

Challenged Public Security by Non-resident Nationals¹

TÓTH Judit²

Hungary as a laboratory may demonstrate the concept on how the nationality law framed by human rights and EU law is using ethnical preferences without textual reference on ethnicity in acquisition. It appears in the amendments of the laws but without impact assessment how the far descendant of ex/nationals living all over the world enjoy preference in acquisition while immigrants residing in Hungary without Hungarian ancestors are treated in a different way. Furthermore, the amendments provide easy acquisition of citizenship and long-term migrant status for non-resident applicants although they are not ethnic Hungarians. There is a common point in these two reverse trends, namely that these facts – together with underestimated procedural and infrastructural needs – are endangering public security. It is proved by the increase of withdrawal for abusive claims and corruption cases relating to the non-resident investors. The absence of impact assessment in legislation may typify a political intention for stretching the base of voters.

Keywords: nationality law, naturalisation, loss of citizenship, security check, resettlement bond

A citizenship model is determined by legal and non-legal (social, historical, geographic and economic) determinants including their interactions. The domestic regulation is strongly framed by the relevant human right standards and EU law as binding rules.³ However, the national legislative power has a forceful belief that sovereignty in this internal domain is absolute. Hungary has partly recognized that union citizenship shall not be lost arbitrarily, and proportionality in the involuntary loss shall be ensured, preferences for certain migrant persons must be provided including the combating of statelessness, respect for refugees, family ties and procedural guarantees in nationality law; these together shall reduce her maneuvering room in setting up conditions of acquisition and loss of citizenship. In other words, a model-making of nationality is less free.

¹ This research was supported by the project Nr. EFOP-3.6.2-16-2017-00007, entitled “Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy.” The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

² Judit TÓTH dr., Associate Professor of Law, Department of Constitutional Law, University of Szeged, Faculty of Law. TÓTH Judit dr., CSC, tanszékvezető egyetemi docens, Alkotmányjogi Tanszék, Szegedi Tudományegyetem, Állam-és Jogi Tudományi Kar.
orcid.org/0000-0001-5236-0436, skula@juris.u-szeged.hu

³ De Groot (2012) 600–619.

Hungary as a party state of human rights treaties has to respect the minimum criteria forming her own nationality law. Without the entire review of all legal principles and requirements I only mention the most important documents as determinant to the nationality law: the European Convention on Nationality (1997), UN Convention on prevention and reduction of statelessness (1961), Universal Declaration of Human Rights (1948), UN Convention of Child's Rights (1989), UN Convention on the Status of refugees (1951), UN Convention on the status of stateless persons (1954) and the European Convention of Human Rights (1950). This set of rules includes: (a) the right to a citizenship that has to avoid statelessness at birth. This regulative principle includes the right to retain the existing citizenship, the prohibition of arbitrary loss of citizenship, i.e. all legal titles of termination shall be objectively determined by law, reasoning of decisions and redress shall be ensured; (b) acquisition of a citizenship at the minor's birth shall be provided *ex lege* and additionally upon request if *ex lege* acquisition cannot cover all cases; (c) preferential naturalisation for stateless persons and refugees is required; (d) no more than ten years of residence prior to submission of application for naturalisation/acquisition would be demanded, however, there is no minimal period of residence determined in multilateral treaties; (e) genuine link between the applicant/individual and the state inside. This requirement appears in acquisition, retaining citizenship or in state succession in the right to opt a citizenship. The effective connection may be manifested in residence, family tie, inherited nationality, language ability, property or investment in the country, worthiness or patriotic duties or through the registration at authority/embassy. Although the genuine link has been disputed in customary law, it exists in domestic and international treaties and they are encapsulated into the term of integration of migrants applying for naturalisation or acquisition of nationality;⁴ (f) dual nationality is tolerated if it is acquired *ex lege* such as by birth or marriage; (g) minimal procedural guarantees in nationality cases are ensured (reasoning, decision within a reasonable time, limited fee/charge that is not excluding the right to apply for acquisition/renouncement and the right to legal remedy in merit); (h) ban of discrimination in acquisition, loss and retention of citizenship; (i) individualisation in each case of discretionary decision of the authority taking into account (for instance the best interest of a child, the intention of the person concerned as married woman or minor over 14, personal hearing, genuine link to the country, abusive manner of applicant); (j) equal treatment and status of nationals regardless how they have acquired their citizenship (at birth or by naturalisation, etc.)

On the other hand, Hungary as a member state of the EU must accept that EU law divides mankind into two groups: union citizens (nationals of all member states) and others (third country nationals, non-union citizens). However, this European legal realm has decisive principles (in EU Treaty, Treaty of the Functioning of the EU, EU Charter of Fundamental Rights) in this domain as follows: (a) non-discrimination in particular on the ground of nationality, race, colour, ethnic origin, sex or age of per-

⁴ Tóth (2015a) 45–56.

sons applying fundamental rights including procedural rights; (b) the union citizenship as a derivative status and shall not be lost due to arbitrary or dysfunctional provisions coming from the national law in member states;⁵ (c) fair procedure in public administration and civil law justice that cover preparatory and merit decisions on citizenship law cases including reasonable time frame, access to the files, reasons, judicial revision and communication with applicants; (d) loyalty to the EU law prohibits derogation of values and guarantees of EU law in national legislation or authority measures endangering or hindering the performance of the aims of the European integration, for instance the free movement of union citizens and their family members and local voting right of residing union citizens; (e) acquisition of citizenship contributes to the integration of the immigrant and to his/her participation in public life. Thus *ex lege* acquisition of citizenship for second and third generation of immigrant residing in member states is more or less expected as influential precondition of employment, education, income and participation.⁶

Summing up, these mandatory components of the regulation and loyalty to the EU would be respected also in Hungary. However, the conditions of acquisition of citizenship, in particular of naturalization cannot be described in an isolated way because it is surrounded at least by various tracks of public policies. The Hungarian migration policy covers only the transit of foreigners (protection seekers, illegal or labor migrants) and the implementation of the minimum of the relevant EU legal norms. The nation-building policy extends the acquisition of Hungarian citizenship and unification of the nation across the borders living ethnic Hungarians in diaspora or as kin-minority members.⁷

The Hungarian model is dominated by the nation-building policy tolerating the dual citizenship, and using the nationality law as a neutral and hidden instrument to recruitment of additional supporters and voters of the ruling party with assistance of the kin-minority elites. The nationality law has no textual reference on ethnical Hungarians just for the upper mentioned human rights restrictions but the implementation of the legal provisions, their sociological target groups, the gesture of granted citizenship of Hungary as a union citizenship form together an ethnic preferential citizenship model. However, the definition of ethnic membership or ethnicity cannot be defined in legislation. The triadic concept of Rogers Brubaker is partly applicable because he considers the Hungarians living across the border in the adjacent states a constrained community, a forced diaspora that has rather a conflicted relation with the representatives of the ruling power of territorial nation state while its main point of reference is Hungary as the kin-state.⁸ However, social surveys made in Romania⁹ indicate how

⁵ De Groot – Vink (2015) 41–115.

⁶ The Zaragoza Declaration was passed on 10 April 2010 by the Ministers responsible for immigrant integration issues and approved by the JHA Council on 3–4 June 2010.

⁷ Kántor (2015) 36–48.

⁸ Brubaker (2005) 1–19.

⁹ Kiss (2015) 3–35.

the centralized, Budapest-driven unification of nation policy including the introduction of the accelerated acquisition of Hungarian citizenship since 2011 has polarised the elite of the minority. Moreover, the acceptance of this trans-border dual citizenship is not uniform by the kin-minority because this kin-state's policy treats the ethnic community as a mass of directed supporters of the governmental actions but not an organic political community in a partnership.

Rainer Bauböck indicates how the extra-territorial citizenship may confront with certain minority strategies in the context of loyalty. Emigration, assimilation/integration to the major society, requirement of autonomy, secession as main strategies would be complemented by diaspora-identity or maintenance of differences taking into account the kin-state as a point of reference or the shared sovereignty that all intend to compensate the disadvantages coming from the minority being. According to him the extra-territorial (dual) citizenship is not compatible with the strategy of the minority's autonomy.¹⁰ Thus the accelerated acquisition of citizenship on ethnic Hungarians across the borders excludes the existence of their independent political community status.

According to Dieckhoff the simplification and polarization of the idea in culture or ethnic versus political nation shall be revised because each national development, its social and legal aspects vary, and the same terms include different substances. Other authors (Rogers Brubaker, Hendrik Conscience, Will Kymlicka) also draw the attention to the ambiguity of the term of ethnic and ethnicity that may refer on common descent, cultural belonging, culture as an ascriptive principle which draws rigid "ethnic fences" between groups, certain national lineage or closed communities that are defined on a religious basis. The conceptual difficulties are not confined to the term "ethnic", they are also quite obvious with the term "civic" and they are best stressed by a historical sociological approach. He underlines that politics and culture are never disconnected in national mobilization processes, although the time sequences and the practical terms may differ from case to case.¹¹

Some surveys among minorities in Slovakia, Serbia and Ukraine¹² prove that reception of the extraterritorial citizenship is partly emotional connecting the minority member to the nation (to the kin-state), partly the second (Hungarian) citizenship is considered as a toolbar in accession to certain advantages (free movement, employment or social benefits) but the majority of respondent treats the acquisition of further citizenship as an improvement of their regional identity (ethnic, cultural and habitual identity that differs from the kin-state and the local majority, too).

In brief, the main division between models is based on whether the political and identity mobilization – also through the nationality law – are rather inclusive for different ethnics or rather exclusive. Beyond the technical and normative deficiencies of the term of ethnicity, the Hungarian model is inclusive for non-resident applicants and exclusive for potential or really residing migrants from the perspective of national mobilization.

¹⁰ Bauböck (2007) 69–91.

¹¹ Dieckhoff (1996) 43–55.

¹² Danero-Sata-Vass (2015) 59–93.

Acquisition of citizenship

The constitutional reform in 1989 has gradually developed a diaspora scheme including the Act on Hungarian Card in 2001. It was a disputed effort of the nationalist-conservative coalition to extend trans-nationally the ethnic preferences to the kin-minorities living in neighbour states (with exception of Austria). Together with its seven executive decrees issued by the Government and responsible ministers forms a chapter in diaspora law: it has provided benefits to their travel to and inside of Hungary, to education in Hungarian language at home or in Hungary, scholarships, other supports to students and teachers, subvention to public media and civil organizations. The extraterritorial scope of these rules on legal ties to the kin-state was introduced in a one-sided way, without bilateral negotiations. This diaspora scheme strongly polarized the public opinion that manifested in the invalid referendum on ex lege acquisition of kin-minority living across the borders (4 Dec 2004). It has divided painfully the voters into civic and ethnic citizenship supporters in a hysterical society and in the Diasporas, too.¹³

This mono-ethnic model appears in the new Constitution passed in 2011. Its Preamble starts: *'We, the members of the Hungarian nation'* while the national minorities (13 recognised minorities including Roma) are *'components of the state power'* – so they are entitled to maintain their own self-identity living in Hungary, they have specific cultural and self-governing rights (Art. 29) but their voting right in general elections is limited.¹⁴ The reference on Union citizenship is missing, the citizens of other member states of the EU residing in Hungary are mentioned in the Constitution (Art. 23) concerning the enfranchisement); the term of political community is totally absent. This way the nation shall be interpreted as an ethnic community. The unified Hungarian nation is labelled as a political program and reality in the Constitution: *"preserving the spiritual and mental unity of our nation"*, *"achievements of the Constitution demonstrates the unity of our nation"* (Preamble); *"taking into account the unity of our nation, Hungary as a kin-state is responsible for ethnic Hungarians living all over the world"* supporting their contacts with the state (Art. D). While the Hungarian and sign-language is protected (Art. H) the mother tongues of minorities are applicable but without official/protected status. The acquisition by *jus sanguinis* has a priority toward other kinds of acquisition and involuntary loss of Hungarian citizenship is not possible. Hungarian nationality is regulated in the act that shall be passed by qualified majority of votes (Art. G) but this condition is not applicable on the ratification or approval of international treaties concerning citizenship law.

Act LV of 1993 on the Hungarian Nationality has been modified yearly in average. Despite numerous modifications it cannot meet all requirements of international human rights obligations including the prevention of statelessness and fair nationality

¹³ Kovács-Tóth (2009) 151–176.

¹⁴ Act CCIII of 2011 provides preferential mandate for the minority community in the Parliament so the registered member of a minority cannot vote to the list of parties but only on the candidate of minorities. It is optional.

procedure.¹⁵ Furthermore, there is no redress in case of quasi loss of nationality, for instance if presumption of acquisition is rebutted or the application for citizenship certificate is refused.¹⁶

There are the following legal titles of the acquisition: (a) *ex lege (ius sanguinis)* means acquisition by birth from the parent of a Hungarian national that cannot be withdrawn; this family tie – paternity/maternity – may be established after the birth of the child by the marriage or declaration of paternity or judicial statement on parenthood; *ius solii* principle comes into effect at birth on the territory of Hungary from unknown parent or from stateless parents with registered address in Hungary as long-term migrants or refugees but *ius soli* acquisition is conditional because later clarified identity or nationality of the parent would terminate the Hungarian citizenship); (b) with *non-discretionary decision of state president* (reinstatement of citizenship within three years from renunciation; restitution of citizenship if it was unlawfully terminated in the Communist past; upon request on *ius soli* if applicant is born on the territory of Hungary and was not acquired his/her parents' foreign citizenship as a birthright, under the law of the state where the parents hold citizenship, provided that the non-national has resided in Hungary on the day of his/her birth and has been residing continuously here for at least five years prior to the submission of the request within one year of full age; upon request on *ius soli* if the applicant was born before 1957 to a mother who was a Hungarian citizen and a father who was a foreign national and if no Hungarian citizenship was acquired by birth); (c) with *discretionary decision of state president* (naturalisation, re-naturalisation). In brief, the term of ethnicity is lacking from the provisions at first sight.

The conditions of naturalisation are as follows: (a) *Non-preferential application*: A non-Hungarian citizen may be naturalized upon request if the applicant has resided in Hungary continuously over a period of eight years prior to the submission of the application; according to Hungarian laws s/he has a clean criminal record and is not being indicted in any criminal proceedings before the Hungarian court; s/he has sufficient means of subsistence and a place of abode (accommodation) in Hungary; his/her naturalization is not considered to be a threat to the public order and national security of Hungary; and s/he has passed the successful examination in basic constitutional studies in the Hungarian language, unless s/he is exempted; (b) *Preferential application based on family ties or human rights*: An applicant may be naturalized upon request if s/he has resided in Hungary continuously over a period of three years prior to the submission of the application; according to Hungarian laws s/he has a clean criminal record and is not being indicted in any criminal proceedings before the Hungarian court; s/he has sufficient means of subsistence and a place of abode (accommodation) in Hungary; his/her naturalization is not considered to be a threat to the public order and national security of Hungary; s/he has passed the successful examination in basic constitutional

¹⁵ Gyulai (2014)

¹⁶ Tóth (2015) 235–249.

studies in the Hungarian language, unless s/he is exempted, and (i) he/she has lived in the household of a Hungarian citizen in lawful marriage for at least three years, or the marriage has been terminated upon the spouse's death; (ii) his/her minor child is a Hungarian citizen; (iii) he/she has been adopted by a Hungarian citizen; (iv) he/she has been recognized as a refugee by the competent Hungarian authority, or (v) he/she is stateless. A non-Hungarian citizen who has resided in Hungary continuously for at least five years prior to the date of submission of the application meeting all of the above mentioned criteria may be naturalised upon request, if he/she was born in the territory of Hungary, and had established residence in Hungary before reaching the legal age. However, requirement of continuous residence may be waived in the case of minors, if the minor's application for naturalization is submitted together with that of the parent's or if the minor's parent was granted Hungarian citizenship; (c) *The most preferential, accelerated application*: A non-resident may be naturalized upon request if s/he has a clean criminal record according to Hungarian laws and s/he is not being indicted in any criminal proceedings before the Hungarian court; his/her naturalization is not considered to be a threat to the public order and national security of Hungary; and his/her ascendant was a Hungarian citizen or his/her Hungarian origin is made probable, and s/he proves the Hungarian language knowledge unless s/he is exempted for his/her legal incapacity or limited capacity; (d) *Chain-naturalisation in an accelerated way*: A non-resident applicant may be naturalized upon request if s/he has a clean criminal record according to Hungarian laws and s/he is not being indicted in any criminal proceedings before the Hungarian court; his/her naturalization is not considered to be a threat to the public order and national security of Hungary; s/he proves his/her Hungarian language knowledge – unless s/he is exempted for his/her legal incapacity or limited capacity – and at least he/she has lived in the household of a person in lawful marriage for ten years with a Hungarian citizen at the time of submission; or at least he/she has lived in the household of a person in lawful marriage for five years with a Hungarian citizen in time of submission and they have a child; (e) *Re-naturalisation*: Upon request, a person whose Hungarian citizenship was terminated and who proves his/her Hungarian language knowledge may be re-naturalised if s/he has a clean criminal record according to Hungarian laws and s/he is not being indicted in any criminal proceedings before the Hungarian court; his/her naturalization is not considered to be a threat to the public order and national security of Hungary.

Statistics on naturalization

Looking at statistics of the UN indicates: the total number of persons that were born in Hungary but emigrated somehow abroad and living outside of Hungary was 528,000 in 2013 while the net-migration is not necessary positive.¹⁷ The rate of the foreign-born population is growing in Hungary, in January 2014 it was 4.5 per cent (in the EU27 it

¹⁷ Available: <https://esa.un.org/migmgprofiles/indicators/files/Hungary.pdf> (Downloaded: 01.10.2017.)

was 11.3 per cent). Their 70 per cent are from the neighbouring states and their two-third has acquired Hungarian citizenship.

The census (2011) registered 143,000 foreign-born non-nationals (1.4 per cent of the population) and 90,000 foreign-born persons with dual (Hungarian and other) citizenship staying longer than one year in the country. The proportion of third-country national in EU27 was 4.1 per cent among the foreign residents. The naturalisation rate was 13 per cent in 2012 (in EU27 it was only 3 per cent) although the probability of naturalisation for third-country national was only 19 percent (in the EU27 the rate of third-country nationals in naturalisation was 87 percent). This increase was connecting to the most preferential, accelerated naturalisation. Within less than six years the number of newly, preferentially naturalized persons could reach 845,000 while 155,000 applications were processing in July 2017.¹⁸ Before this peak the total number of naturalised and re-naturalised persons in 1994–2010 was 134,887, and the non-preferential naturalisation is less than 500 persons per annum.¹⁹ Another benchmark would be that 841,200 people acquired citizenship in EU28 and EFTA states together in 2015. From them 86 percent had previously been citizens of non-EU, only in Luxembourg and Hungary were the majority of newly obtained citizenship (90 percent) derived from another EU Member State. As regards Hungary, the number of naturalised people (in 2010: 6,100, in 2011: 20,600, in 2012: 18,400, in 2013: 9,200, in 2014: 8,700 and in 2015: 4,000) in fact covers only persons that are living as residents in Hungary. An indicator commonly used to measure the effect of national policies on citizenship is the ‘naturalisation rate’ or ratio of the total number of citizenships granted over the stock of non-national population in a country at the beginning of the year. It is important to note that changes in naturalisation rates can also be attributed to changes in the non-national population and in the way the non-national population is measured. In 2015, in the EU-28 and EFTA as a whole, 2.4 per hundred non-national citizens were granted citizenship in average but in Hungary in 2011–15 it was 7.8 percent on average.²⁰

According to the available data,²¹ only 9 percent of applicants in 2011–2015 were registered as residents in Hungary while 647,000 newly naturalised persons are living across the borders acquiring dual citizenship (95 percent of them have Romanian, Serbian, Slovakian or Ukrainian nationality). From the non-residents only 54,000 naturalised have established residence (at least, in part) in Hungary after acquisition. In 2015 only 61,000 newly naturalised persons from the 708,000 recently naturalised were living as registered residents in Hungary. This small amount cannot compensate the growing outflow of people. This newly naturalised population during the period of 2011–2015 living in Hungary (a) is less educated than the average adults in Hungary thus the better qualified ethnic minority members are not attracted to the kin-state;

¹⁸ *Magyar Nemzet*, 23 August 2017. Most már nem sláger a magyar állampolgárság.

¹⁹ Gödri (2015) 187–211.

²⁰ Available: http://ec.europa.eu/eurostat/statistics-explained/index.php/Acquisition_of_citizenship_statistics (Downloaded: 01.10.2017.)

²¹ Új magyar állampolgárok. Változások az egyszerűsített honosítási eljárás bevezetése után. Budapest, KSH. 64.

(b) 12 percent of these resident people were unemployed; (c) more than two-third of them were residing less than 8 years up to naturalisation on average (e.g. applicants coming from Romania about 7 years while applicants from Serbia about 9–10 years) but the average of the all applicants' residing period takes 13 years. (d) The high rate of ethnic Hungarians among the applicants is stable, so 85 percent of the applications was based on this reason in the claim, 8.6 percent was related to spouse of a Hungarian national and 8 percent was connecting to the applicant's paternity/maternity of a minor with Hungarian nationality. The total rate of re-naturalised persons inside the newly naturalised persons was 2.2 percent. This trend has being continuous as we know: in 1994–2010 about 95 percent of re/naturalised persons belonged to the term of ethnic preferences,²² 3 percent to the family preferences and the rest to the term of non-preferential naturalisation.²³ Moreover, cumulative effects of subjective conditions that are hardly met by a well defined group of applicants can be considered discrimination.²⁴ The indirect discrimination is visible because certain conditions are based on objective, neutral requirements at first glance for applicants but statistically it can be proved that a well defined group of applicants is mainly targeted.

Our knowledge on loss of citizenship and refusal rate of naturalisation claims is limited. On one hand, the refusal rate in application for naturalisation in 2005 was 4.8 percent, in 2006: 4 percent, in 2007: 6.8 percent, in 2008: 7.8 percent, in 2009: 10 percent, and in 2010: 8.8 percent. The introduction of the accelerated, hyper-preferential naturalisation affects the refusal rate of traditional, non-accelerated (residence-based) naturalisation: it was 87 percent in 2011, and 114 percent in 2012 and also in 2013 by the data of Office of Immigration and Nationality Affairs (OIN). It means that in 2014–2015 about 100 residence-based naturalised persons face 114 denied applicants. Further research is needed, how and why but accelerated naturalisation has an ousting effect for non-ethnic applicants. Looking at the first citizenship of the refused applicants in 2011–2012 from them 38 percent was Romanian, 36 percent Ukrainian and 17 percent Serbian. The only published reason of refusal was that applicants applied identification documents issued by USSR, Yugoslavia or Czechoslovakia.²⁵ However, the rate of refusal for accelerated naturalisation process is below 4 percent, the 23,000 refusal to 850,000 positive decisions is really minimal.²⁶

²² The ethnic applicant may be naturalised if s/he resides in Hungary (at least for one year prior to submission of the application that was deleted in 2005) with a registered address as long-term migrant (permanent residence permit with registered address), self-subsistence and accommodation is provided for him/her (together with his/her family), s/he has a clean criminal record and his/her naturalisation does not violate the state interests, and s/he declares him/herself as ethnic Hungarian with an ancestor that was a former Hungarian citizen.

²³ Örkény–Székelyi (2010)

²⁴ Tóth–Körtvélyesi (2011) 54–73.

²⁵ Data from HVG, 4 April 2013.

²⁶ Data from *Index*, 8 July 2016.

Security threats

In a deeper analysis the non-equal treatments in favour of ethnic Hungarians are outlined. The different treatment of ethnic applicants to the non-ethnic and resident applicants is manifested in some points of the regulation that mean the security challenges. (a) *Ius sanguinis* is unlimited by domestic law, only international treaties could break its inheritance in past. It means that unlimited lineage neglects the genuine link principle. (b) The inclusive component means that family members, minors, recognised refugees and stateless persons on the grounds of human rights commitments enjoy preferences but mainly for resident immigrants. On the other side, the ethnic preferences and derivative naturalisation of the (not necessary ethnic) spouse of the newly naturalised national, as well as the re-naturalisation are available for applicants without their (ever) residence in Hungary. The non-resident applicant's ancestor should have ever been a Hungarian citizen (in any time and in any grade of relationship) or his/her Hungarian origin is made probable. The term of 'origin' has never been explained by the court or by any legislation so its substance is enigmatic although the Act in force does not refer on ethnicity. (The term of 'ethnic Hungarian' was deleted in 2010.) Moreover, the acquisition of citizenship is eligible upon request to the President of the state (declaration of the ex-national) as a tool of rehabilitation of the citizenship for his/her involuntary loss in past, thus the place of his/her residence is irrelevant. Furthermore, requirement of applicant's residence in Hungary does not exist in accelerated naturalisation, chain-naturalisation and re-naturalisation, while in other versions it is strictly needed: it shall be continuous (interruption size is not defined) and address shall be registered that is based on certain legal status (recognised refugee, registered union citizen with right to free movement that is performed in Hungary, long-term migrant status). In this way staying period of non-preferential applicants in Hungary is longer than ten years in fact. (c) The knowledge of Hungarian language is hardly controlled without a standard in checking.²⁷ Applicants in non-preferential acquisition have to meet communication competence orally and in written inside the exam on constitutional issues. Exemption from the exam – inclusively the language knowledge – may be given if applicant is incapable or his/her ability to act is limited. On the other side, claimants in accelerated naturalisation and re-naturalisation are only formally controlled when they submit the format without its standardisation or designated competence level of their language ability. It means discrimination for assumed non-ethnic applicants. (d) Applicants in naturalisation and re-naturalisation processes may request modification of surname, given name, marriage name, his/her mother's maiden name and geographical name of birth using the Hungarian version of family and forename and the official name of a settlement from the Hungarian Kingdom. Naturally, it is applicable only for native, ethnic applicants and/or coming from ex-territories of the Hungarian Kingdom. It means that many dual citizens have totally different personal data in each identifica-

²⁷ Tóth (2010) 211–240.

tion document. This growth of nationals means the climbing number of dual citizens (mainly from the adjacent states, one-third of them out of the EU, such as Serbia, the Ukraine, Russia and Israel). Consequently, migratory movement of persons using Hungarian passport – allowing free entry without visa to 150 states today – does not automatically demonstrate emigration from or return to Hungary if they relate to other countries of citizenship, family ties, etc. (e) Almost all (enigmatic) conditions relating to the integration of applicants (exam, evaluation of self-subsistence, accommodation or public order criteria) are evaluated administrative documents by the governmental offices/ministries and OIA without local information (e.g. from place of residence). (f) Procedural guarantees are fragmented (absence of reasoning and legal remedy) so arbitrary procedure is not avoided. (g) Involuntary loss of citizenship is impossible for persons acquired on the ground of *ius sanguinis* while naturalisation is allowed to be withdrawn. It means that citizens legally are not equal.

The growth in application for accelerated naturalization was not calculated in details and controlling capacity has not been upgraded. The totally clean criminal record, the non-transparent security checking and the never-reasoning refusal of the application have pushing effects on resident non-ethnic applicants because their data are available due to residing for long years in Hungary. Taking into account the ‘good character’ test by the clean criminal record and absent of security risk of the applicant this ‘zero tolerance’ is very restrictive (for instance, a minor offence excludes the naturalization of many persons). Furthermore, data on how and why an applicant would endanger the public order can be gathered and processed if s/he has spent a certain period of time in Hungary. Naturally, foreign authority can share relevant data concerning the foreigner but basically on the ground of different national legal systems its implementation is diverse including the conclusion whether the applicant is endangering the interests of Hungary. However, the clean criminal record and non-explained or processed security screening are inserted to all types of naturalization/re-naturalization including the applicants staying and living permanently abroad.

The refusal rate in naturalisation is growing. In absence of reasoning and remedy the changes may be explained by extended arbitrariness. Exceptional growth of non-resident applicants and naturalised persons are coming from the accelerated authorisation without an effective evaluation system of applicants’ conditions and submitted documents. In this way the risk of unfounded decisions becomes great. Moreover, the threat of formal decisions en masse is based on shortened deadlines in the preparatory period of naturalisation.

The non-registered address of many naturalised (dual) nationals may upgrade uncertainty of their intention of migratory movement to Hungary. It means a legal limbo if new Hungarian nationals are expelled or transferred to Hungary. “Today registry is not available on naturalised people thus proper address and data on them do not exist. For this reason, we introduce a personal ID number given them in the moment of acquisition” – said the Minister of Justice and Public Administration (7 March 2011)

in the parliamentary session in his explanation to the Bill. Despite of this amendment the size of the resident population is hardly known.

The list of side-effects is long. The growth of population relates to the accelerated naturalisation. The number of people determines certain distribution in the EU (for instance, the number of votes in the Council, mandate in the European Parliament, accession rate from funds). Changing population would urge a recalculation of these rates but how can we consider the 'virtual increase'? Moreover, the high rate of nationals without address and residence in Hungary are third country nationals while they are eligible to union citizens' rights. If their masse wants to move and reside in Hungary using public services that may put to unpredictable troubles. By good fortune, due to the high mortality and emigration rate as well as low fertility and immigration the gross amount of the population is stable.

The modification of the domestic regulation was performed without bilateral or multilateral discussions with first citizenship states. All of these would violate the principle of sincere co-operation principle inside the Union and loyalty to the EU law, the aims of the European integration as determined in the Lisbon Treaty.²⁸

The involuntary loss of acquired citizenship – even causing statelessness – is difficult. There was zero withdrawal of citizenship in 1993–2012 according to the OIN statistics but the accelerated naturalisation has changed this solid statistics: in 2013–2014 the number of cases was 4, in 2015: 61, in 2016 it was 62, in 2017 (20 Oct) it was 16. From these 143 persons there were 18 minors (ages 4–16) with family members, and the share of the applicants' first citizenship may inform us for whom the attraction rate of the Hungarian citizenship is high. Accordingly, 48 persons with Yugoslavian/Serbian documents, 79 with Soviet/Russian/Ukraine documents and 15 with Romanian. Beyond the published withdrawal resolution of the State President there are many headlines on corruption and other criminal cases, started trials concerning the naturalization process.²⁹

A rise in withdrawal of citizenship from naturalised persons in accelerated procedure has been observed. It relates to fast, unfounded decision on naturalisation and to (released) corruption (e.g. falsified documents are attached to the claim, uncontrolled Hungarian language knowledge, etc). The first case represents the method of abuse. The Official Journal published the first withdrawal of citizenship from Mr. Jenő Lackó. His Hungarian nationality was obtained through the most preferential, accelerated naturalisation. He was misleading, providing false or untrue data on his identity (name and birth data) to the authority, and the Minister of the Interior proposed the withdrawal to the President. His abusive conduct was released after his citizenship oath had taken. The decision entered into force on the day of publication and his citizenship was ceased

²⁸ TEU Art.4 (3). Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

²⁹ For instance: *HVG*, 24 April 2013; *Index*, 16 September 2014 and 17 September 2014.

on the same day, not affecting his Ukrainian citizenship. The press release of the Office of the President contains no explanations of the decision, so the press investigated how the upgraded speed of naturalisation process contributed to the public security risks because the authority had no proper time on individual checking and hazard analysis of applicants. According to the official explanation the withdrawal is based on the Art 4 and Art 9 of the Act on Nationality.³⁰ It means that either security requirements (clean criminal records) are missing or the applicants' Hungarian language knowledge, Hungarian ancestors have been manipulated. Police has launched criminal investigations for receiving bribe from applicants and for counterfeiting documents at least against eight officials. Another official's case was released receiving 700 EUR for a naturalization application, while three non-Hungarian speaking persons were arrested in the middle of a naturalization oath ceremony in a corruption case together with the mayor and the clerks in the Eastern region of Hungary. The Ukraine mafia established business contacts in accelerated naturalization using middlemen for 5–30,000 EUR in application procedure due to the fear of applicant's loss of Ukraine citizenship for voluntary accession of another citizenship.³¹

Non-resident inventors

The toolkit of the investment policy includes acquisition of residence and immigration (long-term migrant) permit for the purchase of treasury bonds (settlement bond) by third country nationals. The price of the bond with commission (2–2.5 percent) shall be reimbursed to the buyer after five years thus it is a loan to the Treasury. According to the government it shall be separated from migration policy³² although the owners with family members are entitled to entry, stay in Hungary and free movement inside the EU.³³ In analogy, the free movement of skilled Hungarian workers and students to another Member State of the EEA is not part of the migration scheme because their remittances contribute to the national GDP (about 5 per cent) – thus their action is part of the economic development. Following this track, the easy admission to Hungary is possible through the immigration bonds for non-resident third country national investors attracting at first their money. Buying the minimally required bonds for 300,000 EUR together with further 50,000 EUR as procedural cost they can obtain a long-term migrant status that establishes the application for naturalization in near future. These persons would contribute to the growth of dual nationals. Within less than four years (2012–2016) this legal institution results 890 million EUR

³⁰ *Magyar Közlöny*, 13 July 2013. Resolution of the State President No. 339 of 2013, and *MTI*, 29 September 2015.

³¹ Corruption cases in accelerated naturalisation were released in the press, e.g. bribery for accepted naturalisation application was 700 EUR, *HVG*, 9 January 2014. For the 'non-speakers' story see Thorpe, N.: Hungary creating new mass of EU citizens. *BBC*, 7 November 2013, Subotica; *MTI*, 11 April 2015; *MTI*, 13 May 2015; *MTI*, 9 January 2014; *MTI*, 5 November 2014; *HVG*, 6 September 2014. The method of abusive cases is analysed in *Népszava*, 15 July 2013.

³² Statement of State Secretary Rogán A. in *MTI*, 26 January 2015.

³³ Act II of 2007 on Third Country National's entry and residence in Hungary in the amendment of the Act (Art.4[9] in the Act XXXVI of 2012).

to the Treasury, and 3,490 long-term (settlement) permission owners with 6,148 family members from China (85 per cent), from Russia (7 per cent) and other third country nationals (from Pakistan, Iran, Turkey, Ukraine).³⁴ Until the end of June 2017 the total number of issued long-term migrant permission including the family members was 16,000 and taking into account the pending cases, the final amount of third country nationals in this scheme is over 20,000 or more if residence permit (and bond) holders would apply for long-term migrant authorisation.³⁵ These persons may travel to Hungary and move further to another Member State of the EU or would apply for naturalization in Hungary. Their registered address in Hungary is required if they enjoy the right to free movement or application in naturalization.

Due to security priorities the never-resident investors that purchase settlement bonds are checked in part in long-term residence authorization living far from Hungary. Investor's self-subsistence and security risk can be assessed smoothly because s/he must pay a high sum as a loan to the Treasury but neither public order nor otherwise solid material resources can hinder their non-migration scheme: bond owner is eligible to obtain a national settlement permit (that is valid to five years) together with all family members within a month. This non-migration scheme promises free movement for the settlement permit holders, they can submit an application for naturalization later living in Hungary. This scheme precedes chances for family unification, unity of family and naturalization of integrated resident migrants. It means that loan to the Treasury even from money-laundering and procedural fees for private companies is more important than a genuine link, humanitarian reasons and family life of checked immigrants. Contrarily, the actors of migration-scheme, namely the third country nationals that are residing, working or studying here shall be excluded from the residence permission, as well as from the acquisition of citizenship either for public order reasons or for low incomes in their household.

Conclusions

Without textual reference on ethnic substance inside the legal requirements of nationality acquisition, Hungary has developed an ethnic-driven citizenship model. The kin-state policy inspires a mixture of inclusive and exclusive components in the nationality law that is closely connected to nation-building, immigration policy, investment scheme and the free movement of workers. These are forming an incoherent model. The nation-building policy includes the Act on Hungarian Card in 2001, as a formal tie of ethnic Hungarians in diaspora to the kin-state and it has been institutionalized through the new Constitution and amendments of the Act on Hungarian Nationality. The accelerated acquisition for non-resident diaspora members and descendant of

³⁴ Data from the Minister of the Interior and President of the Tax Authorities, *444.hu*, 25 April 2016 and 26 April 2016.

³⁵ *Magyar Nemzet*, 18 July 2017.

emigrants provides preferences for them discriminating the resident and non-ethnic applicants for entry, residence and naturalization.

The extension of the voting base is obvious, and a deterrent message for resident, ethnically neutral migrants and refugees is release. The enfranchisement of the voting right to non-resident (newly naturalized) nationals³⁶ can approve the antidemocratic characters of the general elections but it was enough to recruit surplus governmental voters in 2014.³⁷ Thus the naturalization as a basis for further voters may mobilize the ethnic diaspora.

The impact assessment before submission of proposals of amendments has poor practice in the Hungarian law-making. Although it has been mandatory since 1987,³⁸ the will of legislation and law-makers has been absent to pass the legal rules on fact-finding and data-based impact analysis.

There are further contradictions in the model. It refuses the admission of refugees or applicants' relocation inside the EU on the grounds of emergency and solidarity measures although the total number of staying and living protected persons in the country is below 5,000 persons (including recognized refugees, subsidiary protected and tolerant migrants in the statistics). The lost referendum against the admission of refugees (2 October 2016) and the governmental anti-refugee propaganda is not in harmony with the sale of settlement bonds and legalized free entry and movement of hardly checked 20,000 third country nationals at least.

Taking into account the security screening and conditions of self-subsistence, as well as registered address, the non-ethnic residing applicants are marginal in naturalisation because family members of naturalised/citizens and persons with Hungarian citizen's ascendant or origin form the mainstream. Furthermore, the resident immigrants are treated in a different, discriminative way in acquisition although they have strong efforts to establish a genuine link to the local society. The accelerated naturalization with various abusive actions in the procedure has not been controlled and about 150 withdrawing cases demonstrate the minimal scrutiny. The political opponents require parliamentary investigation and judicial process.³⁹

BIBLIOGRAPHY

- Brubaker R. (2005): The 'Diaspora' Diaspora. *Ethnic and Racial Studies*, Vol. 28, No. 1. 1–19.
- Bauböck, R. (2007): The trade-off between Transnational Citizenship and Political Autonomy. In Faist, T. – Kivisto, P. (eds.): *Dual Citizenship in Global Perspective*. London, Palgrave Macmillan. 69–91.

³⁶ Act CCIII of 2011 on the Voting Right provides partial voting right for non-resident nationals because they can vote by letter on party lists and not on candidates in constituency.

³⁷ Pogonyi (2014)

³⁸ Act XI of 1987, Act CXXX of 2010 on the law-making process, Cabinet Ministerial Decree No. 12 of 29 April 2016, on preparatory of legal rules and impact assessment.

³⁹ See HVG, 4 March 2016, 8 July 2015; *hvg.hu*, 8 March 2013; *MTI*, 12 May 2016.

- Dieckhoff, A. (1996): La déconstruction d'une illusion. L'introuvable opposition entre nationalisme politique et nationalisme culturel. *L'Année sociologique*, Vol. 46, No. 1. 43–55.
- Danero, I. J. – Sata R. – Vass Á. (2015): Állampolgárság és identitás. Magyarak lenni Szlovákiában, romának lenni Szerbiában és Ukrajnában. *Pro Minoritate*, Vol. 24, No. 1. 59–93.
- Gödri I. (2015): Nemzetközi vándorlás. In Monostori J. – Óri P. – Spéder Zs. szerk.: *Demográfiai Portré 2015*. Budapest, KSH NKI. 187–211.
- De Groot, G. R. (2012): Nationality. In Smits, J. (ed.): *Encyclopedia of Comparative Law*. 2nd edition, London, Edgar Elgar. 600–619.
- De Groot, G. R. – Vink, M. P. (2015): A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union. In Carrera, S. N. – De Groot, G. R. (eds.): *European Citizenship at the Crossroads – The Role of the European Union on Loss and Acquisition of Nationality*. Oisterwijk, Wolf Publishers. 41–115.
- Gyulai, G. (2014): *Nationality Unknown? An overview of the safeguards and gaps related to the prevention of statelessness at birth in Hungary*. Hungarian Helsinki Committee. Available: <http://helsinki.hu/wp-content/uploads/Nationality-Unknown-HHC-2014.pdf> (Downloaded: 01.10.2017.)
- Kántor Z. (2015): Nemzetpolitika és állampolgárság. *Pro Minoritate*, Vol. 24, No. 1. 36–48.
- Kiss T. (2015): Etnikai hegemonia és transznacionalizmus? A román közvélemény viszonya az erdélyi magyar etnopolitikai célkitűzésekhez és a magyar nemzetpolitikához. *Pro Minoritate*, Vol. 24, No. 1. 3–35.
- Kovács, M. – Tóth, J. (2009): Kin-state responsibility and ethnic citizenship: The Hungarian case. In Bauböck, R. – Perchinig, B. – Sievers, W. (eds.): *Citizenship Policies in the New Europe*. Expanded and Updated Edition, Amsterdam University Press. 151–176.
- Örkény A. – Székelyi M. (szerk.) (2010): *Az idegen Magyarország – a bevándorlók integrációja*. Budapest, MTA NKI – Eötvös Kiadó.
- Pogonyi, Sz. (2014): Non-resident votes may tip the balance in Hungarian parliamentary elections. *EUDO Citizenship Observatory*, 7 April 2014.
- Tóth, J. (2010): Ethnic Citizenship – Can it be Obtained and Tested? In Van Oers, N. – Ersbøll, E. – Kostakopoulou, D. (eds.): *A Re-definition of Belonging? The Netherlands*, Koninklijke Brill NV. 211–240.
- Tóth, J. (2015a): The 'Genuine Link' Principle in Nationality Law. In Szabó, M. et al. (eds.): *Hungarian Yearbook of International Law and European Law 2014*. Eleven International Publishing, The Haag. 45–56.
- Tóth, J. (2015b): Is it Possible to Lose the Hungarian Nationality? In Carrera, S. N. – De Groot, G. R. (eds.): *European Citizenship at the Crossroads – The Role of the European Union on Loss and Acquisition of Nationality*. Oisterwijk, Wolf Publishers. 235–249.
- Tóth, J. – Körtvélyesi, Zs. (2011): Naturalisation in Hungary: Exclusion by Ethnic Preferences. *Open Citizenship*, Vol. 2. Summer "Exclusion and Discrimination". 54–73. Available: www.citizenshipfo-reurope.org (Downloaded: 01.10.2017.)