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Impact of Historical Traditions on the Regulation and Practice of Preferential Naturalization of Hungarians Living Outside the Borders

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The study presents the impact of historical traditions on the making and application of law through a specific example. The regulation of nationality, a pivotal field of constitutional law, is considered a sovereign right of the Hungarian state, which is exercised in line with Article G) of the Fundamental Law and Act No. LV of 1993 on Hungarian Citizenship. Hungarian naturalization practice, however, significantly changed in the wake of the amendment of the act concerned: Hungarians living outside the borders are entitled to preferential naturalization since 2011. This legislative action, which remarkably followed the designation of the day of conclusion of the Trianon Peace Treaty as the Day of National Unity in the previous year, was obviously influenced by historical considerations. The primary objective of preferential naturalization was to grant Hungarian nationality to persons of Hungarian origin whose ancestors had lost their Hungarian nationality in the aftermath of historical events involving the transfer of territories to neighbouring states. The study's point of departure is the Trianon Peace Treaty, the first major instrument that had a profound effect on the lives and nationality of millions of Hungarians. The study explores the peculiar interpretation and application of treaty provisions relating to territorial changes, and reveals the flaws of legal regulation which further contributed to the formation of a large community of Hungarians living outside the borders. Having surveyed the historical background, the analysis proceeds to examine the impact of historical traditions on the underling motives and current domestic regulation of preferential naturalization. Evidence includes the broad scope of eligible persons, the wide range of documents accepted to prove descent, the verification of required command of language, and the practical implementation of the procedure of naturalization. Research findings convincingly display the far-reaching effects of historical traditions on the regulation and practice of preferential naturalization in Hungary.

KEYWORDS: regulation of nationality, citizenship, historical traditions, Hungary

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1. Introduction

The amended Hungarian Citizenship Act¹ provides for the preferential naturalisation of Hungarians living outside the borders. According to the amendment, a non-Hungarian citizen,²

¹ Act No. LV of 1993 on Hungarian Citizenship, s 4 (3)

² This study uses both expressions: 'citizenship' and 'nationality'. However the notions of 'citizenship' and 'nationality' need to be distinguished on the basis of their nature in domestic law and international law. Since the existence of citizenship rights and obligations are relevant from the point of view of domestic law, the term 'citizenship' is mainly used as a notion of domestic law. See Maximilian Koessler, "Subject," "Citizen," "National," and "Permanent Allegiance" (1946-47) Yale LJ 56, 62-63. 'Nationality' primarily means the belonging of an individual to a state irrespective of citizenship rights and obligations. See *Minor v Happersett*, 88 US 162 (1874), *Romano v Comma*, Egyptian Mixed Court of Appeal, 12 May 1925, Annual Digest of Public International Law Cases, 1925-26, case no 195, 265. For analyses focusing on nationality in international law, it is the bond between the individual and the state that has significance; the existence of rights and obligations is irrelevant. Consequently, the term 'nationality' has to be used in international law.

whose ascendant was a Hungarian citizen, or who demonstrates the plausibility of his or her descent from Hungary and provides proof of his or her knowledge of the Hungarian language may – on his or her request – be naturalized on preferential terms since 1 January 2011. The criteria of assured livelihood and permanent residence in Hungary, and the requirement of an exam in basic constitutional studies, both having formed part of other kinds of naturalization, were noticeably waived.

The idea of granting citizenship to Hungarians living outside the borders emerged slightly more than half a decade after an unsuccessful referendum in 2004 on that subject-matter, which had proved invalid due to insufficient turnout.³ This time, however, the legislator took a different course of action. The amendment of the Hungarian Citizenship Act was adopted by the Hungarian Parliament on 26 May 2010. A few days later, on 31 May, the Parliament adopted Act No. XLV of 2010, which declared 4 June, the day of signing of the Trianon Peace Treaty, the Day of National Unity.⁴ The Act states that ‘all members and communities of the Hungarian nation, subjected to the jurisdiction of other states, belong to the single Hungarian nation whose cross-border cohesion is a reality and, at the same time, a defining element of the personal and collective identity of Hungarians’.⁵

The same perception also appears in the Fundamental Law of Hungary, which was adopted on 18 April 2011. The Fundamental Law’s preamble, entitled ‘National Avowal’, contains a solemn pledge to preserve the nation’s intellectual and spiritual unity that had been torn apart by the storms of the previous century. Furthermore, its so-called responsibility clause provides that since ‘there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders [...]’.⁶ The perception that Hungarians living outside the borders also form part of the nation⁷ was, therefore, reaffirmed at a constitutional level, and was followed by the granting of political rights, as Act No. CCIII of 2011 offered the right to vote in parliamentary elections to Hungarians living outside the borders.⁸

Bearing all that in mind, the main purpose of the broad wording of the phrase ‘whose ascendant was a Hungarian citizen, or who demonstrates the plausibility of his or her descent from Hungary’ is to enable Hungarians and their descendants living in territories detached during the 20th century to acquire Hungarian citizenship. In addition, the wording of the new provision also embraces those, who have emigrated in the meantime and lost their citizenship.⁹

³ Mária M. Kovács and Judit Tóth, ‘Kin-State Responsibility and Ethnic Citizenship: The Hungarian Case’ in Rainer Bauböck, Bernhard Perchinig and Wiebke Sievers (eds), *Citizenship Policies in the New Europe* (Amsterdam University Press 2009) 151, 158-61 (hereafter M. Kovács and Tóth, ‘Kin-State Responsibility’), Mária M. Kovács, ‘The Politics of Non-resident Dual Citizenship in Hungary’ (2005) 8 *Regio* 50, 50-62, 66-71

⁴ Act No. XLV of 2010 on the Testimony for National Cohesion, s 4

⁵ *Ibid.*, s 3

⁶ Fundamental Law of Hungary (25 April 2011), National Avowal, art D). The previous constitution did not contain a reference to the nation, and it used the formula ‘bears a sense of responsibility’ instead of ‘shall bear responsibility’. For more details, see Halász Iván and Majtényi Balázs, ‘A Magyar Köztársaság Alkotmányának „nemzeti felelősségi klauzulája” (Egy értelmezési kísérlet)’ in Halász Iván, Majtényi Balázs and Szarka László (ed), *Ami összeköt? Státustörvények közel s távol* (Gondolat 2004) 93, Majtényi Balázs, *A nemzetállam új rubája. Multikulturalizmus Magyarországon* (Gondolat 2007) 51-52

⁷ For more details, see Zsolt Körtvélyesi and Judit Tóth, ‘Naturalisation in Hungary: Exclusion by ethnic preference’ (2011) 1 *Open Citizenship* 54, Kántor Zoltán, ‘Nemzet és legitimitás – a státustörvény és a kettős állampolgárság kapcsán’ in Kovács Nóra, Osvát Anna and Szarka László (ed), *Etnikai identitás, politikai lojalitás, Nemzeti és állampolgári kötelességek* (Balassi 2005) 223-34

⁸ Act No. CCIII of 2011 on the Elections of Members of Parliament, s 12 (3)

⁹ M. Kovács and Tóth, ‘Kin-State Responsibility’ (n 3) 152-53; Judit Tóth, ‘Principles and Practice of Nationality Law in Hungary’ (2005) 8 *Regio* 21, 21-22

2. Historical Origins

The first significant group of Hungarians living outside the borders emerged in the wake of the Trianon Peace Treaty of 1920.¹⁰ In the course of territorial revisions between 1938 and 1941, a number of Hungarians received back their Hungarian citizenship.¹¹ However, at the end of the Second World War, Article 2 of the Armistice Agreement of 1945¹² stipulated that the borders of Hungary must be re-established in line with their status as of the regulation of the Trianon Peace Treaty, and any acts and administrative decisions relating to the territorial revisions must be terminated.¹³ Hence, the historical event that had an effect on evolution of the group of Hungarians living outside the borders without Hungarian nationality was the conclusion of the Trianon Peace Treaty.

In the aftermath of World War I, Hungary had to relinquish approximately two-thirds of its former territory and over half of its population under the terms of the Trianon Peace Treaty. The change of sovereignty over the transferred territories inevitably had an impact on the nationality of the persons concerned, as well. The Trianon Peace Treaty set forth the clauses relating to nationality in Part III, Section VII. The treaty text was supplemented and further detailed by Hungarian Royal Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Trianon Peace Treaty. However, the interpretation and implementation of articles concerning nationality were highly ambiguous. Hence, the fate of these individuals largely depended on the domestic legal regulation and the subjective treaty interpretations of successor states, as well by related case law. The application of treaty provisions was not always in conformity with the text, which sometimes proved advantageous, other times disadvantageous for the affected persons.

2.1 Loss of the Hungarian Nationality and Acquisition of the New Nationality in the Transferred Territories

In the wake of the Trianon Peace Treaty, persons living in the transferred territories lost their Hungarian nationality and acquired the nationality of the given successor state in line with their rights of citizenship in a commune (rights of citizenship). This change took place automatically, without a naturalization process or an official act on the day of entry into force of the peace treaty, on 26 July 1921. Pursuant to Article 61, those persons who possessed rights of citizenship, the so-called *pertinenza*, on a territory which formed part of the territories of the former Austro-Hungarian

¹⁰ Treaty of Peace between the Allied and Associated Powers and Hungary (opened for signature 4 June 1920, entered into force 26 July 1921) arts 61-66 (hereafter Trianon Peace Treaty)

¹¹ *Arbitral award establishing the Czechoslovak-Hungarian boundary*, Vienna, 2 November 1938, annex, para 4, RIAA, vol XXVIII, 405. For more details on the award, see Péter Kovács, 'A propos du chemin vers l'arbitrage de Vienne de 1938' in Péter Kovács (ed), *International Law – A Quiet Strength. Le droit international, une force tranquille (Miscellanea in memoriam Géza Herczegh* (Pázmány 2011), 31. Between 15 and 18 March 1939, the Hungarian army invaded the territory of Sub-Carpathia. The ensuing questions of nationality were regulated in Hungarian domestic law by s 5 of Act No. VI of 1939. Award relating to the Territory ceded by Romania to Hungary, 30 August 1940, para 3-4, RIAA, vol XXVIII, 410. Certain elements of the Second Vienna Arbitral Award became part of Hungarian domestic law by way of s 4 of Act No. XXV of 1940. Territories of the South were reannexed after the invasion of the Hungarian army on 11 April 1941. The ensuing questions of nationality were regulated in Hungarian domestic law by s 4 of Act No. XX of 1941. For more see Mónika Ganczer, 'A határon túli magyarok kettős állampolgárságának nemzetközi jogi és belső jogi aspektusai: a kollektív elvesztéstől a könnyített megszerzésig' (2011) 3 Jog-Állam-Politika 45, 48-52

¹² Agreement Concerning an Armistice between the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America on One Hand and Hungary on the Other (opened for signature 20 January 1945, entered into force 20 January 1945)

¹³ Prime Minister's Decree no 526/1945 (III 17) on the Repealing of Acts Concerning Territorial Changes of the Country

Monarchy, obtained ‘*ipso facto* to the exclusion of Hungarian nationality’ the nationality of the successor state exercising state sovereignty over such territory. Article 62 established an exception to the automatic change of nationality. According to this provision, persons who acquired rights of citizenship after 1 January 1910 in territories transferred to the Serb-Croat-Slovene State or to the Czecho-Slovak State could only acquire the Serb-Croat-Slovene or the Czecho-Slovak nationality with a permission of the successor state. In other words, such persons had to apply for nationality and the state could accept or refuse their applications. If the application was not made or was refused, persons automatically acquired the nationality of the state which exercised sovereignty over the territory in which they had rights of citizenship on 1 January 1910.¹⁴ These persons were evidently regarded as nationals of the state of their former rights of citizenship until their application, the submission of which had no time limit. Incomplete records of Hungarian municipalities also caused difficulties in the determination of rights of citizenship beginning with 1 January 1910.¹⁵

The scope of persons affected was determined with regard to the ‘rights of citizenship’.¹⁶ However, the ‘rights of citizenship’ was not defined by the peace treaties, and as such, they were endowed with meaning by the domestic regulation of the states concerned. Numerous problems arose from the differences of regulation within the Austro-Hungarian Monarchy: there were separate legal rules in the Austrian and Hungarian territories;¹⁷ a combination of these rules were in force in the Croatian-Slovenian territories;¹⁸ and rights of citizenship did not exist in Bosnia and Herzegovina.¹⁹ Therefore interpretation of the rights of citizenship was different in successor states.²⁰

Notwithstanding the fact that the rights of citizenship appeared on its own in the text of the Peace Treaty, it was obviously hinged on nationality, since only nationals could possess rights of citizenship at the time of the aforementioned cases of state succession.²¹ The ways of acquisition

¹⁴ Trianon Peace Treaty (n 10) art 62. For example, a Hungarian national who acquired the rights of citizenship in Bratislava after 1 January 1920 remained a Hungarian national, if he or she did not apply for Czechoslovak nationality. Roland Jacobi and Géza Peregriny, *Magyar állampolgárság, községi illetőség és idegenrendészet* (Phoenix Irodalmi Társaság 1930) 34

¹⁵ Rudolf Graupner, ‘Statelessness as a Consequence of Sovereignty over Territory after the Last War’ in *World Jewish Congress British Section, The Problem of Statelessness*, no 12 (British Section of the World Jewish Congress 1944) 27, 34 (hereafter Graupner, ‘Statelessness as a Consequence’)

¹⁶ The ‘rights of citizenship’ or the ‘rights of citizenship in the commune’ are known as ‘*Heimatrecht*’, ‘*Gemeindezuständigkeit*’ or ‘*Pertinenza*’ in German, ‘*pertinenza*’ in Italian, ‘*l’indigénat*’ in French, and ‘*illetőség*’ or ‘*községi illetőség*’ in Hungarian. Even though the expression ‘rights of citizenship’ came into general use in English, it is worth noting that the equivalent of ‘*Heimatrecht*’ would be ‘communal rights’ rather than ‘rights of citizenship’, as the latter can also mean the right to a nationality. William O’Sullivan Molony, *Nationality and Peace Treaties* (George Allen & Unwin Ltd. 1934) 149 (hereafter Molony, *Nationality and Peace Treaties*)

¹⁷ Act of 2 December 1863 on the regulation of the legal relationship of the rights of citizenship, as amended by the Act of 5 December 1896, was in force at the time of the state succession, and as such, it was applicable for the determination of the rights of citizenship of the Austrian nationals. Act No. XXII of 1886 on municipalities was in force at the time of the Trianon Peace Treaty and regulated the rights of citizenship in Hungarian territory. See Mónika Ganczer, ‘The Effects of the Differences between the Austrian and the Hungarian Regulation of the Rights of Citizenship in a Commune (Heimatrecht, Indigénat, Pertinenza, Illetőség) on the Nationality of the Successor States of the Austro-Hungarian Monarchy’ (2017) 8 J Eur Hist Law 100

¹⁸ See Molony, *Nationality and Peace Treaties* (n 16) 151-52, 160

¹⁹ See Sir Walter Napier, ‘Nationality in the Succession of States of Austria-Hungary’ (1932) 18 Transactions of the Grotius Society 1, 2 (hereafter Napier, ‘Nationality’), Graupner, ‘Statelessness as a Consequence’ (n 15) 33, Molony, *Nationality and Peace Treaties* (n 16) 152, Marc Vichniac, ‘Le statut international des apatrides’ (1933-I) 43 RdC 115, 151-52

²⁰ Norman Bentwich, ‘Statelessness through the Peace Treaties After the First World-War’ (1944) 21 Br. Year B. Int. Law 171, 172

²¹ Act No. XXII of 1886, s 15, Judgement no 1080/1935 K. of the Administrative Court, cited by Aladár Bródy & Kálmán Bán, *Allampolgárság és illetőség. A Magyarországon érvényben lévő jogszabályok összefoglaló ismertetése, különös tekintettel a belügyminisztérium és a közigazgatási bíróság legújabb gyakorlatára* (Aladár Bródy and Kálmán Bán 1938) 52 (hereafter Bródy and Bán, *Allampolgárság és illetőség*), Gesetz vom 5. Dezember 1896, art I (5).

of rights of citizenship were rather similar to the grounds for acquiring nationality.²² Each person could possess one set of rights of citizenship only; consequently, former rights of citizenship were replaced upon acquisition of new rights of citizenship in another municipality. The rights of citizenship formed not only a legal right, but also an obligation, since every national had to belong to a municipality. An interesting characteristic of the rights of citizenship was that they were not necessarily tied the place of habitual residence.

The main difference between the relevant Hungarian and Austrian rules, which caused serious problems in the event of state succession, was the acquisition of the rights of citizenship by persons on their own right, through settling and residence. Persons could only acquire rights of citizenship by settling upon a request and an explicit admittance by the municipality in Austrian territory.²³ According to the Hungarian Act, the acquisition of the rights of citizenship could be only be applied for after settling in the municipality, but the rights of citizenship could also automatically²⁴ change due to a four year-long continuous residence and the payment of tax.²⁵ Further difficulties emerged from two Czechoslovak judgments, which set conditions for the acquisition of the rights of citizenship which deviated from the Hungarian regulation and practice. One of these judgments stated that the rights of citizenship ensued on the condition that the contributions provided to the municipality had been continuous during a period of four years.²⁶ The other judgment pronounced that an explicit declaration on the admittance of a person by a municipality was also necessary in addition to residence and continuous contributions.²⁷ This judgment appears to have interpreted the erstwhile nature of the Hungarian rights of citizenship in a rather peculiar manner which ran counter to the technique of automatic acquisition. A number of persons were unable to meet this requirement due to the earlier practice of automatic acquisition. The automatic creation of the rights of citizenship also entailed that records were not always kept as up-to-date in the old Hungarian municipalities as in Austria. Due to the deficiencies of these records, there were persons who theoretically possessed rights of citizenship, but had no means to prove it.

It was not easy to achieve recognition of the rights of citizenship in the municipalities. Moreover, it was particularly difficult for persons belonging to minorities in the states concerned. Their documents were thoroughly examined even if they possessed all the necessary certificates, with special attention paid to those who were about to become pensioners, or whose admittance created financial obligations for the municipality.²⁸ Debates between two or more municipalities concerning the rights of citizenship posed a particularly serious problem if these municipalities

²² Diethard Krombach, *Erstbegründungen im Staatsangehörigkeitsrecht im 19. Jahrhundert und am Anfang des 20. Jahrhunderts* (Bauknecht-Dissertations-Druckerei 1967) 22. See for example Gesetz vom 3. Dezember 1863, s 6, Act No. XXII of 1886, s 6, Gesetz vom 3. Dezember 1863, s 7, Act No. XXII of 1886, s 7

²³ Gesetz vom 5. December 1896, art I (1)

²⁴ Act No. XXII of 1886, s 10. For a similar opinion, see Napier, 'Nationality' (n 19) 9; Graupner, 'Statelessness as a Consequence' (n 15) 33. For more details, see Népíes Irodalmi Társaság, *Magyar-román békeszerződés magyarázata* (Népíes Irodalmi Társaság 1921) 12

²⁵ In line with Hungarian judicial practice, it was sufficient to only pay tax once to meet the requirement of tax payment, and it could even be performed in kind. Judgements nos 999/1924, 1676/1922, 4285/1926 K. of the Administrative Court, cited by Jenő Czebe, *Útmutató honosítási, visszahonosítási, elbocsátási és illetőségi ügyekben. Kiegészítve az elszakított területeken érvényben lévő állampolgársági rendelkezésekkel és jogesetekkel* (Székesfőváros Tanácsa 1930) 35 (hereafter Czebe, *Útmutató*), and Bródy and Bán, *Állampolgárság és illetőség*, 60. Judgement no 3268/1910 K. of the Administrative Court, cited by Jenő Pongrácz, *Magyar állampolgárság és községi illetőség. Törvények, rendeletek, elvi határozatok, díjak és illetékek, magyarázat, iratminták* (Magyar Törvénykezés 1938) 64

²⁶ *Rights of Citizenship (Establishment of Czechoslovak Nationality) Case*, Czechoslovakia, Supreme Administrative Court (no 16.748.), 15 December 1921, Annual Digest of Public International Law Cases, 1919-22, case no 6, 17, Napier, 'Nationality' (n 19) 9

²⁷ Supreme Administrative Court of Czechoslovakia, Decision of 6 December 1923, cited by Seton Watson, *Slovakia, Then and Now. A Political Survey* (George Allen & Unwin Ltd., Orbis Publishing Co. 1931) 56 (hereafter Watson, *Slovakia*), Napier, 'Nationality' (n 19) 9, Czebe, *Útmutató* (n 25) 62

²⁸ Napier, 'Nationality' (n 19) 2

happened to be in different states following the transfer of territories. Since municipalities were not necessarily interested in determining that a person belongs to them, the situation could become exacerbated. The same held true for persons who resided elsewhere. In these cases, the municipalities were often reluctant to stand up for such persons, even if it could be proven that their rights of citizenship pertained to the municipality.²⁹ Disputes concerning the rights of citizenship relating to municipalities that remained in Austrian and Hungarian territories were resolved by the Austrian and the Hungarian Supreme Administrative Court. Disputes concerning municipalities in the transferred territories were decided by the courts of the states concerned.³⁰ In Hungary, the final decision on the question whether the rights of citizenship of a person were in a transferred territory, and whether a person had lost his or her Hungarian nationality was made by the Minister of Interior by virtue of Act No. XVII of 1922.³¹ Order No. 167.335/1922 of the Minister of Interior accordingly pointed out that the decision whether the rights of citizenship of a person existed on the day of entry into force of the Trianon Peace Treaty had to be within the competence of the Hungarian state, even if the municipality was in a transferred territory, under the sovereignty of another state.³² Certainly, this only had relevance when it came to the loss or the reacquisition of Hungarian nationality, since the decision of the Minister of the Interior could not influence the acquisition of the nationality of another state.

2.2 Reacquisition of Hungarian Nationality

Persons over 18 years of age who lost their Hungarian nationality and acquired a new nationality by virtue of the Peace Treaty had a right of option to reacquire their previous nationality.³³ The fundamental idea underlying the theory of the will of persons affected by state succession is that they may not be deemed *glebae adscripti*, therefore, their nationality may not change against their free will.³⁴ A judge of the International Court of Justice also stated – in another context – that territory may not determine the fate of its inhabitants.³⁵ The provisions concerning the right of option of the Trianon Peace Treaty was formulated in vein of the theory of automatic change of nationality with the condition that the right of option has to be afforded to affected persons to enable them to reacquire their former nationality.³⁶

Both the texts of Article 61 ('to the exclusion of Hungarian nationality') and Article 63 ('losing their Hungarian nationality') denote that persons who had rights of citizenship on the transferred territories lost their Hungarian nationality *ipso facto* with the entry into force of the Peace Treaty. Article 63 afforded the right of option to persons over 18 years of age 'losing their Hungarian nationality and obtaining *ipso facto* a new nationality under Article 61' within a period of one year from the entry into force of the treaty. The wording of the treaty seemed unambiguous: persons concerned lost their nationality automatically and they reacquired their former nationality based on their option.

²⁹ Molony, *Nationality and Peace Treaties* (n 16) 165

³⁰ Graupner, 'Statelessness as a Consequence' (n 15) 33

³¹ Act No. XVII of 1922 on the Covering of Public Burdens and Expenditures of the State in First Six Months of the Fiscal Year 1922/23, s 24 (hereafter Act No. XVII of 1922)

³² Circular Decree 167.335/1922 B. M. of Hungarian Royal Minister of Interior, cited by Czebe, *Útmutató* (n 25) 38-39.

³³ For more see Mónika Ganczer, 'Hungarian Territorial Changes and Nationality Issues Following World War I' (2020) 8 Hungarian YB Int'l Law Eur Law 120, 126-32

³⁴ See Rudolf Graupner, 'Nationality and State Succession. General Principles of the Effect of Territorial Changes on Individuals in International Law' (1946) 32 Transactions for the Year - Grotius Society 87, 90

³⁵ *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12, 114 (Separate Opinion of Judge Dillard)

³⁶ Eugène Audinet, 'Les Changements de nationalité résultant des récents Traités de Paix' (1921) 48 J. droit int. privé 377, 383, Luella Gettys, 'The Effect of Changes of Sovereignty on Nationality' (1927) 21 Am J Int'l Law 268

Hungarian practice nevertheless interpreted that option as having a retrospective effect,³⁷ reaching back to the change of sovereignty. Hence, persons who made a declaration of option had to be considered as not having lost their former nationality and not having acquired the nationality of the successor state.³⁸ This was explicitly confirmed by the Czechoslovak-Hungarian Mixed Arbitral Tribunal, which decided that in case of an option the individual concerned had to be considered a Hungarian national even in respect of the period prior to the option, since by providing for that right, the Peace Treaty had offered him the Hungarian rather than the Czechoslovak nationality. The Tribunal also held that, by virtue of the exercise of the right of option, individuals had to be considered as never having lost their Hungarian nationality.³⁹ In other words, the option had a retrospective effect, and the principle of automatic loss of nationality, although expressly laid down in the treaty, could be rebutted by exercising the right of option. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Trianon Peace Treaty also referred to this interpretation, when it used the phrase ‘preservation of Hungarian nationality’.⁴⁰ Hungarian case-law, therefore, ran counter to the text of the Peace Treaty. This theory of the retrospective effect of the right of option has numerous followers,⁴¹ notwithstanding the fact that it can hardly be substantiated. The negative consequences of the retrospective effect on the status of individuals are obvious,⁴² particularly because it may be problematic from the point of view of rights and obligations assumed in the period between state succession and option. If the rights and obligations assumed in the period between these two dates are upheld,⁴³ it seems rather doubtful whether the individual can properly be seen as not having changed his or her previous nationality. If the point of departure is the preservation of nationality, the validity of rights and obligations assumed while the individual appeared to have been a national of the successor state becomes rather dubious.⁴⁴ The retrospective effect of option does not and cannot secure the interest of the individual regarding the certainty of his or her status and the rights and obligations flowing from that status. Having taken all these factors into account, the least disadvantageous solution for the individual would have been the reacquisition of the former nationality by exercising the right of option. This appraisal also finds support in the conceptualization of the right of option as a ‘reparation’.⁴⁵

The Peace Treaty envisaged that an [o]ption by a husband will cover his wife and option by parents will cover their children under 18 years of age,⁴⁶ in accordance with the principle of family unity. In Hungarian law, the aforementioned provision of the Peace Treaty was construed in a way that the nationality of a husband determined that of his wife only if she ‘lived together with him’,⁴⁷ meaning that both marriage and cohabitation were required for any adjustment of the nationality of a woman. This is also confirmed by a Hungarian decision, which allowed for a distinct treatment

³⁷ For the retrospective effect of option, see László Buza and Gyula Hajdu, *Nemzetközi jog* (Tankönyvkiadó 1968) 179, Albert Zorn, *Grundzüge des Völkerrechts* (Verlagbuchhandlung von J. J. Weber 1903) 62, Josef L. Kunz, *Die völkerrechtliche Option I* (Hirt 1925) 153 (hereafter Kunz, *Die völkerrechtliche Option*), Yaël Ronen, ‘Option of Nationality’ in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law VII* (Oxford University Press 2012) 995, 998

³⁸ See John Westlake, *International Law I* (Cambridge University Press 1902) 73

³⁹ *Ladislav Chira Fils v. Czechoslovak State*, Czechoslovak-Hungarian Mixed Arbitral Tribunal (Schreiber, Szladits, Hora), 9 July 1929. Annual Digest of Public International Law Cases, 1929-30, case no 149, 246

⁴⁰ Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Trianon Peace Treaty, s 3 (hereafter Hun. Roy. Ministerial Decree 6.500 M. E. of 1921)

⁴¹ See Kunz, *Die völkerrechtliche Option* (n 37) 156-57

⁴² Sir Hersch Lauterpacht, ‘Nationality of Denationalized Persons’ (1948) *The Jewish YB Int’l Law* 164, 168

⁴³ Emile Szlechter, *Les Options conventionnelles de nationalité à la suite de cessions de territoires* (Recueil Sirey 1948) 334

⁴⁴ George Scelle also refers to the use of the retrospective effect as it undermines the legal certainty. George Scelle, *Précis de droit des gens: principes et systématique II* (Sirey 1934) 161

⁴⁵ Károly Kistelegi, *Az állampolgárság fogalmának és jogi szabályozásának fejlődése. Konceptiók és alapmodellek Európában és Magyarországon* (Martin Opitz 2011) 202

⁴⁶ Trianon Peace Treaty (n 10) art 63

⁴⁷ Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 (n 39) s 9

of the wife's nationality in case of a separation of considerable duration.⁴⁸ Divorce could have taken place in the course of the period open for option, following which the woman could obviously have exercised her right of option of her own accord.⁴⁹ The status of children under the age of 18 and under the power of a father was determined by the father's declaration of option. The declaration of option was made by the legal representative of children under the age of 18 and not under the power of a father or of persons under custodianship, for they had no capacity to act. At the same time, children who had already reached the age of 12 had to be heard prior to the declaration of option.⁵⁰

The declaration of option had to be made in written form; if the declaration was made orally, it had to be recorded.⁵¹ It is worth mentioning that nationality was preserved or acquired by option at the moment when the minister of interior determined that the requirements of the right of option were fulfilled. Hence neither the declaration of option, nor the certificate issued thereupon by the authority resulted in a change of nationality.⁵² The exercise of the right of option was, in essence, a claim (referred to as '*igény*'⁵³ in Hungarian) for the preservation or acquisition of nationality, and as such, the declaration was not unilateral. It was the state that made the final decision concerning the exercise of that right, and the declaration of the individual was followed by an act of acceptance on the side of the state. There was generally a deadline for the exercise of the right of option. In this period, the individual only had to make a declaration, since the right of option was, in fact, exercised by making such a declaration. Nevertheless, the period of one year as laid down in the Peace Treaty proved to be too short. Persons affected by territorial changes could only acquire Hungarian nationality following the expiration of the deadline by way of preferential renaturalization offered under Act No. XVII of 1922.⁵⁴

In order to safeguard the interests of the individual, it was essential to regulate the consequences of option, as well. The Peace Treaty stated that persons who had opted for another state had to transfer their place of residence to the state whose nationality they acquired within one year after the making of the declaration. They could carry with themselves all their movable property without any export or import duties, and they could either retain or sell their immovable property.⁵⁵ The Ministerial Decree 6.500 M. E. of 1921 was more lenient than the Peace Treaty in two respects. Firstly, it formulated the deadline in the following manner: 'within one year following [...] the expiry of the period of time open for option'.⁵⁶ Second, it added that the persons concerned were allowed to retain, along with their immovables, any 'equipment necessary for their cultivation and use'.⁵⁷ However, the Peace Treaty failed to regulate the public service employment, military obligations, pension, and widow and orphan care of individuals who exercised their right of option. These issues were settled for example by Austria and Hungary in a separate treaty.⁵⁸

⁴⁸ *Julianna M. v Josef Sch.*, Supreme Court of Hungary, 14 December 1927, Annual Digest of Public International Law Cases, 1927-28, case no 203, 309

⁴⁹ *A. P. v Federal Ministry of the Interior*, Austrian Administrative Court, 6 October 1925, Annual Digest of Public International Law Cases, 1927-28, case no 212, 318.

⁵⁰ See Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 (n 39) s 5, Bródy and Bán, *Állampolgárság és illetőség* (n 21) 25

⁵¹ See Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 (n 39) s 11

⁵² *Ibid*, s 12.

⁵³ Trianon Peace Treaty (n 10) art 63 [Hungarian version]. See Iván Halász and Gábor Schweitzer, '69. § [Állampolgárság]' in András Jakab (ed), *Az Alkotmány kommentárja II* (Századvég 2009) 2432, 2436

⁵⁴ Act No. XVII of 1922 (n 31) s 24

⁵⁵ Trianon Peace Treaty (n 10) art 63

⁵⁶ Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 (n 39) s 6

⁵⁷ *Ibid*, s 7

⁵⁸ Staatsvertrag zwischen der Republik Österreich und dem Königreich Ungarn über die Behandlung von Angestellten, Pensionisten, Witwen und Waisen aus dem auf Grund der Staatsverträge von Saint-Germain-en Laye und von Trianon von Ungarn an Österreich abgetretenen Gebiete samt Zusatzprotokoll vom 31. März 1924, BGBl. Nr. 138/1925, 581, Zusatzprotokoll zu dem am 12. Jänner 1924 zwischen der Republik Österreich und dem Königreich Ungarn

2.3 Assessment of the Historical Background

In the aftermath of World War I, nationality automatically changed in transferred territories: on the day of the entry into force of the Peace Treaty, the persons falling under its scope lost their Hungarian nationality and acquired that of the successor state. In Czechoslovakia and the Kingdom of Serbs, Croats and Slovenes, the automatic acquisition of nationality hinged upon the existence of rights of citizenship for a specific duration, and was only provided to persons whose rights of citizenship had been established before 1 January 1910. Children born or persons settled in these territories after that date could only become nationals upon application. No deadline was set for such a request, but in the meantime the individual had to be considered a national of the state in which he or she had possessed rights of citizenship before 1 January 1910.

The most important criterion for the determination of nationality and of the right of option was the possession of rights of citizenship, which was governed by the domestic laws of the states concerned. The Acts set forth that everyone had to have rights of citizenship, but it was not always realized. Some persons did not possess rights of citizenship, some could not prove their rights of citizenship by presenting the required documents, and the place of the rights of citizenship of some were debated. It caused difficulties that the successor states did not always interpret the rights of citizenship similarly to the relevant regulation of the predecessor state. In addition, due to the incomplete character of these records, there were persons who theoretically possessed rights of citizenship, but could not prove it. Divergent interpretations of, and difficulties in the determination of the rights of citizenship resulted in statelessness on a massive scale.

For these reasons, a number of persons did not possess or could not prove the rights of citizenship at the time of the entry into force of the peace treaties. The peculiar interpretation of the conditions of the rights of citizenship by certain courts had a result that tens of thousands of Hungarian nationals became stateless, and their number was still around twenty or thirty thousand in 1926,⁵⁹ the preferential naturalization in Czechoslovakia and the preferential renaturalization under Act No. XVII of 1922 in Hungary notwithstanding. Even though a century has passed since the post-war territorial changes, their profound impact on nationality can still be detected,⁶⁰ as shown by the 2010 amendment of Act No. LV of 1993 on Hungarian Citizenship.

3. Objectives of Preferential Naturalization

The amendment had a primarily symbolic purpose by granting citizenship to Hungarians, who or whose ascendants lost their Hungarian citizenship in consequence of historic events and hitherto could not retrieve it for lack of residency in Hungary.⁶¹ The reasoning of the bill on the amendment also reflects that intention:

In the past 20 years, the claim came up from time to time among Hungarians living in the world and in the Carpathian Basin that, on the basis of foreign examples, the introduction

abgeschlossenen Staatsvertrag, BGBl. Nr. 139/1925, 591. See Isidor Schwartz, 'Zur Lehre von der Staatensukzession' (1933-1934) 48 Niemeyers Z für Internat Recht 166, 166-76

⁵⁹ Watson, *Slovakia* (n 27) 57

⁶⁰ Christopher Brennan, 'The memory of the First World War in the former lands of Austria-Hungary' (2015) Comillas J Int'l Rel 139, 149-150

⁶¹ Mónika Ganczer, 'The Recent Amendment of the Hungarian Citizenship Act' in Péter Smuk (ed), *The Transformation of the Hungarian Legal System 2010-2013* (CompLex Wolters Kluwer, Széchenyi István University 2013) 69, 70

of a preferential naturalization procedure would considerably facilitate the maintenance of contact with the kin state and the preservation of their Hungarian identity. The objective of the Bill is [...] the so-called ‘dual nationality’, that is, the granting of simplified, preferential acquisition of nationality to Hungarians living outside the borders.⁶²

Elsewhere, the Bill likewise refers to historical traditions: ‘It should be noted that the Bill is not an absolute novelty in the Hungarian legal system, as the first Hungarian citizenship act and Act No. IV of 1886⁶³ also knew the preferential naturalization procedure of Hungarians, of the Csángós, living outside the borders.’

The making and application of law equally reflect these legislative objectives. The scope of eligible persons was drawn up in the text of the amendment in a broad manner to enable any potentially entitled individual or his or her descendant to take the opportunity of preferential naturalization. In practice, a broad interpretation of the text also facilitates the acquisition of nationality by the widest possible group of persons.

3.1 Legislation

The amended text of the Hungarian Citizenship Act reads as follows:

Article 4

(1) On his or her request a non-Hungarian citizen may be naturalized if:

[...]

b) under Hungarian law he or she has a clean criminal record, and at the time of the assessment of the application there are no ongoing criminal proceedings against him or her before a Hungarian court;

[...]

d) his or her naturalization does not violate the public security and national security of the Republic of Hungary; [...]

(3) In the case of meeting the conditions set out in points b) and d) of paragraph (1) a non-Hungarian citizen *whose ascendant was a Hungarian citizen, or who demonstrates the plausibility of his or her descent from Hungary and provides proof of his or her knowledge of the Hungarian language* may – on his or her request – be naturalized on preferential terms. [...]⁶⁴

Hence in this particular procedure of preferential naturalization, the applicant not only does not need a residence in Hungary, but also does not need to provide proof that he or she has passed the exam in basic constitutional studies in Hungarian language. This latter feature turned out to be rather peculiar. Even though Hungarians living outside the borders had not had a right to vote at the time of the amendment, that situation subsequently changed.⁶⁵ As a result, the release of persons having a right to vote in parliamentary elections from the requirement of an exam in basic constitutional studies no longer appears justified.

The objective of the amendment, as has been mentioned, was to enable the widest possible group of persons to take the opportunity of preferential naturalization. This was achieved, at least in part,

⁶² Bill No. T/29 on the Amendment of Act No. LV on Hungarian Citizenship, 17 May 2010 (hereafter Bill No. T/29 on the Amendment)

⁶³ Act No. IV of 1886 on the Naturalization of Re-Settlers en masse

⁶⁴ Act No. LV of 1993 on Hungarian Citizenship, s 4 (1) b) d), (3) [Emphasis added]

⁶⁵ Kriszta Kovács, ‘Constitutional Continuity Disrupted’ in Margit Feischmidt and Balázs Majtényi (eds), *The Rise of Populist Nationalism: Social Resentments and Capturing the Constitution in Hungary* (CEU Press 2020) 11, 31, Act No. CCIII of 2011 on the Elections of Members of Parliament, s 12 (3)

by the wording of the text. Notably, the formula ‘a non-Hungarian citizen whose ascendant was a Hungarian citizen, or who demonstrates the plausibility of his or her descent from Hungary’ results in an extremely broad personal scope, so basically any individual of Hungarian descent or of presumed Hungarian identity may fulfil the requirements. Furthermore, the legislator refrained from spelling out how proof of knowledge of the Hungarian language should be provided, leaving it to the authorities to determine the acceptable means and methods in practice. The reasoning of the amendment also pointed out that:

[A]lthough the current aliens policing and nationality regulations also contains privileges for Hungarians living outside our borders, the procedures overlaying one another were often lengthy, imposed an unnecessary administrative burden, and so the maintenance of contact with the kin state was rendered difficult.⁶⁶

The text was, therefore, drafted with these considerations in mind, and the legislative objective was successfully achieved. However, it should be noted that the broad wording of the text not only expands the scope of eligible persons, but also opens the door for abuses, as shown by several examples.⁶⁷

3.2 Practice

The loss of nationality on a massive scale due to the historical events had an impact on both the making and application of law. Historical traditions seem to permeate every segment of the system of preferential naturalization. For example, historical experiences explain the long list of documents that may prove descent, the various means and methods that may prove the required command of the Hungarian language, and the practical realization of the procedure of naturalization, which is based on a broadly formulated and broadly interpreted regulation. The absence of details in the regulation, in turn, has endowed the relevant authorities with exceptionally broad discretionary powers. Even the submission of applications is greatly facilitated. Applications may be submitted to a district (capital district) office of a capital and county government office, to an integrated customer service bureau, to a Hungarian consular officer, or to an authority in charge of nationality matters.⁶⁸

3.2.1 Demonstration of Hungarian ancestry or the plausibility of descent from Hungary

In order to demonstrate Hungarian ancestry or the plausibility of descent from Hungary, the relevant procedural rules only require that the documents attesting or making plausible the applicant’s or his or her ancestor’s former Hungarian nationality be annexed to the application.⁶⁹ The legislator had refrained from providing further guidelines; therefore, the list of acceptable documents and the meaning of the word ‘plausibility’ were hammered out in practice by the authorities applying the law.

For neither the list of acceptable documents, nor the meaning of ‘plausibility’ is clarified by the enactment, both the applicants and the officials taking part in the procedure need to consult

⁶⁶ Bill No. T/29. on the Amendment (n 62)

⁶⁷ Mónika Ganczer, ‘Sarkalatos átalakulások: az állampolgársági jog átalakulása’ (2014) 63 MTA Law Working Pap 1 (hereafter Ganczer, ‘Sarkalatos átalakulások’)

⁶⁸ Act No. LV of 1993 on Hungarian Citizenship, s 13 (1)

⁶⁹ Government Decree No. 125/1993. (IX. 22.) on the Implementation of Act No. LV of 1993 on Hungarian Citizenship, s 3 (4) (hereafter Government Decree No. 125/1993)

information websites for guidance. The official advisory⁷⁰ reveals that the documents attesting an applicant's or his or her ancestor's Hungarian nationality, in particular, include birth, marriage or death certificates issued on the basis of state or church registries; old certificates of citizenship or certificates of naturalization, re-naturalization or expatriation; certificates of name change; old Hungarian military identity cards or military pay books; Hungarian decisions on compensation; passports; identity cards; employment record books or service (maid) books; address registration forms; and certificates of rights of citizenship in a commune. Documents making Hungarian descent plausible, in particular, include certificates of the Csángós or those of their ancestors, which suggest a Hungarian descent on the basis of the family name or the place of birth. In addition, other documents, such as school attendance certificates or certificates issued by the Roman Catholic Church may also suggest a Hungarian descent. It should be emphasized that the formula 'demonstrates the plausibility of his or her descent from Hungary' only applies to those persons whose ancestors' past Hungarian nationality is impossible to prove, that is, to the Csángós only.⁷¹

These enumerations are not exhaustive and leave room for the acceptance of other documents. For example, certain information websites also mention certificates of option, school reports, Hungarian State Railways certificates, official correspondence, certificates issued by a parish priest or a pastor before 1895, that is, before the establishment of a state registry, or subsequently issued church certificates, if state certificates cannot be procured or can only be procured by excessive effort. In practice, a person or his or her ancestor is, by way of a presumption, also considered a former Hungarian national, if he or she was born in the territory of Hungary before 26 July 1921, the entry into force of the Trianon Peace Treaty, or was born in territories reclaimed by Hungary between 1938 and 1945.⁷²

Therefore, the officials receiving the applications may exercise, on the basis of the aforementioned advisories and their non-exhaustive lists, virtually unrestrained discretion in the acceptance of submitted documents.⁷³ Indeed, the range and nature of acceptable documents facilitate the demonstration of decent, but at the same time, this flexible approach makes the exposure of forgeries more difficult.

3.2.2 Providing proof of knowledge of the Hungarian language

The authorities enjoy similarly broad discretion in the course of ascertaining the required command of the Hungarian language. Here the legislator had also refrained from laying down specific guidelines in the enactment, and the deficiency was not remedied by the decree on its implementation either. Government Decree No. 125/1993. (IX. 22.), which was also amended after the amendment of the citizenship act, only provides that

[u]pon receipt of the citizenship application, the government official of a district (capital district) office of a capital and county government office, the consular officer, the

⁷⁰ Office of Immigration and Nationality, Application for Naturalization (BAHIV00012)

<<https://kormanyablak.hu/hu/feladatok/14/BAHIV00012>> accessed on 15 February 2021 (hereafter Office of Immigration and Nationality, Application for Naturalization)

⁷¹ Government Offices, Preferential Naturalization Process <<https://www.kormanyhivatal.hu/hu/budapest/jarasok/egyszerusített-honosítási-eljárás>> accessed on 15 February 2021, Office of the President of the Republic, Nationality Issues <https://www.keh.hu/allampolgarsagi_ugyek/1511-Allampolgarsagi_ugyek&pnr=1> accessed on 15 February 2021

⁷² Embassy of Hungary, Canberra, Australia, Preferential Naturalization

<<https://canberra.mfa.gov.hu/page/egyszerusített-honosítás>> accessed on 15 February 2021

⁷³ Kriszta Kovács, Zsolt Körtvélyesi and Alíz Nagy, 'Hol a határ? A külhoni etnikai állampolgárság és a diszkrimináció tilalma' (2015) 19 *Fundamentum* 39, 55

government official of an integrated customer service bureau, furthermore the authority in charge of nationality matters shall verify the identity of the applicant and [...] the knowledge of the Hungarian language, and shall certify that this had been done as well as that the signature of the applicant is authentic by his or her signature on the application.⁷⁴

Hence the fulfilment of the language requirement is verified exclusively by the authority receiving the citizenship application. The official advisory only states that the verification of knowledge of the Hungarian language upon receipt of the application may take place by way of a conversation with an applicant of full age in relation to an application form completed in Hungarian, an autograph curriculum vitae written in Hungarian, or by way of questions raised in relation thereof. Consequently, minors are not required to provide proof of their command of the Hungarian language. The verification of this requirement may also be dispensed with in cases of incapacitated persons or persons with limited capacity.⁷⁵

The Office of Immigration and Nationality issued an advisory on 10 July 2014 in order to alleviate problems in the verification of knowledge of the Hungarian language and to prevent and preclude abuses in the procedure of preferential naturalization.⁷⁶ Though no longer accessible, the advisory states that the presenting of a language certificate is not necessary. Rather, the knowledge of the Hungarian language means the ability to speak and understand the language in general communication. This requirement is to be directly verified by the authority upon receipt of the application by expecting the applicant to submit the application autonomously, and to be able to autonomously provide answers in short sentences to questions raised by the officials, both in Hungarian. Thus, the applicant is not required to be in command of Hungarian literary language; dialect use and disfluent speech are also acceptable. In cases of loss of hearing or speech, the fulfilment of the language requirement takes place in writing.

These guidelines endow the authorities with broad discretionary powers in line with the aforementioned legislative objectives. However, the prevention of abuses and the transparency of the procedure seem to call for a more detailed regulation and the formulation of precise language requirements.⁷⁷ These measures would also guide and help potential applicants in the self-assessment and possible improvement of their language skills.

4. Number of applications and its consequences

4.1 Statistics

The territory and population of the former Kingdom of Hungary, including the associated Kingdom of Croatia-Slavonia, decreased from 325.411 km² and 20.88 million inhabitants to 93.073 km² and 7.61 million inhabitants in the wake of the Trianon Peace Treaty. More than 3 million Hungarians found themselves on the other side of the newly drawn borders.⁷⁸ Evidence suggests that the practical effectiveness of the amendment has been exceptionally high. Statistics indicate that the number of nationals living outside the borders has exceeded 1,1 million since the amendment. A thorough analysis of data pertaining to the first five years of preferential

⁷⁴ Government Decree No. 125/1993 (n 69) s 2

⁷⁵ Office of Immigration and Nationality, Application for Naturalization (n 70)

⁷⁶ Office of Immigration and Nationality

<http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=600&Itemid=1336&lang=hu#> accessed on 8 October 2014

⁷⁷ Ganczer, 'Sarkalatos átalakulások' (n 67) 2-3

⁷⁸ Ignác Romsics, *Magyarország története a XX. században* (Osiris 2010) 25, 95.

naturalization shows that 93 percent of persons acquiring Hungarian nationality in that period were nationals of neighbouring states, whose territories had particularly been shaped by the provisions of the Trianon Peace Treaty.⁷⁹ However, the number of applicants is not proportional to the number of Hungarians living in territories that had been transferred to neighbouring states, the explanation of which lies in the citizenship regulations of these states and in their reactions to the Hungarian amendment.

Table 3.2 Distribution of persons acquiring Hungarian nationality on the basis of existing nationality (Hungarian Central Statistical Office)⁸⁰

Existing nationality of applicant	2011	2012	2013	2014	2015	2011–2015
Romanian	51 708	110 650	102 905	88 485	34 305	388 053 (60,0 %)
Serbian	14 949	29 020	35 409	31 299	12 566	123 243 (19,0 %)
Slovakian	466	367	256	380	251	1 720 (0,3 %)
Ukrainian	5 878	14 684	20 598	23 717	23 462	88 339 (13,7 %)
Other	5 673	8 843	9 446	12 060	9 613	45 635 (7,1%)
Total	78 674	163 564	168 614	155 941	80 197	646 990 (100,0 %)

4.2 International Relations with Neighbouring States

Neighbouring states reacted differently to the history-driven introduction of preferential naturalization by Hungary. In accordance with the amendment of the citizenship act, Hungarians living outside the borders can acquire a second nationality in addition to their existing one, and as such become dual nationals provided that the state of their former nationality recognizes dual or multiple nationality.⁸¹ Croatia, Serbia and Slovenia recognise dual nationality and allow the acquisition of another nationality for those living outside the borders similarly to the Hungarian regulations.⁸² Romania and Hungary concluded an agreement on the elimination of dual nationality in 1979,⁸³ in line with the contemporaneous practice of socialist states,⁸⁴ but it was terminated in 1990. Currently Romania can be ranked among those states, which recognise dual nationality.⁸⁵

⁷⁹ Hungarian Central Statistical Office, New Hungarian Citizens. Changes after Introduction of Preferential Naturalization Process, 10 <<https://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/ujmagyarallampolgarok.pdf>> accessed 15 February 2021

⁸⁰ Ibid.

⁸¹ Mónika Ganczer, 'International Law and Dual Nationality of Hungarians Living Outside the Borders' (2012) 53 Acta Jur Hungarica 316, Julien Danero Iglesias, Róbert Sata and Ágnes Vass, 'Citizenship and Identity: Being Hungarian in Slovakia and Romanian in Serbia and Ukraine' (2016) 18 Minor Stud 15, 18-21

⁸² See Act on Croatian Citizenship of 1991, arts 11 and 16, Law on Citizenship of the Republic of Serbia of 2004, Citizenship Act of the Republic of Slovenia of 1991, The settling of the status of citizens of other SFRY Successor States in The Republic of Slovenia Act No. 61/99 of 1999

⁸³ Agreement between the People's Republic of Hungary and the Socialist Republic of Romania on Solution and Prevention of Cases of Dual Nationality (opened for signature 13 July 1979, entered into force 10 February 1980)

⁸⁴ Hungary concluded such agreements with Bulgaria, Czechoslovakia, the German Democratic Republic, Mongolia, Poland and the Soviet Union, between 1958 and 1981. All of them were terminated between 1990 and 1994 for different reasons. See Mária Ugróczy, 'Az állampolgárság szabályozása Európában' (1999) 10 Acta Humana 57, 63

⁸⁵ Paul Blokker and Kriszta Kovács 'Unilateral Expansionism: Hungarian Citizenship and Franchise Politics and their Effects on the Hungarian-Romanian Relations' in Dimitry Kochenov and Elena Basheska (eds) *Good Neighbourliness in*

Contrary to the above-mentioned states, Ukraine unambiguously prohibits dual nationality; consequently Hungarians living in Ukraine lose their Ukrainian nationality upon the acquisition of Hungarian nationality. In addition to the Constitution of Ukraine,⁸⁶ the Citizenship Act of 2001⁸⁷ also states that the state recognizes only one citizenship per person; therefore, in case one acquires another nationality he or she will automatically lose his or her Ukrainian nationality. Austria also belongs to the group of states, which refuses dual nationality.⁸⁸ This statement is well illustrated by the fact that from among the neighbouring states Austria is the sole party to the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality of 1963. According to the Federal Law concerning Austrian Nationality of 1985,⁸⁹ a person, who acquires a foreign nationality upon his application, his or her declaration or express consent brings about the loss of Austrian nationality, unless he or she was not previously granted the right to retain that nationality. Therefore, a person will lose his or her Austrian nationality in consequence of acquiring Hungarian nationality, unless he or she was not permitted to retain it.

Slovakia is the only country that responded to the Hungarian regulation by amending its citizenship rules.⁹⁰ After the Hungarian Parliament had passed the amendment, the Slovak Citizenship Act was rapidly amended. According to the amendment of the Slovak Citizenship Act,⁹¹ which entered into force on 17 July 2010, persons automatically lose their Slovak citizenship, who voluntarily acquire another nationality,⁹² with the exception of those, who acquire it through birth or marriage. In this manner, with a view to avoid the dual nationality of persons belonging to the Hungarian minority, Slovakia abandoned her former practice, according to which dual nationality was recognised and accepted. Until 2010, pursuant to the Slovak Citizenship Act,⁹³ Slovak citizenship could only be lost upon an explicit personal request for release from the state bond. There existed no regulation concerning the loss of citizenship of dual citizens; moreover several conditions were required for the elimination of the bond of citizenship. Besides, Slovakia, a member state of the Council of Europe, is not a party to the above-mentioned Convention of 1963. It is worth noting that a bilateral agreement was concluded by Czechoslovakia and Hungary in 1960, according to which persons possessing the nationality of both states had to make a choice and decide which nationality they wish to retain. Following the dissolution of Czechoslovakia in 1992, the two states should have had to demonstrate that they regarded the treaty as effective in order to keep it in force. Hungary did not make a statement on this matter; what is more, the act that promulgated the treaty

the European Legal Context (Brill Nijhoff 2015) 136, 149, The Law regarding Romanian Citizenship no 21 of 1 March 1991, art 11

⁸⁶ Constitution of Ukraine, art 4

⁸⁷ Law on Citizenship of Ukraine of 2001, art 2

⁸⁸ Decision no 1217/B/1991. of the Constitutional Court is worth mentioning here. In that case, the applicant presented that the precondition of acquisition of Austrian nationality by way of naturalization was the loss of his former Hungarian nationality.

⁸⁹ Federal Law concerning Austrian Nationality of 1985, art 27 (1)

⁹⁰ Maarten Vink, Arjan H Schakel, David Reichel, Ngo Chun Luk and Gerard-René de Groot, 'The International Diffusion of Expatriate Dual Citizenship' (2019) 7 *Migr Stud* 362, 366, Michaela Kiripolszky and Boldizsár Szentgáli-Tóth, 'Az egyszerűsített honosítás első öt éve' (2016) 9 *Közjogi Szemle* 57, 57-58

⁹¹ Law of Slovak National Council of 19th January 1993 regarding Citizenship of Slovak Nationality

⁹² Constitutional Court of Slovakia rejected the request for a constitutional review of the Law on formal grounds on 17 September 2014. The European Court of Human Rights declared the applications inadmissible on the ground, inter alia, that the breach of their rights under the Constitution of Slovakia and Slovakia's international obligations other than undertakings under the European Convention on Human Rights do not fall within the jurisdiction of the court. *Febér and Dolník v Slovakia*, European Court of Human Rights, App nos 14927/12, 30415/12, Decision on inadmissibility, 21 May 2013, para 43

⁹³ *Ibid*, art 9

was revoked. Slovakia also should have made a notification of succession regarding the agreement, but it did not come to pass according to the available and conflicting pieces of information.⁹⁴

It is worth noting that a bilateral treaty was concluded by Slovakia and Hungary, namely the Treaty on Good-Neighbourly Relations and Friendly Co-operation in 1995.⁹⁵ This kind of bilateral basic treaties were concluded by Hungary and several other neighbouring states, namely Croatia⁹⁶ Romania,⁹⁷ Slovenia⁹⁸ and Ukraine⁹⁹, between 1992 and 1996.¹⁰⁰ In these treaties states undertook that they develop their relations in the spirit of good neighbourliness, confidence and friendly co-operation, and they establish an appropriate framework for co-operation and maintain a dialogue in all fields of mutual interest. According to the obligations laid down these basic treaties, Hungary should have initiated negotiations prior to the amendment of the Citizenship Act. Matters of preferential naturalisation of Hungarians living in the neighbouring states and possessing the nationality thereof certainly constitute an area of mutual interest. Slovakia likewise should have negotiated with Hungary before its reaction to the Hungarian legislation with a view to base inter-state relations on good neighbourliness, confidence and friendly co-operation. In order to ensure and maintain friendly relations, the states concerned should co-operate and consult in every field related to the preferential naturalisation of Hungarians living outside the borders. From the point of view of Hungary, an eventual amendment of the Citizenship Act or an expansion of citizenship rights by means of facilitating their exercise would undoubtedly call for consultations. Neighbouring states, on the other hand, which prohibit dual nationality, should also negotiate with Hungary concerning any future amendments of the legal consequences related to the loss of their nationality.

5. Summary

The impact of historical events on Hungarian law-making and law enforcement on nationality matters analyzed by the study is evident. Persons living in territories transferred in the wake of the Trianon Peace Treaty lost their Hungarian nationality automatically. Notwithstanding that they simultaneously acquired the nationality of the successor state, many became stateless owing to regulatory and practical anomalies and inconsistencies. New nationality was granted on the basis of the rights of citizenship in a commune, which was often lacking, doubtful or impossible to prove. Even though the reacquisition of Hungarian nationality was enabled by the right of option, many were not in a position to exercise that right as a result of problems related to the rights of citizenship in a commune, the short period of time open for option, or the legal consequences of

⁹⁴ Mónika Ganczer, 'Hungarians outside Hungary – the twisted story of dual citizenship in Central and Eastern Europe' *Verfassungsblog* (VerfBlog), 8 October 2014, <www.verfassungsblog.de/en/hungarians-outside-hungary-twisted-story-dual-citizenship-central-eastern-europe/> accessed 28 February 2021

⁹⁵ Treaty on Good-Neighbourly Relations and Friendly Co-operation between the Republic of Hungary and the Slovak Republic (opened for signature 19 March 1995, entered into force 15 May 1996)

⁹⁶ Agreement on Friendly Relations and Co-operation between the Republic of Croatia and the Republic of Hungary (opened for signature 16 December 1992, entered into force 21 December 1993)

⁹⁷ Treaty between the Republic of Hungary and Romania on Understanding, Co-operation and Good Neighbourhood opened for signature 16 September 1996, entered into force 27 December 1996)

⁹⁸ Treaty on Friendship and Co-operation between the Republic of Hungary and the Republic of Slovenia (opened for signature 1 December 1992, entered into force 4 March 1994)

⁹⁹ Treaty between the Republic of Hungary and Ukraine on the Foundations of Good Neighbourly Relations and Co-operation (opened for signature 6 December 1991, entered into force 16 June 1993)

¹⁰⁰ In more details see Károly Nagy, 'Les règles de caractère soft law dans le traités bilatéraux de la Hongrie conclus sur la protection des minorités' in Péter Kovács (ed), *Le droit international au tournant de millénaire – l'approche Hongroise. International Law at the Turn of the Millennium – the Hungarian Approach* (Pázmány Péter Catholic University 2000) 12, 18-24

option, including the obligation to transfer the place of residence and its effects on movable and immovable property.

The amendment of the Hungarian citizenship act on preferential naturalization was obviously meant to remedy the related problems. This legislative objective is attested by the formulation of the amendment, the interpretation of the text, the elimination of the requirement of passing an exam in basic constitutional studies, the broad scope and non-exhaustive list of acceptable documents, the vague formulation and practical verification of the language requirement, the broad discretionary powers of the relevant authorities, the statistical data on the number and distribution of applications, and the reaction of Slovakia to the Hungarian legislation. The amendment seems to have achieved its objectives, as the number of new Hungarian nationals living abroad has exceeded 1.1 million, 93 percent of whom have their residence in neighbouring states. However, the history-driven amendment also had an effect on bilateral relations, and had a negative impact on the situation of Hungarian minorities living in a neighbouring state.

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