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Changes in the Hungarian Regulation of Citizenship and the Hungarian Concept of Nation

The population living in the territory of the state is divided into citizens and aliens based on the legal fact of (non-)belonging to that state. Regarding belonging to the state, *in a narrower sense* those are considered citizens who participate in the exercise of state power, that is, who have political rights. In this sense, so far as the history of the development of Hungarian citizenship before 1848 is concerned, membership in the Holy Crown implied belonging to the “body of the state”.

Before expanding on the demarcation of the scope of “the population constituting the state” legally determined by the doctrine of the Holy Crown, we’ll briefly outline the Hunnish–Hungarian theory of medieval Hungarian national consciousness as elaborated by Simon Kézai. As Jenő Szűcs proves in a convincing argument, apart from the cult of Attila fostered by the House of Árpád, Kézai “imported” every element of the Hunnish–Hungarian identity from Western Europe and he created the entire conceptual construct and theory independently. Accordingly, Kézai posited the idea of two “nations”: one of them is the people with Hungarian language and culture sharing the belief in a common origin related to the category of “nationality”, the other one is the nobility constituting the “politically organised society”, which was both Hungarian and alien with respect to nationality. Simon Kézai interwove these two elements so that originally every Hun-Hungarian was included in the politically organised society, therefore, nationality and political society were linked up. Nevertheless, those who did not answer conscription commanded by the community were excluded from the political community and thrust into servitude, whereas, compliant “nobility” constituted the rightful part of the Hungarian nation, that is, the nobility was equivalent to the nation.¹ This theory was adopted by the most important work of medieval Hungarian judicial practice, scilicet, *Tripartitum* by István Werbőczy, which makes the division of the society into nobles and servants legally relevant.²

Thereby, who belonged to the Holy Crown, that is, who were classified legally as belonging to the scope of “politically organised people” in medieval Hungary? Within the “corporation” of the Holy Crown, the head of the corporation was the king, whereas, the estates constituted the members. The members of the Holy Crown encompassed the nobility

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¹ Szűcs, J.: *A magyar nemzeti tudat kialakulása* (The Evolution of Hungarian National Consciousness). Budapest, 1997, 432.

² Magyar Törvénytár (The Hungarian Statute Book). *Tripartitum* by István Werbőczy. Budapest, 1897, 58–59 (Arts 1–6, Title 3, Part I). During the critical analysis of the opinions of classic Hungarian legal scientists, Gábor Hamza stated regarding the legal relevance of the *Tripartitum* that it does not fall under the scope of acts, decrees or statutes, but *it is definitely classified as customary law* (“*consuetudo*”). See Hamza, G.: Werbőczy Hármaskönyvének jogforrási jellege (The Legal Source Character of *Tripartitum* by Werbőczy). *Jogtudományi Közlöny*, 48 (1993) 1, 33.

(the magnates, prelates and the lesser nobility), the burghers of free royal towns endowed with corporate nobility supplemented by the members of the Jász-Kun (Jazygian-Cumanian) districts and of the Hajdú (Heyduck) towns, *whereas, villeins ranked as commonalty were not included in this scope.*³

Before the legal regulation of Hungarian citizenship under a separate act in 1879, Hungarian national status had been acquired *by birth, naturalisation and by so-called reception without a formal procedure*. Regarding acquisition by birth or descent, it can be stated that Hungary was a country that followed the principle of *ius sanguinis*. Furthermore, *the broader construction of nationality and the bonds of the subject also encompassed the patriots (“indigenas”)*⁴ regarded as members of the Hungarian Holy Crown. According to their particular rights and duties, they were distinguished from *aliens*,⁵ that is, exclusively an *indigena* could be granted nobility, prelacy or could hold state office.

Naturalisation appeared in Hungarian legislation for the first time under Statute 50 of 1542 and the procedure of naturalisation was regulated by Statute 77 of 1550. Accordingly, naturalisation was effected in the form of “*végzemény*” (ruling) by the King and the Diet jointly, when the Diet was sitting. However, when the Diet was not sitting, the King was empowered to confer *indigenatus*, thereby, Hungarian nobility. However, in this case the naturalised person had to apply subsequently to the Diet for enactment. This was followed by *the oath of the naturalised person, which had to be taken before the Diet* or in case of the absence of the Diet, *before the Chancellor*. The text and location of the oath and the name of the oath-taker were placed on record. Subsequently, the would-be-indigena had to pay *naturalisation fee* determined by law to the national money-chests.⁶ Then the naturalised person could take out *the royal patent (“diploma indigenatus”)* from the Royal Hungarian Chancellery.

When assessing the enumerated procedural instruments, it can be stated that *enactment, oath taking and the payment of the prescribed fee were considered to be conditions of the validity of naturalisation, whereas, letters patent were mere means of certifying indigenatus*. The effect of the acquired “country membership” entailed that the person concerned enjoyed

³ According to Werbőczy (Title 4, Part II): “Who are regarded as people and who are regarded as commonalty? Here *the name and designation of people refers exclusively to the prelates, barons, other magnates and other nobles, not to the non-nobles*. [...] Just as genus differs from species, commonalty shall differ from the people. Namely, the designation of people encompasses all nobles ranging from magnates to lower ranks and even to the non-nobles, however, *the designation of commonalty refers merely to the non-nobles*”. See Werbőczy: *op cit.* 230–231.

⁴ The designation is explained by Ágoas Ekmayer: “The sheer designation of *indigena* in our country sometimes means a native Hungarian, other times a hosted Hungarian”. Ekmayer, Á.: A honfűség (indigenatus) Magyarországon [Patriotism (indigenatus) in Hungary]. *Jogtudományi Közlöny*, 1867, 29.

⁵ *Ibid.* 32.

⁶ The extent of this for laymen was 1,000 lions (Act 26 of 1688), later 2,000 lions (Act 41 of 1741, Act 69 of 1790–91), for clergymen it cost 1,000 lions in case of a larger benefice (Act 17 of 1741) or 200 lions in case of a smaller benefice (Act 70 of 1790). According to Act 37 of 1827, the naturalisation fee always had to be paid in lions and according to Act 17 of 1830, before payment, the future *indigenatus* could not be enacted. Ekmayer: *op. cit.* 39.

all rights emanating from Hungarian nobility and if the person had been a peer in his former country, he automatically became a member of the Table of Magnates in Hungary, as well.⁷

In the other case of the acquisition of Hungarian nationality, the alien became merely a patriot (*indigena*), but was not granted nobility (*"indigenatus successivus"*). This is called *reception without formal procedure* (*"tacita receptio"*), which ensued owing to permanent settlement in Hungary, long-lasting residence, becoming enlisted as resident and tax payer of a town or a chartered community and owing to holding public office.⁸ *The acquisition of civic rights in a town* was generally not regulated under contemporary Hungarian statutes. Exclusively municipal statutes contained relevant regulations, which required the petitioner to certify his legal birth, his record, "good morals", in addition, in some places even marriage was specified as a prerequisite (e.g. Kassa, Kolozsvár, 1537), in other places, membership of a guild or the possession of realty was necessary (e.g. Kolozsvár, Fiume, Kassa 1607).⁹ The town council could recognise aliens as burghers, who, having met the previous requirements were obligated to pay so-called burgher-money and take an oath.¹⁰

In case of aliens with a *villein status*, it sufficed if the lord of the land permitted the villein to settle down in the villein community either in words or in writing. This amounted to the *tacita receptio* of Hungarian nationality, which as a matter of course entailed rights deriving from serfhood.¹¹

⁷ The latter right became so narrowly circumscribed under Acts 49, 50, 51 of 1840 that naturalisation was linked up with membership in the Table of Magnates exclusively if the Diet had specifically conferred sitting and voting rights on the person.

⁸ Ekmayer: *op. cit.* 40.

⁹ Csizmadia, A.: A magyar állampolgársági jog fejlődése (The Development of Hungarian Citizenship Law). *Állam és Igazgatás*, (1969) 12, 1078.

¹⁰ *Ibid.* 1077–1078.

¹¹ At the time of the resettlement of desolate lands abandoned during the wars against the Ottomans, this process was intensified by a spontaneous internal migration and immigration on the one hand, and a deliberate governmental colonisation on the other hand. Recent research estimates that the population of Hungary at the beginning of the 18th century totalled at 4–4.5 million. At that time, the density of the population was 18.4 person/square kilometre in the territory of the former royal Hungary, 18.6 person/square kilometre in Transylvania, whereas, 8.4 person/square kilometre in the territory under the former Ottoman rule. Owing to the internal and external migration and to the colonisation organised by Hungarian landowners and government substantiated by Act 103 of 1723 promising exemption from tax for 15 years for immigrant craftsmen and for 6 years for ploughmen, at the end of the century, the census of 1785 ordered by Joseph II with the correction of 1787 established a population of 8.5 millions in the country. However, recent research with respect to some corrections estimates that the number of the population was 9.9 million by 1790. On the basis of the estimates regarding the ethnic composition of that population, it can be stated that Hungarians, who had composed 80–90% of the population of the country before the Ottoman rule, became a minority in their own homeland. At the beginning of the 18th century, the proportion of Hungarians was 50–55%, which decreased to about 42% by 1790. At the same time, the proportions of other nationalities were as follows: 16% for Romanians, 10–10% for Germans and Slovaks, 9.5% for Croats, 7% for Serbs, 3.5% for Ruthenes and 2% for other ethnic groups. See Barta, J. Jr.: *A tizenyolcadik század története. Magyar századok-sorozat* (The History of the 18th Century. Hungarian Centuries Series). Budapest, 2000, 153–159; Kosáry, D.: *Újjáépítés és polgárosodás 1711–1867. Magyarok Európában III.* (Reconstruction and Bourgeoisification 1711–1867. Hungarians in Europe). Budapest, 1990, 55–59.

The French “Declaration of Rights of the Man and the Citizen” of 1789 highlighted the issue of civil equality before the law and indirectly even the claim to the establishment of a uniform citizenship status. This idea was embraced by the Hungarian Jacobins, whose prominent figure, Joseph Hajnóczy *framed a constitutional draft* during the Diet of 1790–91 and it dealt with the issue of Hungarian nationality.¹² However, the draft of 1791 was not debated at that time, therefore, the demand for the legal regulation of citizenship was formulated again in the *Reform Era*. This era was the age when nations acquired self-consciousness, which implied the fundamental need for the definition of citizenship. In France it was the Code Civil, in the territories of the Habsburg Empire, it was the Austrian Civil Code that regulated the conditions of the acquisition and loss of citizenship. In these states, citizenship was a matter of *civil law*. In Hungary, however, the issue was dealt with within the confines of *public law* and this persisted as a basic characteristic of the Hungarian regulation. The related draft laws were submitted to two sessions of the Diet in 1843–44 and 1847–48, but they were not adopted.

Following the 1848–49 Revolution and War of Independence, after 1853 the relevant citizenship clauses of personal law under the Austrian Civil Code became operative in Hungary.¹³ According to *the naturalisation practice* pursuant to the respective legal regulations,¹⁴ the Minister of the Interior issued the letter of naturalisation for the petitioner, who had taken an oath, if the petitioner had certified that he was not a subject of another state and that he had had residence in Hungary for 5 years, had paid tax regularly and there was no objection against him in terms of morals, wealth and politics.

Finally, it was in 1879 that Hungarian legislature considered the issue of citizenship ripe for a definitive regulation. The debate of the draft law in the Lower House took merely one month, then the bill submitted to and adopted by the Table of Magnates was sanctioned by Francis Joseph on 20 December 1879.

The first Supplementary Law of Hungary on Citizenship enacted as Act 50 of 1879 entered into force on 5 January 1880. The act admitted five manners of *the acquisition* of citizenship: descent, legitimation, marriage, naturalisation and residence in the country.¹⁵

Accordingly, every person of legal birth, whose father was a Hungarian citizen, furthermore, even the illegitimate child of a Hungarian female citizen disregarding whether the place of birth was or wasn't Hungary could acquire citizenship *by descent*.

The title of acquisition was *legitimation*, if the child was illegitimate and his mother was non-Hungarian, but his father was a Hungarian citizen.

¹² Csizmadia, A.: *Hajnóczy József közjogi munkái* (The Works of József Hajnóczy on Public Law). Budapest, 1958, 71–72.

¹³ Haller, K.: *Az Osztrák Általános Polgári Törvénykönyv jelenleg még érvényes alakjában* (The Austrian General Civil Code in Its Effective Form). Budapest, 1897, 23–24.; Eöttevényi Nagy, O.: *Osztrák közjog* (Austrian Public Law). Budapest, 1913, 46–47.

¹⁴ These include Act 42 of 1870 and Act 36 of 1872.

¹⁵ According to some views, the titles of the acquisition of Hungarian citizenship also included regainment and acquisition under established customary law (tacitly). Berényi, S.–Tarján, N.: *A magyar állampolgárság megszerzése és elvesztése (honosság, letelepülés, kivándorlás, útlevéligy)*. Az 1879. évi 5. törvény-cikk és az ezzel kapcsolatos törvények s rendeletek gyűjteménye és magyarázata [Acquisition and Forfeiture of Hungarian Citizenship (National Status, Settlement, Emigration and Free Pass Issues). Act 50 of 1879 and the Digest and Reasoning of Related Acts and Decrees]. Budapest, 1905, 23.

An alien woman, who got married to a Hungarian citizen entered the bonds of the Hungarian state by virtue of *the bonds of marriage*.

Two types of *naturalisation* were distinguished: *ordinary and extraordinary naturalisation*. *Ordinary naturalisation* could commence exclusively by petition and the competent authority was either the Minister of the Interior or the Governor of Croatia. The conditions were as follows: the petitioner had to be entitled to petition, his admission to a native community had to be anticipated,¹⁶ continual residence in the country and being enlisted as a tax-payer for 5 years, capacity for supporting his family and himself and correct conduct. However, the political rights of such a naturalised person were limited, because he was eligible to the Lower House only after 10 years and could be granted membership in the Table of Magnates only by the legislature and he could not be a Keeper of the Crown. In contrast, the person *naturalised by a royal charter* as an award for extraordinary merits was immediately eligible to the Lower House.

Residence in the country resulted in the recognition of citizenship, if the person had been living in Hungary and had been enlisted as a tax-payer of a Hungarian community for at least 5 years before 8 January 1880.

The ways of termination and forfeiture of citizenship included legitimation, marriage, absence from the country, release and administrative decision. The citizenship of an illegitimate child (with a Hungarian mother) was terminated *by legitimation*, if he had been legitimated under the law of the country of the alien father and subsequently he did not live in Hungary. If a Hungarian woman got married to an alien man, she forfeited citizenship *via marriage*. Hungarian citizenship was also forfeited under the *absence clause*, if a person had resided continuously beyond the borders of the Hungarian state for 10 years in void of the mandate of Hungarian Government or the Austro-Hungarian joint ministers. The forfeiture pertained to the wife and minor children of the absent man, as well. A petitioner could be *released* from the bonds of the state pursuant to a procedure initiated upon petition on condition that he had complied with compulsory military service. Furthermore, the person had to certify that he had the capacity of disposition or that his father or guardian had assented to his release via the permission of the court of guardians, that he did not have accrued rates and taxes and there was no ongoing criminal action or effective sentence against him in Hungary. In case all these requirements were met, the Minister of the Interior authorised to issue the releasing document could not deny the fulfilment of the petition, so the released person forfeited Hungarian citizenship. The forfeiture affected the wife and minors of the released person.

The act also regulated the possibility of *re-naturalisation* in case the forfeiture of citizenship was caused by absence or release. Such a person could be re-naturalised even without residence in the country, if he applied for Hungarian citizenship after his return and he could regain it without the examination of other conditions.

In the interest of *the settlement of Bucovinian Székelys and Csángós* and the increase of the proportion of ethnic Hungarians in the multinational country, Act 4 of 1886 on the

¹⁶ This condition was set forth under an effective act, i.e. Act 18 of 1871, the first act on communities, Art. 6 of which stipulated that “each Hungarian citizen has to belong to the bonds of a community”.

Naturalisation of Re-Settlers En Masse¹⁷ stipulated that re-settlers en masse could acquire Hungarian citizenship free of charge pursuant to the regulations of re-naturalisation and via the establishment of their community residency ex officio.¹⁸

If a Hungarian citizen *entered the service of another country without the permission of the competent authority* (Minister of the Interior, the Governor of Croatia and Slovenia, the Authority of the Military Frontiers) and did not quit such service against the order of the authority within the specified period, *his citizenship was forfeited according to the administrative decision of the competent authority* by virtue of Act 50 of 1879.

Besides the legal consequences of the acquisition and forfeiture of citizenship, the act declared *the recognition of dual (or multiple) citizenship*. Last but not least, it contained legal technical regulations regarding the conduct of the procedures related to citizenship. The essential provisions of the statute remained in force until 1948, that is, almost for seven decades.

Due to the amendments of the 20th century, *essential* changes were effected in our first supplementary law on citizenship due to various aspects of political tendentiousness. Owing to such an intention, *discrimination* clauses affecting the opponents of the timely political system were incorporated into the regulations, whereas, partly to counteract this, the claim for *indemnity* was also introduced into citizenship law.

The *discriminative* regulations were connected to the *forfeiture* of citizenship. Among these we should emphasise *deprivation*, which was clearly a political-regime-specific invention. Firstly, we have to mention Act 4 of 1939 on the Limitation of the Economic Expansion of Jewry usually quoted as *the second anti-Jewish act* in Hungarian legal history. Here the limitations introduced against Jewry were definitely *based on race*.¹⁹ Article 3 of this act prescribed on the one hand that *Jews could not acquire Hungarian citizenship* by naturalisation, marriage or legitimation, on the other hand, it stipulates measures in order to *repeal* the valid citizenship of Jewish persons, which was practically equivalent to deprivation. Act 13 of 1939 already applies the term of *deprivation formally*, as well. The prescriptions of Article 8 unequivocally demonstrate the legislative power of political judgement, namely, the political regime in power targeted the regulations pertaining to deprivation chiefly at communists and persons involved in the labour movement declared to be its primal enemies. We have to put special emphasis on the section which deprives of citizenship the individual who leaves for abroad via the violation or evasion of the law pertaining to abandonment of the territory of the country, which constitutes the legal case of the infamous *defection*, which proved to be the most viable reason for deprivation.

¹⁷ According to Ferenc Ferenczy, Act 4 of 1886 introduced the institution of “re-reception” for re-settlers en masse. Ferenczy, F.: *Magyar állampolgársági jog* (Hungarian Citizenship Law). Gyoma, 1928, 58.

¹⁸ Tarczay, Á.: *A magyar állampolgárság viszonya a magyar nemzetiséghez és a lakóhelyhez – a jogtörténetben és jelenleg* (The Relation of Hungarian Citizenship to Hungarian Nationality and Residence – in Legal History and at Present). http://www.kettosallampolgarsag.mtaki.hu/tanulmanyok/tan_30.html

¹⁹ The first anti-Jewish act was Act 15 of 1938, which *on the basis of religion* limited the number of Israelites among the employees to 20 in the areas of business and trade and in the chambers of journalists, engineers and doctors. According to estimates, about 15,000 people lost their jobs pursuant to the act. Romsics, I.: *Magyarország története a XX. században* (Hungarian History in the 20th Century). Budapest, 2000, 194–195.

This is proven later by the so-called *popular democratic acts*, which were inclined to apply this provision and thereby demonstrated that there *was no insuperable difference among the legal technical solutions of various political systems, since they were equally useful for various governments in power*.

After World War II, the statutes regulating the legal institution of citizenship proliferated and besides three new supplementary laws, these were exclusively discriminative or indemnificatory.

The scope of *discriminative* statutes primarily encompasses *decrees that expatriated ethnic Germans and deprived them of Hungarian citizenship*,²⁰ as well as those acts of 1947 and 1948 which confirmed strengthening *political discrimination*, which were adopted to deprive certain individuals residing abroad of their Hungarian citizenship.²¹

Act 15 of 1946 on the Exchange of the Population between Hungary and Czechoslovakia qualifies as a discriminative act on citizenship because of the relocation of ethnic groups. According to the agreement, every Slovak and Bohemian person with permanent residence in Hungary who declared the intention of relocation shall be relocated and on the day of relocation the person shall forfeit Hungarian citizenship and *shall become a Czechoslovak citizen on the basis of the fact of relocation*. In a similar manner, ethnic Hungarians with permanent residence in Czechoslovakia were relocated to Hungary *in the same number as Slovaks and Bohemians were relocated from Hungary to Czechoslovakia. They lost their Czechoslovak citizenship* under Decree 33 of 1945 of the Czechoslovak President.²² Apart

²⁰ Statute 9.550 M.E. of 1945 on the Repeal of the Naturalisation and Re-naturalisation of German Citizens; Statute 12.330 M.E. of 1945 on the Relocation of the German Population from Hungary to Germany. Nevertheless, the issue of the citizenship of expatriated ethnic Germans was open to discussion until 16 July 1946, when Statute 7.970/1946 M.E. was issued. Accordingly, Hungarian citizens relocated to Germany lost their Hungarian citizenship on the day they left Hungary. This also affected people who had been relocated to Germany before the statute came into force.

²¹ Under Act 10 of 1947 *Government could deprive anybody of Hungarian citizenship who was staying abroad and an investigation was ongoing against him because of a crime defined under Act 7 of 1946 on the Criminal Legal Protection of the Democratic Political System and the Republic, if he failed to return to the territory of Hungary upon the call of Government within 30 days (within 60 days in case of residing beyond Europe) as of notification and failed to appear before Hungarian authorities*. Under Act 26 of 1948 *Government could deprive anybody of Hungarian citizenship who failed to return to the territory of Hungary upon the call of Government within 30 days from the publication of the call in the Hungarian Bulletin (within 60 days in case of residing beyond Europe) and failed to appear before Hungarian authorities*. In this case, the law-maker ignored any reference to the facts of the case of conduct, thereby, the scope of discretion of the authority completely dissolved. The deprivation of citizenship came into force via *the failure to return upon a call with whatever content*. The part of the statute on *confiscation* manifests the further extension of negative discrimination. The property of the person whose Hungarian citizenship had been repealed after 22 December 1944 (under Article 8 of Act 12 of 1939 or Article 9 of Act 14 of 1939 or Act 10 of 1947) had to be confiscated. If the effect of the deprivation pertained to the wife and children of the deprived person, their property had to be confiscated, as well.

²² Under this decree, people who had acquired German and Hungarian citizenship by virtue of the Treaty of Munich and the Vienna Awards *were not granted Czechoslovakian citizenship*, although these treaties had been meanwhile annulled, therefore, these persons became stateless. On the basis of unequivocal ethnic discrimination, the decree did not grant Czechoslovakian citizenship to ethnic Germans and Hungarians *not concerned* by the Treaty of Munich and the Vienna Awards, but living in former Czechoslovakian territories, either. Then the Czechoslovakian Government redressed the

form these people, Czechoslovakia was also entitled to expatriate Hungarians accused of war crimes.²³ The Hungarian Government confined itself in an agreement to admit these relocated people and to *recognise them as Hungarian citizens on the basis of the fact of relocation*.²⁴

These antecedents led to the re-codification of citizenship law, consequently, Act 60 of 1948 as comprehensive supplementary law regulated the issue. To expand on the discriminative rules of the act, we state that citizenship could be forfeited *by marriage, legitimation, acknowledgement or ascertainment of paternity, release or deprivation*. Pursuant to this act, the institution of forfeiture by reason of absence from the country or foreign nationality was ultimately terminated. The act affirmed the force of the provisions of Act 26 of 1948 regarding confiscation. On the whole, it can be stated that Act of 60 of 1948, scilicet, the second Hungarian act on citizenship stabilized the discriminative regulation.

Under Act 5 of 1957, our third uniform act on citizenship, the scope of discriminative regulations was narrowed in comparison with the former acts. Hungarian citizenship could be forfeited on grounds of two titles: *release upon petition* and *deprivation*. According to the new regulation, deprivation concerned the person who *was staying abroad and seriously breached the fidelity of citizens*,²⁵ or who was *validly convicted by a Hungarian or foreign court by reason of a serious crime*. The effect of deprivation did not automatically pertain to the spouse and children, only if they were also staying abroad and the decision on forfeiture specially ordered it. Concerning the issue of deprivation, instead of Government, the Presidential Council of the Democratic People's Republic (NET) was authorised to make the decision, whereas, *confiscation* was not bindingly prescribed by law, but it was *subject to the discretion* of the NET.

consequences of the disfranchising decree under Act 245 of 25 October 1948, which restored the Czechoslovakian citizenship of ethnic Hungarians on the day of taking an oath of citizenship. See Sútaj, S.: A magyar kisebbség Csehszlovákia világháború utáni politikájában (The Hungarian Minority in the Post-World-War Politics of Czechoslovakia). In: Popély, Á.–Sútaj, S.–Szarka, L.: *Benes-dekrétumok és a magyar kérdés 1945–1948. Történeti háttér, dokumentumok, jogszabályok* (The Benes-Decrees and the Hungarian Issue 1945–1948. Historical Background, Documents and Statutes). Máriabesnyő–Gödöllő, 2007, 42–43.

²³ The exchange of the population took place from April 1947 to the summer of 1949. Meanwhile, the Hungarian Government made enormous efforts related to the implementation of the agreement, which was disadvantageous from a Hungarian viewpoint, to enforce the parity of persons and property and to prevent the Czechoslovaks from exploiting the exchange of the population in the interest of the complete liquidation of Hungarians in Slovakia. Despite constant Hungarian protests, the enforcement of equal rates failed: 76,616 relocated Slovakian Hungarians left behind 16,000 acres and 15,700 houses in Slovakia, whereas, 60,257 relocated Slovaks left behind only 15,000 acres and 4,400 houses in Hungary. Sútaj: *op. cit.* 26.

²⁴ László Szarka draws attention to the fact that the agreement extraordinarily disadvantaged Hungary, because it authorized the Czechoslovak state to enlist Slovaks in Hungary and gave plenty of rope for the appointment of Hungarians in Czechoslovakia as subjects of the exchange of population. Szarka, L.: A csehszlovákiai magyar kisebbség felszámolását célzó dekrétumok és rendeletek (Decrees and Ordinances Targeting the Liquidation of the Hungarian Minority in Czechoslovakia). In: Popély–Sútaj–Szarka: *Benes-dekrétumok... op. cit.* 23.

²⁵ The act came into force on 1 October, 1957 and as a matter of course it concerned the people who had fled from the country by reason of the consequences of the suppression of the Revolution of 1956.

The regulations concerning *indemnification* were introduced under Act 33 of 1921, which ratified the Trianon Peace Treaty²⁶ in Hungarian legislation. Indemnification was regulated under Art. 63 by the institution of “*option*”. Accordingly, persons over the age of 18 forfeiting their Hungarian citizenship and acquiring new citizenship under Article 61 shall be entitled to opt for Hungarian citizenship within a period of one year as of coming into force of the treaty (from 26 July 1921 to 26 July 1922), if their residency had formerly been in the territory of Hungary. If an individual failed to opt within the specified year, the acquisition of Hungarian citizenship was feasible by *re-naturalisation because of the term of preclusion*.²⁷ If the person had forfeited citizenship due to other factors, he could regain Hungarian citizenship by *naturalisation* following 26 July 1922.

The right of option stipulated by the act enacting the Trianon Peace Treaty could not settle the issue ultimately. The term of one-year specified for option was too short to administer the cases in such a large volume and the procedure of re-naturalisation as regulated under Act 50 of 1879 resulted in unfair and protracted procedures.

All these factors urged the Hungarian legislature to pass Act 17 of 1922 as an instrument of indemnification. Under Article 24, the act permitted the re-acquisition of Hungarian citizenship terminated by the Trianon Peace Treaty via preferential procedures. According to the act, the person *who had forfeited Hungarian citizenship* without release or an administrative decision *after the outbreak of the World War I* (26 July, 1914) *and was living or intending to settle down in Hungary* could be exceptionally *re-naturalised at request by the Minister of the Interior* in default of the requirements specified under Article 38 of Act 50 of 1879 (on re-naturalisation), if the petitioner had *reached the age of 18, was not incapable of action and if re-naturalisation was justified by circumstances worthy of appreciation*. Taking advantage of the option under the provision of 1922, about 350,000 ethnic Hungarians moved to Hungary, even though it was not easy to obtain permission to immigrate because Hungary was not prepared to handle immigration of such scale.

However, the weakest point of the indemnification regulation was related to *community residency*, which wasn’t originally linked up with citizenship, but with *community self-government*. This is what community residency developed from, which was incorporated in domestic law under Act 13 of 1871, which established relationship between individuals and their communities on the basis of *public law*. According to Article 6, each citizen had to

²⁶ The Trianon Peace Treaty binding Hungary was signed in the Great Trianon Palace of Versailles on 4 June 1920. Consequently, the territory of Hungary decreased from 283,000 square kilometres to 93,000 square kilometres and the population decreased from 18.2 million to 7.6 million. According to the data of the census of 1910, 3,320,058 native Hungarians resided beyond the borders of Hungary, within this scope, 1,664,000 native Hungarians resided in Romania, 1,072,000 in Czechoslovakia and 465,000 in the Serb-Croat-Slovenian Kingdom. Szarka, L.: Magyarország és a magyar kisebbségek ügye a párizsi béketárgyalásokon: határkijelölés, népszavazás, kisebbségvédelem (Hungary and the Issue of Hungarian Minorities at the Paris Peace Talks: Demarcation of Borders, Referendum and Minority Protection). In: Bárdi, N.–Fedinec, Cs.–Szarka, L. (eds): *Kisebbségi magyar közösségek a 20. században* (Hungarian Minority Communities in the 20th Century). Budapest, 2008, 27.

²⁷ The original requirements of re-naturalisation were: disposing capacity, belonging to a Hungarian community, continual residence in the country for 5 years, proof of proper housing and living circumstances, continual payment of taxes for 5 years, correct conduct. Obviously, these requirements could not be met by a person who had lost Hungarian citizenship *under the changed circumstances*, therefore, Act 17 of 1922 granted exemption from these conditions.

belong to the bond of a community, whereas, Act 50 of 1879 stipulated that individuals to be naturalised had to belong to the bond of a community or admission to a community had to be anticipated. Thereby, *exclusively Hungarian citizens could gain community residency and each Hungarian citizen had to belong to the bond of a community.*

In practice, however, deadlocks occurred in several cases. Namely, a lot of communities recognised exclusively the residency of Hungarian citizens and issued certificates on residency merely for them. Therefore, the petitioner could not request naturalisation, since he could not certify his community residency, for which in turn he could not apply, because he was not a Hungarian citizen.²⁸

Subsequently to the Trianon Peace Treaty, the Minister of the Interior became *the only legal authority* that could *make final decisions* on community residencies via the exclusion of recourse. However, this provision could not solve the problems entailed by the new situation related community residency, either.

In legal technical literature the opinion that community residency should be replaced by *permanent or temporary residence* gained ground.²⁹ Thus, Hungarian legislation adopted according measures upon the settlement of the citizenship of persons living in the territories re-annexed pursuant to the Vienna Awards (1938–1940).³⁰

Act 6 of 1939 stipulated in connection with the re-annexed territories of Upper Hungary and Sub-Carpathia that those who were undoubtedly Hungarian citizens on 26 July 1921 according to Hungarian law effective at that time and became Czechoslovak citizens under the Trianon Treaty regained Hungarian citizenship legally without an administrative decision as of 15 March 1939, if their domiciles had been in the re-annexed territories of Upper Hungary and Sub-Carpathia since 15 March 1929. Therefore, *the legal basis of the reacquisition of citizenship* was no longer community residency, which had caused confusions, but the *domicile*. While the quoted act prescribed a period of 10 years for the recognition of the existence of the domicile, this restriction was no longer contained under Act 26 of 1940 on the Unification of Re-Annexed Eastern and Transylvanian Territories with Hungary pursuant to the Second Vienna Award (30 August 1940). Accordingly, Romanian citizens who had domiciles in the above-mentioned territories on 30 August 1940 acquired Hungarian citizenship without administrative measures. Ethnic Hungarians with Romanian citizenship who had domiciles in the territory of Romania subsequently had the

²⁸ Besnyő, K.–Horváth, J.: *A magyar állampolgárság megszerzése és elvesztése. Gyakorlati útmutató az állampolgársági ügyek intézéséhez* (The Acquisition and Forfeiture of Hungarian Citizenship. A Practical Guide to the Administration of Matters of Citizenship). Budapest, 1985, 33–34.

²⁹ See, for instance, Kuthi, S.: Magyar állampolgárság (Hungarian Citizenship). *Jogtudományi Közlöny*, 64 (1929) 24, 239–240; Rácz, K.: Az állampolgárság kérdéséhez (On the Issue of Citizenship). *Jogtudományi Közlöny*, 65 (1930) 14, 131–132.

³⁰ As a consequence of the first Vienna Award (2 November 1938), Hungary regained some parts of its former territory in Upper Hungary. The treaty was ratified under Act 34 of 1938 in Hungarian legislation. The act referred the issues of citizenship and option to a joint committee composed of Hungarians and Czechoslovaks. On the basis of its work, Hungary acquired Sub-Carpathia from former Czechoslovakia by reason of the German invasion in March 1939. Issues of citizenship related to the two territories were jointly regulated under Act 6 of 1939, which came into force on 23 June 1939.

right to opt for Hungarian citizenship.³¹ *Act 20 of 1941* enacting the re-annexation of territories acquired from the Yugoslav Kingdom settled the issue in a similar manner.

However, as a consequence of our part played in World War II, these re-annexed territories were lost again and the acts settling the issues of citizenship were annulled, therefore, the legal status of a great number of people became questionable.

The citizenship problems originating in the Trianon Peace Treaty were generally regulated by the second citizenship act, scilicet, *Act 60 of 1948*. This conferred citizenship on those individuals including their spouses and descendants *who remained Hungarian citizens upon the entry into effect of the Trianon Peace Treaty (26 July 1921) or took opportunity/exercised the right of option* pursuant to the treaty. Furthermore, the act offered another possibility, that of *preferential naturalisation*. That could be requested from the Minister of the Interior by *any person born within the borders of historical Hungary*, whose domicile was in Hungary on 15 September 1947,³² who was staying here at the time of the submission of the petition for naturalisation, besides, the naturalisation was justified by circumstances worthy of appreciation.

Act 61 of 1948 cancelled community residency and stipulated accordingly that if any law referred to community residency, it should be understood as domicile in case of Hungarian citizens living in Hungary and as last residence in Hungary in case of persons living abroad.

A further scope of indemnificatory regulations consists of statutes which *annulled the detrimental legal consequences of deprivation*. Such indemnification was applied for the first time by the Socialist Government in connection with the persons discriminated against for opposing the Horthy-regime.³³

Owing to the political transformation in 1989–1990 the people who had been deprived of Hungarian citizenship under the Communist Regime after 1945 were restituted in compliance with the intention to guarantee indemnification.³⁴

Act 55 of 1993 is our fourth citizenship law, which regulates special citizenship procedures already in detail and lays down the basic rules concerning data protection and

³¹ The people who acquired Hungarian citizenship in the territories re-annexed pursuant to the Vienna Award, however, intended to become Romanian citizens, could acquire this by option within a six-month term. They had to leave the Hungarian territory within one year and Romania was obliged to admit them.

³² The date of entry into effect of the Paris Peace Treaty.

³³ Ordinance 285 M.E. of 1945 regulated the restitution of the convicted or disadvantaged by reason of leftist political conviction and activity, but it was pursuant to Ordinance 9.590 M.E. of 1945 promulgated eight months later that redressed prejudices in a more precise and ampler manner. Regarding the same people, the mentioned regulation was put into force under *Act 60 of 1948* with a temporal limitation, that is, the restoration of the legal effect of citizenship pertained to people who returned to Hungary before 15 September 1948. Finally, Ordinance 200 M.E. of 1945 promulgated on 6 February 1945 annulled the anti-Jewish acts and decrees.

³⁴ *Act 27 of 1990* annulled every particular decision on deprivation made under *Act 10 of 1947*, *Act 60 of 1948*, *Act 26 of 1948* and *Act 5 of 1957*. The appointed persons re-acquired their Hungarian citizenship via a statement addressed to the President of the Hungarian Republic as of the date of making the statement. *Act 32 of 1990* completed the provisions of the previous act by declaring that the people deceased meanwhile had to be regarded as if they had not lost their Hungarian citizenship as a consequence of forfeiting measures. In a similar manner, our fourth act on citizenship, *Act 55 of 1993* among its closing provisions extends the repeal of the particular decisions on deprivation to release effected between 15 September 1947 and 2 May 1990.

the protection of privacy. *This act provides among the fundamental principles* (para. 2 of Art. 1) that nobody can be *deprived arbitrarily* of their citizenship and of the right to the change of citizenship. With this significant statement the law-maker hopefully put an end to the tendency encompassing the legislature of the 20th century, in the spirit of which the legal institution of citizenship was applied for the purposes of political *discrimination* and in turn inevitable *indemnification*. In compliance with international practice, this act already contains the basic principles of citizenship law, which up to this point had been missing from Hungarian law. Our fourth citizenship law was first amended by Act 32 of 2001, then by Act 56 of 2003.

In connection with Hungarian citizenship law, we believe it is important to expand on the concept of the Hungarian nation from the perspective of the state, furthermore, from the viewpoint of the political and cultural concepts of the nation. The nobility/aristocrats of the Hungarian Reform Era in the 19th century defined the Hungarian people on the one hand as a cultured nation in contrast with the Habsburg, on the other hand as a political or nation state as opposed to the various ethnic groups in Hungary.³⁵ As a consequence of the Trianon Peace Treaty, the Hungarian nation state was born, but one-third of the cultured nation was excluded from this framework. After 1949 the state of “Proletarian Dictatorship” did not solve the problems originating in these two conceptions and in the spirit of internationalism, “nation” as an issue became taboo for a long time.³⁶

In the recuperation of the cultural concept of the Hungarian nation, the unassimilated nature of the massive shock caused by the Trianon Peace Treaty between 1945–1989 plays the main part and in the protracted polemics this concept mingles with the political concept of the nation, which is reflected in the statutes. Upon examining the Hungarian Constitution, we can state that basically the categories of the political nation are specified, whereas, the cultural concept of the nation is applied mainly in a complimentary manner both in the Constitution and in Hungarian public law, implying that the Hungarian state supports the individuals belonging to the cultural nation by helping with naturalisation and offering them support and advantages.³⁷

In the effective act on citizenship (Act 55 of 1993), the elements of the cultural conception of the nation are relevant. The law-maker facilitated preferential naturalisation, meaning that if other requirements are met, continual residence for 8 years is not necessary, merely one-year continual residence is required, if the petitioner is a non-Hungarian citizen, but claims him/herself to be of Hungarian nationality and had an ascendant with Hungarian citizenship. These are not disjunctive, but conjunctive requirements. Therefore, for preferential naturalisation claiming oneself to be Hungarian shall not suffice officially, but one has to have a Hungarian citizen among one’s ascendants. On the other hand, the conjunctive conditions are valid reversely, as well. Preferential naturalisation can be requested by the descendant of a former Hungarian citizen, who claims her/himself to be Hungarian. Thus, under the act on citizenship the cultural and linguistic conception of the nation has been reinforced after 1993.³⁸

³⁵ Szűcs: *op. cit.* 430–431.

³⁶ Halász, I.: *Állampolgárság, migráció és integráció* (Citizenship, Migration and Integration). Budapest, 2009, 124.

³⁷ Majtényi, B.: *A nemzetállam új ruhája* (The New Garment of the Nation State). Budapest, 2007, 52.

³⁸ Halász: *op. cit.* 121.

The latest amendment to Hungarian citizenship law was effected in May 2010 basically in the spirit of the cultural conception of the nation. First and foremost, the act sets forth that the child of a Hungarian citizen shall gain Hungarian citizenship not only by birth, but also by descent. After 1 January 2011, a non-Hungarian citizen can be naturalised preferentially, if one ascendant was a Hungarian citizen or her/his Hungarian origin is plausible and if s/he certifies the knowledge of Hungarian language, clean record and that this naturalisation shall not infringe either the public or national safety of Hungary. These procedures shall commence at individual requests, not collectively or automatically. Applications shall be submitted to the local registry or the Hungarian consulate, or to the authority in charge of the administration of citizenship procedures appointed by the Hungarian Government.