and with Hungary are equally important in connection building

³³ The Act II of 2007 on entry and residence of third country nationals in Hungary remains valid the long-term immigrant status (something missing here after ‘valid’) if it was issued before the transposition of Dir 2003/109/EC on the grounds of the Act XXXIX of 2001 and Act XXIX of 2004. The term of registered address is determined in the Act LXVI of 1992 on registration of citizens’ personal data and address.

³⁴ Article 6 (3) in the Constitution of the Republic of Hungary (Act XX of 1949 modified by the Act XXXI of 1989).

and the maintenance of their autonomy in their home countries.³⁵ Although the relevance of this closure in the normative system and legislation has been disputed (Kukorelli, 2000) it has become the constitutional ground of ethnic preference policy and regulation for decades.

Ethnic preferentialism has been politically important at least in three aspects in relation to the acquisition of citizenship by naturalisation and re-naturalisation.

(a) Acquisition of Hungarian citizenship by naturalisation and its preservation occurs regardless of other citizenships possessed by the individual. It means that *dual citizenship is fully tolerated* in the acquisition procedure (e.g. the OIN has never informed another state's authorities of the acquisition of Hungarian citizenship, there is no exclusion on acquisition by birth since the termination of bilateral agreements on exclusion of dual citizenship with Socialist states concluded in the 1960s and 1970s.) The subjects of this tolerant regulation are the ethnic Hungarians living in adjacent states or migrating to Hungary giving up their own citizenship. However, others equally enjoy this principle.

(b) The most *preferential naturalisation* was based on the applicant's confessed ethnic Hungarian origin and the proofs that his/her ancestor possessed Hungarian citizenship. Naturally, these applicants had to reside permanently in Hungary and meet all other preconditions of naturalisation with the exception of long years of prior residence (1993-2010). These applicants were also eligible for exemption from examination because they were schooled according to Hungarian curricula in an adjacent state or in Hungary. The accelerated naturalisation introduced in 2011 stipulates that non-resident applicants must have an ancestor who has or possessed Hungarian citizenship, and that the applicant for naturalisation or re-naturalisation has Hungarian language knowledge at a non-determined level. These ethnic applicants do not have to live in Hungary.

(c) *Changing their names and information about the birth* of a naturalised person is a privilege for ethnic Hungarians whose identity documents are issued in a neighbouring state in the official language of the state. Upon acquiring Hungarian citizenship their identity documents (including personal name, place of birth and name of applicant's mother) may optionally – upon request of the applicant – follow the Hungarian language version.

This preference is proved by the statistics on the rate of non-preferential, preferential and accelerated cases of naturalisation per year (Table 2). For instance the rate of the most preferential applicants was almost 78 percent of all applicants in 2008, 85 percent in 2009 and 84 percent in 2010. The accelerated naturalisation makes marginal all non-ethnic applicants. On the other hand, at least one third of applicants for naturalisation had requested a change of name after naturalisation according to the current OIN.

³⁵ See the text of Article D in upper note.

Table 2: Share of naturalised, re-naturalised persons

Legal basis of Naturalisation	2009	2010	2011
Non-preferential migrants	219	273	169
Preference for refugees, stateless persons	33	24	15
Preference for family members, minors	578	538	497
Ethnic preference	4 704	4 364	----
Accelerated naturalisation	---	---	2011-2012: 200 000 ³⁶

The accelerated naturalisation is challenging not only because of the number of acquisitions but also its principles. The Constitutional Court's judgement³⁷ on accelerated naturalisation confirms that it is in harmony with the criteria of popular sovereignty and all of the undertaken international legal obligations. The private person who submitted a request for constitutional review of the amendment of preferential naturalisation referred to the provision that all applicants with a clean criminal record and without threat to public order and national security may be naturalised if their ascendant was a Hungarian citizen or their Hungarian origin is made probable, and they prove knowledge of the Hungarian language. Moreover, the criteria of continuous residence may be waived for (non-ethnic) family members. These provisions (Art 4(3), 4(5) and Art 5) violate the equal treatment as required in the European Convention on Nationality (1997) or bilateral agreements on good neighbourhood relations (e.g. with Slovakia concluded in 1995) and endanger popular sovereignty because many non-habitant nationals could participate in the general elections. The Constitutional Court dismissed the request for three reasons. First, the right to vote was not modified in the altered Act on Hungarian Nationality and the voting right was based on the criterion of residence in Hungary. (Following the decision, the Act on Voting Rights was amended in order to extend it to the non-resident citizens in 2012.³⁸) Second, there is no substantial connection between the naturalisation requirements and popular sovereignty. Third, the review of compatibility with international treaties shall be submitted only by Parliament, parliamentary committee, deputies of the Parliament, president of the state, the Government or a member of the Government, the chair of the Audit Office, Supreme Court or the Chief Public Prosecutor. The applicant is out of this circle, so his application is, in this respect, not evaluated substantially.

³⁶ The number of naturalised person is 200 000 but the number of applicants is over 300 000 and the plan is for the acquisition of Hungarian citizenship by about 500 000 up to 2014. State Secretary of MFA, Németh Zsolt, MTV1, 25 July 2012.

³⁷ Constitutional Court decisions No.188 of 2010, November 12

³⁸ See the Act CCIII of 2011 on elections of the members of the parliament, Art 12 (3) that is applicable from 2014

6. Special procedural arrangements

The citizenship regulations and procedure have some peculiar characteristics:

The decision regarding acquisition and loss of citizenship is made by the President of the Republic upon the proposal of the responsible minister as counter-signature authority (the preparatory period shall be finished within 3-6 months). The President's entitlement is based on the Basic Law [art 9(4) point i and (5)]. Due to the lack of provisions on how to practice this entitlement in the Act on Hungarian Nationality, constitutional principles alone are applicable in cases of uncertainty such as the question of how many days the President has to sign the documents on naturalisation. However, local municipal authorities or other communities have no right to complain against a migrant resident's naturalisation.

The preparation of naturalisation and loss of citizenship is made by OIN, that has been directed by two ministers since 2010: the accelerated naturalisation issues belong to the task of the minister of justice and law enforcement, while the other citizenship (and migration) issues are the responsibility of the minister of the interior. However, the budget of OIN belongs to the Ministry of the Interior.³⁹ The separation of the accelerated naturalisation from citizenship and migration administration would demonstrate its political importance. The accelerated citizenship was accompanied with outstanding budget and personnel contributions (from 2010-2012 the extra budgetary cost was 2,519,661 EUR).⁴⁰

Decisions on naturalisation cases are not explained, and the absence of reasoning perhaps is related to *sui generis* rules. At the level of the President it would be acceptable but from the perspective of the OIN and the minister as preparatory administrative authority this shortage violates the requirement of the fair procedure.

There is no legal recourse against naturalisation decisions and withdrawal of citizenship, also in the context of the *sui generis* rules. Only the legal facts of the application can be discussed in procedures related to the issue and renunciation of the citizenship certificates. Judicial review of such matters may be submitted to the Metropolitan Tribunal.

While the citizenship applications procedure is free of charge, the examination on constitutional rudiments costs fifty percent of the actual lawful minimal salary per month (about 120 EUR). Naturally the expenditures of the oral examination and the written test shall be covered by applicants who are almost always non-ethnic migrants while the costs of the whole citizenship administration made by the clerk of the local municipal, mayor, OIN, consular office, police, ministries, the president office and security services are financed from the state budget because they are almost always connected to ethnic applicants.

Naturalisation is valid if the applicant takes an oath or pledge before the local mayor as representative of the local community. This ceremony would express the solemn

³⁹ Joint order of the Ministry of the Interior and Justice and Law Enforcement No.9 of 2010, September 29, Section 1

⁴⁰ Government Resolution No.1162 of 2010, August 4 provided surplus 830 million HUF to 2010, Government Resolution No.1135 of 2011, May 2 provided surplus 3359.1 million HUF to 2011, Government Resolution No. 1164 of 2012, May 18 ensured surplus 3221.2 million HUF to 2012

inclusion into the local (political) community of citizens. However, the accelerated naturalisation without requirement of residence in Hungary also includes taking an oath or pledge before the Hungarian ambassador or consular official in the state of applicant's residence. Thus the oath or pledge of new citizens is transformed to a declaration of loyalty only to the state of Hungary⁴¹.

7. Current political debates on citizenship

Some examples are given on political discussions in order to highlight the interrelations between citizenship law, migration law, external relations, European integration and nation-building in contemporary Hungary.

8. The Hungarian Status Law and the referendum on dual citizenship

Although the list of states and criteria for visa obligations have come under European Union control, bilateral agreements on visa-free travel were maintained up to Hungary's accession to the EU⁴². Issuing visas, including a national visa (in the terminology of the Schengen regime), was reformed in favour of Hungarian minorities living in adjacent third countries. In 2006 a visa allowing its holder to stay in Hungary and a multi-entry visa for ethnic Hungarian visitors was introduced. This visa may be issued for five years to a foreign applicant who is capable of sustaining himself or herself, and wishes to use his or her stay in Hungary for practicing the Hungarian language and cultural activities. Under this visa, employment or study in Hungary is not allowed. The visa policy intends to secure the possibility for individuals belonging to the kin-minority to visit and enter Hungary freely in order to compensate for EU law and security requirements (Tóth 2004b).

The Act on benefits for Ethnic Hungarians living in Neighbouring States of Hungary (usually called the Status Law) was adopted in 2001 after stormy debates. It introduced a specific certificate for ethnic Hungarians living in Slovakia, Romania, Ukraine, Slovenia, Serbia-Montenegro and Croatia.⁴³ It entitled beneficiaries to a set of cultural and economic rights, including seasonal working permits in Hungary. The World Federation of Hungarians insisted that the benefits provided by the law were no substitute for what the Hungarians really needed, which was full Hungarian citizenship. The Status Law provoked an angry response in neighbouring states. Hungary was accused of irredentist nationalism, of creating a 'veil for dual citizenship', the ultimate effect of which was to call the sovereignty of the adjacent states into question. Hungary was also criticised by the EU for the unilateral

⁴¹ The Act on Hungarian Nationality determines the text of the declaration [Art 7(4) and (4a)]: 'The citizenship oath/pledge of allegiance shall read as follows: I (XY) do solemnly swear that I will consider Hungary my homeland. I will be a loyal citizen of Hungary, I will support and observe the Basic Law and laws thereof. I will defend and serve my country to the best of my abilities. (So help me God!)

⁴² Before accession Hungary had agreements on visa-free travel with six neighbours, and a voucher system was defined with Ukraine. For the sake of legal harmonisation these agreements were modified. Visa requirements were introduced for Ukrainian and Serbian citizens, while the agreement with Romania introduced a maximum length of stay.

⁴³ According to the statistics published by the Hungarian Government Office for Trans-border Hungarians, the number of Hungarians living in Romania, Ukraine, Serbia and Montenegro, Slovakia, Slovenia and Croatia on the grounds of last census was amounted to 2.429 000 persons. ([wwwHYPERLINK "http://www.htmh.hu/"](http://www.htmh.hu/) .HYPERLINK "[http://www.htmh.hu/"](http://www.htmh.hu/) htmhHYPERLINK "[http://www.htmh.hu/"](http://www.htmh.hu/) .HYPERLINK "[http://www.htmh.hu/"](http://www.htmh.hu/) hu in 2004)

adoption of the law, for not having consulted the states concerned, and for the extraterritorial aspects of the law. Despite the negative response, the World Federation of Hungarians insisted that Hungary must proceed with the unilateral creation of non-resident trans-border citizenship for ethnic Hungarians. In October 2003, the Federation began collecting signatures for a referendum on establishing non-resident citizenship for trans-border Hungarians. Thus the initiative for citizenship reform came from outside the Hungarian political establishment. Because of constitutional inconsistency and international protests (Kántor, 2004) the new government submitted the modification of the law to the parliament, also in 2003 ending some of the individual benefits (employment, social insurance and public health) that were available only in Hungary to the Ethnic Hungarian Certificate holders.⁴⁴ As a palliative, in December 2004, another support system for community building was set up (Homeland Fund).⁴⁵

On December 2004 Hungary held a referendum on whether to offer Hungarian citizenship to Hungarians living outside the borders of Hungary.⁴⁶ The novel aspect of the proposal was not the introduction of dual citizenship itself, since the option of acquisition of a Hungarian second citizenship had long been available for permanent residents within the country. The innovation was the removal of all residency requirements from the preconditions of preferential acquisition. Ethnic Hungarians in neighbouring states, and possibly living elsewhere, were to be granted the opportunity of obtaining Hungarian citizenship merely by declaring themselves of Hungarian linguistic affiliation at a Hungarian consular office, or if they hold an Ethnic Hungarian Certificate, confirming their Hungarian citizenship. Although the referendum question left the details of the criteria of eligibility open for future lawmaking, an estimate of those potentially eligible to benefit from those provisions could be made by reference to the estimated two and half million persons of ethnic Hungarian origin living in neighbouring states. Assuming that the majority of those made eligible by the reform would actually claim citizenship, the proportions of the resulting change would exceed the growth of Germany's citizenry after reunification but without territorial enlargement.

The Hungarian suggestion associates eligibility for extraterritorial dual citizenship with membership in an ethnically-defined community. Dual citizenship would thus purposefully reaffirm the connection between ethno-cultural nationality and citizenship which is precisely the connection that most immigration states have been trying to weaken when tolerating dual citizenship (Fowler, 2002).

The political debates on the referendum were tremendously polarised – and finally the referendum failed. 63 percent of the eligible voters stayed away from the referendum. Among those who cast their ballots, 51.5 percent voted in favour of the reform and 48.4 percent against. The invalid referendum was “the offer to make a nation of ten million to enlarge its homeland beyond the state-borders to the entire Carpathian basin. The nation refused to take the risk and accept the costs.” (Kis, 2004a) But given the enormous disappointment of trans-

⁴⁴ The Act LXII of 2001 was amended by the Act LVII of 2003. Its administrative rules on financial, technical and procedural issues are laid down in 10 Government and Ministerial Decrees.

⁴⁵ Act II of 2005 on the Homeland Fund covered various community-building projects for kin-minorities living in adjacent states.

⁴⁶ The question of the referendum was as follows: ‘Do you agree that parliament should pass a law allowing Hungarian citizenship with preferential naturalisation to be granted to those, at their request, who claim to have Hungarian citizenship, do not live in Hungary and are not Hungarian citizens, and who prove their Hungarian citizenship by means of an Ethnic Hungarian Certificate issued pursuant to Article 19 of Act LXII of 2001 or in another way to be determined by the law which is passed?’ (<http://www.election.hu/>)

border Hungarians with the result, the issue was raised during the long campaign and at the opening of the new parliamentary session in 2010.

9. Implications of the planned trans-border dual citizenship

The Socialist-Liberal coalition governing power was defensive concerning their nationality policy after the unsuccessful referendum. Due to continuous pressure from nationalist right-wing parties, the legislation on citizenship was modified between 2005-2010 in order to consolidate public opinion:

The application for naturalisation could be immediately admissible after obtaining the settlement (open-ended residence) permit. It meant a radical reduction of the necessary residence period prior to submission;

an EU citizen staying longer than three months in Hungary with a registry document in Hungary is considered as a resident (on equal footing with a third country national in possession of a settlement/immigration permit that is available for five years of residence);

entitlement of the state president to exempt applicants from certain criteria of the naturalisation procedure was limited;

the preparatory period of the nationality procedure made by the Ministry of the Interior (OIN) was considerably reduced.

The reaction to allowing trans-border dual citizenship was immediate in Slovakia, which adopted a legal restriction against the intentionally acquired second citizenship in May 2010. The Robert Fico cabinet submitted a modification of the Slovakian citizenship act similar to the regulation in Ukraine that terminated original citizenship, a measure combating dual citizenship, but using a legal possibility provided for by Art 7-1a of the European Convention on Nationality (loss of nationality *ex lege* in case of voluntary acquisition of another nationality). Although there are lawful exemptions in favour of multiple nationality, the conflict with Slovakia and Ukraine meant a risk for all applicants for Hungarian naturalisation. The Hungarian Helsinki Committee criticized the government for neglecting the diplomatic negotiations with neighbours on planned acquisition of Hungarian citizenship for non-resident ethnic Hungarians. The promised discretion of the authority keeping personal data of naturalised persons in confidential files increased the distrust of the neighbouring states. Nonetheless, the few cases of acquisition of Hungarian citizenship which became public (e.g. a dual citizen published a public letter to Prime Minister Radicova on the event of his naturalisation in Hungary) prove that the Slovakian authority is ready to implement the restrictions and erase the name of former Slovakian citizens from the list of residents and nationals who acquire a second citizenship. These members of the Hungarian community also lose their voting rights in Slovakia (recently general elections were held in March 2012).⁴⁷ However, the trans-national citizens are losing their first citizenship and acquiring a new (in the case of Slovakia, also European) citizenship, but without staying in Hungary (in the absence of a rented flat, purchased house, family accommodation) they will not be registered in Hungary, which is a precondition for having an identity card and access to social and health

⁴⁷ Státusza: lakhely nélküli idegen. A kettős állampolgárságról jogász szemmel. *Helsinki Figyelő*, 24 February 2012.

care. On the other hand, with the application of the relevant EU law on free movement of persons and workers, they have access to a driving licence, a social insurance card or others in the country of residence (in their home come country).⁴⁸

The implications of dual citizenship include other interrelated aspects as well. After WWI, those Hungarians who ended up as minorities in neighbouring states were obliged by the Peace Treaty to opt for the citizenship of their new home state, or, if they declined to do so, to move to Hungary. Therefore, in the eyes of Hungary's neighbours, any unilateral change in the citizenship status of minority Hungarians would amount to a unilateral breach of treaty obligations, and to a revision of the terms of the peace treaty that still serves as the basis of international legitimacy for the current borders of these states. Furthermore, the dual citizenship that emerged from the referendum initiative makes a weak distinction between active and inactive (dormant) citizenship. The idea that *ius sanguinis* transmission could automatically create dual citizens after any number of generations would amount to the obligation to re-activate the 'slipping' citizenship of people whose numbers surpass 1.5 million (the result of the two or three generations of emigrants since 1929).⁴⁹ Finally, the dual citizenship is incompatible with claims of autonomy raised by trans-border minorities in territorial states.

10. Fight against statelessness

The Ombudsman investigated the implementation of provisions combating statelessness. Upon complaints and *ex officio* procedure improper practices in children's homes and orphanages was discovered relating to children born of unknown parents and found in Hungary. Hundreds of children living in these institutions were registered as persons with unaccounted origin/status due to the malpractice of guardian authority that did not request either Hungarian citizenship or the clarification of their legal status from the consular offices for years. Moreover, OIN's interpretation of controversial rules in favour of stateless minors was restrictive. However, the proposals on improvement of legislation and interpretation in accordance with children's rights made by the Ombudsman have been neglected.⁵⁰

The Hungarian Helsinki Committee dealing with statelessness and legal status of *de jure* and *de facto* stateless migrants since 2006 submitted a motion to the Bill on amendment of the Hungarian Nationality Act in 2010⁵¹. It stressed that neither the rules in force, nor their modification would be in accordance with the UN Convention (1961) on reduction of the cases of statelessness and UN Convention (1989) on child rights.

It proposed conditional acquisition of citizenship for a child of recognised as stateless person without immigration/settled migrant permission if that child was born in Hungary (Art 3 (3)a) or if s/he could not acquire citizenship of any parent by birth (Art 3 (3) new point of c).

It would grant Hungarian citizenship for a child born in Hungary from a foreign parent if his/her origin and citizenship could not be clarified within one year. In this case at

⁴⁸ The concrete cases were cited in Semjén kuruckodása és a cserbenhagyott Boldoghy Olivér. 22 November 2011, http://hvg.hu/velemeney/20111122_szlovakia_megfosztas_alampolgarsagtol

⁴⁹ see the estimation in Resolution of the Presidium of the People's Republic, No.11 of 1956.

⁵⁰ See the documents of the Ombudsman Office AJB 2629/2010, AJB 4196/2010.

⁵¹ Gyulai, Gábor (Magyar Helsinki Bizottság) javaslata dr. Rogán Antal úrnak a T/4699.számú önálló képviselői indítványhoz. 24 October 2011, <http://www.helsinki.hu>

the age of 1 this child shall be considered a Hungarian citizen. (Art 3 with a new (4) deleting the actual Art 5/A (1)b).

This proposal was refused without public debate. The only positive but subtle impact of this proposal became visible in 2012 when the Parliament withdrew the declaration made to the UN Convention (1954) on the legal status of stateless persons. Accordingly, their social rights will be provided regardless of how they entered Hungary.⁵²

11. The ethnicisation of naturalisation

The general elections in spring 2010 cleared the way for a modification of the Act on Hungarian Nationality, requiring a qualified majority. Public opinion also supported the accelerated, beneficial acquisition for ethnic Hungarians (61 percent of population went along with the legislation in this effort in August 2011) but enlargement of voting rights to non-resident citizens was unexpected because such plans were denied by prominent representatives of this elected party in 2004-2010⁵³.

The unification of the Hungarian nation through the acquisition of citizenship does not require residence in Hungary. The amendment is rooted in the optional interpretation of the genuine link principle, namely that non-ethnic applicants may establish linkage via long residence in the country but ethnic Hungarians would connect to the kin-state on a cultural, linguistic, spiritual or identity level.⁵⁴ In this way the nation as political community becomes ethnic community while national minorities, as citizens living in Hungary, are considered as a “pillar of the state”⁵⁵. In this way minorities are excluded from the nation and may be included to the political community. Furthermore, the Basic Law that was passed and published in a speeded up procedure (25 April 2011) disconnects the society due to ideological terms. Issues such as the dividing line between the political and ethnic nation, the protective role of Christianity for the entire nation, whether marriage should be exclusively heterosexual, the legal obligation of children to maintain old parents in need, denial of the political state’s responsibility for the Holocaust, denial of democratic and constitutional reform in 1989 may represent reasons for a lack of social consensus. Not surprisingly, the event of entry into force of the Basic Law (on 1 January 2012) was celebrated officially in the Opera House while people were demonstrating against it in the downtown. In order to prove that the opposition to the Basic Law was only marginal, a “peace march for Basic Law” was managed by the (publicly financed) ruling parties, churches and ethnic organisations across the borders⁵⁶ expressing in part their gratefulness for the material support and accelerated naturalisation of the ruling powers.⁵⁷ The ongoing citizenship policy through the timing of

⁵² See Act LIII of 2012 that deleted the declaration (reservation) made to the Art 23 and 24 of the UN Convention (1954).

⁵³ The result of Medián Kutatóintézet and the denied enlargement of the voting circle is cited in Mesterházy, Szilvia - Hadnagy, Miklós: Csak a FIDESZ, semmi és senki más. A második Orbán-kormány magyarság-és nemzetpolitikája. Kisiklott forradalom. Szerk: Szeredi, Péter – Szigetvári, Viktor, József Attila Alapítvány, Budapest, 2012, 307-317.

⁵⁴ Pröhle, Gergely state secretary in the Ministry of Foreign Affairs argued for the amendment of the act on Hungarian nationality at the international conference of the Hungarian Academy of Sciences and MFA (4 October 2011).

⁵⁵ Art XXIX (1) in Basic Law.

⁵⁶ <http://www.erdely.ma> 16 January 2012

⁵⁷ The Hungarian National Council in Transylvania (EMNT) was established in 2003 and strongly supported with political and financial instrument in order to defeat the old, well-known Hungarian coalition partner in

legislation or propaganda of beneficial naturalisation has played a role in the elections in neighbouring countries.⁵⁸

Although the migration statistics are modernised, data from the accelerated naturalisation are not available. Up until summer 2012 – an 18 month period – the number of applicants was 300 000, of which about 200 000 persons have taken the citizenship oath⁵⁹. Due to missing statistics, the procedure is not transparent but “the emotional aspect of nationality is significant,”⁶⁰ not the legal or numerical.

The purpose and substance of the naturalisation criteria, namely “whose Hungarian origin is made probable” is vague. (Tóth, J., 2012a) The explanatory note to the Bill refers to the Csángó people living in Romania without any further explanation or definition. For instance, about 50 000 *magyaráb* are living in the border zone of North Sudan and Egypt whose ancestors as soldiers migrated to Africa from the Ottoman Empire including, at that time, the Kingdom of Hungary. Their descendants consider Hungarians as distant relatives. Mohamed Osman as *magyaráb* obtained ethnic Hungarian certificate (on the grounds of the Status Law), so he applied for citizenship when living in Oradea (Romania). His request was refused due to absence of proper documents on Hungarian ancestors and relatives, as the ministerial administrator explained. This case illustrates the arbitrary implementation of an inaccurate term without specific rules on evidence.⁶¹

The unilateral citizenship amendment was not negotiated with the territorial states in order to prevent conflicts of dual citizenship. Due to the modification of the Slovakian citizenship law in 2011, 296 naturalised persons lost Slovak citizenship (134 male and 162 female) up to July 2012. The majority of them acquired Czech citizenship and only 25 were naturalised under the accelerated procedure by Hungary. “A nationality that you shall keep in secret and that you shall not wear in your homeland, is worthless” – Péter Balázs, ex-European commissioner, thus summarized the political implications of the Hungarian legislation.⁶² He also urged the consolidation of bilateral relations with Slovakia— a move that was opposed by demonstrations demanding the withdrawal of the “discriminative Slovakian nationality law violating human rights and decisions on loss” in Kosice and Komárom in 2011 and 2012. The constitutional marches co-managed by ethnic NGOs and blessed by priests attracted 5-600 participants.⁶³

The expansion of voting rights to non-resident nationals belongs to the nation building and unification policy. The government’s secret desire is to ensure 500 000 new voters that would be grateful for naturalisation on the forthcoming elections in 2014. Today there are

governing power (RMDSZ) in Romania. According to a survey the members and supporters of EMNT intend to acquire the Hungarian citizenship and voting rights in the highest rate of ethnic Hungarians in Romania <http://www.hvg.hu> 15 January 2012)

⁵⁸ Erdélyben is toboroznak Orbán mellett. *Népszava*, 17 January 2012

⁵⁹ Little information are available. For example, until 30 September 2011 the number of applicants was 150 107 submitted at embassies (72), mayor offices (1264), OIN units (23) and government offices (29). At that time 72 percent of the applications were decided and about 55 000 persons from them have taken the citizenship oath. *MTI* 30 September 2011.

⁶⁰ Répási, Zsuzsanna, state secretary in charge of nation policy, Ministry of Justice and Public Administration, Tusványos Festival, Romania, 26 July 2012.

⁶¹ Elutasították egy magyaráb férfi állampolgársági kérelmét. *MTI*, 4 December 2011.

⁶² Balázs: Nem sokat ér a titkos állampolgárság. *Népszava*, 18 August 2012.

⁶³ Szlovákiai magyarok: aláírásgyűjtés és tüntetés a kettős állampolgárságért. <http://www.origo.hu> 10 August 2011.

only 250 000 newly naturalised citizens but it is not enough. For this reason the upgraded speed and lightened procedure of naturalisation is under preparation and “the new parliament represents the entire nation as desired by the prime minister”.⁶⁴ The formal rationale of extended voting rights means equality in rights among nationals regardless of their place of residence if a consensus is made on the preparatory period and management of general elections in the consular offices without further political conflicts or damages in bilateral relations.⁶⁵ Act CCIII of 2011 on the election of parliamentary members opens the gate for non-resident citizens (Art 12). Accordingly, nationals residing in Hungary and holding a registered address may vote for individual candidates in their local constituency and for a list of political parties, while citizens belonging to the autochthonous minority may alternatively vote for the list of minority representatives. On the other hand, citizens without residence in Hungary are entitled to vote only on the list of political parties, contradicting the principle of nationals’ equal rights. In this context the citizen’s residence is the place determined in the Act on registration of address and personal data, or else his/her place of being (Art 1). The procedural rules at general elections are under preparation. However, the database on address and personal data of citizens that provides the list of voters made by the authority will be replaced by a separate voting registration.

The impact of victory of this reformed citizenship was projected by Kis (2004b): it would mean “nothing less than putting Hungarian representative democracy in danger and transforming the nature of the Hungarian polity. Since elections in Hungary are usually won by a narrow margin, the appearance of trans-border voters would most likely mean that outcome of Hungarian elections would regularly be decided by voters who do not pay taxes in Hungary and who are, in general, not subject to its law.”

12. Conclusions

Since 1879 there have been formally four acts on Hungarian nationality but in practice there are five sets of regulations including the recent amendment in 2010. Termination and ceasing of citizenship has been a marginal issue; renunciation and withdrawal remains only a law on paper. Acquisition of nationality has been at the centre of legislation and modifications in Hungary since 1989. From them all modes of acquisition can be labelled as problematic, those based on ethnic proximity or former possession of Hungarian citizenship, thus all of the “alien” applicants – despite certain preferences determined in the act – are facing severe discrimination for required criteria and missing procedural guarantees. The conditional *ius soli* acquisition, the non-preferential case of naturalisation, naturalisation for refugees and stateless migrants have not been improved, notwithstanding the criticisms and proposals of the Ombudsman or the Hungarian Helsinki Committee on how to harmonize them with human rights obligations.

Neither the assimilation of diaspora Hungarians, nor their emigration and decrease of ethnic communities across the borders can be stopped by the policy of “uniting of the nation across borders”, dual citizenship or legal ties of the diaspora to the kin-state (Tóth, 2012b). Conflation of the notion of ethnicity and nation would be dangerous if it excludes numerous

⁶⁴ Félmillió új szavazó? *Népszava*, 27 July 2012.

⁶⁵ Martonyi, János minister of foreign affairs explained the forthcoming amendment of voting rights of nationals on the international conference of the Hungarian Academy of Sciences and MFA (4 October 2011).

social strata and international relations, as it has proved to be in the past.⁶⁶ Taking into account the data from the census in 2011, the size of the ethnic Hungarian communities are diminishing also in Romania⁶⁷ and Slovakia.⁶⁸ The conflicting government policy on nation building, the timing of legislation on accelerated naturalisation for non-resident ethnic Hungarians without bilateral negotiations and enlargement of the voting rights also in absence of conciliation with territorial states may demonstrate how the affairs of the kin-minority have become part of domestic politics nowadays.

The “unity of the Hungarian nation” is not inclusive but exclusive- the Basic Law⁶⁹ appears to have the intention of discouraging non-ethnic residents, foreigners and ‘otherness’ in general. According to surveys on racism, xenophobia and extremism, 63 percent of the population consider that criminality of Roma is genetically determined, while 67 percent refuse to let their own child play with Roma children. The majority of respondents objected to allowing Roma asylum seekers into Hungary; Roma have been the most hated group, followed by Arabs, Romanians, Africans, and Chinese and the non-existent Pirezen people. Between 2002 to 2009 Hungary’s position on the index of rightist extremism shifted : there was an increase from 10 to 21 percent of adults over the age of 15 that sympathize with rightist extreme ideas and policies, which puts Hungary in 5th place among the 33 states surveyed.⁷⁰

Finally, the one-sided involvement of newly naturalised non-resident nationals that are living in adjacent countries in the general elections in Hungary interfere with the internal affairs of neighbouring states. Despite the request for diminution of the gap between the resident and non-resident nationals, the newly passed act on general elections provides voting rights for citizens living abroad only with regard to a list of political parties, and not to individual candidates [ha despite-tal kezdődik, így van benne ellentét].⁷¹ This friction is summarized by Ruprecht Polenz (CDU) the chair of the Foreign Affairs Committee of the Bundestag: “It causes a loyalty conflict for ethnic Hungarians across the borders.”⁷²

⁶⁶ Frechet, Timea: Vér vagy föld. Kettős állampolgárság a történelemben és ma. *Hetek*, 4 October 2010.

⁶⁷ Horváth, István (professor of sociology at Babes-Bolyai University, Romania) said that within 10 years the total population was decreasing (-2.6 million people) as the Hungarian community (-194 000 persons). However, the rate of ethnic Hungarians is stable (6.6-6.5 percent of the total population). He confirmed that emigration and dual citizenship also contributed to this ethnic decrease. *Népszabadság* 18 February 2012.

⁶⁸ Fogadja el a Fidesz a tényeket, *Népszava*, 10 September 2012.

⁶⁹ The first sentence of the Basic Law: „We the member of the Hungarian nation...”, Article H: The official language of the state is Hungarian, and Hungary protects the Hungarian language; Article D: With a view to the unity and togetherness of the entire Hungarian nation, Hungary feels responsible for the fate of ethnic Hungarians living across the borders. Hungary supports subsistence and development of the Hungarian communities, facilitates their efforts to preserve the Hungarian identity, fosters the implementation of their individual and community rights, establishment of their self-governments, promotes their weal in homeland, and it supports their cooperation with one another and connections to Hungary.

⁷⁰ See the researches of the Political Capital, Tárki and St.Andrews University. The results are published by the British Council, <http://www.tarki.hu> and *Népszabadság*, 5 December 2011.

⁷¹ The president of RMDSZ requested voting rights be limited for non-resident citizens on the forum of Representatives of Ethnic Hungarians in Carpathian Basin during the negotiations on the act on voting rights and general elections in the Parliament chaired by the Speaker. *Külhoni magyarok a választójog kérdéséről. Népszava* 3 December 2011.

⁷² Cited by Erika Törzsök (sociologist, journalist, prior state secretary responsible for ethnic and minority policy in social-liberal coalition period) *Játszmák határon belül, határokon kívül. Népszava* 10 March 2012.

Bibliography

- Fowler, B. (2002) 'Fuzzing Citizenship, Nationalising Political Space: A Framework for Interpreting the Hungarian 'Status Law' as a New Form of Kin-state Policy in East-Central Europe, Centre for Russian and East European Studies, European Research Institute, University of Birmingham, Working Paper 41. <http://www.one-europe.ac.uk>
- Fullerton, M. Sik, E., and Tóth, J. (eds.) (1997) 'From Improvisation towards Awareness? Contemporary Migration Politics in Hungary. Yearbook of the research Group on International Migration. Budapest: Institute for Political Science, Hungarian Academy of Sciences.
- Gyulai, G. (2010) 'Hontalanság Magyarországon. Jelentés a hontalanok védelméről, a hontalanság megelőzéséről és csökkentéséről' Magyar Helsinki Bizottság. [Statelessness in Hungary – Report on protection, prevention and reduction of statelessness by the Hungarian Helsinki Committee], Budapest, 2010 December.
- Kántor, Z. (2004) 'Re-institutionalizing the Nation – Status Law and Dual Citizenship' *Regio* 1:40-49.
- Kiss, J.(2004a) Nemzetegyesítés vagy kisebbségvédelem [Unification of the Nation or Minority Protection?] *Élet és Irodalom* 51:3-4.
- Kis, J. (2004b) 'Miért megyek szavazni?' [Why am I taking part in the voting?] *Népszabadság*, November 20.
- Kukorelli, I. (2000) 'A felelősség klauzula (Alkotmány 6.§ (3) bekezdése) értelmezési lehetőségei' [The Interpretation of the Trans-border Hungarians' closure in Art 6 (3) in the Constitution] In: Tóth, J.(ed.) 'Schengen: a magyar-magyar kapcsolatok az uniós vízumrendszer árnyékában'. Lucidus, Kisebbségkutatás Könyvek, Budapest, 175-180.
- Tóth, J. and Körtvélyesi, Zs. (2011) 'Naturalisation in Hungary: Exclusion by Ethnic Preferences'. *Open Citizenship*, Vol.2 Summer 2011 „Exclusion and Discrimination” , pp.54-73. ISSN: 2191-5695, <http://www.citizenshipforeurope.org>
- Tóth, J. (1995) 'Who are the Desirable Immigrants in Hungary under the Newly Adopted Laws?', in Fullerton, M. Sik, E., and Tóth, J. (eds.), *Refugees and Migrants: Hungary at a Crossroads*. Yearbook of the research Group on International Migration. Budapest: Institute for Political Science, Hungarian Academy of Sciences, 57-68.
- Tóth, J. (2003) 'Connection of Kin-minorities to the Kin-state in the Extended Schengen Zone. *European Journal of Migration and Law*, 5:201-227.
- Tóth, J.(2004a) Státuszjogok. Kisebbségkutatási Könyvek [Legal status of different groups] Budapest, Lucidus Kiadó.
- Tóth, J. (2004b) 'Aspects of Analysing the Minority Problem' in Szarka, L. (ed.), *Hungary and the Hungarian Minorities: Trends in the Past and Our Time*. Atlantic Studies on Society in Change 122, 223-244, New York: Columbia University Press.
- Tóth, J. (2005), 'Principles and Practice of Nationality Law in Hungary', *Regio* 8:21-39.
- Tóth, J. (2012a) 'Changes in law on Hungarian Nationality (2010-2012)' - conference paper 'Second anniversary of the Accelerated Citizenship – Facts and Myths', Central European University (11 May 2012).

Tóth, J. (2012b) 'Migration Law in Hungary' Vol. of Encyclopaedia of Law Kluwer Law International, The Hague.

