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## „Double citizenship“, the Home Fund Act and the Inclusion of the Cultural Nation Into the Constitution: Hungary’s Steps to Protect Her Kin-Minorities in the Neighbouring Countries After the „Status Law”

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### **I. The Problem**

The question of the Magyar minorities in the neighbour states has been of importance to the Hungarian nation since the end of World War I. In the Trianon Peace Treaty of June 4, 1920, Hungary lost nearly two thirds of her population and nearly three fourths of her territory. The Allied Powers declared the peoples’ right to self-determination to be the leading principle of the new peace order, yet the Paris peace treaties strongly disrespected this principle to the detriment of the states

that had lost the war<sup>1</sup>. The largest gap between theory and practice was suffered by Hungary. As a result of Trianon, several million ethnic Hungarians have lived outside the Hungarian state, although the demographic facts would have allowed borders that correspond much better with the Hungarians' right to self-determination.

During the two world wars, the unsolved „national question“ led to a strong political revisionism. The re-integration of Hungarian-populated areas into the Hungarian state was the highest priority of the Horthy government's domestic and foreign policy. After World War II, the official position of the Hungarian People's Republic was the exact opposite. Within the Soviet bloc, the – sometimes extremely bad – situation of the Hungarian minorities in the neighbour states was a taboo which the bloc discipline forbade to touch. Even in the apparently relatively liberal atmosphere of the Kádár government, it was impossible to address the question of the Hungarians abroad, and any attempt to do so prompted a reaction of the state's organs of control and repression. Only when the Party's power eroded in the mid-1980ies, the sentiment that had built up through decades of silence could come out into the open, although at first only reluctantly and at the periphery of the official social life, e.g. in the songs of punk bands<sup>2</sup>.

## **II. From the change of system to the „Status Law“**

When the system changed in 1989/90, the state-imposed taboo ended, and the new freedom of opinion and of speech allowed the broad public to discuss the situation of the Hungarians abroad. At the same time, a strong influx of ethnic Hungarians from Romania confronted the Hungarian public with the atrocious conditions of minoritarian life in the last years of the Ceaușescu regime and even after the Romanian change of system. These reports caused indignation, sympathy and a wish to help. On the other hand, the rising number of Magyar immigrants especially from Romania soon made the majority of Hungary's population think that the Hungarian state ought to help the Hungarians beyond the borders, but that these Hungarians ought to stay beyond the borders and should not emigrate into Hungary. The parallel attitude of the German public towards the ethnic Germans in Eastern Europe is obvious.

### **1. The amendment of the Constitution**

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<sup>1</sup> The legal tension between the peoples' right to self-determination and the dispositions of the Paris treaties of 1919/1920 is discussed by Küpper, Herbert: Einführung in die Rechtsgeschichte Osteuropas (Introduction into the Legal History of Eastern Europe), Frankfurt/Main 2005, pp. 334-338, 349-350.

<sup>2</sup> There is no comprehensive analysis on the role of the punk in the erosion of the Party's power in Hungary. On comparable tendencies in Slovenia, cf. Barber-Kersovan, Alenka: Vom ‚Punk-Frühling‘ zum ‚Slowenischen Frühling‘.

At the very beginning of the change of system, the state's official attitude towards the Hungarian minorities in the neighbour countries changed. The constitutional amendment of October 23, 1989<sup>3</sup>, which initiated the change of system on the constitutional level by turning the People's Republic into a Republic and by establishing the basis of a liberal multiparty democracy with guaranteed basic rights and an orientation towards a free market economy, addressed the Hungarians beyond the borders as well. In art. 6, which contains provisions on the foreign policy, a § 3 was introduced which reads:

Art. 6 § 3: The Republic of Hungary bears a sense of responsibility for the fate of the Hungarians living outside its borders, and shall promote the fostering of their contacts with Hungary<sup>4</sup>.

## 2. The bilateral (international) phase

After the first free post-socialist elections, the governments of the Prime Ministers Antall (1990-1994, Conservative) and Horn (1994-1998, Socialist<sup>5</sup>) took recourse to international law in order to support the Hungarian minorities beyond the borders. With most of her neighbours Hungary entered into bilateral treaties which were either special minority protection agreements or minority clauses in general treaties on good neighbourly relations and friendship.

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Der Beitrag des slowenischen Punk zur Demontage des sozialistischen Wertesystems (From the ‚Punk Spring‘ to the ‚Slovenian Spring‘. The Contribution of Punk to the Dismanteling of the Socialist Value System), Hamburg 2005.

<sup>3</sup> Act 1989:XXXI on the amendment of the Constitution of October 23, 1989.

<sup>4</sup> The legal contents of this article are analysed by Balogh in Balogh, Zsolt et al.: *Az Alkotmány magyarázata* (The Constitution Annotated), Budapest 2002, pp. 158-159; Kukorelli, István: A „felelősségi klauzula“ [Alkotmány 6. § (3) bekezdés] értelmezési lehetőségei (The possible interpretations of the „responsibility clause“ [art. 6 § 3 of the Constitution]), in Tóth, Judit (ed.): *Schengen. A magyar-magyar kapcsolatok az uniós vízumrendszer árnyékában* (Schengen. The Hungarian-Hungarian relations under the shadow of the Union's visa system), Budapest 2000, pp. 175-179; Küpper, Herbert: *Völkerrecht, Verfassung und Außenpolitik in Ungarn* (International law, Constitution and foreign politics in Hungary), *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 58 (1998) pp. 239-289 (pp. 255-256); Tóth, Judit: A határon kívül élő magyarokért való felelősség egyes alkotmányjogi összefüggéseiről (On some constitutional connections of the responsibility for the Hungarians living beyond the borders), in Tóth, op. cit., pp. 123-173.

On the realisation of the constitutional order in art. 6 § 3 by the Hungarian foreign policy cf. Brunner, Georg: *Nationalitätenprobleme und Minderheitenkonflikte in Osteuropa* (Nationality problems and minority conflicts in Eastern Europe), 2nd ed., Gütersloh 1996, pp. 68-74; Göllner, Ralf Thomas: *Die Europapolitik Ungarns von 1990 bis 1994. Westintegration, mitteleuropäische regionale Kooperation und Minderheitenfrage* (Hungary's European policy from 1990 until 1994. Western integration, Central European regional co-operation and the minority question), Munich 2001, pp. 143-151; Szarka, László: *Die ungarischen Minderheiten in den Nachbarländern* (The Hungarian minorities in the neighbouring countries), in Brunner, Georg/Lemberg, Hans (eds.): *Volksgruppen in Ostmittel- und Südosteuropa* (Ethnic groups in Eastern Central and South Eastern Europe), Baden-Baden 1994, pp. 163-170; Zellner, Wolfgang/Dunay, Pál: *Ungarns Außenpolitik 1990-1997. Zwischen Westintegration, Nachbarschafts- und Minderheitenpolitik* (Hungary's foreign policy 1990-1997. Between Western integration, neighbour and minority policy), Baden-Baden 1998, pp. 205-371.

<sup>5</sup> The MSZP (Magyar Szocialista Párt: Hungarian Socialist Part) calls itself „Socialist“. Nevertheless, it is a Social-Democrat party following the Continental European model.

During the Antall government, the less problematic treaties were concluded: the minority agreements with Ukraine (May 31, 1991) and with Slovenia (November 6, 1992) as well as the treaties on good neighbourly relations with Ukraine (December 6, 1991), with Germany (February 6, 1992)<sup>6</sup>, with Slovenia (December 1, 1992) and with Croatia (December 16, 1992). All these treaties on good neighbourly relations contain special minority clauses. The most remarkable of these instruments is the Hungarian-Slovenian minority agreement because it grants the reciprocal minorities an unusually wide range of rights and therefore is one of the most liberal bilateral minority protection treaties in the world.

The subsequent Horn government managed to achieve the conclusion of the more problematic treaties on good neighbourly relations and friendship with Slovakia (March 19, 1995) and with Romania (June 19, 1996). On the one hand, the pressure by the European Community to realise those treaties rose; on the other hand, a less nationalistic rhetoric of the Hungarian diplomacy enhanced acceptance in the neighbour states. Both treaties contain clauses on reciprocal minority protection; during the treaty negotiations, these clauses were among the most strongly contested parts. Apart from these treaties, the Horn government also signed a minority protection agreement with Croatia (April 5, 1995).

All these bilateral treaties prevail over the multilateral minority protection instruments that Hungary as well as some of her neighbours signed: the European Charter for Regional or Minority Languages (November 5, 1992)<sup>7</sup> and the Framework Convention for the Protection of National Minorities (February 1, 1995)<sup>8</sup>. If a given aspect of minority protection does not fall within the scope of the mentioned bilateral treaties, these multilateral agreements apply and may protect the interests of the Hungarian minorities in the signatory states.

### **3. The unilateral (national) phase**

The Antall and Horn governments had entered into bilateral agreements on the protection of the reciprocal minorities with all neighbours except for Austria and Yugoslavia. The subsequent Orbán government (1998-2002) changed the course and started to take unilateral measures in domestic

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<sup>6</sup> This treaty only protects the German minority in Hungary; since there is no traditional Hungarian minority in Germany, the mechanisms of minority protection in the German-Hungarian relationship necessarily remain one-sided. Hungary accepts Germany as the kin state for the German minority in the country, unlike e.g. Slovenia, where bilateral treaty provisions for the protection of the local German-speaking community were concluded with Austria and not with Germany.

<sup>7</sup> Amongst the signatories are, inter alia, Austria, Croatia, Hungary, Romania, Serbia-Montenegro, Slovakia, and Slovenia.

law. The most important domestic act was the so called „status law“ (Hungarian: „státusztörvény“), the official title of which is „Act 2001:LXII on the Magyars Living in the Neighbouring States“. This law entered into force on January 1st, 2002. It provides for various privileges for the members of Magyar minorities in all neighbour countries with the exception of Austria. Some of these privileges are granted on the territory of Hungary, others can be claimed on the territory of the residential state of the minorities. The administrative basis to prove the entitlement to the privileges of that law is the „Hungarian identity card“ that members of the Hungarian minorities may obtain from the Hungarian Ministry of the Interior after having proven their Hungarian ethnicity. The identity card strongly resembles a passport<sup>9</sup>. However, the identity card does not have any consequences on the nationality, and it does not confer on its bearer any „status“ in public law or otherwise in Hungary, as the unofficial title of the law („status law“) suggests<sup>10</sup>.

In its original version, the status law creates numerous problems in international law. These problems were detailed by the Venice Commission of the Council of Europe („European Commission for Democracy through Law“) on the request of Romania and Slovakia<sup>11</sup>. Despite the Venice Commission’s objections, Hungary set the act into force and declined to conduct consultations with the neighbour states whose citizens the Hungarian minorities are<sup>12</sup> although the lack of consultations leads to a serious violation of international law. The main reason for the status law was not to serve the interests of the Hungarians beyond the borders but much rather a reaction to a certain constellation in domestic Hungarian politics. By enacting this strongly symbolic law,

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<sup>8</sup> Amongst the signatories are, inter alia, Austria, Croatia, Hungary, Romania, Serbia-Montenegro, Slovakia, Slovenia, and Ukraine.

<sup>9</sup> A detailed description of the contents of the status law and an analysis of the legal problems it causes can be found with Farkas, Stephen: *Unilateral Minority Protection by Kin-State Governments: A Comparison of the Slovak and Hungarian Status Laws*, *Columbia University Journal of East European Law* 9 (2002), pp. 341-377; Ieda, Osamu: *The Status Law and New Nation Building in Post-Communist Hungary*, in *Slavic Studies* 51 (2001), pp. 157-208; Kántor, Zoltán (ed.): *A státusztörvény. Dokumentumok, tanulmányok, publicisztika* (The Status Law. Documents, studies, articles), Budapest, 2002; Kántor, Zoltán/Majtényi, László/Ieda, Osamu/Vizi, Balázs/Halász, Iván (eds.): *The Hungarian Status Law: Nation Building and/or Minority Protection*, Sapporo 2004; Küpper, Herbert: *Ungarns umstrittenes Statusgesetz* (Hungary’s contested status law), *Osteuropa-Recht* 47 (2001), pp. 418-434; an English translation of that article can be found with Kántor/Majtényi/Ieda/Vizi (op. cit.), pp. 313-327.

<sup>10</sup> The „status“ that the „Status Law“ allegedly creates is discussed by Borbély, Imre: *Külhoni állampolgárság vagy státusztörvény* (Foreign nationality or status law), in Kántor: *A státusztörvény* (cf. fn. 9), pp. 227-237; Tóth, Judit: *Státusmagyarság* (The status Magyars), *ibid.*, pp. 250-258.

<sup>11</sup> Report on the Preferential Treatment of National Minorities by Their Kin-State of October 19/20, 2001, CDL-INF (2001) 19. This report is analysed in detail by Voigt, Katrin: *Der Schutz nationaler ungarischer Minderheiten durch ihren Ursprungsstaat aufgrund des ungarischen Statusgesetzes und dessen Vereinbarkeit mit dem Völkerrecht* (The protection of national Hungarian minorities by their kin state on the basis of the Hungarian status law and the compatibility of that law with international law), Frankfurt/Main 2005.

<sup>12</sup> A sort of temporary agreement could be achieved only with Romania; the mixed Romanian-Hungarian intergovernmental committee drafted a text which both governments accepted in a joint declaration on December 22, 2001. The text of this declaration can be found on the homepage of the Office for the Hungarians Beyond the Borders: [http://www.htmh.hu/?menuid=040201&news014\\_id=1077](http://www.htmh.hu/?menuid=040201&news014_id=1077).

the weakened government coalition led by FIDESZ<sup>13</sup> tried to hold existing and gain new voters in the general elections that were to be held in 2002. For this domestic purpose, the government accepted violations of international law, diplomatic conflicts with the neighbours<sup>14</sup> and a poor technical quality of the law that was patched up in great haste in order to be in force at the time of the elections. On the other hand, Hungary has always invited and supported comparable activities by her neighbours for the benefit of their respective kin-minorities on Hungarian territory<sup>15</sup> so that Hungary does not apply „double standards“.

### III. After the „Status Law“

#### 1. A mixture of bilateralism and unilateralism

The status law did not produce the domestic effect that the Orbán government had hoped for: They lost the general elections in 2002, and since these elections, a coalition of the Socialist Party (MSZP) and the Association of Free Democrats (SZDSZ<sup>16</sup>) under the Prime Ministers Medgyessy and later Gyurcsányi has been in office. This coalition partially returned to international law as a basis for the solution of minority questions and sought mutual understanding with the neighbour states. At the same time, it took further unilateral measures in domestic law to assist the Magyars beyond the borders.

The opposition, under the leadership of FIDESZ, as well as the World Federation of Hungarians, took recourse to the people's initiative and the referendum to make government and Parliament accept an amendment to the nationality law that was to open Hungarian citizenship for those ethnic Hungarians who continued to live outside Hungary (remote naturalisation). With this initiative, which was not sponsored by the Hungarian government, FIDESZ continue their unilateral course in

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<sup>13</sup> FIDESZ = Fiatal Demokraták Szövetsége (Association of Young Democrats). After the change of system, this party had quite a liberal start, but especially when it was senior partner of the government coalition under Prime Minister Orbán from 1998 to 2002, it turned into the nationalist conservative party which it still is today.

<sup>14</sup> One must note, however, that many of the neighbour states have similar laws, even if they are not quite as far-reaching. On the other countries' „status laws“ cf. Halász, Iván/Majtényi, Balázs: A magyar és a szomszédos államok „státustörvényei“ (The „status laws“ of the Hungarian and the neighbour states), *Kisebbségkutatás* 10 (2001) pp. 470-479; Halász, Iván/Majtényi, Balázs: A magyar státustörvény a kelet-közép-európai jogi szabályozás tükrében (The Hungarian status law, as compared to the regulations in Central Eastern Europe), in Szarka, László/Kovács, Nóra (eds.): *Tér és terep. Tanulmányok az etnicitás és az identitás kérdésköréből* (Space and ground. Studies on questions of ethnicity and identity), Budapest 2002, pp. 391-436; Halász, Iván/Majtényi, Balázs/Szarka, László (eds.): *Ami összeköt? Státustörvények közel s távol* (What binds us together? Status laws in the near and far vicinity), Budapest 2004. With view to these regulations, the especially loud criticism by Slovakia and Romania bears a certain hypocritical trait, although the reproach that Hungary had not sought diplomatic consultations in advance is justified in principle.

<sup>15</sup> Küpper, Herbert: *Das neue Minderheitenrecht in Ungarn* (The new minority law in Hungary), Munich 1998, pp. 150-151, 346-347.

<sup>16</sup> The SZDSZ is essentially a liberal party. On MSZP cf. supra fn. 5.

the support for the Hungarians abroad that they had practiced when they were in government 1998-2002 (supra point II. 3.).

## 2. The amendment of the Status Law

In the field of the Hungarians beyond the borders, one of the first measures of the Medgyessy government was to amend the status law<sup>17</sup>. The amendment abolished or modified numerous details that had caused problems in international law; other provisions were bound to the prior consent of the target state. The most important changes are that

- the administrative procedure to issue the Hungarian identity card no longer includes the local Magyar associations in the neighbour states, but is conducted by the Hungarian embassies and consulates in those countries;
- the support for Magyar minority associations is more strongly linked to cultural activities, i.e. non-cultural activities of the minorities are no longer supported;
- the access to the Hungarian labour market, the payment of a monthly stipend to children in the neighbour states that attend Hungarian-speaking schooling, and the inclusion of non-Hungarian spouses of ethnic Hungarians into the scope of the law require prior agreements with the target states.

These amendments are a reaction to the report of the Venice Commission. However, not all points of criticism were acted upon. Yet, in its amended version the status law more or less conforms to the relevant rules of international law<sup>18</sup>.

In a parallel strategy, Hungary reinforced her diplomatic endeavours in order to achieve the co-operation of the neighbour states which is necessary to make the extraterritorial execution of the status law possible. This diplomatic initiative managed to reduce the neighbours' feeling of indignation that the unilateral character of the law had caused. The Hungarian government even succeeded in concluding a formal execution agreement with Romania. In the government agreement of September 23, 2003<sup>19</sup>, Romania accepts certain privileges for the ethnic Hungarians in the country, whereas other provisions of the status law – such as the inclusion of the non-Hungarian spouses of ethnic Hungarians – cannot be executed on Romanian territory. For the time being, the

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<sup>17</sup> Act 2003:LVII on the amendment of Act 2001:LXII on the Magyars Living in the Neighbouring States of July 15, 2003.

<sup>18</sup> A detailed assessment of the compatibility of the amendment with international law can be found at Voigt (supra, fn. 11), pp. 293-386.

<sup>19</sup> The original English title quite succinctly is „Agreement between the Government of Romania and the Government of Hungary“. On the homepage of the Office for the Hungarians Beyond the Borders, the English original version can be found on [http://www.htmh.hu/?menuid=040301&news015\\_id=1134](http://www.htmh.hu/?menuid=040301&news015_id=1134); the unofficial Hungarian translation is

necessary ratification process has not been finished so that the agreement has not yet entered into force. The Hungarian-Slovakian government agreement on the mutual support for the minorities in questions of education and culture of December 12, 2003<sup>20</sup>, acknowledges in principle the right of both countries to see to the cultural and educational needs of their kin minority in the other state. This agreement does not mention the status law literally, yet it can be interpreted as the consent of the Slovakian state to the execution of most of the provisions of that law on Slovakian territory for the benefit of Slovakian nationals and organisations.

Furthermore, the Medgyessy government enacted numerous implementing regulations to the status law. The Orbán government had not had the time; yet, without this secondary legislation, the status law would have remained a mere skeleton, unfit for administrative execution.

The demand for the Hungarian identity card was enormous. Until mid-2005, some 825.000 persons had filed a request for a Hungarian identity card; 815.000 requests were approved. Most applications, i.e. more than 500.000, were submitted by Romanian citizens. Apart from Romania, a high number of applications came from Ukraine (some 120.000 requests) and from Serbia (some 107.000 requests). The demand from Slovakia was quite low, as compared to the size of the Hungarian minority in that country: some 96.000 requests arrived from Slovakian citizens. The reason probably lies in the fact that Slovakia, like Hungary, is a EU member state and that Slovakian citizens therefore have little practical need for such a document<sup>21</sup>.

### **3. Further bilateral agreements**

The „return to international law“ of the Medgyessy and Gyurcsány governments is exemplified by the conclusion of further bilateral treaties with the neighbour countries. After the downfall of the Milošević regime and the subsequent political change, it became possible to conclude a minority protection agreement with the successor state of Yugoslavia. On October 21, 2003, Hungary and Serbia-Montenegro, as this successor state is now called, signed a treaty which grants the reciprocal minorities a comparatively wide range of rights.

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published on [http://www.htmh.hu/?menuid=040301&news015\\_id=1133](http://www.htmh.hu/?menuid=040301&news015_id=1133). This agreement is to replace the joint declaration of 2001 (supra fn. 12).

<sup>20</sup> The agreement is published on the homepage of the Office for the Hungarians Beyond the Borders on [http://www.htmh.hu/?menuid=040301&news015\\_id=1135](http://www.htmh.hu/?menuid=040301&news015_id=1135). It entered into force on February 13, 2004.

<sup>21</sup> The numbers are published by the Central Office for Statistics. The numbers of the Hungarian identity card include the numbers of the Hungarian family member identity card which the non-Hungarian spouses and children of ethnic Hungarians may apply for.



The Hungarian-Slovakian agreement on cultural co-operation of January 16, 2003, contains provisions for the majority cultures, but it also takes far-reaching account of the cultural treasures and needs of the reciprocal minorities. As such, it develops the minority protection clause in the 1995 treaty on good neighbourly relations and shows the détente between Hungary and Slovakia in the question of the Hungarian minority in Slovakia. This détente was made possible by the end of the Mečiar government in Slovakia and its anti-Hungarian rhetoric; however, some tensions over the Hungarian policy with view to her kin-minorities in Slovakia remain in the bilateral relationship. The Hungarian-Romanian agreement on the reciprocal cultural institutes of October 20, 2005, does not contain any provisions on the minority cultures. This fact does not indicate any problems between Hungary and Romania but is mostly due to the limited scope of the treaty.

#### **4. Schengen and the freedom of travel**

When Hungary's EU-accession drew closer, the question arose how to secure free travel into Hungary to the members of the Hungarian minorities abroad even after May 1, 2004. It is true that the status law was in part a reaction to this problem<sup>22</sup>; yet, it does not deal with questions of travel and immigration. It allows the bearers of a Hungarian identity card to travel on public transport within Hungary at reduced fares and thus tries to minimise the effects of the economic differences between Hungary and her neighbours in the East and South by reducing the costs of travelling within Hungary to a level that a Ukrainian, Romanian or Serbian income can afford. Yet, the status law keeps silent on visa questions.

Under the aspect of the freedom of travel, the only problematical countries are Ukraine and Serbia-Montenegro. Among the EU member states, there is full freedom of travel. Therefore, visa-free travel is possible between Austria, Hungary, Slovakia and Slovenia. The visa regime on third-state nationals is subject to a community regulation and therefore cannot be altered by the national law of the member states. According to the relevant community regulation<sup>23</sup>, Croatia and Romania are on the „white list“ which means that their nationals do not require a visa to enter any Schengen state, whereas Serbia-Montenegro and Ukraine are countries of the „black list“ and their nationals need a visa for all EU member states including Hungary.

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<sup>22</sup> On the discussion in Hungarian literature about Schengen and the Hungarian minorities abroad cf. Kovács, Péter: A schengeni vízumrendszer és a határon túli magyarság (The Schengen visa system and the Hungarians beyond the borders), in Tóth (supra fn. 4), pp. 25-47; Küpper, Herbert: Kisebbségek, kapcsolattartás és a nyugati integráció (Minorities, the fostering of contacts and the Western integration), *Kisebbségkutatás* 9 (2000), pp. 59-77; Sieber, Edit: Schengeni egyezmény (The Schengen Agreement), *Jogtudományi Közlöny* 50 (1995), pp. 391-397; Tóth, Judit: Connections of Kin Minorities to the Kin-state in the Extended Schengen Zone, in Kántor et al.: *The Hungarian Status Law* (supra fn. 9), pp. 371-395.

Even prior to Hungary's accession to the EU, Hungarian government reacted to this scenario with bilateral visa agreements with Ukraine (October 9, 2003) and Serbia-Montenegro (October 21, 2003). Ukraine and Serbia-Montenegro undertake to uphold visa-free travel for Hungarian citizens, whereas Hungary promises to arrange the issue of visas for citizens of Ukraine resp. Serbia-Montenegro in a way that causes them as little administrative problems as possible.

Hungary acted upon this promise in mid-2005 by amending her legislation on aliens<sup>24</sup>. This amendment introduced the so called „national visa“. A national visa may be issued on the basis of an international treaty as a special title for a sojourn between three months and five years and for multiple entrances and exits to and from Hungarian territory. It does not entitle its bearer to work, business activities or studies because sojourns with these purposes still require special visas. The international treaties that the amendment refers to are the mentioned visa agreements with Ukraine and with Serbia-Montenegro. Even if the new law refers in principle to all citizens of these two countries, the „national visa“ – which, due to the limitations of the purpose of travel, is mainly a title for private visits to Hungary – serves the needs of the Magyar minorities in Carpathoukraine and in Voivodina especially well.

The term „national visa“ which the amendment introduced into Hungarian law, gives rise to two different associations. First, the European law uses this term for the visas that do not fall under the community (Schengen) rules and that therefore are open to regulation by the national laws of the member states. Such visas are long-term visas (for more than three months), visas for local cross-border traffic and visas in humanitarian emergencies. These visas are valid only for the issuing state, whereas visas issued under the community regulations (the so called Schengen visas, which allow a sojourn up to three months) are valid for all Schengen states. In this sense, „national visa“ is the counterpart of „Schengen visa“.

Second, the term „national visa“ may suggest that a visa is issued to members of the Hungarian nation (in an ethnic sense), that the national visa is an institution to promote the unity of the nation and therefore destined as a contribution to the solution of the „national question“.

## **5. The debate about the citizenship**

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<sup>23</sup> Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

<sup>24</sup> Act 2005:XLVI on the amendment of Act 1993:LV on the Hungarian citizenship and of Act 2001:XXXIX on the entrance and sojourn of alien nationals of June 14, 2005.

### a. The political and psychological background

During the last years, the most important issue in connection with the Magyars beyond the borders has been the question of their citizenship. The Trianon Treaty had conferred upon them the citizenship of the new territorial state which replaced their previous Hungarian nationality<sup>25</sup>. This is why their descendants today are Austrian, Croatian, Romanian, Serbian, Slovakian, Slovenian, or Ukrainian nationals. The more nationalist part of the political spectrum in Hungary wishes a closer, and if possible legal link between the members of the Hungarian minorities and the Republic of Hungary. In their eyes, the ideal solution would be to confer Hungarian citizenship on all ethnic Magyars in the neighbouring countries.

Despite its unofficial title the status law does not create any legal status for the members of the Hungarian minorities and even less grants them Hungarian citizenship<sup>26</sup>. The law is limited to certain privileges and benefits of a social nature<sup>27</sup>. Therefore, it is not the answer to the wish for an institutional and legal link between the Hungarian minorities and the Hungarian state.

This political wish, i.e. the wish to include the Hungarians beyond the borders into Hungarian citizenship, has various sources. First, it is based upon the pre-democratic cultural or ethnic notion of nation which is wide-spread in Central and Eastern Europe. The nation (Hung.: „nemzet“) is defined as the cultural community of all persons of Hungarian language, sometimes even as a community of descendants of „Hungarian blood“. In this notion, the Magyar minorities in the neighbour countries belong to the Hungarian nation because of their cultural or „blood“ identity. At the same time, the Hungarian state is seen as the political and public law institutionalisation of the ethnical Hungarian nation. If one accepts this premise, it is quite obvious that every person of a cultural or „blood“ Hungarian identity ought to be a national of the Hungarian state. The democratic-civic notion of nation that defines the nation as the community of the citizens built upon their will to master their fate together within one state and that forms the basis for the democratic idea of the people's sovereignty, is prevalent in Western Europe, but not very well accepted in Hungary. In Hungary, there is a gap between the „nation“ as a cultural or ethnic community on the

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<sup>25</sup> Arts. 61-66 of the Trianon Treaty.

<sup>26</sup> On a symbolic level, the Hungarian identity card with its design similar to a passport and its name serves as a sort of substitute for the Hungarian citizenship. However, this symbol does not have any tangible effect on its bearer's nationality: *supra* fn. 10.

<sup>27</sup> Since the change of government from Orbán to Medgyessy, official sources have ceased to use the term „Status Law“ and have begun to address the law as „Benefit Law“ (kedvezménytörvény).

one hand<sup>28</sup> and the constitutional term „people“ as the community of Hungarian citizens as the source of sovereignty in the state (art. 2 § 2 of the Constitution) on the other<sup>29</sup>.

Second, the conservative parties and especially FIDESZ have a tangible interest to allow the members of the Magyar minorities in the neighbourhood to take part in the Hungarian general elections. The majority of these groups tend towards Hungary's conservative parties and their national rhetoric and would therefore improve the chances of these parties if they were allowed to vote in Hungary. For the same reason, Croatia's former president Tuđman always took great care that the ethnic Croatians in Bosnia-Herzegovina and elsewhere („dijaspora“) were allowed to participate in the Croatian general elections irrespective of their citizenship<sup>30</sup>.

Third, the re-naturalization of ethnic Hungarians in the neighbour states can contribute at least to some extent to undo the injustice of Trianon. In Hungary the feeling that Trianon preached the right to self-determination but practiced the victorious powers' will and therefore was unjust is still vivid. By bringing the ethnic Hungarians who (resp. whose ancestors) lost their Hungarian citizenship as a result of Trianon back into the scope of Hungarian citizenship may help to redress this injustice.

Fourth, the repressions and persecution of the Milošević regime against the minorities in Yugoslavia are unforgotten, and therefore there is a special concern for the ethnic Hungarians in Voivodina. It is felt that they should have the possibility to flee to Hungary in case that the situation in Serbia should become bad again<sup>31</sup>. The advocates of the Hungarian citizenship for the ethnic Hungarians beyond the borders refrain from recognizing the fact that this aim does not require Hungarian passports to be conferred on these groups. The European Community's Schengen regime allows the member states quite far-reaching deviations from Schengen standards and procedures as a reaction to humanitarian emergencies and therefore is no legal obstacle for Hungary to allow Serbian citizens to immigrate in order to flee from eventual ethnic persecution.

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<sup>28</sup> The Constitution, however, refers the term „nation“ to the Hungarian people in the sense of the sum of all citizens (art. 29 § 1 in connection with the role of the President of the Republic as expressing the „unity of the nation“ which means that the President embodies the state and its people) respectively to the Hungarian state (in the heading of chapter XIV on the „national symbols“, which means the symbols of the state). However, the government intends to introduce into art. 6 § 3 of the Constitution the cultural notion of nation: infra, point III. 6. b.

<sup>29</sup> This paragraph runs: „In the Republic of Hungary, all power belongs to the people, which exercises the people's sovereignty through elected representatives as well as immediately“. People in this context can only mean the sum of all citizens and does not bear any ethnic connotations.

<sup>30</sup> The penchant that the Croatian diaspora had for the conservative Tuđman regime became especially obvious in the general elections of January 3, 2000, which brought about the political change in Croatia: newline of the Croatian news agency Hina, January 4, 2000: *Dijaspora dala glas HDZ-u; u Hrvatskoj vodi koalicija SDP-HSLS* (The diaspora voted for HDZ; in Croatia the coalition of SDP-HSLS holds the lead), <http://www.hina.hr>.

<sup>31</sup> The present conditions of life of the Hungarian minority in Voivodina are described by Brusis, Martin: *Die Voivodina in der aktuellen Politik und Verfassungsordnung Serbiens* (Voivodina in the present policy and constitutional order of Serbia), *Südosteuropa* 53 (2005), pp. 573-586.

After the enactment of the status law, these reasons caused various groups to try to create for the Hungarians abroad a legal status in Hungary, if possible to grant them Hungarian citizenship. The Medgyessy and Gyurcsány governments did not approve of these plans. Therefore, their advocates made use of the people's initiative which is an instrument that allows the majority of the people to force government and Parliament to legislate according to the people's wish<sup>32</sup>.

### **b. The people's initiative and the referendum**

To understand the following events, one needs to examine the mechanisms of direct democracy first. These consist of two steps. As a first step, a Hungarian national may start a people's initiative. The aim of the initiative is to organise as a second step a referendum which allows the people to take a decision which is compulsory for Parliament.

The first step, i.e. the people's initiative, starts with the initiator formulating the question that is to be put to referendum. This question is presented to the National Election Committee for what is called authentication. This authentication is a preliminary legal control. The National Election Committee examines whether the question corresponds to the relevant legal prerequisites. This does not include a political control of the initiator's goal.

During the authentication procedure, the National Election Committee examines whether the question conforms to the admissibility requirements of a referendum because if the question is not admissible for referendum, the people's initiative does not make sense. The most important limitations for a referendum (and thus indirectly for a people's initiative) are set out in the Constitution itself. Art. 28/C § 5 Constitution prohibits direct democracy inter alia in questions on obligations that arise for the Republic of Hungary out of international treaties. This is to prevent the people from taking a decision that would force Parliament and government to violate the Hungarian state's obligations towards other states. The referendum law stipulates that the question must be formulated in an understandable and unequivocal way.

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<sup>32</sup> A detailed description of this people's initiative and the problems it caused both in international and in domestic Hungarian law is given by Halász, Iván: *A kettős állampolgárság mint a magyar nemzetpolitika eszköze?* (The double citizenship as an instrument of the Hungarian nation policy?), *Regio 15*, vol. 4 (2004), pp. 18-35; Küpper, Herbert: *Die Volksabstimmung über die doppelte Staatsbürgerschaft für Auslandsungarn vor dem Verfassungsgericht* (The people's initiative for double citizenship for Hungarians abroad before the Constitutional Court), *Europa Ethnica* 61 (2004), pp. 82-96; Majtényi, Balázs: *Hol húzódnak a kisebbségvédelem határai?* (Where do the limits of minority protection lie?), *Regio 15*, vol. 4 (2004), pp. 3-17.

If the National Election Committee does not have any legal objections, it authenticates the question. After that, the initiators may start collecting signatures. If they collect the signatures of more than 200.000 citizens who are entitled to vote within four months, the people's initiative is successful, and the question has to be put to referendum, as art. 28/C § 2, art. 28/E Constitution set out.

According to art. 28/C § 6 of the Constitution, the referendum is successful if more than half of the citizens who are entitled to vote take part in it and if more than half of the participants in the referendum give an affirmative answer to the question put to referendum. As a result of the 50 % participation quorum, non-participation has the same effect as a negative vote.

### **c. The question put forward by the World Federation of Hungarians**

In the course of 2003, several organisations tried to initiate a referendum in order to force Parliament to open Hungarian citizenship for ethnic Hungarians with a residence outside Hungary (remote naturalisation). The National Election Committee selected the initiative of the World Federation of Hungarians (Magyarok Világszövetsége)<sup>33</sup>, being a comparatively moderate version, and authenticated their question with the decision of September 18, 2003<sup>34</sup>. The World Federation had presented the following question: „Do you want Parliament to pass a law that non-Hungarian citizens who confess to Hungarian nationality<sup>35</sup>, who do not live in Hungary and who prove their Hungarian nationality with a ‚Hungarian identity card’ according to art. 19 of the Act 2001:LXII or in another way determined by the intended law, may receive – on their request – Hungarian citizenship by way of privileged naturalisation?“.

With this initiative, the World Federation tried to introduce the remote naturalisation of the Magyars living in the neighbour states. A residence in Hungary is no prerequisite of the naturalisation that the initiative envisages. In comparison to the nationality laws of other European states, this lack of a residence requirement is at least unusual.

The version of the World Federation of Hungarians was moderate in comparison to some other initiatives first because it concentrated on an individual and not on a collective naturalisation and second because it allowed naturalisation only on request of the future Hungarian citizen, whereas

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<sup>33</sup> The World Federation of Hungarians represents the Hungarians who live in dispersion throughout the world.

<sup>34</sup> Decision of the National Election Committee no. 116/2003. (IX. 18.) OVB.

<sup>35</sup> In Hungarian, the term „nationality“ („nemzetiség“) refers to ethnicity only and, unlike its English translation, does not have any reference to citizenship.

more extreme initiatives want the naturalisation by virtue of the law, i.e. if necessary against the will of the persons concerned.

By authenticating the modest version of the World Federation the National Election Committee blocked all other initiatives because in one question there can only be one initiative at a time. This limitation on one initiative is to prevent that in one question contradicting initiatives are successful and thus binding on Parliament. In such a situation, it would be unclear for Parliament which of the conflicting initiatives was to be acted upon.

#### **d. The ruling of the Constitutional Court**

The authentication by the National Election Committee was challenged before the Constitutional Court. In March 2004, the Court declared the Committee's decision to be constitutional and legal<sup>36</sup> and thus gave way to the collection of signatures. The Constitutional Court had to examine whether constitutional and legal grounds made the people's initiative inadmissible. In this examination, the Court concentrated on three questions:

- Does the initiative violate Hungary's obligations arising from international treaties?
- Does the initiative violate the obligation of equal treatment (the ban on discrimination) in the Hungarian Constitution?
- Does the initiative violate regulations on formal aspects?

The Constitutional Court did not deal with the question whether the initiative violated general rules of international law because such a violation would not make the people's initiative inadmissible. In Hungarian constitutional law, these aspects of international customary law are irrelevant. Yet, they play an important role in an overall assessment of the initiative in international law.

*- Does the initiative violate Hungary's obligations arising from international treaties?*

The Constitutional Court examined whether the initiative, provided it were to be transformed into an act of Parliament, would violate the international treaties that Hungary had signed. In this respect, the Trianon Peace Treaty, which continues to be in force, as well as the European Convention on Nationality of November 6, 1997, are relevant.

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<sup>36</sup> Ruling of the Constitutional Court no. 5/2004. (III. 2.) AB.

The Trianon Peace Treaty provides for a change of citizenship for the persons inhabiting the ceded territories<sup>37</sup>. The Constitutional Court found no violation of these provisions because the initiative of the World Federation of Hungarians aimed at a naturalisation in individual cases. The Court pointed out, however, that a collective naturalisation would be incompatible with the Trianon Treaty and therefore would be an inadmissible object for a people's initiative.

The European Convention on Nationality prohibits in art. 15 that the national citizenship laws of the signatory states discriminate on the grounds of, inter alia, ethnicity. According to the Hungarian Constitutional Court, the people's initiative does not violate this provision. The Court resorted to the very formalistic argument that discrimination existed only with respect to negative acts, whereas conferring a state's citizenship was a positive act and for that reason not to be measured against the ban on discrimination. This formalistic approach allowed the Constitutional Court to avoid the merits of the subject-matter, and two constitutional judges, Holló and Kukorelli, dissented for this reason. They argued that a naturalisation of non-residents (remote naturalisation) did contravene if not the wording, but certainly the spirit of the European Convention. In their view, the Convention was designed to help solve the problems arising out of migration and therefore tacitly presupposed the residence of a naturalised person in the naturalising state. According to the dissenting votes, the „acquisition of a fifth column“ lied beyond the scope of the Convention.

*- Does the initiative violate the obligation of equal treatment (the ban on discrimination) in the Hungarian Constitution?*

The next point of the Constitutional Court was whether the initiative conformed with the principle of equal treatment in art. 70/A of the Constitution. Since a people's initiative aims at passing an act of Parliament, it is only admissible if the act that it aims at does not violate the Constitution.

The Constitutional Court dispelled the objections in connection with the ban on discrimination on grounds of ethnicity that is enshrined in art. 70/A of the Constitution, with the argument that in a case of naturalisation, a differentiation according to ethnic closeness was not arbitrary but rested on an appropriate reason. As such, it did not violate art. 70/A of the Constitution. Furthermore, art. 6 § 3 of the Constitution<sup>38</sup> allows special measures (privileges) for the benefit of ethnic Magyars abroad and therefore legitimises a partial exception from the principle of equal treatment with view to the Hungarians abroad, i.e. their positive discrimination.

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<sup>37</sup> Supra, point III. 5. a.

<sup>38</sup> For this paragraph, cf. supra point II. 1.



*- Does the initiative violate regulations on formal aspects?*

The complainants argued that the wording of the question was neither generally comprehensible nor unequivocal. The Constitutional Court did not follow this argument, but held that legal expressions such as „privileged naturalisation“ were intelligible to the average voter and that the construction of the phrase was not complicated to the point of being incomprehensible.

*- Does the initiative violate customary international law?*

For procedural reasons, the Constitutional Court did not deal with the question whether the initiative conformed with the principles of general customary international law. Yet, this aspect is of considerable relevance because a violation of customary international law would set Hungary in the wrong. This international tort would give the neighbour states claims in international law against Hungary to abstain from the continuation of the tort as well as to pay damages.

In principle, international customary law leaves the question of naturalisation to be dealt with by the national law of the naturalising state. Therefore, every state may naturalise any person it wishes to naturalise. However, the other states have to recognise a naturalisation only if there is, between the naturalising state and the naturalised individual, a special relationship that the International Court of Justice called a „genuine link“<sup>39</sup>. If there is no such genuine link, no state is compelled to recognise the act of naturalisation and may (though does not have to) treat the situation prior to the naturalisation act as valid.

In the literature on international law, there is a vivid discussion on what exactly constitutes a „genuine link“. There is wide-spread consensus, however, that the requirements of a genuine link must not be too strict. Ethnic closeness as well as the descendancy from Hungarian citizens<sup>40</sup> probably suffice to create a genuine link. International customary law does not require residence in the naturalising state, although residence of course is the strongest genuine link possible. Thus, international customary law does not oppose a remote naturalisation in principle, provided that some sufficient link other than residence exists between the naturalising state and the naturalised person(s).

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<sup>39</sup> The International Court of Justice developed this criterion in the so called *Nottebohm case* (Liechtenstein ./ Guatemala) of June 6, 1955, ICJ-Reports 1955, p. 4.

<sup>40</sup> Until Trianon, the ancestors of the persons who are the target of the people's initiative had been Hungarian citizens.

According to these principles, the neighbour states – whose nationals the Hungarians abroad have been so far – are compelled to recognise as valid a naturalisation by Hungary even if the individuals in question maintain their residence outside Hungary. The obligation to recognise the Hungarian act of naturalisation as valid does not mean, however, that the neighbour states do not have the right to react to such a naturalisation. One possible reaction for the neighbour states would be to withdraw their own citizenship from those individuals who apply for Hungarian citizenship<sup>41</sup>. Such provisions can be found in the nationality laws of Ukraine<sup>42</sup> and Austria<sup>43</sup>. If the other neighbour countries follow the Austrian and Ukrainian example, the Hungarians abroad would end up with only one citizenship, i.e. their newly acquired Hungarian nationality, and they would become legal aliens in their own country. As a result, they would have to apply for a residence permit and a work permit in the country they have lived in their whole life, and they would be excluded from political participation and in some countries even from possessing and acquiring landed property<sup>44</sup>. In an extreme case, the residence state may even expel the new Hungarian citizens. At least Serbia-Montenegro and Ukraine are not compelled by any treaty obligations with the European Union to tolerate a permanent residence of Hungarian citizens on their territory.

In Hungarian political life, the people's initiative and its political goal have always been addressed as „double citizenship“ („kettős állampolgárság“). The sponsors of the initiative carefully avoid to discuss the fact that the neighbouring countries may react to the application for the Hungarian citizenship with the withdrawal of their own nationality and that thus the individuals in question do not acquire a double citizenship but end up with Hungarian citizenship only. This one-sided focus has helped to veil the shift of paradigm in minority policy that the people's initiative brings about<sup>45</sup>. So far, all measures including the status law have aimed at making the minorities comfortable in their traditional dwelling grounds and at encouraging them to remain there. The possibility to

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<sup>41</sup> This is the solution of, e.g., the Japanese citizenship law. Art. 11 § 1 of the Nationality Law (Law no. 147 of 1950, with later amendments) runs in unofficial English translation: „A Japanese national shall lose Japanese nationality when he or she acquires a foreign nationality by his or her own choice.“. The same solution can be found in Art. 25 § 1 of the German Nationality Act of 1913: „A German national shall lose his or her nationality when acquiring a foreign nationality if this acquisition takes place on his or her application“. Other Western European and US nationality laws contain similar provisions. The essence of these laws is that the old nationality ceases to exist by virtue of law, and no individual act of withdrawal is necessary. In Eastern Europe, similar provisions are as yet less frequent.

<sup>42</sup> The Ukrainian Act 2235-III on the Nationality of Ukraine of January 18, 2001, contains in art. 19 no. 1 a provision on the termination of Ukrainian citizenship similar to Japanese and German law (supra fn. 41), with the difference that Ukrainian citizenship terminates only if the applicant for a foreign nationality is of age.

<sup>43</sup> Art. 27 Nationality Act 1985.

<sup>44</sup> Art. 14 § 2 of the Constitution of Ukraine sets out a total ban for foreign nationals to acquire and have real estate in Ukraine; arts. 355-357 of the Croatian Property Act contain a relative ban for foreigners, but these rules will have to be changed with Croatia's EU-accession, perhaps after the expiration after a certain transitional period; and art. 41 § 2 of the Romanian Constitution in the version established by the constitutional amendment of September 18, 2003, sets out a total ban for foreigners to own or acquire real estate in Romania, but puts this rule under the reservation of differing EU-law after Romania's accession.

<sup>45</sup> On the paradigms of minority protection policies in Hungary cf. Ieda, Osamu et al. (eds.): *The Status Law Syndrome: Post-Communist Nation Building or Post-Modern Citizenship*, Sapporo 2006.

acquire Hungarian citizenship, on the other hand, would provide them with an additional incentive to emigrate. A Hungarian passport would not only open the way to Hungary, but give its holder the right to settle down in any other country of the European Economic Area<sup>46</sup>. This may be an enticing perspective for Romanian, Ukrainian or Serbian citizens.

Another aspect of customary international law is human rights. The generally recognized human rights guarantee that no one is forced into a citizenship against their will. The initiative of the World Federation of Hungarians respects this human right because it aims at a naturalisation only on request. More extreme wishes to confer Hungarian citizenship *ex lege* on the grounds of Hungarian ethnicity without or against the will of the individuals concerned, however, would violate this human rights standard which, being part of the compulsory customary international law (*ius cogens*), is binding on all states.

#### *- Result*

The Constitutional Court avoided with a very formalistic argument the core problem of the people's initiative, i.e. the admissibility of a remote naturalisation. If the Court had looked into this question, it would probably have had to find a violation of the European Convention on Nationality. The Court refrained from doing so in order not to create any martyrs. In the opinion of the Constitutional Justices, a judicial stop to the initiative would have given rise to political myths and to an attitude of martyrdom among the political powers in favour of the initiative. Such a development might have poisoned the political climate in the country. At the same time, the Constitutional Court seized the opportunity to pronounce inadmissible and unlawful the more far-reaching wishes for a collective naturalisation or a naturalisation without the consent or even against the will of the individuals concerned.

#### **e. The referendum of December 2004**

After the positive decision of the Constitutional Court, the collection of signatures was started, and within the four months deadline the necessary number of 200.000 signatures was not only achieved but by far exceeded. Consequently, Parliament ordered a referendum to be held about the question of the World Federation of Hungarians<sup>47</sup>. The Parliament's decision was challenged before the

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<sup>46</sup> The European Economic Area (EEA) includes all EU member states as well as Norway, Iceland, and Liechtenstein. Switzerland is only loosely attached to the EEA. The restrictions for Hungarian citizens (and citizens of other East European EU member states) to settle down in the Western EEA states will expire at the latest in 2011.

<sup>47</sup> Decision of the Parliament no. 82/2004. (IX. 15.) OGY.

Constitutional Court, too, but the Court considered the merits to be *res iudicata* and therefore refused to judge again on the admissibility of the referendum<sup>48</sup>.

Since the Constitutional Court had removed all legal obstacles, the referendum took place on December 5, 2005. The Hungarian citizens were invited to vote on the proposed amendment in nationality law as well as on certain details of the privatisation of hospitals. Both subject matters did not have any inner connection, but were drawn together to one referendum on an organisational level in order to save costs.

On December 11, 2005, the National Election Committee declared as the official result that the referendum had not been successful due to a low participation<sup>49</sup>. The referendum had failed to activate the necessary quorum of 50 % of all the voters of Hungary. The initiators sought legal remedy against this declaration before the Supreme Court who ordered the votes to be counted once more. This repeated counting showed some minor differences in some voting districts, but did not change the result on a national scale: The referendum had not been successful<sup>50</sup>. It is true that the majority of the votes cast was in favour of the initiative, but the level of participation remained far below the constitutional quorum of 50 %.

In this situation, both political sides declared themselves to be the winner. The sponsors of the initiative argued with the relative majority of the votes cast which had been in favour of their plan. The opponents – among them the government who had kept a strong reserve in the discussions before the referendum – argued that many voters who were against the initiative had not shown up because non-participation was as good as a negative vote. In any case, the World Federation of Hungarians, FIDESZ and other organisations publicly declared that they would continue to pursue their aim of creating the possibility for a „double citizenship“<sup>51</sup>.

The ethnic Hungarians in the neighbouring countries felt „rejected“ and „betrayed“ by their „home country“. In the weeks and months after the referendum, there were reports about violence against cars with Hungarian number plates and even against Hungarian citizens especially from Transylvania and from Voivodina. These reactions are based on the cultural and ethnic notion of nation which is described supra. The Magyar minorities in the neighbour states derive from this

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<sup>48</sup> Ruling of the Constitutional Court no. 40/2004 (X. 27.) AB.

<sup>49</sup> Decision of the National Election Committee no. 196/2004. (XII. 11.) OVB.

<sup>50</sup> Decision of the National Election Committee no. 2/2005. (I. 4.) OVB.

<sup>51</sup> On the positions on the issue of the „double citizenship“ within the political elite cf. Tóth, Judit: *Hogyan vélekednek az állampolgárságról a parlamentben?* (What do they think in Parliament about citizenship?), Regio 15, vol. 4 (2004), pp. 36-50.

notion of nation a „claim“ to belong to the Hungarian state in some way or other. They feel that the result of the referendum repudiates this supposedly legitimate claim of theirs.

#### **f. The amendment law for a privileged naturalisation of ethnic Hungarians**

Even if the initiative for the „double citizenship“ had not managed to activate the majority of the population for its cause, the Hungarian government realised that the question of the nationality of the Hungarians beyond the borders was able to mobilise a considerable part of the Hungarians. Therefore they decided to reduce the legal requirements for a naturalisation of ethnic Hungarians taking residence in Hungary. This was done by the act of June 14, 2005, the same law that also introduced the „national visa“<sup>52</sup>.

According to the law before the amendment, an ethnic Hungarian could be naturalised after one year of legal residence in Hungary – as compared to three years of legal residence that applicants of other than Hungarian ethnicity had and still have to show for naturalisation. The amendment law of June 2005 abolishes the one year deadline for ethnic Hungarians whose ancestors had been Hungarian citizens. As a result, these persons can apply for Hungarian citizenship immediately after having taken legal residence in Hungary. This amendment entered into force on January 1, 2006. It only refers to citizenship and does not liberalise the rules under which non-Hungarian citizens are allowed to set up residence in Hungary. Hungarians from beyond the borders still have to undergo the general immigration procedures before being allowed to move into Hungary, but once they are there, they can be granted Hungarian citizenship immediately.

### **6. More unilateral measures**

Government was so alarmed by the considerable (though not majoritarian) support that the cause of the Hungarians beyond the borders had found among the Hungarian population, that they did not content themselves with creating additional privileges for their naturalisation<sup>53</sup>, but took more steps in favour of the Hungarian minorities abroad.

#### **a. The Home Fund Act**

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<sup>52</sup> Act 2005:XLVI of June 14, 2005 (supra, fn. 24). On the „national visa“ cf. supra point III. 4.

<sup>53</sup> Supra point III. 5. f.

The first measure consisted in creating additional pecuniary funds for the Hungarians beyond the borders. These additional funds are laid down in the Home Fund Act<sup>54</sup>.

This law creates the Home Fund as a separate fund within the budget. It serves to finance projects that help the Hungarians beyond the borders to survive under cultural and other aspects on their traditional dwelling grounds. The decisive factor is the aim and the appropriateness of the project, not the ethnic background of the project's initiator. The geographical scope of the law is wider than that of the status law because it includes Austria and therefore covers all territories ceded under the Trianon Treaty. The Home Fund is equipped with money for the first time by the 2006 budget<sup>55</sup>. Its fundamental decisions are taken by the Fund's Council in which the representatives of the Hungarians beyond the borders have the majority and the representatives of the Hungarian government take the position of a minority.

The Home Fund Act avoids the mistakes that the status law had made and links its payments to recipients outside Hungary to a large extent to the provisions of international law and thus to the consent of the recipient states. This excludes violations of international law from the start. On the other hand, Hungary recognises with this law – according to the law's critics – the „vetoing power“ of the neighbour states. This criticism is unfounded because the Hungarians beyond the borders are in any case subject to the territorial and personal sovereignty of the state they reside in and whose citizens they are. This is a fact in international law that the Republic of Hungary is bound to respect anyhow. Thus, the „vetoing power“ of the neighbours is a consequence of fundamental principles of international law and therefore exists irrespective of the fact whether Hungary formally „recognises“ it or not.

### **b. The amendment of art. 6 § 3 of the Constitution**

On their session of November 30, 2005, the cabinet decided with the votes of the Socialist ministers and with certain reservations of the Liberal ministers<sup>56</sup> to amend the clause on Hungarians abroad in art. 6 § 3 Constitution<sup>57</sup>. They intend to make it clear in the wording of that paragraph that the Hungarians beyond the borders are an integral part of the „Hungarian nation“. In this context,

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<sup>54</sup> Act 2005:II on the Home Fund of February 28, 2005.

<sup>55</sup> Act 2005:CLIII on the budget of the Republic of Hungary in 2006 of 23 December 2005, Schedule 9, Title LXV, provides for 500 million HUF (roughly 2 million Euro) of direct budget subsidies and another 108,2 million HUF (roughly 430.000 Euro) of supplementary grants.

<sup>56</sup> In 2001, the Liberal party SZDSZ (Szabad Demokraták Szövetsége; Association of Free Democrats) was the only party to vote against the status law. SZDSZ does not aim at a broad electorate, but predominantly at the urban middle classes, for whom the question of the Hungarians beyond the borders is of secondary importance.

<sup>57</sup> On this article of the Constitution cf. supra point II. 1.

„nation“ is to mean the linguistic, cultural, and historic community<sup>58</sup>, and the amendment is to pronounce this *expressis verbis*. Government is aware of the fact that this amendment will introduce a new notion of nation into the Constitution and says that with the intended wording of art. 6 § 3 Constitution, „the notion of nation will receive a new content“<sup>59</sup>.

As yet it is unclear how this cultural notion of nation which is to be introduced into art. 6 § 3 of the Constitution will relate to the democratic-civic notion of nation enshrined in the other parts of the Constitution<sup>60</sup>. It is possible to assign different notions to the same word in one law. However, such a solution always is unfortunate and apt to lead to problems of interpretation.

A second question is whether it is advisable for Hungary in her present phase of integration into the community of democratic states that constitute the European Union, to introduce into her Constitution a notion of nation which bears distinct pre-democratic features and which leads to an ethnicisation of the Constitution at least on the symbolic level. Yet, even at the present state of European integration such a question is to be answered by the member states alone and is not (yet) subject to any regulation by community law.

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<sup>58</sup> It follows that this notion of nation does not have any bearing on the citizenship of the members of the Hungarian nation.

<sup>59</sup> Quoted from the official press communication about the government session; it is published on the homepage of the Hungarian government on <http://www.meh.hu/kormany/kormanyulesek/prez/magy20051201.html>.

<sup>60</sup> *Supra* point III. 5. a.