

**EXTERNAL CITIZENSHIP FOR TRANS-BORDER  
MINORITIES: CASE OF HUNGARY AND SLOVAKIA**

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## Abstract

The thesis analyzes the recent citizenship controversy that took place between Hungary and Slovakia, as a suitable example pointing at theoretical and practical problems related to the adoption of legal rules offering a preferential access to citizenship to minorities living across the border. After summarizing the main trends in the dual and external citizenship policies and the academic debates that accompany them, author focuses on the political and legal reaction of Slovakia on the Hungarian policy of non-resident citizenship. Although strongly fuelled by the prospect of the upcoming elections, the reaction shows the large interdependence of nationality laws, when combination of certain citizenship rules may create a group of de facto stateless people. To prevent the similar situations to occur in the future and to improve the protection of minorities, author argues in favor of (a) the habitual residence as an obstacle to the citizenship deprivation, if the citizenship is lost by the voluntary acquisition of a foreign citizenship, (b) the standardized procedure of a consultation with the affected countries, if the citizenship rules with extraterritorial effects are about to be adopted by the EU country.

**Key words:** dual citizenship, non-resident citizenship, external citizenship, facilitated naturalization, acquisition and loss of citizenship, ban on dual citizenship, trans-border minorities

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## 1. Introduction

On the 26th May of 2010, a newly elected Hungarian parliament has amended the citizenship law by dismissing the residency requirement for naturalization. The non-residents who prove their Hungarian ancestry and speak the language are now eligible to receive a Hungarian passport. A day after, Slovak parliament adopted a remedy law, by which Slovakia stops to tolerate dual citizenship. The individuals granted with a citizenship of another country, with the exceptions of the acquisition by birth or marriage, might be deprived of the Slovak citizenship. A lot of international tension occurred, when Slovak PM Robert Fico called the Hungarian amendment a security threat and Slovak ambassador in Budapest was withdrawn for consultations.

In the situation when there is a visible trend towards the acceptance of citizenship and many argue for its normative desirability, the fact that dual citizenship can still cause a disturbance in international relations might seem puzzling. Therefore this exchange raised a big debate among citizenship experts, which has been mostly focusing on the normative aspects of dual citizenship, and specifically the problematic implications it may have if granted to the minorities within neighboring kin states.

Leaving the interesting normative questions aside, it is obvious that politics played a decisive role in shaping of the policies. The incentives that may lay behind offering citizenship for non-resident Hungarians and the consequences for the domestic politics of Hungary have already been very well documented. In this thesis, I would like to have a look on the Slovak retaliation. I will provide a discourse analysis of the debates that accompanied the policy-making of the 2010 law as well as the failed proposals from 2011. The material I can consult counts the actual bills, the parliamentary debates on them and official policy statements. Second, I will consult the information and commentaries provided by the

influential media. The analysis will be conducted for the two short two-three week periods in May 2010 and February 2011, when the issue of dual citizenship dominated the public sphere. The initial decision of Fico government to make a harsh retaliation move can be easily interpreted. The Hungarian initiative came one month before general elections in Slovakia, becoming an easy target for Slovak nationalist politicians. Still, there are interesting questions remaining about the role of citizenship in the Slovak politics.

More importantly, the situation the countries got into is a part of a broader problem. It shows us that in the countries with the minorities living across the border, granting citizenship can result in the potentially dangerous consequences not only for the international relations, but also for the minorities involved. Let us imagine the Hungarian living in Slovakia, who is granted Hungarian citizenship upon his request, and who carries out his legal duty to notify the authorities. If the Slovak officials proceeded equally legally, this individual becomes a tourist in the country where he spent his life. He loses the social and political rights attached the Slovak citizenship. At the same time, he does not have the same rights in Hungary, as they are very often conditioned by residence.

In fact, the discussed case exposes a loophole in international citizenship arrangements. Even though both countries made sure their citizenship laws are in line with the international conventions they have ratified, the citizens of Slovakia are put in the strange position. This leads me to think there is a necessity to further regulate the available modes of acquisition and loss of citizenship at the international level, so that similar situations can be avoided. A normative minimum should be set up in such a way that would acknowledge the large interdependence of nationality laws, and would protect minorities better. Therefore, the discussion on feasible solutions follows after the analysis of Slovak politics.

## 2. Dual and external citizenship: trends and debates

The notion of citizenship dates as far back to the history as to the antiquity. Aristotle held that all associations of men have the aim of achieving some form of good. The city, *polis*, was the most important of all associations in the Greek world, because it comprised the others and the whole is always bigger than its parts. As the man is *zoon politicon*, the only to achieve the highest good is to live as a citizen in the *polis*.

From this tradition, the republican conception of citizenship has evolved, which stresses the political nature of a man. Citizenship is thus not a mere legal status, but is (or should be) an active process of participation in the public sphere. Civic virtue and a commitment to civic duty is what make for a republican ideal of a good citizen. As opposed to republican tradition, the individualist or liberal conception stresses the rights attached to the citizenship status instead of the duties. Citizenship, in this understanding, is a passive experience of entitlements necessary to live in dignity. It can be sensed that the liberal individualist conception of citizenship with its stress on the entitlements is much more accurate description of what citizenship means nowadays.

With a Westphalian system of sovereign states and later the nationalist revolution, the citizenship status has been continuously ascribed to more and more people. The changes in the content of citizenship were famously described by T.H.Marshall who assigned the development of civic, political and social rights to 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> century respectively. In the 20<sup>th</sup> century, cultural rights have become to be understood as attached to citizenship as well. Even as the scope of the rights attached to citizenship and the number of people entitled to these rights have been rising, it was unthinkable for a long time to have two or more citizenships.

## **2.1 Dual citizenship on the rise: From rejection to benevolence**

Up to the first half of 20<sup>th</sup> century, citizenship was widely considered to be unitary concept. Political loyalty to a state and citizenship were seen as inseparable unity,<sup>1</sup> and therefore citizenship of another state was seen as infringement of such loyalty, a security threat. According to 1930 Hague Convention prescribed that “Every person should have one nationality and one nationality only.”<sup>2</sup> The spirit of such an understanding can be described by the richly quoted remark of an US Ambassador to Germany George Bancroft, who said the states should "as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it".<sup>3</sup>

Above all, this notion was a consequence of the ‘warfare state’,<sup>4</sup> which relied on the conscription and mandatory military service as the means to acquire the manpower, one of the two basic sources (another being tax collection) necessary to successfully engage in wars and to survive in the world characterized by international relations system of mutually hostile nation states. The centralized government administrations, the invention of Napoleon,<sup>5</sup> were designed to be able to swiftly deploy the military forces in the warzones. For obvious reason, they adopted the policies formally prohibiting multiple allegiances of individuals.

After the 2<sup>nd</sup> World War, notably from the 1960s, several factors contributed to the blurring of individual-state relationship. The spread of nuclear weapons in the bipolar Cold War era and the technological advance in the military in general rendered the need for

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<sup>1</sup> Thomas Faist, “The Shifting Boundaries of the Political,” in *Dual Citizenship in Global Perspective*, ed. Thomas Faist and Peter Kivisto, 1.

<sup>2</sup> <http://www.scribd.com/doc/22249788/HAGUE-Convention-1930-Nationality-Laws>

<sup>3</sup> Bancroft, George 1849. Letter to Lord Palmerson, Jan. 26, 1849, reprinted in Sen. Ex. Docs. 38, 36th Congress, 1st Session.160 (1860).

<sup>4</sup> Triadafilopoulos, Triadafilos, “Dual Citizenship and Security Norms in Historical Perspective,” in *Dual Citizenship in Global Perspective*, ed. Thomas Faist and Peter Kivisto, 27.

<sup>5</sup> *Ibid.*, 29.

excessive manpower obsolete. The focus of the state security policies shifted to the well-trained professional armed forces.<sup>6</sup> Warfare state has gradually been exchanged by welfare state, as the demands for living standards and the scope of public services rose in the Western world. The international recognition of universal human rights proliferated (especially the cultural rights).<sup>7</sup> Manifestations of globalization: international trade, revolution in communications and travel, with all the implications for the migrating populations, also contributed to the new understanding of citizenship.

From the 1990s onwards, a toleration of dual citizenship has continually become a standard, although it is still not an open toleration. Citizenship is far from being promoted or becoming the universal value or right. Some states preserve restrictive policy for various reasons. According to the most important current document regulating nationality, European Convention of Nationality (ECN henceforth) from 1994, “each state shall determine under its own law who are its nationals.”<sup>8</sup> The fact that the document is neutral towards the dual or multiple nationalities is emblematic of the current situation. The ‘don’t ask, don’t tell’ practice prevails.

The spread of dual citizenship toleration has been very rapid as currently more than a half of the countries in the world tolerate some form of dual citizenship.<sup>9</sup> Besides the traditional immigration countries (USA, Great Britain, France, Germany), most of the emigration countries of continental Europe do so nowadays. Many scholars explain the growing toleration of dual nationality as one of the signs of broader context: the liberal convergence of citizenship acquisition at birth and naturalization procedures in Western

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<sup>6</sup> Ibid., 28.

<sup>7</sup> Szabolcs Pogonyi, “Dual Citizenship and Sovereignty,” *Nationalities Papers* 39, no. 5 (2011): 689–690.

<sup>8</sup> European Convention on Nationality, At: <http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm>

<sup>9</sup> Faist, “The Shifting Boundaries of the Political,” 1.

European and North American countries. Vink and de Groot identify six liberalizing trends in their study of citizenship acquisition in Western Europe, and list the rising tolerance of multiple nationalities as one of them.<sup>10</sup>

Some authors attribute the trends to the lower importance of nation states and citizenship in the globalized world, or even the post-Westphalian system of the world order. There is some cleavage between citizenship studies scholars who still understand citizenship as a path-dependent process, historically rooted in the ethnic and civic conceptions of nationality in a given state,<sup>11</sup> and scholars who attribute the liberalizing trends to profound changes citizenship is going through in the world characterized by globalization and international human rights norms.

Soysal is the most famous proponent of post-national system, and she makes the argument about ‘declining significance of national citizenship’ as soon as in 1994. She considered the changes in the citizenship legislation - introduction of rights, previously restricted only to citizens, to legal residents – that had taken place as a reaction to immigration, to be not just the matter of expanding the basis of the nation-state based citizenship from ethnic group to territory, but a completely new quality of relations between individual, state and the world order.<sup>12</sup> Besides the emphasis on the increasing role of supranational institutions and regionalism, she considers the spread of universal human rights to be the breaking point of deriving individual rights not from the particularistic criteria of citizenship, but from the universal criteria of ‘personhood’. Therefore, the increasing

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<sup>10</sup> Maarten P. Vink and Gerard-René de Groot, “Citizenship Attribution in Western Europe: International Framework and Domestic Trends,” *Journal of Ethnic and Migration Studies* 36, no. 5 (2010): 713–734.

<sup>11</sup> See classic work of Rogers Brubaker, “Immigration, Citizenship, and the Nation-State in France and Germany: A Comparative Historical Analysis,” *International Sociology* 5 (1990): 379–407.

<sup>12</sup> Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (University of Chicago Press, 1994), 139.

tolerance of dual citizenship is seen here not as a mere devaluing of national allegiance, but as a new post-national form of citizenship.

Strong proponent of dual citizenship Peter Spiro, describing the evolution of citizenship in the American context in his book *Beyond Citizenship*, observes the “irreversibility of citizenship’s decline”.<sup>13</sup> He states that “dual nationality has become a fact of globalization”.<sup>14</sup> The trend towards its acceptance is not only irreversible but normatively desirable, as it enables the free association of individuals and their right to exercise the full identity.<sup>15</sup> As the objective reasons for prohibiting dual citizenship disappeared (conscription and military service), a liberal state has no business to interfere with the expressions of the individual freedom. Spiro goes as far as to say that dual citizenship should become a human right.<sup>16</sup>

Christian Joppke sees the dual citizenship as part of broader phenomenon of “inevitable lightening of citizenship”.<sup>17</sup> The shift from the ethnic to territorial citizenship is indeed driven by the pragmatic need of states to integrate large groups of immigrants.<sup>18</sup> Besides continuing immigration, the toleration of dual citizenship is highly likely to be increasing for the two prosaic reasons. First one is a gender equality, which results in the dual citizenship in the case of mixed couples. Marriage is a common exception that allows the dual nationality even in the countries that do not tolerate dual citizenship. Secondly, the coexistence of *ius soli* and *ius sanguinis* principles in the national citizenship regimes

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<sup>13</sup> Peter J. Spiro, “Beyond Citizenship: American Identity After Globalization,” *SSRN eLibrary*, 160, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1092187](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1092187).

<sup>14</sup> Peter Spiro “Dual Nationality: Unobjectionable and Unstoppable | Center for Immigration Studies,” *Center for Immigration Studies*, <http://cis.org/node/2939>.

<sup>15</sup> Peter Spiro *ibid.*

<sup>16</sup> Peter Spiro, “Dual Citizenship as Human Right,” *SSRN eLibrary* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1489005](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1489005).

<sup>17</sup> Christian Joppke, “The Inevitable Lightening of Citizenship,” *European Journal of Sociology / Archives Européennes De Sociologie* 51, no. 01 (2010): 9–32.

<sup>18</sup> Christian Joppke, *Citizenship and Immigration* (Polity, 2010), 48.

inevitably leads to the proliferation of dual citizenship.<sup>19</sup> Countries may decide to take some defensive measures, but the actual number of multiple nationals can only rise in the future.

While basically all the experts observe the fact of growing toleration of dual citizenship and admit that this fact is hardly reversible, some warn that this in itself by no means renders the notion empirically and normatively unproblematic. By the words of Schuck, dual citizenship is only “becoming more common and more controversial.”<sup>20</sup>

## **2.2 External citizenship in Europe**

Basically, two types of state policies that contribute to the proliferation of dual citizenship may be distinguished: ordinary and facilitated naturalization. The former type originated from the need to integrate legal residents, who lived and worked in the country, sometimes for generations, without political and social rights linked to citizenship. The reasoning behind these policies relied on the social, political and also cultural incorporation of individuals into the society which is difficult to achieve without formal citizenship.<sup>21</sup> To assure this, the large array of instruments has been used, from strengthening the *ius soli* principle to liberalization of the naturalization procedures. Obviously, this trend is debated predominantly with relation to the immigration (host) countries, which need to integrate the large groups of migrants.

Another type of state policy that leads to multiple nationalities is the facilitated naturalization. It is designed to provide preferential access to citizenship to ethnic and/or linguistic kins, former citizens (reacquisition), their descendants or to the individuals with

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<sup>19</sup> Ibid., 49.

<sup>20</sup> P. Shuck: Plural citizenship. In: Randall Hansen and Patrick Weil, *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe: The Reinvention of Citizenship* (Berghahn Books, 2002), 69.

<sup>21</sup> Thomas Faist, Jürgen Gerdes, and Beate Rieple, “Dual Citizenship as a Path-Dependent Process1,” *International Migration Review* 38, no. 3 (September 1, 2004): 5.

cultural affinity (cultural affinity-based acquisition). The facilitated naturalization does not have to be conditioned by residence. If it is not, the terms ‘external citizenship’ or ‘non-resident’ citizenship may be used. External citizenship is defined as “A set of rights and duties nationals have vis-à-vis their country of nationality when residing outside its borders.”<sup>22</sup>

While external citizenship is discussed predominantly with relation to the Eastern European states, it is in fact the countries in the Western Europe that had originally crafted policies providing preferential access to citizenship. In the book overviewing the citizenship policies of the ‘old Europe’, edited by Bauböck, EU-15 could be divided into three groups of countries based on what type of facilitated naturalization they provide.<sup>23</sup> Austria, Finland, Netherlands, Sweden and UK do offer the reacquisition of citizenship to former citizens only. For Belgium, Denmark, France, Italy and Luxembourg, the ethno-cultural affinity is sufficient, but the facilitated naturalization is conditioned by residence. Germany, Greece, Ireland, Portugal and Spain went the furthest in their acquisition policies.<sup>24</sup> Here, the preferential access to citizenship to former citizens, ethno-cultural kins or even persons with cultural affinity is not conditioned by residence, and thus qualifies as a policy of external citizenship. It can be concluded that external citizenship is not rare in the countries of the Western Europe.

Offering external citizenship has been a quite common practice in the Central and Eastern Europe (CEE henceforth) countries. Bulgaria, Macedonia, Romania, Croatia, Serbia, Russia, Lithuania, with the newest addition of Hungary, offered non-resident citizenship for

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<sup>22</sup> The EUDO Glossary on Citizenship and Nationality. At:

<http://eudo-citizenship.eu/databases/citizenship-glossary/89#Culty>.

<sup>23</sup> Rainer Bauböck and Eva Ersboll, *Acquisition and Loss of Nationality: Policies and Trends in 15 European States* (Amsterdam University Press, 2006), 27.

<sup>24</sup> Denmark and France are added to this list by other researchers. See: Maria M KOVACS, Zsolt KORTVELYESI, and Szabolcs POGONYI, “The Politics of External Kin-State Citizenship in East Central Europe,” Technical Report, October 2010, 3, <http://cadmus.eui.eu/handle/1814/19576>.

the former nationals or the ethno-cultural kins.<sup>25</sup> Moreover, Latvia, Moldova, Poland, Slovakia and Slovenia had also adopted cultural affinity-based policies for the ethnic kins, but with residency requirements.

Apart from full external citizenship, the quasi-citizenship regulations have been adopted in Bulgaria, Hungary, Lithuania, Poland, Romania, Russia, Slovakia, Slovenia and Serbia.<sup>26</sup> To explain, these so-called ‘benefit laws’ provide the ethnic kins residing abroad with financial support for maintaining culture and language, or preferential access to labor, welfare or education. Facilitated naturalization procedure is commonly a part of the package. These policies can indeed “serve as a stepping stone towards full multiple nationalities for kin minorities”.<sup>27</sup>

The policies of preferential access to citizenship are largely proliferated in the ‘new Europe’, and their beneficiaries are often not required to reside in their kin state. Many scholars draw conclusions upon the policies and see them as part of “more general revival of ethno-national policies on the part of post-communist nation states in East-Central Europe.”<sup>28</sup> Liebich thinks that this is a result of the particular historical conditions of CEE, e.g. the very recent and fragile statehood, weak independence tradition, turbulent border changes and history of emigration. Therefore, he says, the historically rooted ethnic conception of

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<sup>25</sup> Ibid., 1.

<sup>26</sup> Ibid., 2.

<sup>27</sup> Rainer BAUBOCK, “Stakeholder Citizenship and Transnational Political Participation. A Normative Evaluation of External Voting,” Article, 2007, 2439, <http://cadmus.eui.eu/handle/1814/7313>.

<sup>28</sup> C. Iordachi, “Dual Citizenship and Policies Toward Kin-Minorities in East-Central Europe: A Comparison Between Hungary, Romania, and the Republic of Moldova,” *The Hungarian Status Law: Nation Building And/or Minority Protection. Sapparo, Japan: Slavic Research Centre* (2004): 239.

citizenship has triumphed in CEE, as opposed to the civic conception of the West.<sup>29</sup> There is an interesting debate going on over how much truth is there in this distinction.<sup>30</sup>

Some authors correctly pointed out that criticizing the nationalist grounds of preferential policies for kin-minorities in the CEE is not appropriate without making a reference to the Western countries, which craft exactly the same policies towards their diasporas with the same strategic intentions. This fact is very well documented by C. Joppke.<sup>31</sup> M. Kovács rightly observed the interdependency between the two alleged groups of states: “the toleration by the international community of the introduction and practice of non-resident external citizenship in various European states” encourages the kin-state elites to adopt such a policy even if they hesitated before.

On the example of the benefit law of Hungary, the Status law, Bauböck shows that the external citizenship policies of both the Western and Eastern countries have exactly the same characteristics: (1) the identification of beneficiaries is based on the ethnic principle, (2) cultural support is provided, in addition to political and legal support, (3) the measures have ex-territorial effects and (4) there is often an absence of prior negotiations with the affected states.<sup>32</sup> External citizenship policies of Eastern European countries are in these respects very similar to those of their Western ‘counterparts’.

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<sup>29</sup> A. Liebich, “Altneuländer or the Vicissitudes of Citizenship in the New EU States,” in *Workshop on Citizenship Policies in the New European Member States and Turkey*. Vienna, Austria, vol. 30, 2005.

<sup>30</sup> edited by Rainer Bauböck and André Liebich, *Is There (still) an East-West Divide in the Conception of Citizenship in Europe?*, EUI-RSCAS Working Paper (European University Institute (EUI), Robert Schuman Centre of Advanced Studies (RSCAS), 2010), <http://ideas.repec.org/p/erp/euirsc/p0237.html>.

<sup>31</sup> See Christian Joppke, *Selecting by Origin: Ethnic Migration in the Liberal State*, First Edition-Signed. (Harvard University Press, 2005).

<sup>32</sup> Rainer BAUBOCK, “The Trade-Off Between Transnational Citizenship and Political Autonomy,” Contribution to book, 2007, 72, <http://cadmus.eui.eu/handle/1814/10970>.

### **2.3 External citizenship for trans-border minorities**

There are two types of external citizenship policies in CEE. The first one is targeted at migrant diasporas that have left their countries throughout 20<sup>th</sup> century and live in the Western Europe or overseas. It is the second type of policy that often fuels interstate tensions in the CEE area. Aimed at the trans-border minorities in the neighboring countries, whose current residence had once been a part of the kin state, such policy towards kin minorities may be interpreted as a threat to territorial sovereignty. This context renders these policies much more explosive in CEE, where: “transnational citizenship is not perceived as a facilitator for migratory movements but as a challenge by an external kin-state to the jurisdiction of a neighboring state over a part of its citizen population and over the territory in which these minority citizens live.”<sup>33</sup>

Interestingly, in some cases the regulations targeting trans-border minorities have been so inclusive that the beneficiaries of facilitated naturalization even formed the majority group in the neighboring states (Bulgarians in Macedonia, Romanians in Moldova or Serbs in Bosnia).<sup>34</sup> Still, the concerns about a potential of the external citizenship for trans-border minorities to cause armed conflict in the CEE have not been confirmed.<sup>35</sup> Nevertheless, the recent history provides many examples of diplomatic wars created by quasi-citizenship or external citizenship policies.<sup>36</sup> Those have been the external citizenship for Croats in Bosnia, for Romanians in Moldova, and for Russians in South Ossetia; quasi-citizenship policies of

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<sup>33</sup> Ibid., 74.

<sup>34</sup> KOVACS, KORTVELYESI, and POGONYI, “The Politics of External Kin-State Citizenship in East Central Europe,” 4.

<sup>35</sup> See for example de Nevers in: Michael E. Brown and Richard N. Rosecrance, *The Costs of Conflict: Prevention and Cure in the Global Arena* (Rowman & Littlefield, 1999).

<sup>36</sup> KOVACS, KORTVELYESI, and POGONYI, “The Politics of External Kin-State Citizenship in East Central Europe,” 10–11.

Hungary (Status law) and Poland (Charter of the Poles) also disconcerted the neighboring countries.

The main purpose or rather a justification behind these policies is the protection of kin minorities. But obviously, external citizenship may serve the less noble objectives as well. M. Waterbury does a very good job as embraces a pragmatic approach and explains why the post-communist elites (as the process is 'elite-driven' for the most part) adopt such policies, stressing its strategic and political purposes.<sup>37</sup> She observes that the trans-border minorities constitute the potential source of investments or labor, or may be at least presented so. Next, the cultural-linguistic function of kin minorities is important for maintaining the cultural identity of the nation, resisting assimilationist pressures and keeping "the influence of the homeland language and culture alive in territories that were once under the control of the kin-state."<sup>38</sup> Last but not least, she mentions the kin-state minority may be utilized as a political resource for expanding legitimacy of kin-state elites, especially in the times of crises.

Regarding the normative dilemmas connected to external citizenship for trans-border minorities, I agree with the opinion that we should not make any differences between external citizenship for the trans-border minorities and the migrant diasporas. If the option of retaining citizenship is considered to be positive for the emigrants as it allows them to actuate identities and keep the ties with the country of their ancestors, there is no reason not to think in the same way in the case of the trans-border minorities. A sensitive context cannot be a justification for a rejection of a policy that is good per se. Bauböck thinks that "none of the general arguments for or against multiple and transnational citizenship seems to supply us

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<sup>37</sup> M.A. Waterbury, "From Irredentism to Diaspora Politics: States and Transborder Ethnic Groups in Eastern Europe," *Global Migration and Transnational Politics* (2009): 6–10.

<sup>38</sup> Liebich, *Is There (still) an East-West Divide in the Conception of Citizenship in Europe?*, 7.

with a clear normative criterion that justifies treating migrants and trans-border minorities differently.”<sup>39</sup>

In practice, though, the differences come into surface. The citizenship of emigrants is retained while trans-border minorities’ citizenship is restored. Also, in the migration context, number of holders of dual citizenship rises gradually, in contrast to external citizenship for the trans-border minorities, where it may rise substantially in a short period of time after the granting of the access to the citizenship.

In the interstate relations of CEE, this may be perceived as a threat to territorial sovereignty and a breach of international Peace Treaties that constituted current borders. Even though there is a wide consensus on the fact that dual citizenship has not a potential to cause armed conflicts anymore, protection of kin minorities in the neighboring state may be presented as an excuse of military intervention by the kin state, as it has recently happened in the conflict between Russia and South Ossetia.<sup>40</sup>

Next, the problems may rise from the proximity of trans-border population granted citizenship to the kin state citizenry. While emigrant citizens or re-naturalized emigrants are distant and therefore the scope of rights they might and want to experience is limited, the trans-border minorities have better access and more incentives to be interested in the advantages the citizenship may offer. The co-ethnics are often offered certain material benefits, which is easily objectionable as they do not pay taxes in the kin state. It may lead to the tensions between the internal citizens and the trans-border citizens.<sup>41</sup>

Not only social rights, but also political rights are in the different perspective here. External citizens are usually citizens with everything what it takes. External voting is

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<sup>39</sup> BAUBOCK, “The Trade-Off Between Transnational Citizenship and Political Autonomy,” 74.

<sup>40</sup> Pogonyi, “Dual Citizenship and Sovereignty,” 695–696.

<sup>41</sup> *Ibid.*, 698.

probably the most discussed issue regarding dual citizenship in general.<sup>42</sup> Is it not creating inequality between dual nationals and single nationals with regard to the rule of ‘one person, one vote’? Or as Pogonyi warns, “the consequence of voting rights offered for large kin-minorities may be that outsiders may determine the future of those, who, unlike external citizens, are subjected to the laws of the homeland.”<sup>43</sup> Again, this problem is more pronounced in the case of trans-border minorities as there is a larger danger of deterioration of relationships between the populations voting inside and outside. Another argument that could be applied to trans-border minorities as well is that external voting undermines the position of the kin minority within their host country, and trumps its autonomy efforts.<sup>44</sup>

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<sup>42</sup> For the most elaborate insight to the problem, see BAUBOCK, “Stakeholder Citizenship and Transnational Political Participation. A Normative Evaluation of External Voting.”

<sup>43</sup> Pogonyi, “Dual Citizenship and Sovereignty,” 697.

<sup>44</sup> BAUBOCK, “The Trade-Off Between Transnational Citizenship and Political Autonomy.”

### **3. External citizenship: Hungary and Slovakia**

In this chapter, I will first shortly have a look at the Hungarian diaspora politics and the major changes in Hungarian nationality law affecting the trans-border minorities in the neighboring countries (with a focus on Slovakia). In the second part, the reaction of Slovakia on the introduction of external citizenship by Hungary will be analyzed. Focusing on the policy making and the discussions that accompanied it, I hope to provide a Slovak perspective that I find to be missing in the analyses of 2010 developments.

Due to historical grievances between the two countries, Slovak-Hungarian relations have been potentially explosive since a fall of communism. Nationality law of Hungary, our main concern here, raised the debates and tensions three times since. Both the Hungarian Status Law from 2001 and a referendum on dual citizenship held in 2004 influenced Slovak politics, but the introduction of external citizenship in 2010 probably brought the most serious reaction. I will discuss these three stages of Hungarian diaspora politics on the following pages.

#### **3.1 Hungarian diaspora legislation: from certificate to passport**

The responsibility that Hungary takes over its expatriates has made its way into the 1989 Constitution. As early as in 1990, the first democratically elected Prime Minister of Hungary József Antall sparked controversy when he declared himself to be a spiritual Prime Minister of 15 million Hungarians. This is not to say all Hungarian governments have been keen to protect or engage its co-ethnics abroad. Political Right has definitely asserted this role in 2001, when the right-wing government crafted the Status Law ('Act on Hungarians Living in Neighboring Countries').

### 3.1.1 Status law (2001)

In the wording of the Status law, we can trace the legacy of Antall's words about the large Hungarian nation. One of its objectives is "to ensure that Hungarians living in neighboring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country".<sup>45</sup> The Status law is the typical benefit law, providing the beneficiaries assistance and benefits in education, social and health insurance, culture, travelling and employment. Practically, this meant the members of Hungarian minority in the neighboring states could have asked for a Hungarian certificate that entitled them for discounts on public transports, museums, cultural and educational events in Hungary. More importantly, the social, public health, employment benefits, and financial stipends for education were part of the package. The local organizations of foreign Hungarians were authorized to recommend who can get a certificate or a stipend. Last but not least, Hungarian certificates had a symbolic value. The first Hungarian certificates have been handed out in January 2002.

The Status law has been controversial especially in one respect: it was explicitly targeted at the Hungarians living in neighboring countries. To quote, "This act shall apply to persons declaring themselves to be of Hungarian nationality, who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine and who have lost their Hungarian citizenship for reasons other than voluntary renunciation."<sup>46</sup>

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<sup>45</sup> Act LXII on Hungarians Living in Neighboring Countries. At: <http://www.ciemen.org/mercator/butlletins/49-26.htm>, 15.5.2012.

<sup>46</sup> Andre Liebich, "Introduction: Altneulander or the Vicissitudes of Citizenship in the New EU States," in *Citizenship Policies in the New Europe: Expanded and Updated Edition*, ed. Rainer Bauböck, Bernhard Perching, and Wiebke Sievers, n.d., 5. Liebich, *Is There (still) an East-West Divide in the Conception of Citizenship in Europe?*, 5.

Needless to say, the negative reactions broke out in the neighboring states. With a 6.5 percent Hungarian minority, Romania felt its territorial sovereignty is threatened. It objected the extraterritorial impacts of Hungarian law, its discrimination based on ethnicity and incompliance with the valid international norms. The request to assess the compliance of the Status law with EU norms has been escalated to Council of Europe's body, the Venice Commission. The Commission accepted some of the Romanian objections. In its report, it responded that some provisions of the Status law discriminate basing on ethnicity and also the ambiguous use of the term nation may imply the non-acceptance of borders.<sup>47</sup> Moreover, the Commission did not like the way how the law authorizes semi-official organizations of another country to implement its regulations, which might qualify as an extraterritorial impact.<sup>48</sup> After some more pressure from OSCE High Commissioner for National Minorities, the bilateral 'Orbán-Nastasse' agreement has been signed, which modified the alleged discriminatory and extraterritorial provisions of the Status law in the spirit of Venice Commission's objections.<sup>49</sup> Finally, the law has been amended by the new left-wing government in summer 2003, in a way that redirected most of the benefits (social, health, education) from individuals to institutions, so that the law does not discriminate on the ethnic basis.

Slovakia was not willing to accept the impacts of the Status law on its territory as well. In this spirit, Christian democrats (KDH) drafted a law on 'Securing a sovereignty of Slovak Republic'<sup>50</sup> in the beginning of 2002, which did not pass as governmental MKP

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<sup>47</sup> Pogonyi, Szabolcs, "National Reunification Beyond Borders. Diaspora Politics in Hungary Since 2010.," *European Yearbook of Minority Issues 2011.*, European Centre for Minority Issues, Bolzano, Italy. (Forthcoming 2012): 5.

<sup>48</sup> Ibid., 6.

<sup>49</sup> Ibid.

<sup>50</sup> "KDH Vydesilo Maďarov," [KDH scared Hungarians] *Www.sme.sk*, <http://www.sme.sk/c/233616/kdh-vydesilo-madarov.html>.

(Magyar Koalíció Pártja) did not support it. In February though, the parliament has made a declaration that “rejects the intervention into the jurisdiction of a sovereign state’. Especially, the legislators were complaining about the financial support and stated that all the benefits should be valid only on the territory of Hungary, should not be of economic character and discriminate ethnically. The document also expressed the reservations towards Hungarian certificate as a document too much resembling identity card. Some ambiguous formulations of the Status law have been criticized, especially the ones presenting Hungarian minority as Hungarian citizens or speaking about ‘Hungarian nation as a whole’, ‘Hungarian national community’ and so on.

Interestingly, Bratislava remained to oppose the Status law even after its 2003 amendment, e.g. after the consent of European Commission and Romania, when most of the extraterritorial elements have been removed from the law. The educational stipends continued to be a problem for Slovakia, as they were allegedly discriminating Slovaks studying in the Hungarian educational institutions.<sup>51</sup> The retaliation move was proposed, planning to tax the benefits and contributions for Slovak citizens coming from another state by 90 percent.<sup>52</sup> However, the bilateral agreement from December 2003 has resolved the issue, in the similar manner as with Romania. The two sides agreed the educational financing can be granted only to institutions and the decisions about the contributions are taken by the two pre-determined organizations, under the yearly scrutiny of a bilateral Slovak-Hungarian committee.<sup>53</sup>

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<sup>51</sup> The remarks of Slovak Republic to the Hungarian Status law amendment. At:

[http://www.kbdesign.sk/cla/projects/comparative\\_statuslaw/cla\\_analysis/status\\_memorandum\\_2002\\_dec\\_3.htm](http://www.kbdesign.sk/cla/projects/comparative_statuslaw/cla_analysis/status_memorandum_2002_dec_3.htm),

<sup>52</sup> “Na Krajský Zákon Je Už Návrh Protizákona,” [Anti-law is proposed to Patriot Act] *Www.sme.sk*, <http://www.sme.sk/c/1018759/na-krajansky-zakon-je-uz-navrh-protizakona.html>.

<sup>53</sup> Kusa, Dagmar, “EUDO Citizenship | Country Profiles,” *Slovakia*, 16, <http://eudo-citizenship.eu/country-profiles/?country=Slovakia>.

Obviously, the Status law itself was not a key part of a controversy in the Slovak public debate. This can be proved by a fact that Slovak government continued to refuse the Status law even after its amendment, when only a little more than its symbolic function remained in force. When the amending proposal has been drafted by the left-wing Hungarian government in November 2002, considering the notes from the international institutions, Bratislava still had 15 reservations.<sup>54</sup> The alleged revisionism of Hungary has been much bigger problem for Slovak politicians.

### 3.1.2 External citizenship referendum (2004)

The amended Status law, cutting lot of benefits, dissatisfied the institutions of foreign Hungarians. With a leadership of The World Federation of Hungarians, the petition for a referendum was prepared with a goal to provide the holders of Hungarian certificate with a full-fledged external citizenship.<sup>55</sup> The initiative was also backed up by leading right-wing party Fidesz after some hesitation.

The plebiscite asked if the law should be passed “...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 a means of a ‘Hungarian identity card’ ... or in another way to be determined by the law which is to be passed?”<sup>56</sup>

The referendum ended up as invalid due to the low turnout, but with slightly more votes in favor. Of course, Slovak government watched the developments in Hungary closely

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<sup>54</sup> The remarks of Slovak Republic to the Hungarian Status law amendment.

<sup>55</sup> Kusa, Dagmar, “EUDO Citizenship | Country Profiles,” 17.

<sup>56</sup> Kovács, Mária M. and Tóth, Judit, “EUDO Citizenship | Country Profiles,” *Hungary*, 10, <http://eudo-citizenship.eu/country-profiles/?country=Hungary>.

and with caution, but did not react officially, waiting for the results of the plebiscite. Only the ethnically-based parties engaged into the disputes. Slovak National Party (SNS) interpreted the initiative as a step towards Hungarian autonomy in the south of Slovakia and subsequently independence, and charged MKP's Vice-Chairman Miklós Duray for treason, as he openly supported the idea of non-resident citizenship.<sup>57</sup> The then leader of MKP Béla Bugár expressed the dissatisfaction with the Status law and the referendum on external citizenship as well: "We are involuntarily involved in Hungarian political contestation that gives us one slap after another. We want to stay in our homeland and pay taxes here."<sup>58</sup>

### 3.1.3 External citizenship (2010)

Fidesz did not give up its plan to engage the co-ethnics abroad. After the huge victory in 2010 elections and getting the constitutional majority, it used the mandate to follow up on the non-resident citizenship. Informed by the criticism of the international institutions and the neighboring countries in 2001 and 2004, in 2010 the legislators made sure to avoid the problematic parts from before.

The amendment of Hungarian nationality law no. XLIV has been adopted on 26<sup>th</sup> of May 2010, with an overwhelming support. It has come into force on the January 2011. However, the applications for facilitated naturalization could have been filed as soon as on 20<sup>th</sup> August 2010, the St. Stephen's day. As for the precise changes, the law stipulates that an

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<sup>57</sup> "Slota Podal Na Duraya Trestné Oznámenie," [Slota filed criminal complaint on Duray] *Www.sme.sk*, <http://www.sme.sk/c/1852977/slot-podal-na-duraya-trestne-oznamenie.html>.

<sup>58</sup> "Maďari Hlasujú o Dvojitom Občianstve" [Hungarians vote on dual citizenship], *Hnonline.sk*, <http://hnonline.sk/c1-22211815-madari-hlasuju-o-dvojitom-obcianstve>.

applicant (a candidate for Hungarian citizenship) may be naturalized in the most preferential way, if he fulfills all of the three conditions:<sup>59</sup>

1. He has clear criminal record and constitutes no threat for national security,
2. His ancestor has been a Hungarian citizen and/or he has a probable Hungarian origin,
3. He has entire ability to prove the Hungarian language knowledge.

Thus, the compliance with a civic understanding of citizenship is formally observed. However, we can see the law is over-inclusive in its wording. There is no time frame that would restrict the tracing of Hungarian ancestry. Given the size of Austrian-Hungarian Empire, all the contemporary citizens of Slovakia or Croatia would formally be eligible for a Hungarian citizenship, if we disregard the other conditions. Therefore, there is a little doubt that ethnicity is the main criterion upon which the citizenship request can be approved. The focus on ethnicity is confirmed by another change the law brought about, which raised the administrative fee for non-preferential naturalization that is now seven times higher than preferential.<sup>60</sup> According to the newest figures from the beginning of 2012, more than 200 000 application procedures have been initiated, and around 150 000 applicants have already been granted citizenship.<sup>61</sup>

The end of 2011 has brought a change that will affect Hungarian non-resident citizens. According to the new electoral law, external citizens will be eligible to vote, but only for the party lists that will constitute 93 MPs from the Parliament of 199 members.<sup>62</sup> Interestingly, the new election rules do not exclude passive voting rights for non-residents as

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<sup>59</sup> Judit Tóth, “Accelerated Naturalisation in Hungary. The Amended Act on Hungarian Nationality” (presented at the Preferential Naturalization and Social Integration in Hungary, Budapest, Hungary, 2012).

<sup>60</sup> Ibid.

<sup>61</sup> Pogonyi, Szabolcs, “National Reunification Beyond Borders. Diaspora Politics in Hungary Since 2010.,” 9.

<sup>62</sup> Ibid., 20.

a possibility. It is now upon the Venice Commission to explore the compatibility of the amendment with the European legal norms.<sup>63</sup>

### **3.2 Slovakia: the reaction**

Slovakia adopted a retaliation law to the new rules of for citizenship acquisition in Hungary. It bans dual citizenship by introducing a new mode of loss of citizenship: acquisition of a foreign citizenship. The declarations accompanying the adoption of the remedy law have been unprecedented in their gravity, speaking about ‘security threat’ or Hungarian effort to ‘revise the borders’. International tension reached its peak when Slovak ambassador has been withdrawn from Budapest for consultations.

There are two obvious political explanations of why Slovakia’s reaction has been so strong in 2010 and perhaps the strongest of all above mentioned events. First of all, in 2001 and 2004, Slovakia did not have a nationalist-oriented government as in 2010. Still, Hungarian policy seems to upset whole political spectrum rather than its part. Second, the elections were knocking on the door in 2010. In this part, I will analyze these political factors.

#### **3.2.1 The preliminary reactions**

The war of words has started on 12<sup>th</sup> May 2010, with a visit of Fidesz’s designated Foreign Minister, János Martonyi, in Bratislava. He informed Slovak Foreign minister Miroslav Lajčák about the plans to introduce external citizenship already on the first session of the new Hungarian parliament. On this visit, Martonyi advocated the law by arguing that no voting rights will be attached to it, and the only change will be the abolition of residency requirement from the naturalization procedure. He also announced that MKP is a

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<sup>63</sup> Ibid., 23–24.

partner of Hungarian government in Slovakia. This way, Fidesz decidedly entered the electoral campaign in Slovakia.

The reaction was quick: Slovak ambassador Peter Weiss was withdrawn from Budapest for consultations on the same day. Péter Balász, who was still in service as a Foreign Affairs minister in Hungary, stated in the television interview that Slovakia released a 'strong signal' to Hungary by calling in its ambassador. He added that he does not see the reason why Fidesz opens the question before the elections in Slovakia, as it can only threaten the MKP's ambitions to get elected.<sup>64</sup>

Slovak Prime Minister Fico,<sup>65</sup> leader of Smer – Social democracy, organized a press conference on the other day.<sup>66</sup> He condemned the Hungarian decision not to consult the bill with Slovak side as disturbing the friendly relationships, and the way it was presented to Slovakia as arrogant. He said that if the serious consultations will not take place, Slovak Republic will consider the bill to be a 'security threat'. He added "the program of Fidesz from the end of the 1990s, which has never been given up, is the institutionalization of the 15-million Hungarians in the Carpathian basin". The elementary principles of acquiring citizenship are not fulfilled by the Hungarian proposal, he continued, as without residence there cannot be any effective links to the country. "If they say they want to strengthen the identification of Slovak Hungarians with Hungary, it means they want to weaken their Slovak identity. That is against our national interests", he concluded.

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<sup>64</sup> "Fico: Dvojité Občianstvo Je Bezpečnostným Rizikom" [Fico: Dual citizenship is a security threat], Aktualne.atlas.sk, <http://aktualne.atlas.sk/fico-dvojite-obciansstvo-je-bezpecnostnym-rizikom/slovensko/politika/>.

<sup>65</sup> Until June 2010, PM R. Fico, consisting of 3 parties, sorted by number of MPs: Direction (Smer), Slovak National Party (SNS), Movement for Democratic Slovakia (HZDS). Slovak Democratic and Christian Union (SDKU), Christian Democratic Party (KDH) and Party of Hungarian Coalition (SMK) were in the opposition.

<sup>66</sup> "Robert Fico k Avizovanému Prijatiu Zákona o Dvojitom Občianstve Maďarskej Republiky" [Robert Fico on the dual citizenship proposal of Hungarian republic], <http://www.strana-smer.sk/1413/robert-fico-k-avizovanemu-prijatiu-zakona-o-dvojitom-obciansstve-madarskej-republiky>.

In the following two weeks, the campaign for the Slovak general elections has been at its peak. The contestants were keen to put their reactions out. In the interview for Austrian daily Kurier, Fico said the policy is a “time-bomb” and “Orbán caters politics to Hungarians, instead of social-economic measures.”<sup>67</sup> Smer’s Culture Minister Marek Mad’arič compared the situation to Russia-South Ossetia war.<sup>68</sup> Chairman of a Parliamentary Foreign Committee Juraj Horváth (Smer) had the same opinion: “We know very well what happened when Russian Federation protected its citizens in Georgia and the whole world was upside-down. This is a policy Budapest pursues.”<sup>69</sup> Slovak National Party compared Hungarian policy with the practices of interwar Germany and its use of dual nationals of Austria or Czechoslovakia as a pretext to unleash the war in Europe.<sup>70</sup> Movement for Democratic Slovakia’s (HZDS) leader Mečiar claimed the introduction of dual citizenship by Hungary is just another strategic variant of how to achieve autonomy and revise the borders.<sup>71</sup>

Of the opposition parties, Christian Democrats (KDH) also took, somewhat surprisingly, a very strict stance. Their chairman Ján Figel’ stated that “Budapest made a one-sided and well-thought step against the spirit of Europe and friendly neighborly relations”, and that it reminds him of Hungarian revisionism.<sup>72</sup> He observed that the topic is identical with the one from six years ago and is a step back in interstate relations. KDH challenged the to-be Hungarian administration to discuss the issue on the bilateral level, otherwise they were

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<sup>67</sup> “Fico Pre Kurier: Dvojité Občianstvo Je Veľmi Nebezpečné Pre Európu,” [Fico for Kurier: Dual citizenship is very dangerous for Europe] *Www.sme.sk*, <http://www.sme.sk/c/5386208/fico-pre-kurier-dvojake-obcianstvo-je-velmi-nebezpecne-pre-europu.html>.

<sup>68</sup> “Mad’arič: Dvojité Občianstvo Je Ako Situácia Pred Druhou Svetovou”, [Madaric: dual citizenship is similar to situation before the 2<sup>nd</sup> World War], *Aktualne.atlas.sk*, <http://aktualne.atlas.sk/madaric-dvojite-obcianstvo-je-ako-situacia-pred-druhou-svetovou/slovensko/politika/>.

<sup>69</sup> “Dvojité Občianstvo Sleduje Ruský Model, Tvrdí Smer”, [Dual citizenship follows Russian model], <http://aktualne.atlas.sk/dvojite-obcianstvo-sleduje-rusky-model-tvrdi-smer/slovensko/politika/>.

<sup>70</sup> “Fico: Dvojité Občianstvo Je Bezpečnostným Rizikom” [Fico: Dual citizenship is a security threat]

<sup>71</sup> “Mečiar: Dvojité Občianstvo Je Taktikou Maďarov”, [Meciar: Dual citizenship is a strategy of Hungarians], *Aktualne.atlas.sk*, <http://aktualne.atlas.sk/meciar-dvojake-obcianstvo-je-taktikou-madarov/slovensko/politika/>.

<sup>72</sup> “Fico: Dvojité Občianstvo Je Bezpečnostným Rizikom” [Fico: Dual citizenship is a security threat]

about to support a legislative answer. Slovak Democratic and Christian Union (SDKÚ) took more moderate approach. Its chairman Mikuláš Dzurinda marked the Hungarian citizenship amendment as a provocation, but refused the rhetoric of Fico and his coalition partners. He objected the extraterritorial character of external citizenship and added that “in Slovakia only those laws can be valid that have been agreed by the Slovak National council”. Later Prime Minister Iveta Radičová (SDKÚ) added that “citizens should not be punished because of high political games.”

On a day preceding the adoption of Hungarian and Slovak amendment, 25th May of 2010, Slovak government adopted a memorandum<sup>73</sup> that expresses concern over the policy planned by Hungary. The declaration, accepted by all parliamentary parties except of MKP, warns that “(Hungarian parliament) makes an unilateral decision creating the institutional bonds between Hungary and the minority members on the territory of Slovakia, raising doubts about coherence of such behavior with international law, recommendations of international institutions and especially the basic principles and values of European Union.” Document lists several treaties the Hungarian amendment is about to violate, such as ECN or Bolzano recommendations of Organization for Security and Co-operation in Europe (OSCE).<sup>74</sup>

Declaration goes on with the statements that it is unacceptable for Hungarian parliament to adopt extraterritorial legal norms that concern Slovak citizens, without any previous consultation with the political representation of Slovakia. As the Treaty on Friendship and Cooperation between Hungary and Slovakia from 1995 stipulates, in the spirit of friendly relations, each of the countries should seek to pre-discuss the measures with some

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<sup>73</sup> National Council of the Slovak Republic: A text transcript of the debate. At: <http://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=345092>.

<sup>74</sup> The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note, At: <http://www.osce.org/hcnm/33633>

exterritorial impact. Next, the declaration warns that the law repeatedly calls into question the Trianon treaty and the post-war arrangement of Europe. It can be observed that the text is not preoccupied at all with all the normative or technical questions of citizenship. The Hungarian bill is seen solely through the lens of Hungarians expansionism and revisionism.

### **3.2.2 The amendment**

The amendment of Slovak nationality law no. 250/2010,<sup>75</sup> from the 26th May of 2010, has been adopted on the extraordinary parliamentary session with only one point of program. It means a substantial update of citizenship regime in Slovakia. Before this amendment, Slovak citizenship could have been lost only by request. Under the new circumstances, “person can be released from a state bond with Slovak republic, if it is proven, that he/she has requested and acquired a foreign citizenship”, with the exceptions of birth and marriage. The amendment basically introduces a new way of loss of Slovak citizenship besides the request: by a voluntary acquisition of citizenship of another state.

In case of acquiring new citizenship, immediate notification duty of an individual to the district office has been introduced into the law. Failure to announce a new citizenship may result in a fine of 3319 euro. The district officer is then obligated to notify police, tax office, customs office and institutions performing social and health insurance. By a day of acquiring new citizenship, all types of employment relations that require Slovak citizenship are cancelled, as well as a right to get secret information. If a person does not announce a new citizenship, he or she may lose a Slovak citizenship *ex lege* (by withdrawal). Regarding the

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<sup>75</sup> At: [www.zbierka.sk/sk/predpisy/250-2010-z-z.p-33630.pdf](http://www.zbierka.sk/sk/predpisy/250-2010-z-z.p-33630.pdf),

exceptions and the overall tone of the law, Slovak nationality law amendment copies the Czech provision.<sup>76</sup>

The law has been effective from 13th July, which is a commemoration day of the Slovak sovereignty declaration from 1993. Slovak legislators clearly imitated their Hungarian counterparts when they chose an important commemoration day as the effectiveness day. Expectably, in the explanatory note<sup>77</sup> accompanying the law, there is no mentioning of Hungary and there are only a few signs hinting this law is a retaliation move. Instead, dual citizenship is marked as wrong per se. “Dual citizenship is an undesirable phenomenon...In practice, it has very serious consequences for citizen’s rights and duties. In international law, it is usual that the question of dual citizenship is discussed bilaterally with an objective to eliminate its negative consequences, and more so, if it comes to massive granting of citizenship.” General condemnation of dual citizenship can be explained as an attempt to put out some justification on the harsh move. Later in the text, more justifications are made. There is a reference to the same provision of Czech Republic and an assurance about compliance with ECN.

On the parliamentary session, one attempt has been made to soften the ban of dual citizenship, presented by SDKÚ leader Mikuláš Dzurinda. In his amending proposal,<sup>78</sup> he suggested a provision that would deny the effects of the Hungarian amendment on the Slovak territory. In the reasoning, famous Nottebohm case<sup>79</sup> ruled by the International Court of

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<sup>76</sup> Czech government plans to lift the ban on dual citizenship in 2012. “Češi Budou Moci Mít Dvojitý Občanství. Když Získají Cizí, Neztratí České” [Czechs will be allowed to have dual citizenship] *iDNES.cz*, [http://zpravy.idnes.cz/cesi-budou-moci-ziskat-dvoji-obcanstvi-dyz-domaci.aspx?c=A120213\\_143330\\_domaci\\_jj](http://zpravy.idnes.cz/cesi-budou-moci-ziskat-dvoji-obcanstvi-dyz-domaci.aspx?c=A120213_143330_domaci_jj).

<sup>77</sup> National Council of the Slovak Republic: A text transcript of the debate. At: <http://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=345105>,

<sup>78</sup> National Council of the Slovak Republic: A text transcript of the debate. At: <http://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=345114>

<sup>79</sup> Citizenship case law: Nottebohm case. At:

Justice in 1955 has been quoted: “no state can demand the rules it set to be recognized by other states..., or only to the extent that is coherent with ... generally acknowledged principles concerning citizenship.”

Later in the discussion, Dzurinda warned that the governmental proposal is an acceptance of Hungarian bill’s validity on the territory of Slovakia and uselessly punishes Slovak citizens. New MKP’s leader Pál Csáky highlighted that 200 000 Slovaks already possess dual citizenship. He announced that some MKP’s members decided to request the Hungarian citizenship but they refuse to give up a Slovak one, which is an expression of their “dual civic and national binding”. After this declaration, members of the party demonstratively left the parliamentary session. After all, the governmental bill got through without any updates, with a supplementary support of KDH from the opposition.

### 3.2.3 Further development

With a government elected in June 2010,<sup>80</sup> the objective to abolish the dual citizenship ban made its way into Program Declaration of the Government: “(the government) is determined to change the law, by which the Slovak Republic reacts on the law of the Hungarian Republic on dual citizenship, in a way that will eliminate the negative consequences of this law on the citizens of the Slovak Republic.”<sup>81</sup>

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<http://eudo-citizenship.eu/citizenship-case-law/?search=1&name=nottebohm&year=&country>

<sup>80</sup> From June 2010 - PM I. Radicova - consisting of 4 parties. Sorted by number of MPs: Slovak Democratic and Christian Union (SDKU), Freedom and Solidarity (SaS), Christian Democratic Union (KDH) and Most–Híd. Direction (Smer) and Slovak National Party (SNS) are in the opposition.

<sup>81</sup> Program Declaration of Government, At: <http://www.vlada.gov.sk/4-2-vnutorny-poriadok-a-bezpecnost/>, 15.5.2012.

On 20th of July, the Prime Ministers of four Visegrad countries have met in Budapest, and Slovakia received the rotating presidency from Hungary. Radičová and Orbán agreed that the controversial questions of external citizenship (and Slovak Language Act) will be discussed by the mixed expert commissions. If this fails, Radičová announced, Slovak government plans to cancel the retaliation law, and has an alternate solution Orbán is aware of. Later, she judged the meeting positively, stated that Slovak-Hungarian tensions belong to the past and “the shouting over Danube” is over.<sup>82</sup>

But the commissions and relationships between the countries obviously did not work as well as advertised. In September, after Radičová’s Foreign Minister Mikuláš Dzurinda met with János Martonyi, “the renewal of commissions’ activities and their better supervision” was announced.<sup>83</sup> When Orbán visited Bratislava in December 2010, Radičová has not been so enthusiastic about the prospects of the intergovernmental cooperation. She stated the attitudes toward the dual citizenship are fundamentally different and “in politics, the search for success may lead to populist decisions”.<sup>84</sup>

The first attempt to amend the law by the government has been repeatedly postponed, to finally reach the floor of the National Council in February 2011. The proposal<sup>85</sup> stipulated that Slovak republic “does not recognize the effects of granting citizenship of another state to Slovak citizens, ...especially is it is in contradiction with a condition that citizenship is based on the stronger factual relationship between an individual and a state, which is constituted by the usual residence of an individual, center of his interests, his family

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<sup>82</sup> “Orbán Má Na Občianstvo Rozumné Riešenia, Tvrdí Radičová,” [Orban knows reasonable solutions] *Www.sme.sk*, <http://www.sme.sk/c/5471875/orban-ma-na-obcianstvo-rozumne-riesenia-tvrdi-radicova.html>.

<sup>83</sup> “Dzurinda a Martonyi Si v Budapešti Rozumeli,” [Dzurinda and Martonyi found a common ground] *Www.sme.sk*, <http://www.sme.sk/c/5568187/dzurinda-a-martonyi-si-v-budapesti-rozumeli.html>.

<sup>84</sup> “Orbán a Radičová Sa Aspoň Stretli,” [Orban and Radicova at least met] *Www.sme.sk*, <http://www.sme.sk/c/5683656/orban-a-radicova-sa-aspon-stretli.html>.

<sup>85</sup> At: <http://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=347812>.

ties and his participation on a public life.” The amendment operated with a legal notion of genuine link.

The proposal brought a solution based on ignoring the extraterritorial effects of Hungarian law by not recognizing passports, granted for citizens resident in Slovakia. As can be seen, this proposal was not a complete return to the state of affairs before the ban on dual citizenship, but importantly, the acquisition of a foreign citizenship as a mode of loss was about to be cancelled: “Citizenship of Slovak republic can only be lost by release from the bond with Slovakia by request.” The bill further promised to return the citizenship to everyone who lost it due to the law from 26<sup>th</sup> May, without a duty to pay any administrative fees.

This proposal, deliberated by the National Council in February 2011, caused an unexpected political storm. A political faction within the governmental Freedom and Solidarity (SaS), calling itself Ordinary people (OL),<sup>86</sup> led by MP Igor Matovič, put an amending proposal on the table.<sup>87</sup> Criticizing the default bill for “not solving a problem of giving away Hungarian citizenship to Slovak citizens”, this arrangement would keep the ban on dual citizenship, listing a large array of exceptions (complementing birth and marriage), which, according to its promoters, constitute an active link of an individual and a state (paraphrased):

- an individual had, for at least for 12 months prior to acquiring citizenship, registered residence, full-time employment, full-time study or own enterprise in the country of acquired citizenship, or,

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<sup>86</sup> Ordinary people (OL) got to the parliament on the last four places of SaS’s slate.

<sup>87</sup> At: <http://www.nrsr.sk/web/Dynamic/Download.aspx?DocID=350836>.

- one of his parents, or their parents, was born in the country of acquired citizenship, and the territory he was born in belonged to the country of acquired citizenship at the time of his birth.

Matovič argued that his proposal, by introducing the above mentioned conditions, secures a compromise between individual rights and a territorial integrity of Slovak Republic. Surprisingly enough, the amending proposal was just accepted, with the opposition, all four members of Matovic's OL and one MP from KDĽ (Radoslav Procházka) voting in favor. Matovič was expelled from SaS for breaking the coalition treaty and the amended bill was dropped out from the session, as the rest of the ruling coalition disagreed with the unexpected outcome.

After the failure to accept the amendment, Slovak government proposed a bilateral agreement to Hungary that would regulate the acquisition of citizenship of the respective minorities and also the principles of diplomatic and consular protections. Slovak side ambitiously requested the annual exchange of lists of applicants for facilitated naturalization as well as the successful applicants. Hungarian government refused the proposal in May.<sup>88</sup>

Early in 2011, four more initiatives to amend the law have been deliberated by the National Council. Three of them were proposed by Smer and another one by I. Matovič. The bills were all variations of the same pattern: exceptions to the ban of dual citizenship were proposed, only the temporal (6 months, 12 months) or the factual (residence, education, employment, entrepreneurship; philanthropic, cultural, sporting, missionary activities) requirements varied. None of the bills meant a complete abolition of dual citizenship ban.

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<sup>88</sup> "Slovensko Predložilo Maďarom Návrh Zmluvy o Občianstve" [Slovakia proposed bilateral agreement to Hungary] *Pravda.sk*, [http://spravy.pravda.sk/slovensko-predlozilo-madarom-navrh-zmluvy-o-obcianstve-pkn-sk\\_domace.asp?c=A110215\\_173147\\_sk\\_domace\\_p29](http://spravy.pravda.sk/slovensko-predlozilo-madarom-navrh-zmluvy-o-obcianstve-pkn-sk_domace.asp?c=A110215_173147_sk_domace_p29).

Needless to say, the proposals were not successful. Government had not been able to achieve political agreement and therefore did not advance the issue on its own to avoid further complications. Due to the early fall of the government in October 2011, the preliminary elections took place in March 2012.<sup>89</sup>

### **3.2.4 Evaluation**

Going back to 2010, it is safe enough to say that Slovak political representation reacted in a way that was undoubtedly fuelled by the upcoming elections. In the spring 2010, bad economic figures were having a negative impact on the campaign of Smer, which was responding by blaming the overall economic crisis. As the topic of Greek huge economic troubles was hot in the world news, the opposition parties succeeded to make a campaign catchphrase from a slogan “Fico is taking us a Greek way’. Moreover, the finishing government was forced to make a positive decision on the first bailout for Greece. Smer could not afford more complications at the European level after he invited the ultra-nationalist party to his government in 2006, which cost it the membership in the Party of European Socialists for two years.

This was extremely difficult for Fico to explain to his voters who belong to the less-earning part of the population. Meanwhile, the opposition was profiting heavily on creating the image of Fico giving away the hard-earned taxpayers money of poor Slovaks to Greeks with their generous social system and multiple times higher wages. Coming only a few days after the unpopular governmental decision, Orbán’s initiative has been like throwing a safety net to Smer.

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<sup>89</sup> Smer now forms a single-party government with an absolute majority of 83 seats. KDĽ, OL, SDKU and SAS are in the opposition.

The citizenship issue might have not been the best topic imaginable, as it has never been used to mobilize voters before. Few factors contributed to its political attractiveness. Besides the content itself and the perfect timing, the presentation of the issue by Fidesz was relevant. The amendment of the Hungarian nationality law was about to be deliberated on the founding session of the newly elected House, which is unusual as the very first parliamentary meetings do not yet discuss any bills under normal circumstances. Thus, the introduction of the external citizenship has been the first law on the agenda of a Parliament with Fidesz's constitutional majority, acquiring very strong symbolic meaning. Next, the decision not to wait one month after the exceptional situation in Slovakia passes was the gesture of contempt from Fidesz. Certainly, it was not line with the statement Orbán made shortly after the elections: "We will promote Hungarian interests with all due sensitivity and respect."<sup>90</sup>

Last but not least, for Smer, the nationalist rhetoric against Hungary has been a topic of the electoral campaign before the external citizenship issue came to life. In the speech on the Smer's program priorities, delivered shortly before the Hungarian elections in April 2010, Fico stated: "We will talk openly about the attacks on the Slovak statehood, the threats that dispute the after-war arrangements and the threats of larger-Hungarian chauvinism and extremism."<sup>91</sup> The issue of external citizenship provided Fico with a necessary leverage to fill these declarations with a palpable content.

Therefore, Hungarian policy was a good opportunity for Smer to overlay the more important issues and grab some more votes from the SNS, which was taken by surprise by the

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<sup>90</sup> "Orbán Bude Chciť Dobré Vzťahy. Možno to Nezvládne", Aktualne.atlas.sk, [Orban is looking for friendly relations] <http://aktualne.atlas.sk/orban-bude-chciť-dobre-vztahy-mozno-to-nezvladne/zahranicie/europa/>.

<sup>91</sup> "SMER – Sociálna Demokracia Predstavil Svoj Program Pre Volebné Obdobie 2010 - 2014", [Smer introduced its program for electoral term 2010 - 2014] <http://www.strana-smer.sk/1344/smer-socialna-demokracia-predstavil-svoj-program-pre-volebne-obdobie-2010-2014>.

resolute approach or Smer. Although Smer has already been taking over the anti-Hungarian agenda of SNS before 2010, it was not negligible that it will become the main point of its campaign. SNS attempted to call the extraordinary session of the National Council but was not able to without the votes of Smer. Also, it prepared the anti-law of its own, without any success. Smer was firmly holding the agenda in its hands. SNS was left with adopting the stricter rhetoric as a means to capitalize on the issue. Head of SNS Slota declared that pulling out the ambassador from Budapest is not enough and Slovakia should denounce the Neighborly relations agreement with Hungary.<sup>92</sup> SNS was attacking MKP and their relations with Orbán very often. But all in all, its declarations and actions have been overshadowed by Smer.

KDH, a party with a strong rural constituency from purely Slovak settlements, also used this to gain some more support shortly before the elections. According to the opinions of R. Procházka, one of the leading constitutional lawyers in Slovakia, who voted in favor of Matovič's amending proposal, it would not be a good idea to ignore the Hungarian amendment. In his commentary,<sup>93</sup> he quotes the ECN: "A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases: a. voluntary acquisition of another nationality." He thinks that any steps taken by Slovakia beyond this right, guaranteed by the ECN, are a voluntary manifestation of a good will.

Procházka thinks a desirable Slovak answer to Hungarian external citizenship policy should come in the two steps: first one would be to reduce the renunciation of Slovak

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<sup>92</sup> "SNS Chce Mimoriadnu Schôdzu v Otázke Dvojakeho Občianstva" [SNS wants extraordinary session of Parliament on dual citizenship issue], Cas.sk, <http://www.cas.sk/clanok/164324/sns-chce-mimoriadnu-schodzu-v-otazke-dvojakeho-obcianstva.html>.

<sup>93</sup> Radoslav Procházka: Dvakroky v ústrety. [Two Steps Halfway] *Postoy.sk*, February 15, 2011, [http://www.postoy.sk/prochazka\\_dostal\\_o\\_dvojacom\\_obcianstve](http://www.postoy.sk/prochazka_dostal_o_dvojacom_obcianstve).

citizenship only to cases when there is no factual link to the country of origin (for example, but not limited to, permanent residence). In a second step, he continues, ‘temporal’ legal norm should be created: a norm the validity of which is cancelled in the moment when the presumed legal event occurs. A bilateral treaty between Hungary and Slovakia or a legally binding verdict of international jurisdiction could be the examples of such an event. Returning of citizenship to those who lost it in the meantime should be a part of this temporal legal norm. Such an arrangement ensures protection of interests of all citizens of Slovak republic, and, importantly, pushes for a solution based on the cooperation, he concludes.

These insights, coming from a highly respected figure of non-nationalist part of Slovak political elite, are demonstrative of how rare are opinions which consider amendment of Hungarian nationality law as a complete non-issue for Slovakia. Apart from the representatives of Hungarian minority and a few Slovaks focused in the Most–Híd party, it is impossible to trace down a Slovak politician who would embrace the solution of no reaction at all.

#### 3.2.4.1 Struggle for Hungarian vote

Before the 2010 elections, the representatives of Hungarian minority in Slovakia - MKP and Most-Híd - adopted different strategies. Both party leaders, Pál Csáky and Béla Bugár, admitted that their party put a pressure on Fidesz not to pull out the citizenship issue before the elections.<sup>94</sup> In case of MKP, this is not as likely, as its close relations with Fidesz, which openly supported MKP before the elections,<sup>95</sup> were generally expected to help it to resist the Bugár’s party ambitions. MKP defended the external citizenship with determination,

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<sup>94</sup> “Fico: Dvojité Občianstvo Je Bezpečnostným Rizikom” [Fico: Dual citizenship is a security threat]

<sup>95</sup> “Fidesz Otvorene Podporil SMK [Fidesz Openly Supported MKP],” *Pravda.sk*, [http://spravy.pravda.sk/fidesz-otvorene-podporil-smk-dj8-/sk\\_domace.asp?c=A100512\\_170559\\_sk\\_domace\\_p12](http://spravy.pravda.sk/fidesz-otvorene-podporil-smk-dj8-/sk_domace.asp?c=A100512_170559_sk_domace_p12).

maintaining that Slovakia is overreacting, pointing out the peaceful approach of other affected countries and the proliferation of external citizenship policies. Csáky announced that some of the MKP members decided to take up Hungarian citizenship and promised all the legal support from MKP to citizens who decide to do the same. Most-Híd refrained from the nationalist appeals towards Hungarian minority and restricted its reactions to calming the situation down and opposing the attacks from Slovak political parties. Bugár challenged Slovak Hungarians rather not to request the Hungarian citizenship until the solution is figured out.

The results of the 2010 elections showed that Hungarians living in Slovakia have prioritized the non-conflicting approach of Bugár. Hungarian voters sent MKP out of the Parliament despite the Fidesz's support. Most-Híd grabbed more than 8 percent of the vote, gaining more Hungarian votes than MKP. The fact that more than a half of Hungarians living in Slovakia supported the party built on the idea of Slovak-Hungarian partnership can be attributed to the strong personality of Most-Híd's leader Bugár, who is credited among Hungarian minority and Slovaks alike for his ability to keep down the emotions and foster cooperation.

In January 2011, a new leader of MKP József Berényi decided to tighten up the nationalist strategy that his party has embraced before. He utilized the official date when the Hungarian law has become effective, and declared that as he is the leader of the only Hungarian party in Slovakia. Obviously, the MKP evaluated the citizenship issue as a good opportunity to implicitly blame Most-Híd for being a traitor of the Hungarian 'case'. Berényi stated it is his very duty to ask for the Hungarian citizenship and to vote in the Hungarian elections as well, if the new Constitution allows it. "I have a double identity. Politics, residence and laws bond me with Slovakia. But in Hungary, it is my native language, culture,

common history. Therefore it is necessary to accept this offer”, said Berényi about non-resident citizenship.<sup>96</sup> Bugár condemned his step as provocative and risky.

Before the preliminary elections of 2012, Berényi continued in the strategy attempting to capitalize on the dual citizenship issue. Fidesz’s support has been granted, as the strongest Hungarian party continually ignored Most-Híd. Berényi engaged into the war of words with the Slovak nationalists as well as the Most-Híd representatives.<sup>97</sup> Later, he refused to tell if he took the Hungarian citizenship after all. He was frequently asked this question before the 2012 elections, but did not provide the answer. But the idea that the escalation of the nationalist agenda will mobilize the Hungarian voters to cast their vote to MKP again proved itself to be misguided. MKP has received almost identical number of votes as in 2010. The forerunners from Most-Híd passed the threshold again and definitely settled down as a primary representative of a Hungarian minority in Slovakia.

From the objections, raised by the Hungarian parties to dual citizenship ban, the one questioning the expression of will as a legal basis for the ban of dual citizenship has been the most visible. Leader of Most-Híd, Béla Bugár, estimated in August 2011 that several hundreds of ethnic Hungarians have requested Hungarian citizenship so far. “None of them expressed will to lose the Slovak citizenship.”<sup>98</sup>

Slovak Constitution is rather ambivalent in this respect: “Acquisition and loss of Slovak citizenship is regulated by law”, it says at one place, but “No one can be deprived of citizenship against his will”, goes on right after.<sup>99</sup> It is not clear if requesting citizenship of

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<sup>96</sup> “Šéf SMK Berényi Riskuje Občianstvo,” [MKP boss Berenyi risks his citizenship] *Www.sme.sk*, <http://www.sme.sk/c/5705015/sef-smk-berenyi-riskuje-obcianstvo.html>.

<sup>97</sup> “Berényi Claims Slota Has Dual Citizenship,” *The Daily News - Slovakia*, <http://www.thedaily.sk/berenyi-claims-slota-has-dual-citizenship/>

<sup>98</sup> “BugárDáObčianstvo Na ÚstavnýSúd,” [Bugár will hand over citizenship to Constitutional Court] *Www.sme.sk*, <http://www.sme.sk/c/6008149/bugar-da-obcianstvo-na-ustavny-sud.html>.

<sup>99</sup> Constitution of the Slovak Republic, At: [http://www.vop.gov.sk/en/legal\\_basis/constitution.html](http://www.vop.gov.sk/en/legal_basis/constitution.html)

another state can lawfully equal to the expression of will to lose the Slovak citizenship. The decision on the compliance of the provision with Slovak Constitution is now due to the Constitutional Court, where the complaint is already filed.<sup>100</sup>

#### 3.2.4.2 Non-political factors

Pointing at the calm reactions of the remaining affected countries has been the most common defense of Hungary vis-à-vis Slovak criticism. János Martonyi stated “I toured all the neighboring countries before the vote. In six of seven they made it clear that there are no objections against the amendment. Hungary has rarely received this kind of support in last 90 years from its neighbors. Only one country attempts to raise tensions.”<sup>101</sup>

While the reaction of Slovakia surely was by far the strongest, I think this was a result of other factors than the overall satisfaction with Hungarian non-resident citizenship. It is true that Slovak reaction was rooted in character of the government and motivated by an ongoing electoral campaign, as Fidesz representatives and many observers on the both sides of Danube pointed out. But Slovak domestic politics is not a whole answer. After the Status law adoption, at times of the liberal Dzurinda government with MKP being a coalition party, the Slovak resistance has been the most persistent as well. Slovakia had opposed the Status law long after it has been modified by socialists and bilateral treaty with Romania has been signed, and ultimately gained the most concessions.

But the almost fully-fledged non-residence citizenship policy is objectively something new in the relations of the two countries and Slovakia has some objective reasons

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<sup>100</sup> Gábor Gál, Ústava kontra dvojité občianstvo.[Constitution Versus Dual Citizenship] *MOST-HÍD / StranaSpolupráce - Az Együttműködés Pártja* ,<http://www.most-hid.sk/sk/content/gabor-gal-ustava-kontra-dvojite-obcianstvo#comment-1510>.

<sup>101</sup> “Martonyi: Budeme Sa Sťažovať ” [Martonyi: we will complain] *Pravda.sk*, [http://spravy.pravda.sk/martonyi-budeme-sa-stazovat-d1r-/sk\\_svet.asp?c=A100528\\_081031\\_sk\\_svet\\_p12](http://spravy.pravda.sk/martonyi-budeme-sa-stazovat-d1r-/sk_svet.asp?c=A100528_081031_sk_svet_p12).

to watch Hungarian diaspora politics with suspicion. To start with the prosaic ones, in Slovakia, there is the largest proportion of Hungarian minority to majority population. Hungarians reside at the more-or-less continuous strip in the south of the country. Therefore, the Hungarian minority in Slovakia is much more suitable to become a tool of nationalist politicians than in Austria, Croatia or Slovenia.

Secondly, Hungary is the only country which Slovakia has some shaken relationships with, and is traditionally regarded as the most problematic point of a foreign policy. All the other affected countries have their 'archenemies' elsewhere (Romania – Moldova, Ukraine – Russia, Serbia – Croatia). They devote the most of their resources there. Slovakia does not have to split its attention between the two or more countries. Thirdly, Slovakia did not need to look for support of Budapest for the important foreign policy objections like Ukraine or Serbia, especially with the prospect of Hungarian presidency in the EU in 2011. Last but not least, Slovakia does not have non-resident citizenship policy like Romania or Serbia, two countries with the largest Hungarian minority, and therefore can criticize Budapest freely on the grounds of public policy.<sup>102</sup>

### **3.2.5 Practical consequences**

According to the newest figures of the published by the Ministry of Interior in Slovakia in April 2012, 258 people have lost the Slovak citizenship from July 2010. Most people that were taken Slovak citizenship are from Czech Republic (129), 33 are from Austria

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<sup>102</sup> For a detailed description of the reactions of the neighboring countries and some more explanations, see Oxana Shevel, Kusá, Dagmar, and Roxana Barbulescu, "EUDO Citizenship | Reactions in Ukraine, Slovakia, Romania and Serbia to Hungary's Decision to Give Access to Citizenship to Ethnic Hungarians", May 23, 2010, <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>.

and 28 from Germany. 25 individuals only have been granted Hungarian citizenship.<sup>103</sup> These numbers indicate that the new citizenship law primarily affects people who were not its target. Also, the actual numbers of individuals that have gotten foreign citizenship in the meantime is likely to be higher, as many people certainly did not announce the acquirement of the new citizenship to the authorities in order to be able to keep their Slovak passport.

Many Slovak guest-workers, who were ready to take up citizenship in the country where they work, may face hard dilemmas as a result of this provision. Canadian-Slovak Chamber of Commerce officially protested against the law and asked for the exception for Canada, after the impulse from more than one hundred of its members. As soon as they acquire Canadian citizenship (some of them are in the final stages of naturalization procedure), they can only stay in Slovakia for 90 days, which restricts their work and entrepreneurship flexibility. Slovak Canadians found it discriminating that they have to suffer for a provision directed against another state.<sup>104</sup> Around 100 000 Slovaks live in Canada.

New Fico government already announced the plans to amend the citizenship law. Most likely, if the new proposal will be accepted, the 1-year residency requirement in the country I which citizenship is requested will be required. It is now being elaborated if the study and/or work requirement will be the part the proposal as well. As the new administration is single-colored, it is highly unlikely that the change of the citizenship arrangement would not pass in one way or another.

Either way, it will not solve the problem of the Slovak residents who will get foreign citizenship and keep their obligation to announce it. This will leave intact the

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<sup>103</sup> “Slováci Sa Stávajú Čechmi Aj Maďarmi. Smer to Chce Zmeniť”, [Slovaks become Czechs and Hungarians. Smer wants to change it] Hnonline.sk, <http://hn.hnonline.sk/c1-55455350-slovaci-sa-stavaju-cechmi-aj-madarmi-smer-to-chce-zmenit>.

<sup>104</sup> “Kanadskí Slováci Chcú Výnimku v Občianstve,” [Canadian Slovaks want the citizenship exception] *Wwww.sme.sk*, <http://www.sme.sk/c/5475397/kanadski-slovaci-chcu-vynimku-v-obcianstve.html>.

paradoxical legal situation, when the law punishes those who perform their duty and notify the authorities (by taking their passport) and spares those who keep quiet. Hungarian authorities already assured the potential applicants that they will not give away information on the individuals' citizenship requests and applications to the other countries. In fact, current Slovak citizenship law encourages illegal behavior by imposing a fine that is far from negligible.

Olivér Boldoghy, a constructor of Hungarian origin living in Slovakia for all his life, decided to point a finger on the senselessness of the law. The activist from the civic organization has first organized a petition against the law and then a protest in this small border town of Komárom in August 2011. As nothing has changed, he took an action and announced his Hungarian passport to the Slovak officials. They urged him to hand out his Slovak documents including passport, ID, health insurance card and a driving license. As he stated, he has no property in Hungary and no intention to move there. He would now certainly get permanent residence in Slovakia, if he applied for it. It would allow him to continue living in Slovakia as a foreigner, which he refuses. But in fact, he might be forced to do that in order to avoid deportation. Even if the law changes in line with the plans of the new administration, the situation he got himself into will not be fixed. Boldoghy was promised all the legal support from the Hungarian government as well as from the MKP.<sup>105</sup>

Boldoghy's situation is peculiar: he lost some social and political rights in the country where he lives and pays taxes in, but at the same time he has got no rights in the country he has citizenship of. If he does not move to Hungary, he may be forced to become a legal alien in Slovakia to be able to work and get a healthcare and social assistance. Still, he

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<sup>105</sup> "Veľvyslanec Weiss: Boldoghy Stratil Občianstvo v Zmysle Zákona," [Ambassador Weiss: Boldoghy lost his citizenship lawfully] *Www.sme.sk*, <http://www.sme.sk/c/6152341/velvyslanec-weiss-boldoghy-stratil-obcianstvo-v-zmysle-zakona.html>.

would not be able to vote in the Slovak general elections. Now, this case is intentionally escalated to grab attention. Nevertheless, it proves the insufficiency of the international citizenship arrangements.

## **4. External citizenship: consequences for loss and acquisition of citizenship**

As mentioned before, the case discussed in this thesis exposes a loophole in the international regulations on citizenship. Even though the citizenship laws of both countries comply with the ECN they have ratified, a group of people is potentially exposed to the loss of social and political rights and de facto statelessness. This problem could contribute to the acknowledgement of the large interdependence of nationality laws by the international community and the European Union, and of the need to look for some more standards regulating loss and acquisition of citizenship on the international level.

In this chapter, I will analyze the modes of loss and acquisition of citizenship that created the situation explored in my thesis. I will look at their proliferation and discuss their normative validity. Also, I will raise some suggestions about the norms that could be introduced to avoid the irregularities caused by the external citizenship provisions.

### **4.1 Slovakia: Loss of citizenship by voluntary acquisition of a foreign citizenship**

Article 7 of the ECN lists the loss of citizenship by voluntary acquisition of another nationality as the first reason which enables the automatic loss of nationality (ex lege) or a loss of nationality at the initiative of a state party.<sup>106</sup> The state does not have an obligation to withdraw a citizenship in such a case, however. ECN leaves this decision upon the jurisdictions of the states. This is a clear change from 1963 Convention on the Reduction of

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<sup>106</sup> Kay Hailbronner, "Nationality in Public International Law and European Law," in *Acquisition and Loss of Nationality: Policies and Trends in 15 European States*, 67.

Cases of Multiple Nationality, which stated that: “(nationals who acquire nationality of another state) shall not be authorized to retain their former nationality“.<sup>107</sup> Nevertheless, the fact that the voluntary acquisition of citizenship of another country is listed as the first reason, hints that it is still seen as the most important or ‘traditional’ mode of loss.

Groot and de Vink, in their survey on the modes of citizenship loss in 33 European States, identify two important norms of international law that guided the legitimate forms of citizenship loss before they have been inscribed into ECN.<sup>108</sup> First one is the norm of preventing statelessness, prescribed especially by the 1961 Convention on the Reduction of Statelessness. The second one is the norm of preventing multiple nationalities, which was reflected in the 1963 Convention on the Reduction of Cases of Multiple Nationality and the Military Obligations in Cases of Multiple Nationality. Voluntary acquisition of another nationality was listed as a ground for loss in both of the latter documents.

The norm of preventing multiple nationalities is weakening for practical reasons, e.g. the combination of mixed marriages and *ius sanguinis* principle. „As a result, whereas the norm of statelessness prevention is still very much at the core of the international rules on loss of citizenship, the norm of preventing multiple citizenship is becoming of ever decreasing importance, certainly among the thirty-three countries under this study, where we observe a clear trend since 1985 of abolishing the rule of automatic loss of citizenship as a result of the voluntary acquisition of the citizenship of another country“.<sup>109</sup>

Only twelve out of 33 countries (Austria, Czech Republic, Denmark, Estonia, Germany, Ireland, Latvia, Lithuania, Netherlands, Norway, Slovakia, Spain) under the survey

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<sup>107</sup> Gerard-René De Groot and Maarten P. Vink, “Loss of Citizenship: Trends and Regulations in Europe,” *SSRN eLibrary* (n.d.): 6, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1694701](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1694701).

<sup>108</sup> *Ibid.*, 3.

<sup>109</sup> *Ibid.*, 4.

maintain the voluntary acquisition of another citizenship as the grounds for loss. Slovakia is the first country from 1995 (Moldova introduced the ban in 1995, but abolished it in 2003) that has introduced this mode of loss into its nationality legislation.<sup>110</sup> Denmark and Norway have the strictest provisions that do not provide for any exceptions. The legal rules on the acquisition of foreign nationality as grounds for loss of citizenship may take different forms, based on the exceptions involved: these can be based on birth, marriage, residence, or agreements with specific countries. In some countries, individuals may take certain actions to prevent the citizenship loss.<sup>111</sup> The arrangement that will most likely be adopted in Slovakia in the near future, e.g. the exception based on the naturalization abroad, is practiced by Austria, Netherlands and Spain.<sup>112</sup> On the contrary, the habitual residence is an exception for the loss of citizenship by voluntary acquisition in some countries (Italy, Spain, Germany until 1999).

Authors do not argue for a rejection of this mode of loss, even if they conclude that „it is questionable, whether voluntary acquisition of a foreign citizenship always indicates that the ties with the state of origin are weakened to an extent which legitimates the loss of citizenship.“<sup>113</sup> In order to prevent the endless transmission of citizenship of co-nationals residing abroad, they suggest that each country should keep either the voluntary acquisition of a foreign citizenship or the permanent (extended) residence abroad as a grounds for

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<sup>110</sup> Montenegro as a new state has this provision from 2008, but it is not a part of the referenced survey by de Groot and Vink. At:

[http://eudocitizenship.eu/index.php?option=com\\_content&view=article&id=186&Itemid=34&search=1&country=&idmode=L05&page=2](http://eudocitizenship.eu/index.php?option=com_content&view=article&id=186&Itemid=34&search=1&country=&idmode=L05&page=2),

<sup>111</sup> Harald Waldrauch, “Loss of Nationality,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European States*, n.d., 198.

<sup>112</sup> Rainer Bauböck and Bernhard Perchinig, “Evaluation and Recommendations,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European States*, n.d., 440.

<sup>113</sup> Groot and Vink, “Loss of Citizenship,” 13.

citizenship loss, or should at least limit the external transmission of citizenship to the first or second generation born abroad.

Many experts who are consequently in favor of multiple nationalities would argue that any deprivation of citizenship is interfering with the individual freedom. P. Spiro would say „The liberal state has no business obstructing alternate national ties in the absence of a compelling interest.”<sup>114</sup> In my opinion, maintaining some important form of citizenship loss is not harmful, as it prevents the further detachment of citizenship from territory. By this logic, extended residence abroad is more legitimate mode of loss. However, to avoid the situations when individual really has a close ties with his country I reckon it is vital to strengthen the principle of appeal, and to identify the conditions for a successful appeal.

One serious constraint is worth considering regarding the loss of citizenship by voluntary acquisition of a foreign citizenship. The recent experience from Slovakia shows that the acquisition of a foreign citizenship should not be sufficient grounds for loss of citizenship if a person does not reside or naturalize abroad. This way the exclusion of individuals that took up another citizenship but wish to continue living in the country of their original citizenship could be avoided.

It is clear that current Slovak arrangement leads to unjustified exclusion of the group of people that obviously have effective link with Slovakia, as they reside there.<sup>115</sup> Residence is a very strong attribute of attachment of an individual to the state as most of the citizenship rights are conditioned by residence. Moreover, it is a very reliable indicator of the active citizenship. It is not acceptable if the individuals can be deprived of citizenship of the country they founded their existence in (being it citizenship acquired at birth or by

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<sup>114</sup> Spiro, “Dual Citizenship as Human Right,” 2.

<sup>115</sup> In the particular Slovak case, legitimacy is further undermined by the fact that acquisition of a foreign citizenship is not a traditional mode of loss and has been adopted as a politically-motivated reaction.

naturalization). If states are afraid of the exodus of citizens, the threat of citizenship loss will not help it (on the contrary). From the point of view of state, there is nothing else to be afraid of. External citizenship will only bring symbolic and practical gains to its citizens.

Adoption of this rule is exceptionally important because the national minorities are involved. Minorities have a special status and the states are bound by the international treaties to protect them. Liberal states should not expose their citizens to the dangers of de facto statelessness, especially the vulnerable minorities. Of course, the option I suggested would be viable only in the combination with some limitations in the citizenship acquisition that I discuss in the next part.

#### **4.2 Hungary: Acquisition of citizenship by non-resident facilitated naturalization**

Here, I would like to talk about the conditions under which the facilitated naturalization for descendants of former citizens, co-ethnics or persons with cultural affinity is justified. Is Hungarian policy of non-resident preferential access to citizenship legitimate, and if not, what are the desirable limitations that should be in place? The ECN Article no.3 (1) stipulates: “Each State shall determine under its own law who are its nationals.”, but the 6<sup>th</sup> article about the citizenship attribution is silent about the rules for facilitated naturalization for co-ethnics or co-nationals, resident or not. Nonetheless, the preferential access to citizenship is a very common procedure, although very often conditioned by residence.

In the recommendations for the facilitated naturalizations, Bauböck and Periching contend that: “Privileged access to nationality based on a person’s nationality or ethnicity should generally be regarded as a suspicious classification that conflicts with the principles of nondiscrimination“. However, they provide a rather modest list of exceptions that legitimize

such 'discrimination'. Here belongs the facilitated naturalization for the diaspora in the initial stage of the country independence, for the citizens of former colonies, for the persecuted co-ethnics, for the immigrants from co-lingual countries, and for the foreign citizens - based on mutual reciprocity (European citizenship).<sup>116</sup> Obviously, the researchers are in favor of much more restricting policies of citizenship attribution, as the state practices considerably exceed these ideal limitations.

These criteria are easy to identify with, but have been created with regards to EU-15 and the migration context. The authors clearly wanted to rule out the option of facilitated naturalization for the second and third level generations of immigrants. But the trans-border minorities, unlike migrants, did not leave their homeland voluntarily (if we take the liberty to say the migrants did). In fact, they did not move at all. Because of the political changes they could not control, they have involuntarily become citizens of another country. Often, they have close family ties across the border, and shared language and culture is a rule (unlike for emigrants). Therefore, in my opinion, their claim for citizenship is stronger than the claim of migrants. I think there is nothing particularly discriminating about descendants of former citizens having preferential access to citizenship, if the only reason of loss has been the border change. Sure, the legal residents applying for ordinary naturalization may feel discriminated when the second or third generation migrants receive citizenship faster without much qualification, but the character of the trans-border minorities fate legitimize their claim. To conclude, I think the preferential access to citizenship for trans-border minorities could arguably be added to the above referenced list of conditions.

But is the non-resident access to citizenship for trans-border minorities justified as well? As an editor of the publication that discusses the Hungarian-Slovak quarrel, Bauböck

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<sup>116</sup> Bauböck and Perchinig, "Evaluation and Recommendations," 465–466.

claims that upholding the principle of genuine link would „clearly condemn ius sanguinis transmission of citizenship across several generations born abroad or preferential naturalization of persons residing permanently abroad whose ancestors had once been citizens.“<sup>117</sup> He argues that just “shared language and an interest in external protection of their minority rights“ are not enough for claiming the citizenship status. Thus, the relationships that Hungarians in Slovakia have today with Hungary, however strong they are, do not legitimize the citizenship offer. He stresses the ethno-national incentives behind the law and identifies the Hungarian government as the main offender in this controversy.

In the discussion, he is rather isolated in this opinion. P. Spiro thinks „If the Hungarian people want to define themselves to include those living abroad of Hungarian ancestry, that is Hungary’s business“. He argues that autonomy of an individual, his option to actuate identities and the right to free association are much more important than maintaining diplomatic balance. A. Staviľa agrees: „the new Hungarian law (although insensitive to the actual political context) is legitimate, and its only negative effects amount to hurting Slovak ethnic nationalists’ feelings.“<sup>118</sup> F. Bieber has a similar opinion: „The critique of nationalist politics should therefore not distract from considering possible benefits of dual citizenship for minorities“.<sup>119</sup>

Paradoxically, the Hungarian-Slovak controversy leads to a situation when liberally thinking scholars defend the law that serves nationalist objectives or favor the preferential access to citizenship on the ethnic basis. Although I am aware of these paradoxes, I believe that the members of Hungarian minority in Slovakia have a legitimate right to be

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<sup>117</sup> Rainer Bauböck et al., “Dual Citizenship for Transborder Minorities? How to Respond to the Hungarian-Slovak Tit-for-tat” (2010): 3, <http://cadmus.eui.eu/handle/1814/14625>.

<sup>118</sup> Ibid., 12.

<sup>119</sup> Ibid., 19.

treated preferentially when applying Hungarian citizenship status, as they lost it involuntarily and under the conditions beyond their control. Moreover, they cannot be forced to leave their residence in Slovakia in order to be able to claim and exercise their right. Therefore, in the particular case of the trans-border minorities, the external citizenship offer is legitimate, although I do not think the same about the descendants of emigrants.

Regarding the sensitive political context, it is for sure that citizens should not be restricted in full exercise of their rights just because their elected representatives are not able to solve the interstate disputes in the meaningful way. Also, the fact that a law has been created by nationalists and serves nationalist purposes does not make it questionable or less valid, and certainly does not diminish its potentially positive impacts. However, I do not think the concerns about the ethno-national objectives of the external citizenship are so easily negligible and “the road to hell may be paved with bad intentions.”<sup>120</sup> Nationalism gives birth to more nationalism: it was the true character of Hungarian policy that enabled the Slovak government to legitimize something otherwise impassable. If Fidesz had sincere intentions and the only objective of external citizenship would be to offer the symbolical satisfaction to the trans-border Hungarians, Slovak legislators could have hardly adopted the policy that may complicate the lives of its own citizens.

To prevent the international tension in the future, I would argue for standardized procedure at least on the level of EU that would introduce the obligation to consult the nationality laws with extraterritorial effects with the affected countries. I acknowledge this is would be a serious constraint of a state sovereignty, but I believe a result would be a less voice for nationalist politicians. One might object this would slow down the adoption of the policies beneficial for people. But frankly, between the EU countries, there is not so much

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<sup>120</sup> Stavila in: *Ibid.*, 12.

beneficial about the external citizenship besides the symbolic value, which can always wait a year or two.<sup>121</sup> Also, the often criticized influx of workforce from outside the EU, caused by the non-resident citizenship offered by EU countries to non-EU neighbors,<sup>122</sup> could be addressed this way.

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<sup>121</sup> There are potentially practical benefits of external citizenship between EU countries, including access to US visa and bypassing of temporary working restrictions.

<sup>122</sup> It was mainly discussed in relation to Romanian citizenship policy towards Moldova.

## 5. Conclusion

In my thesis, I attempted to analyze the recent citizenship controversy that has taken place between Hungary and Slovakia. I did so as I find this example very suitable to point at theoretical and practical problems related to the adoption of preferential access to citizenship for the minorities living across the border. The thesis has three main chapters besides introduction and conclusion that loosely follow up on each other but also have some separate objectives and conclusions.

In the second chapter, I described the rather recent proliferation of dual citizenship, the rising benevolence of states towards the double or multiple allegiances and the prospect that the future will bring more dual nationals. I showed what the leading scholars in citizenship studies make of this development. While the advantages of dual citizenship are widely acknowledged if it serves the aims of incorporating immigrants into society (ordinary naturalization), in case of extending the citizenry by the co-ethnics or co-nationals (facilitated naturalization), dual citizenship should be approached with caution. Next, I narrowed down the scope of the discussion to the external citizenship, e.g. the policy of preferential access to citizenship without a residence requirement. It was demonstrated that the non-resident citizenship is not an invention of the CEE countries, and how the context of trans-border minorities complicates the situation further.

The analysis of the political actors and debates in Slovakia followed in the main third chapter. I started with the overview of the development that led to the Hungarian policy of external citizenship, focusing on the impacts on Slovakia. I continued with a detailed narration of the international controversy and the stances of the actors in Slovak politics. In the evaluation, I explained the behavior of the main political players including the representatives of Hungarian minority in Slovakia. The reactions were strongly fuelled by the

upcoming elections in Slovakia. It is clear that the issue of citizenship was utilized by the strongest political party Smer to play the ‚Hungarian card’ and to cover the more important problems that the country had faced at the moment. As for the Hungarian parties, the issue helped to crystallize the configuration between the parties MKP and Most-Híd, when most of the Hungarian voters refused the nationalist appeals of MKP backed up by Fidesz and favored the Most-Híd’s stress on cooperation. I further contended that the reaction in Slovakia, while strongly fuelled by the electoral struggles, can be partially explained by demographical, geographical and geopolitical factors, too. Concluding the chapter, the so far real-life consequences have been described as disturbing, with a potential of creating group of de facto stateless people.

Finally in the fourth chapter, I have looked at the international standards of loss and acquisition of citizenship. Specifically, I explored the voluntary acquisition of another citizenship as a mode of loss introduced by Slovakia and the non-resident facilitated naturalization introduced by Hungary. I reckoned that the loss by voluntary acquisition of a foreign citizenship leads to the unjustified exclusion of an individual if he does not naturalize abroad, and especially in order to better protect minorities, this mode of loss should not be available for the states to apply on the habitual residents (birthright or naturalized). Regarding the citizenship attribution by the non-resident facilitated naturalization, I claimed that it is justified in the case of the trans-border minorities (more than in the case of descendants of migrants), arguing by the involuntary character of their exclusion. To prevent the situations like the Hungarian-Slovak controversy to occur in the future, I suggested that when external citizenship policy is about to be adopted by the EU country, a standardized procedure of obligatory consultation with the affected countries is worth considering.

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