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# EUDO CITIZENSHIP OBSERVATORY

## *COUNTRY REPORT: HUNGARY*

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November 2009  
Revised June 2010



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

***Report on Hungary***

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**Robert Schuman Centre for Advanced Studies**  
in collaboration with  
**Edinburgh University Law School**  
Country Report, RSCAS/EUDO-CIT-CR 2010/36  
Badia Fiesolana, San Domenico di Fiesole (FI), Italy

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

Research for the EUDO Citizenship Observatory Country Reports has been jointly supported by the European Commission grant agreement JLS/2007/IP/CA/009 EUCITAC and by the British Academy Research Project CITMODES (both projects co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

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

# Hungary

Mária M. Kovács and Judit Tóth

## Abstract

Since 1879, Hungarian citizenship law has undergone four major reforms as a consequence of historical changes and a succession of political regimes. The act on nationality has been an outstanding attribute to state and national sovereignty, and through the amendments of the regulation, a map of national identity may be described. Some principles of nationality law are stable, such as the limited rights of applicants in acquisition procedures due to the wide discretion power of the sovereign. Certain features of acquisition and maintenance of Hungarian citizenship (such as prohibition of deprivation, liberal renunciation, *ius sanguinis a patre* and *a matre* equally, prevention of statelessness and benefit in acquisition for refugees and stateless migrants) relate to the respect for human rights and respect for international commitments as a party state to all important UN and Council of Europe conventions in this context. Finally, a stratum of provisions and principles is related to the kin-state and Diaspora policy of each government within the framework of ethnic preferences in entry, residence and naturalisation of kin-minority living in the adjacent states and Diaspora members. The migrating borders of Hungary and mass emigration in the past contribute to domestic political debates on how the nation can be unified through symbolic and normative instruments such as tolerant regulation on multiple citizenship and never-ending nationality which are an important component of the Diaspora policy in Hungary towards millions of expatriates and their descendants around the world.

## 1 Introduction

The preference for the naturalisation of ethnic Hungarians has been considered a counterbalance to the troubled history of a nation artificially split among various states and as a tool for preserving cultural identity in the twentieth century. The principle of ethnicity has been observed directly in citizenship legislation and migration law through regulations for visas, residence and employment permits, and asylum status (Tóth 1995). Due to the ideology of a ‘threatened Hungarian ethnic identity’ the relationship between the social and economic integration of migrants, migration law, naturalisation and citizenship has never been publicly discussed (Fullerton, Sik & Tóth 1997). Hungarian authorities need not give reasons for refusing an application for naturalisation and there is no legal remedy against a negative decision. This is justified by referring to the sovereign power of the state and, in cases of rejection, by a presumption of the applicants’ missing ethnic and cultural ties to Hungary. An extension of preference in naturalisation for European Union citizens was smoothly passed in 2003, partly because of the supposed ethnic proximity of applicants in adjacent states.<sup>1</sup> Provisions supportive of family unity in nationality law are widely accepted, and so are the discretionary powers in naturalisation proceedings that determine who is to be allowed to join this rather homogeneous society (Tóth 2005).

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

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

- (a) Naturalisation and its precondition, the authorisation of permanent residence, are criticised as being too time-consuming and expensive, and the requirements for documentation as too bureaucratic. In other words, ethnic Hungarians, being the largest group of applicants, do not see themselves as preferential beneficiaries when it comes to the attitude of the authorities or to procedural provisions.
- (b) Moreover, certain privileges of Hungarian citizenship were extended to EU citizens and migrants under the scope of Community law as part of the EU accession process (Tóth 2004a).
- (c) The role of naturalisation in the process of migrant integration has been unclear. While the applicant is required to be highly integrated in a cultural, economic and social sense, integration programmes do not exist at all, which means that integration can only be achieved by individual effort. The applicant must also not endanger public order and is investigated in this regard in various ways.
- (d) Citizenship as a basket of various rights and obligations is basically considered by the general public as a historical, cultural, ethnic and emotional issue without awareness of its existing legal and normative status and its neutral significance in a democratic rule-of-law system. For this reason, public opinion is strongly divided into ‘normativists’ and ‘nation builders’, representing different standpoints concerning voting rights, principles for the acquisition of citizenship, dual citizenship and never-ending citizenship for emigrants in the diasporas.
- (e) As for ethnic Hungarians, the right to have the family and given name and the name of the applicants’ prior place of residence and birthplace in their original ethnic language was finally introduced in amendments related to the naturalisation and registry process.<sup>2</sup> It causes certain confusion in the registration of foreigners and citizens since registration is, in theory, based on the authenticity and unaltered nature of existing identity documents. Moreover, this right is exclusively reserved for ethnic Hungarians; it does not apply to the non-Hungarian version of names of, for instance, naturalised refugees or stateless migrants belonging to a linguistic minority, which would be registered in the dominant language in their countries of origin.

## 2 History of Hungarian policies on citizenship since 1945

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

- (a) 1945–1948: The Armistice Agreement concluded in Moscow (1945)<sup>3</sup> annulled all the modifications to citizenship that had come about as a result of territorial changes to the

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<sup>2</sup> Act XXXII of 2001 amending Act LV of 1993 on Hungarian Nationality, Government Decree No. 125 of 22 September 1993, Decree of the Minister of the Interior No. 6 of 7 March 2003.

<sup>3</sup> Concluded in Moscow on 20 January 1945 and published in Act V of 1945.

Hungarian state between 1939 and 1945. Millions of former Hungarian citizens who ended up under the jurisdiction of neighbouring states lost their Hungarian citizenship. The Peace Agreement fixed the borders of the Hungarian state as they had existed on the last day before the war began.<sup>4</sup> Between 1945 and 1948 temporary regulations on citizenship considered all those residing in Hungary in 1945 to be citizens except for those holding the citizenship of another state. Bilateral agreements on population exchange initiated by Czechoslovakia and the expulsion of Germans resulted in the deprivation of citizenship for those falling under these measures.<sup>5</sup> Individuals who had not returned to Hungary following the conclusion of the war were deprived of their citizenship and, between 1946 and 1948, their property was confiscated.<sup>6</sup> Finally, the citizenship status of communists who had fled Hungary during the interwar years was settled.<sup>7</sup>

- (b) 1948–1956: In 1946 a reform of the legal status and civil rights of children born out of wedlock established their full equality,<sup>8</sup> but only the new Act on Hungarian Nationality of 1948<sup>9</sup> provided a coherent legal framework for the acquisition of citizenship through changes in family and personal status. The Act provided for the equal treatment of children born out of wedlock and stipulated that all nationals residing abroad should be registered, without, however, creating techniques for registration in the absence of consular relations. The Act recognised the pending Hungarian citizenship of undocumented persons who had been residing in Hungary for a given number of years.
- (c) 1956–1989: This period witnessed the emancipation of spouses on the basis of the New York Convention on the Nationality of Married Women of 1957,<sup>10</sup> the principles of which were inserted into the third Act on Nationality adopted in 1957.<sup>11</sup> The executive rules of the Act were not published and were implemented by confidential order, such as the one requiring emigrants to renounce their citizenship and social insurance rights. Following the 1956 revolution and the mass emigration it triggered, a broad amnesty was proclaimed for returnees and a registry of nationals permanently abroad was established.<sup>12</sup>
- (d) 1989–1993: After 1989, Hungary started reforms to establish the rule of law and constitutionalism. In 1989 the prohibition of deprivation of citizenship was regulated in the modified Constitution.<sup>13</sup> At the same time the citizenship of expatriate nationals who had been deprived of their citizenship arbitrarily was restored upon request.<sup>14</sup> The Geneva Convention of 1951<sup>15</sup> inspired the preferential naturalisation of refugees that was inserted into the citizenship law. The fourth Act on Nationality, passed in 1993,

<sup>4</sup> The Peace Agreement was concluded in Paris and published in Act XVIII of 1947. It entered into force by Government Decree 11.800 of 1947.

<sup>5</sup> See details in Czech-Slovak-Hungarian Agreement published in Act XV of 1946 and Government Decree 12.200 of 1947.

<sup>6</sup> In particular, Act X of 1947 and Act XXVI of 1948.

<sup>7</sup> For instance, Prime Ministerial Decree 9.590 of 1945.

<sup>8</sup> Act XXIX of 1946.

<sup>9</sup> Act LX of 1948.

<sup>10</sup> Published in Law-Decree No. 2 of 1960.

<sup>11</sup> Act V of 1957.

<sup>12</sup> Law-Decree No. 11 of 1955, No. 7 of 1956, No. 11 of 1956; Ministerial Decree of the Interior 2 of 11 January 1956.

<sup>13</sup> Act XXXI of 1989 introduced a substantially new Constitution but formally it was only an amendment.

<sup>14</sup> Provisions of Act XXVII of 1990 and Act XXXII of 1990 were inserted into the third Act on Nationality in 1993.

<sup>15</sup> Published in Law-Decree No. 15 of 1989.

made preconditions for naturalisation more restrictive, but preferences based on ethnic and family ties were intended to compensate for this.<sup>16</sup> Between 1989 and 1993 Hungary terminated bilateral agreements with former socialist states that excluded dual citizenship.<sup>17</sup>

- (e) 1994–2005: This period is marked by Hungary’s accession efforts to the EU and by political debates on the status of ethnic Hungarians living outside Hungary’s borders. During this time the Act on Nationality was amended three times,<sup>18</sup> due to the ratification of the European Convention on Nationality (1997) and the UN Convention on Stateless Persons (1954).<sup>19</sup> Eligibility for preferential naturalisation was extended to EU citizens and a super-preference was adopted in favour of ethnic Hungarians in the shadow of the upcoming Schengen restrictions (Tóth 2003).

In the period under discussion there were three major breaks with basic principles. Although from 1879 onwards Hungary tolerated multiple citizenship, between 1946 and 1989 the main rule was the exclusion of dual citizenship through bilateral agreements with socialist states. Mixed couples had to choose one citizenship for their child. After 1989, the modified Constitution abolished the arbitrary deprivation of citizenship. International principles of human rights relevant to citizenship were inserted into the law, while a growing circle of preferences was defined as a core element of domestic legislation.

### 3 The current citizenship regime

The Constitution contains a guarantee relating to citizenship, i.e. the prohibition of its arbitrary deprivation (art. 69). Other rules are to be settled in legislation to be adopted by a two-thirds voting majority. The two-thirds rule, however, does not apply to the ratification of international agreements on citizenship.

The Nationality Act ensures the equality of rights of citizens. It guarantees that all citizens have identical legal standing irrespective of the legal title of acquisition of citizenship. The 1997 European Convention on Nationality obliges participating states to refrain from discrimination between their citizens, whether they are nationals by birth or have acquired citizenship subsequently.

Discrimination is forbidden among Hungarian nationals, irrespective of the legal title under which their citizenship was granted. The Act contains only one exception with regard to withdrawal of citizenship, which only applies to citizens by naturalisation.

The right to change citizenship is also included in the Nationality Act. Withdrawal of citizenship is an exception. The more common procedure is renunciation by a person who lives abroad and thus would presumably not become stateless. Measures aimed at the prevention of statelessness restrict the right of the individual to self-determination and the sovereignty of the state in accordance with the conventions of the UN and the European

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<sup>16</sup> Act VL of 1993.

<sup>17</sup> These agreements were concluded with the Soviet Union, GDR, Czechoslovakia (in whose case the dissolution of the state was interpreted as termination of the agreement), with Romania (since 10 February 1990 its application was suspended due to one-sided termination), with Bulgaria, Poland and Mongolia (with these states a consensual termination was published in acts).

<sup>18</sup> Acts XXXII of 2001, LVI of 2003 and XLVI of 2005.

<sup>19</sup> Published in Acts II and III of 2003.

Council. The only legitimate reason for the withdrawal of citizenship is if it was acquired in a manifestly fraudulent manner. Moreover, in the case of renunciation the person must prove that he or she has obtained another citizenship.

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

Hungary tolerates multiple citizenship, and the state strives to create rules and enter into agreements to avoid conflicts between different legal systems. A person acquiring Hungarian citizenship by naturalisation need not renounce his or her prior citizenship. The circle of bilateral agreements and the European Convention regulate several legal relationships with respect to persons of multiple citizenship (e.g. with regard to military service or taxation). Furthermore, those having another citizenship are entitled to the same rights and obligations in the territory of Hungary as other nationals, with the exception of employment in the police or security services (Tóth 2004b). On the other hand, the principle of genuine link<sup>20</sup> requires a factual, effective and close relationship between Hungary and the applicant for naturalisation or other modes of acquiring citizenship, regardless of his or her existing other citizenship. However, for those in possession of Hungarian citizenship and living abroad the genuine and effective link to Hungary is irrelevant. Since 1929, millions of (lawful) emigrants and their descendants have preserved their Hungarian citizenship despite acquiring a second or third citizenship, and despite the absence of close relations, or cultural and ethnic affiliation to Hungary.

Hungarian citizenship shall be certified with a valid document (identity card, passport, citizen's certificate). In case of doubt, it must either be attested by the authorities or a certificate must be issued. Upon request, the responsible minister issues a certificate on the existence of citizenship or its cessation, or verifies that the person concerned has never been a Hungarian citizen. The certificate is valid for one year from the date of issuance. The certificate's contents may be contested before the Municipal Court by the person concerned, his or her lawful representative, the public prosecutor as well as the person's guardian.<sup>21</sup>

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

### 3.1 Current modes of acquisition and loss of citizenship

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

<sup>20</sup> This principle is a legal expression of the fact that the individual who obtains this citizenship – directly through the law or as a result of the action of the authorities – is in actual fact more closely related to the state whose citizen he or she is than to any other state (*Liechtenstein v. Guatemala*, 1955 WL 1 (International Court of Justice), generally known as the *Nottebohm* case).

<sup>21</sup> Act on Hungarian Nationality, arts. 10-12.



- (a) The child of a Hungarian citizen obtains Hungarian citizenship by birth (*ius sanguinis*) regardless of the place of birth.
- (b) The child of a stateless immigrant in possession of a permanent residence permit or an abandoned child of unknown parents shall be considered a Hungarian citizen unless or until this presumption is rebutted (e.g. when he or she obtains a foreign citizenship due to the clarification of his or her parent's identity and citizenship). There is no time limit for rebuttal; presumption of Hungarian citizenship on the basis of *ius soli* is therefore conditional.
- (c) The Hungarian citizenship of exiled nationals who were deprived of their citizenship between 1945 and 1990 shall be restored upon request. A declaration addressed to the President of the State reinstates the citizenship of the exiled national immediately when it is made. Acquisition of citizenship is also possible by declaration in case the applicant was born in Hungary and has not acquired another citizenship through his or her parent by birth, provided that at the time of the person's birth he or she resided in Hungary, he or she has lived without interruption in Hungary for a period of at least five years by the time of submission of the declaration and he or she is not older than nineteen years. Another ground for acquisition applies if the applicant was born from a Hungarian citizen mother and a foreign father before 1 October 1957 and did not become a Hungarian citizen by birth.
- (d) Presumptive paternity ensures citizenship by law for a child born out of wedlock if a parent who declares paternity or a judgement recognises paternity/maternity, or if the parents marry subsequently (family law facts).
- (e) Upon request the restitution of citizenship is ensured if the applicant could not obtain a new citizenship within one year of his or her renunciation of Hungarian citizenship.
- (f) Naturalisation implies a long procedure and is conditional on various preconditions.

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

- (a) permanent residence in Hungary for eight years in possession of a permanent residence permit (for third country nationals) or EEA citizens' residence certificate;
- (b) clean criminal record and no current criminal proceedings;
- (c) proven means of stable livelihood and residence in Hungary;
- (d) naturalisation must not violate the national interest of the state; and
- (e) successful examination taken on basic constitutional issues in the Hungarian language. If the applicant attended a Hungarian language primary or secondary school or university either in Hungary or in another state, he or she is exempt from the exam. This exemption can be implemented by the overwhelming majority of applicants belonging to the kin-minority after attending Hungarian public education in adjacent states or in Hungary.

The requirements for preferential naturalisation differ from the basic ones as follows:

- (a) The permanent residence requirement is reduced to five years if the applicant was born on Hungarian territory or has established residence in Hungary before reaching legal age or is stateless.

- (b) The permanent residence requirement is reduced to three years, if the applicant has been married to a citizen for three years, or he or she has a minor child who is a Hungarian citizen, or if the applicant has been adopted by a Hungarian citizen or is an officially recognised refugee.
- (c) There is a permanent residence requirement if any of the applicant's ancestors were Hungarian nationals and he or she declares himself or herself to be an ethnic Hungarian. This represents the most preferential opportunity.

The permanent residence requirement can also be waived

- (a) in the case of the extension of naturalisation to a minor child, i.e. if the applicant is a minor and his or her application was submitted along with that of a parent who qualifies for naturalisation,
- (b) if the applicant is a minor and has been adopted by a Hungarian citizen,
- (c) if the President of the State determines that the applicant's naturalisation is of 'overriding interest' to the Republic of Hungary (for instance, if he or she is a top-level artist, athlete, or scientist). The proven means of stable livelihood and residence of the applicant can also be waived by the President of the State.

Requirements for re-naturalisation include a permanent residence permit of the applicant whose citizenship has ceased (if he or she is a third country national) or an EEA residence certificate, a clean criminal record and no current criminal proceedings, proven means of stable livelihood and residence in Hungary, and the assurance that his or her naturalisation does not violate Hungarian national interests.

The permanent residence authorisation is based on a person being habitually and lawfully present in the country without interruption for some years previously. The permanent residence status is an accumulative term due to the amending acts, including immigration or settlement permit, EC permanent residence, national permanent residence permit and temporary permanent permit.<sup>22</sup>

Loss of citizenship shall be based on:

- (a) Renunciation: A citizen residing abroad may renounce his or her citizenship if he or she possesses another citizenship or relies on the probability of its acquisition.
- (b) Withdrawal: Hungarian citizenship may be withdrawn only if a person who has acquired citizenship by naturalisation has violated the law on citizenship, in particular by misleading the authorities by submitting false data or omitting data or facts. In practice, however, there have not been actual cases in which this provision would have been applied to persons that would have become stateless as a result. Ten years after naturalisation, Hungarian citizenship may no longer be withdrawn. (This is a theoretical entitlement with no underpinning practice. The Office for Immigration and Nationality Affairs (OIN) and the President have never implemented this provision.)

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<sup>22</sup> See the Act II of 2007 on entry and residence of third country nationals in Hungary. Accordingly, the permanent residence authorization has remained valid if issued before the transposition of Dir 2003/109/EC on the grounds of the Act XXXIX of 2001 and Act XXIX of 2004.

### 3.2 Specific rules for members of the kin-minority

The ethnic preference has been politically important at least in three aspects in relation to the acquisition of citizenship by naturalisation:

- (a) Acquisition of Hungarian citizenship by naturalisation and its preservation occurs without regard to other citizenships possessed by the individual. It means that dual citizenship is fully tolerated in the acquisition procedure (e.g. the OIN has never informed another state's authorities of the acquisition of Hungarian citizenship, there is no exclusion on acquisition by birth since the termination of bilateral agreements on the exclusion of dual citizenship with Socialist states concluded in the 1960s and 1970s). The subjects of this tolerant regulation are the ethnic Hungarians migrating to Hungary without giving up their own citizenship. However others equally enjoy this principle.
- (b) The most preferential naturalisation is based on the applicant's confessed ethnic Hungarian origin and his or her ancestor who possessed Hungarian citizenship. Naturally, these applicants have to reside permanently in Hungary and meet all other preconditions of naturalisation with the exception of long years of prior residence. Sociologically also these applicants may use most often the exemption from examination because they were schooled according to Hungarian curricula in an adjacent state or in Hungary.
- (c) The changing name and information about the birth of a naturalised person is a privilege for ethnic Hungarians whose identity documents are issued in a neighbouring state in the official language of that state. Upon acquiring Hungarian citizenship their identity documents (including personal name, place of birth) may optionally—upon request of the applicant—follow the Hungarian language version.

This preference is proved by the statistics on the rate of non-preferential, medium-preferential and the most preferential cases in naturalisation per year (Table 3). Accordingly, the rate of the most preferential applicants is almost 78 percent of all applicants in 2008. On the other hand, at least one third of applicants for naturalisation have requested a change of name after naturalisation according to the current OIN.

### 3.3 Special procedural arrangements

The citizenship regulations and procedure have three peculiar characteristics:

- (a) The decision regarding acquisition and loss of citizenship is made by the President of the state. Although the OIN and the Minister of Justice and Law Enforcement is a preparatory and counter-signature authority, the President's entitlement derives from the Constitution (art 30/A (1) point 1). Due to the silence on how to practice this entitlement in the Act on Hungarian Nationality, constitutional principles alone are applicable in cases of uncertainty such as the question of how many days the President has to sign the document on naturalisation. However, local municipal authorities or

other communities have no right to support or to complain against a migrant resident's naturalisation.

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

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

## 4 Current political debates on (dual) citizenship

### 4.1 The Hungarian Status Law and the referendum on dual citizenship

Minority protection for ethnic Hungarians and nation-building has inspired debate in contemporary Hungary. There are numerous ramifications of the political discussions on legal development but we will describe only two aspects briefly here and give a concrete example in order to highlight the interrelations between citizenship law, migration law, external relations, European integration and nation-building.

Although the list of states and criteria for visa obligations have come under European Union control, bilateral agreements on visa-free travel were maintained up to Hungary's accession to the EU. Issuing visas, including a national visa (in the terminology of the Schengen regime), has just been reformed in favour of Hungarian minorities living in adjacent third countries. In 2006 a visa allowing its holder to stay in Hungary and a multi-entry visa for ethnic Hungarian visitors has been introduced. This visa may be issued for five years to a foreign applicant who is capable of sustaining himself or herself, and wishes to use his or her stay in Hungary for practicing the Hungarian language and cultural activities. Under this visa, employment or study in Hungary is not allowed. The text of the visa agreements is neutral but there are plans to reform them to reflect certain ethno-national priorities towards Romania, Ukraine and Serbia.<sup>23</sup> In brief, the visa policy intends to secure the possibility for individuals belonging to the Hungarian external kin-minorities to visit and enter Hungary freely in order to compensate for EU law and security requirements (Tóth 2004b).

The Act on Benefits for Ethnic Hungarians living in Neighbouring States of Hungary (usually called the Status Law) was adopted in 2001 after stormy political debates. It introduced a specific certificate for ethnic Hungarians living in Slovakia, Romania, Ukraine, Slovenia, Serbia-Montenegro and Croatia. Because of constitutional inconsistency and international protests (Kántor 2004), the law was modified in 2003 ending some of the individual benefits (employment, social insurance and public health) that were available in

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<sup>23</sup> Before accession, Hungary had agreements on visa-free travel with six neighbours, and a voucher system was defined with the Ukraine. For the sake of legal harmonisation these agreements were modified. Visa requirements were introduced for Ukrainian and Serbian citizens, while the agreement with Romania introduced a maximum length of stay.

Hungary to holders of the Ethnic Hungarian Certificate (identity card).<sup>24</sup> In December 2004, another support system (Homeland Fund) for community building was adopted.<sup>25</sup> Naturally, the range of direct ethnically-based preferences under this diaspora law (Tóth 2000) can legalise and inspire migratory movements toward Hungary.

On 5 December 2004 Hungary held a referendum on whether it should offer Hungarian citizenship to Hungarians living outside the borders of the Hungarian state.<sup>26</sup> The novel aspect of the proposal was not the introduction of dual citizenship itself, since the option of obtaining a Hungarian second citizenship had long been available for permanent residents within the country. The innovation would have been to remove all residency requirements from the pre-conditions for obtaining a Hungarian second citizenship. Ethnic Hungarians in neighbouring states, and possibly living elsewhere, were to be granted the opportunity of obtaining Hungarian citizenship merely by declaring themselves as of Hungarian linguistic affiliation, at a Hungarian consular office, or if they hold a Hungarian Certificate, confirming their Hungarian citizenship. The proposal was thus directed at external co-ethnic minorities living in neighbouring states and at members of the Hungarian diaspora elsewhere in the world.

The text of the referendum question was as follows: ‘Do you think that Parliament should pass a law allowing Hungarian citizenship with preferential naturalization to be granted to those, at their request, who claim to have Hungarian citizenship, do not live in Hungary and are not Hungarian citizens, and who prove their Hungarian citizenship by means of a ‘Hungarian Identity Card’ issued pursuant to Article 19 of Act LXII of 2001 or in another way to be determined by the law which is to be passed?’<sup>27</sup>

Although the referendum question left the criteria of eligibility open for future lawmaking, an estimate of those potentially eligible to benefit from these provisions could be made by reference to the estimated three million persons of ethnic Hungarian origin living in neighbouring states.<sup>28</sup> Assuming that the majority of those made eligible by the reform would actually claim citizenship, the proportions of the resulting change would exceed the growth of Germany’s citizenry after reunification, but of course, without the corresponding territorial enlargement. This then points to the second specificity of the Hungarian situation, namely that the dimensions of Hungary’s kin-minority problem are unusually large even for Europe.

<sup>24</sup> Act LXII of 2001 on ‘Ethnic Hungarians Living in Neighbouring Countries’. It was amended by Act LVII of 2003. Its administrative rules on financial, technical and procedural issues are laid down in ten government and ministerial Decrees.

<sup>25</sup> Act II of 2005 on the Homeland Fund covers various community-building projects for kin-minorities living in adjacent states.

<sup>26</sup> In Hungary, a referendum is valid if at least 25 per cent of the electorate returns identical votes, or if participation is higher than 50 per cent of the total number of eligible voters. In this case neither criterion was fulfilled.

<sup>27</sup> Official translation provided by the Government’s Election Office (*Országos Választási Bizottság*), [www.election.hu](http://www.election.hu), last accessed 5 May 2005.

<sup>28</sup> According to the statistics published in 2004 by the Hungarian Government Office for Trans-Border Hungarians (*Határon Túli Magyarok Hivatala*), the number of Hungarians living in Romania, Ukraine, Serbia and Montenegro, Slovakia, Croatia and Slovenia as provided by the official censuses in these countries between 2000 and 2002 amounted to 2,429,000: among these in Romania 1,435,000; Ukraine 156,000; Serbia and Montenegro 293,000; Slovakia 516,000; Croatia 16,000 and Slovenia 8,500 (see [www.htmh.hu](http://www.htmh.hu), last accessed 5 May 2005). The estimate for the number of trans-border Hungarians potentially eligible for Hungarian citizenship based on ethnic identification is higher than these numbers, which is explained by the assumption that more people would be able to fulfil the criteria of Hungarian affiliation than those who actually declare themselves Hungarian in government censuses. The number of potential claimants on such grounds globally was estimated at around five million by the Under Secretary for Foreign Affairs, András Bársony (*‘Határok nélkül’*, Kossuth Rádió, 16 January 2003. [www.hhrf.org](http://www.hhrf.org), last accessed 5 May 2005).

Nearly a quarter of all ethnic Hungarians live outside Hungary's borders in neighbouring states.

Political debates on the referendum within Hungary were tremendously polarised. Indeed, in 2003, the initiative to call a referendum had not come from within the Hungarian political establishment, but from a radical and somewhat marginal organisation not well integrated into Hungarian politics, the World Federation of Hungarians (Debreczeni 2004).<sup>29</sup> The Federation had contested the policies of the Hungarian Government on citizenship matters for years and had also set itself on a collision course with the more moderate Hungarian minority parties across the borders, especially when it mounted opposition against the Orbán Government's (1998–2002) efforts, supported by external Hungarian minorities, to provide an alternative solution to dual citizenship through the creation of the Status Law of 2001.<sup>30</sup> The law established the certificate for ethnic Hungarians living in neighbouring states,<sup>31</sup> entitling its beneficiaries to a set of cultural and economic rights, including seasonal working permits in Hungary. However, the Federation insisted that the benefits provided by the law were no substitute for what the Hungarians really needed, which was full Hungarian citizenship.<sup>32</sup> The Status Law provoked an angry response in neighbouring states. Hungary was accused of irredentist nationalism, of creating a 'veiled form of dual citizenship', the ultimate effect of which was to call the sovereignty of the neighbouring states into question. Hungary was also criticised by the European Union for the unilateral adoption of the law, for not having consulted the states in question, and for the extraterritorial aspects of the law. But despite this negative response, the World Federation of Hungarians insisted that Hungary must proceed with the unilateral creation of non-resident trans-border citizenship for ethnic Hungarians.<sup>33</sup> Responding to arguments that such a step would not be compatible with the terms of Hungary's accession to the Union, in the spring of 2003, the Federation called on Hungarian voters to say 'no' to Hungary's accession. Hungary should only join the EU if it could take trans-border Hungarians into the Union even if the state in which they live remains outside of it (Csergő & Goldgeier 2004). So, in October 2003, the Federation began collecting signatures for a referendum on establishing non-resident citizenship for trans-border Hungarians.

This points then to the third specificity of the Hungarian story, namely that the initiative for citizenship reform came from outside the Hungarian political establishment. Only this feature can explain the puzzle of why any political actor would take the risk of launching an initiative that has only limited support within Hungary itself and therefore carries the prospect of its own defeat. Initially, mainstream Hungarian parties on all sides reacted very cautiously to the initiative, along with the more moderate groups of trans-border minorities. Only after a few months did the mainstream right-wing parties (FIDESZ and MDF) along with the President of the Republic declare their support for the referendum, while the socialists and liberals turned against it.<sup>34</sup> What followed was an agitated, occasionally

<sup>29</sup> J. Debreczeni, 'Hazardjáték' [Gambling], *Népszabadság* [daily newspaper], 27 November 2004.

<sup>30</sup> The Hungarian name of the federation is *Magyarok Világszövetsége*.

<sup>31</sup> Since its adoption, approximately a quarter of all trans-border Hungarians applied for the Hungarian card. There are about 850,000 card-holders or at least this amount of cards have been ever issued.

<sup>32</sup> As a result of the conflict surrounding the Status Law, the Orbán Government withdrew public funding from the Federation.

<sup>33</sup> Soon after the announcement of the plan for the referendum it became clear that any legislation on dual citizenship would have to happen unilaterally, as the Romanian president promptly announced his country's opposition.

<sup>34</sup> On 12 November 2004, President Ferenc Mádl, in a speech addressed to the Hungarian Permanent Assembly (MÁÉRT), spoke of the perception of the referendum initiative by external minorities as an act of 'historical justice' and added: 'I call upon Hungarians to use their votes to assume a sense of community with Hungarians outside of our borders' ([www.martonaron.hu](http://www.martonaron.hu), last accessed 17 February 2005).

hysterical, campaign leading up to the referendum that fulfilled the prophecy of its own failure ending up invalid on account of the low number of participants. Eventually, 63.33 per cent of the eligible voters stayed away from the referendum. Among those who cast their ballots, 51.57 per cent voted in favour of the reform, 48.43 per cent against.<sup>35</sup>

No research is available on the question of what precisely motivated Hungarian voters in their choices. Welfare protectionism could well have played a role, given the fact that, apart from Slovakia, the living standards of trans-border Hungarians are far below those of Hungarians, and that the arguments of the Socialist Party against dual citizenship relied primarily on the costs of the reform. An equally important motive may have been the fear of instability at the borders resulting from conflicts with Hungary's neighbours. Voters may also have been influenced by the perception that dual citizenship would eventually lead to voting rights. What is sufficiently clear, however, is that, at least for now, trans-border dual citizenship could only be created in Hungary without the popular mandate of the Hungarian electorate, the mandate that the supporters of the initiative had hoped to obtain in the referendum. To quote one liberal opponent of the initiative (Kis 2004a: 4): 'The offer was made to a nation of ten million to enlarge its homeland beyond the state-borders to the entire Carpathian basin. The nation refused to take the risk and accept the costs.' But given the enormous disappointment of trans-border Hungarians with the result, the issues raised during the campaign will remain on the agenda of Hungarian politics for quite some time to come.

#### **4.2 Implications of the planned trans-border dual citizenship**

The arguments for the Hungarian trans-border dual citizenship initiative are fundamentally different from those advanced in favour of dual citizenship in the major immigration states of Western Europe. In the immigration states dual citizenship is an instrument used to integrate labour migrants into their country of immigration. Dual citizenship in this case works towards the decoupling of citizenship from ethnicity. In contrast, the Hungarian initiative is part of a counter-trend present in a number of European countries of re-linking citizenship with ethnicity.

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

Advocates of the reform wish to overcome this difficulty by presenting their plan as based on a traditional *ius sanguinis* concept rather than on ethnicity. In this view, trans-border citizenship is not something that would be newly granted to ethnic Hungarians. Trans-border Hungarians would only 'regain' the citizenship of their ancestors who had been citizens of the

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<sup>35</sup> 'A kettős állampolgárságról, Adatok, állásfoglalások, elemzések' [On dual citizenship, data, opinions and analyses]. [www.martonaron.hu](http://www.martonaron.hu), last accessed 17 February 2005.

Hungarian part of the Austro-Hungarian Monarchy before the First World War.<sup>36</sup> However, there are several difficulties with this approach (Nagy 2004).<sup>37</sup>

The first difficulty is political. After the First World War, those Hungarians who ended up as minorities in neighbouring states were obliged by the Peace Treaties to opt for the citizenship of their new home state, or, if they declined to do so, to move to Hungary. Therefore, in the eyes of Hungary's neighbours, any unilateral change in the citizenship status of minority Hungarians would amount to a unilateral breach of treaty obligations, and to a revision of the terms of the peace treaty that still serves as the basis of international legitimacy for the current borders of these states. It was for a similar reason that the Italian law of 2000 that offered Italian citizenship to the Italian diaspora did not extend this offer to the descendants of Italians in Dalmatia, Istria and Fiume, i.e. those regions that were ceded by Italy to Yugoslavia in the post-war treaties.

Second, trans-border populations whose ancestors bore the citizenship of the larger Hungarian state in the Austro-Hungarian Monarchy before the First World War include millions of non-Hungarians. So, even if the *ius sanguinis* principle was applied, the only way to narrow down eligibility for Hungarian dual citizenship to those with a Hungarian ethno-cultural affiliation would be to apply an ethnic definition.

A third feature of dual citizenship that emerged from the referendum initiative was the potentially weak distinction between active and inactive citizenship for dual citizens. In most immigration states, transnational dual citizenship implies that only the citizenship of the current country of residence is active, so that the rights associated with the external citizenship are dormant (Faist 2005). However, in the case of Hungarian trans-border citizenship such clear-cut distinctions between periods of active and inactive citizenship would be hard to make (Vizi 2003).<sup>38</sup> Therefore, with regard to the potential content of non-

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<sup>36</sup> Hungarian citizens who had emigrated from Hungary retained their Hungarian citizenship. This, however, did not apply to former citizens of Hungary in the neighbouring states who had lost their Hungarian citizenship as a result of the peace treaties that redrew the borders of the Hungarian state. The possibility of inheriting Hungarian citizenship applies only to people whose right to Hungarian citizenship is derived from their connection to the territory of the state of Hungary as delineated in the Paris Peace Treaty of 1947.

<sup>37</sup> The dimension of the population potentially affected by the *ius sanguinis* transmission of citizenship is difficult to assess. Given the fact that in 1920, Hungary's population had been reduced to half of what it had been before the war (with a corresponding reduction of two-thirds of its territory), the idea that *ius sanguinis* transmission could automatically create dual citizens after any number of generations would amount to the obligation to re-activate the 'dormant' citizenship of people whose numbers may surpass half of Hungary's current population. The peace treaty of 1920 reduced Hungary's population from 18,2 million to 7,9 million and its territory from 282,000 sq km to 93,000 sq km. Trans-border Hungarians are estimated to number about 3,5 million, while people (with their offspring) who retain a *ius sanguinis* right to Hungarian citizenship (e.g. those who emigrated after 1929) are estimated to be about 1,5 million (see the Resolution of the Presidium of the People's Republic of Hungary No.11 of 1956).

<sup>38</sup> Hungarian trans-border citizenship, if ever instituted, is more likely to be in line with that of Croatia where trans-border dual citizens retain some of their rights associated with Croatian citizenship, including voting rights in Croatian elections, even at times when their alternate citizenship is active (see Ragazzi & Štikš, *Report on Croatia*, [www.eudo-citizenship.eu](http://www.eudo-citizenship.eu)). But while trans-border Croats vote for a quota of expatriate seats, trans-border Hungarians would find it easy to vote for regular seats without putting their alternate citizenship to rest. This is because Hungarian regulations on the declaration of residence are extremely lax, requiring only three months of residence for a citizen to activate his or her right to vote. Moreover, in order to avoid the disenfranchisement of the homeless, voters can be admitted to the voters' registry without actually possessing an address or residence permit by simply making a declaration of residence at a given locality at the municipal office. According to recent changes in Italian law, Italian non-resident citizens may also vote in referenda and national elections for a fixed number of seats. However, the numerical dimensions of the Italian case are radically different from that of Hungary. There are altogether 2,7 million non-resident Italian citizens, which is equivalent to about 3 per cent of the resident citizenry of Italy, as opposed to the size of the trans-border Hungarian population which represents 30-35 per cent of Hungary's current citizenry.



resident trans-border citizenship, the general perception that has emerged in Hungary is that even if dual citizenship would initially be created without voting rights, it would only be a matter of time before large numbers of trans-border voters would begin casting their ballots. In view of these implications, it is hardly surprising that the proposal created passionate debates both within Hungary and among Hungarian minorities in the neighbouring states. For many participants the question at stake was whether Hungary should experiment with ideas that are pulling it away from, rather than bringing it closer to ‘mainstream’ Europe. As János Kis summarised it, the victory of the ‘yes’ votes would mean nothing less than putting Hungarian representative democracy in danger and transforming the nature of the Hungarian polity. Since elections in Hungary are usually won by a narrow margin, the appearance of trans-border voters would most likely mean that ‘the outcome of Hungarian elections would regularly be decided by voters who do not pay taxes in Hungary and who are, in general, not subject to its laws’. A further element of ‘organised irresponsibility’ inherent in such a solution would be that those casting the swing votes may be people who had never even lived in Hungary, so that their political choices would be made on a highly selective image of issues and candidates. For all these reasons, Kis concluded,

‘the victory of “yes votes” would pull us back to the murky nationalism of past ages, it would lock up Hungarian politics in the prison of revisionist nostalgia, it would poison public life within Hungary as well as our relationship with neighbouring states and with trans-border Hungarians, and it would damage the level of our acceptance within the European Union’.<sup>39</sup>

In stark contrast to the liberals, advocates of the initiative argued that their proposal is modelled on concepts and processes that are part and parcel of an integrated Europe of the future, a de-territorialised world in which individuals with multiple identities are entitled to a legal expression of their free choice of citizenship. Advocates argued that all European states accept ethnicity as part of the basis of citizenship, most even making provisions for the acquisition of benefits, including citizenship, for co-ethnics who are citizens of another state. The problem with European norms and practices, they argued, is not that there is no connection between ethnicity and citizenship but that Europe is in a state of denial about this connection, treating ethnicity as though it was a disreputable factor on which we rely secretly, but which we hide from others (Schöpflin 2004). They pointed to plans or existing legislation on non-resident citizenship for co-ethnic kin within the European Union in Italy, Greece, Slovakia and the Czech Republic. A particularly relevant example concerns Silesian Germans who, from the early 1990s, were able to obtain German passports in addition to their Polish ones and, by implication, European citizenship, without having to take up residence in Germany. These precedents, they argued, point to the legitimacy, even within the core nations of the European Union, of using dual citizenship for the inclusion of trans-border co-ethnics in the citizenry of the homeland.

Liberal opponents challenged this interpretation of larger European processes and insisted that the EU would regard the ethnicist turn in Hungarian legislation as a breach of common principles laid down in European agreements (Tóth 2004c).<sup>40</sup> Secondly, they criticised the confrontational attitude towards Hungary’s neighbours promoted by this policy. The problem with unilateral action is not so much that it violates international law, but that it

<sup>39</sup> J. Kis, ‘Miért megyek el szavazni?’ [Why am I taking part in the voting?], *Népszabadság*, 20 November 2004.

<sup>40</sup> Especially in the European Convention on Nationality (1997), ratified by Hungary in 2002, which stipulates in art. 2(a) that “nationality” means the legal bond between a person and a State and does not indicate the person’s ethnic origin’, and restricts the ‘recovery of former nationality’ of a given state to those residing on its territory.

is self-defeating. To quote the above mentioned newspaper article by János Kis again, the unilateral creation of Hungarian citizens in the territory of other states is nothing but a ‘mirage’ that provokes ‘phony wars over phony questions and phony answers’. Thirdly, opponents argued, the creation of dual citizenship cannot be justified by reference to the approval by trans-border minorities either, because these groups are themselves divided over the issue and do not speak with a single voice.<sup>41</sup> In the end, any unilateral move by Hungary to create dual citizenship would remain ‘a game of illusions played between Hungarian nationalists and a minority within the Hungarian minority’ in a useless, but ‘ritual display of imagined political togetherness’ (Kis 2004b). Fourthly, critics objected that dual citizenship is incompatible with claims of autonomy raised by trans-border minorities.<sup>42</sup> Concurring with Rainer Bauböck, they maintained that parallel ‘claims of multiple citizenship and territorial autonomy should be seen as mutually incompatible. They would create fears in the host society about irredentist threats to its territorial integrity that cannot be easily dismissed as unreasonable’ (Bauböck 2006: 159–160).

Therefore, according to the socialists and the liberals, Hungary must take a new look at its homeland policies regarding kin-minorities. The discourse advocated by the two mainstream right-wing parties aims at recreating a ‘unitary Hungarian nation’ over and above existing state borders by means of creating legal bonds between parts of the Hungarian nation living in several countries (Stewart 2004). Hungary should step back from this confrontational approach because it relies on outright ignorance about the sensitivities of other states. Instead, it should clearly articulate its policies in the conceptual framework of minority protection. Hungary must accept that trans-border Hungarians are the citizens of other states and should promote the protection of Hungarian minorities in their efforts to secure equal individual and collective rights in their home states.

Finally, there are obvious ambiguities in the arguments of both sides in the debate. The idea of dual citizenship emerged in Hungary with reference to a larger international trend of increasing toleration of dual citizenship, partly within the European Union and partly within the East-Central European region although for different motivations. However, while in the immigration states of Europe the idea of dual citizenship is not associated with nationalist policies, in Hungary, as in many other states of the region, the demand for dual citizenship has mostly migrated to the nationalist right. In the Hungarian referendum debate, the battle over dual citizenship has been cast as a debate between the nationalist right as supporters, on the one hand, and the Europe-orientated liberals, as opponents, on the other. However, this representation of the debate is, to some extent, self-made and arbitrary. In fact, in their support of dual citizenship the nationalists have mainly been drawing on the arguments of European liberals. At the same time, liberals relied on counter-arguments they claimed to have extrapolated from relevant European norms and practices, but these practices are much too diverse to form the basis of a coherent interpretation. Unsurprisingly, in the end, both sides failed to present a fully convincing, coherent interpretation of those international norms and practices that would support their respective positions. In the final analysis it is quite possible that the conflicting stances of the two sides in the debate may stem from

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<sup>41</sup> For example, the biggest Hungarian party of the large Hungarian minority of Romania, which has substantial representation in the Romanian parliament and government, has traditionally been, at best, lukewarm about dual citizenship. However, the most vocal advocates of trans-border Hungarian citizenship also come from Romania and they also rely on a substantial constituency. Minorities themselves do not speak with a single voice because the attitudes of the different groups of which they are composed are derivative of the long-term view each of these groups takes on the possibilities of negotiating a better status for themselves in their host states. Even if the idea of dual citizenship enjoyed the support of the majority of trans-border Hungarians, this support would be based on a demagogic-populist misrepresentation of what is actually possible.

<sup>42</sup> T. Bauer, ‘Kettős kapituláció’ [Dual Capitulation], *Népszabadság*, 8 January 2004.

concerns that are only remotely connected to the problems of trans-border Hungarians, namely from conflicting opinions, and concerns about the long-term stability of Hungary's transitional democracy. After all, parliamentary practices have not been firmly established in Hungary in the past two decades. Yet, in the Hungarian context, the creation of trans-border non-resident dual citizenship would most likely amount to a mass enfranchisement of a new electorate that, similar to all episodes of mass enfranchisement in the past, would introduce new uncertainties into the system and could lead to an internal destabilisation of Hungarian democracy itself. In this respect, both sides share the same intuition, namely that, if instituted, trans-border citizenship would most likely have the effect of freezing the regular rotation of parliamentary forces for some time to come in favour of the nationalist right: a prospect that is as welcome on one side as it is feared on the other.

## 5 Conclusions

Over the past number of years Hungary has become an immigration country for large numbers of ethnic Hungarians and, increasingly, for others coming from more distant regions. There are three major channels for immigrants to become citizens: (1) naturalisation, (2) prior citizens, mainly expatriates re-obtaining Hungarian citizenship by declaration or re-naturalisation, (3) expatriates or their descendants living abroad who can prove Hungarian citizenship through a verification procedure of existing citizenship (Certificate of Nationality). This restoration of legal ties with Hungary was made possible by political changes and new rules on rehabilitation and compensation for damages or harm committed against nationals by the socialist regime. Between 1998 and 2008, the number of naturalised and re-naturalised persons was below the number of applicants for a citizenship card, which serves to certify the holder's Hungarian citizenship. The number of naturalisations over recent years proves that preferential cases vastly outweigh non-preferential ones, which represented between three and six per cent of all cases. The available statistical data indicate that, beyond ethnic immigration from the Carpathian basin, family reunification and repatriation of prior nationals have added the largest numbers of new nationals.

In Hungary, the term 'nation' is interpreted and used in law as a concept referring to membership in the cultural, ethnic and linguistic community. But the substance of the term remains indefinable by law. This reveals contradictions between existing laws and the Constitution. On the one hand, art. 6 of the Constitution refers to the kin-state's responsibility for kin-minorities living across the borders. However, the definition of membership in the minority or ethnic community is vague, and various preferential provisions legally discriminate against certain categories of people despite the fact that the state is party to dozens of international treaties aimed at avoiding such discrimination. Furthermore, minorities living in Hungary are distinct participants in the state, in possession of subjective and collective constitutional rights, although, in their case as well, membership of a specific ethnic or national entity cannot be defined. Due to this problem neither statistics on membership of minorities living in Hungary, nor hard data on immigrants entering Hungary and enjoying legal preferences in the country are available. According to Rainer Bauböck, '[h]istoric traditions and the distinction between ethnic and civic nationhood are increasingly irrelevant for explaining legislative changes'.<sup>43</sup> Despite a standard level of immigration, in the case of Hungary Bauböck's suggestion is less evident than among the old EU Member States

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<sup>43</sup> See 'Western European Countries Tend to Follow a Liberalizing Trend towards Citizenship Policies. Interview with Rainer Bauböck'. [www.migrationonline.cz](http://www.migrationonline.cz).

(Tóth and Sik 2003). The recently failed referendum of 5 December 2004 on *ex lege* citizenship being granted to ethnic Hungarian minorities living in adjacent states is a case in point as it would have used ethnic preferences for granting non-resident citizenship to trans-border Hungarians. The role of citizenship law in the integration process of migrants has not been discussed publicly, and the need to harmonise Hungarian citizenship with that of other Member States of the European Union has not been put on the agenda.

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