Hungarian Territorial Changes and Nationality Issues Following World War I

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Abstract

In the aftermath of World War I, Hungary had to relinquish approximately two-thirds of its former territory and over half of its population under the terms of the Trianon Peace Treaty of 4 June 1920. This inevitably brought about a change in the nationality of persons pertaining to territories transferred to other states. However, the interpretation and implementation of articles concerning nationality were highly ambiguous. For example, the rights of citizenship in a commune, the so-called pertinenza, was not defined in the peace treaty, although the determination of affected persons and beneficiaries of the right of option was explicitly based on that particular criterion. Hence, the fate of these individuals largely depended on the domestic legal regulation and the subjective treaty interpretations of successor states. The application of treaty provisions was not always in conformity with the text, which sometimes proved advantageous, other times disadvantageous for the affected persons. This study seeks to explore the theoretical background, the past and present interpretation, the practical application and the judicial treatment of articles concerning nationality in the Trianon Peace Treaty. The paper also exposes the major problems and shortcomings of the Treaty and makes suggestions for an appropriate wording and adequate interpretation of relevant treaty provisions. Furthermore, in order to provide a full picture of how territorial changes following World War I affected the nationality of millions of individuals, the study takes into consideration other contemporary international instruments with a bearing on the change of nationality or its consequences.

Keywords: nationality, state succession, right of option, rights of citizenship in a commune, Trianon Peace Treaty.

1. Introduction

Having been on the losing side at the end of World War I, Hungary had to relinquish approximately two-thirds of its former territory to neighboring states. The change of sovereignty over the transferred territories inevitably had an

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impact on the nationality of the persons concerned, as well.[1] The Trianon Peace Treaty,[2] which formally terminated the state of war with Hungary, set forth the clauses relating to nationality in Part III, Section VII. The interpretation of these clauses was far from unequivocal. The treaty text was supplemented and further detailed by Hungarian Royal Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, the domestic laws and practices of neighboring states, as well by related case-law. In addition to the Peace Treaty, other international treaties concerning nationality, or the consequences of the change of nationality, must also be taken into consideration.

2. Acquisition of a New Nationality in the Transferred Territories

In the wake of the Trianon Peace, persons living in the transferred territories lost their Hungarian nationality and acquired the nationality of the given successor state in line with their rights of citizenship in a commune (rights of citizenship). This change took place without a naturalization process or an official act on the day of entry into force of the peace treaty, on 26 July 1921, simultaneously with the replacement of one state by another in the sovereignty over the territories concerned.[3] Pursuant to Article 61, those persons who possessed rights of citizenship, the so-called *pertinenza*, on a territory which formed part of the territories of the former Austro-Hungarian Monarchy, obtained "*ipso facto* to the exclusion of Hungarian nationality" the nationality of the successor state exercising state sovereignty over such territory.[4] Persons possessing rights of

1 *See* Mónika Ganczer, *Állampolgárság és államutódlás*, Dialóg Campus, Budapest-Pécs, 2013, pp. 201-206 and 212-213.

2 Treaty of Peace between the Allied and Associated Powers and Hungary, and Protocol and Declaration, Trianon, 4 June 1920 (Trianon Peace Treaty, 1920). For more on the analysis of the treaty, *see* Ignác Romsics, *A trianoni békeszerződés*, Osiris, Budapest, 2005; Miklós Zeidler (ed.), *Trianon*, Osiris, Budapest, 2008; András Jakab, 'Trianon Peace Treaty (1920)', *in* Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law, Vol. X*, Oxford University Press, Oxford, 2012, pp. 88-92.

3 For more on the theory of an automatic change of nationality in cases of state succession, *see* Hans Kelsen, *General Theory of Law and State*, Harvard University Press, Cambridge, 1945, p. 239; Hansjörg Jellinek, *Der automatische Erwerb und Verlust der Staatsangehörigkeit durch Völkerrechtliche Vorgänge, zugleich ein Beitrag zur Lehre von der Staatensukzession*, Carl Heymanns Verlag, Berlin, 1951, pp. 50-59; Georges Scelle, *Cours de droit international public*, Domat-Montchrestien, Paris, 1948, pp. 132, 136; Lassa Oppenheim, *International Law, Vol. 1*, Longmans, Green, and Co., New York, London, Bombay, 1905, p. 273; László Buza, *A nemzetközi jog tankönyve*, Politzer Zsigmond és Fia, Budapest, 1935, p. 147.

4 In cities (*e.g.* Komárom, Nagyszalonta, Sátoraljaújhely) that were divided by the Peace Treaty, persons who had rights of citizenship in the part of the city that remained in Hungary or who had rights of citizenship in the transferred part of the city, but opted for the Hungarian nationality and moved to the Hungarian part of the city or to another place in Hungary could remain Hungarian nationals. Roland Jacobi & Géza Peregriny, *Magyar állampolgárság, községi illetőség és idegenrendészet*, Phőnix Irodalmi Társaság, Budapest, 1930, p. 4.

citizenship in Hungarian territory obviously remained Hungarian nationals regardless of their place of residence, as stipulated under Article 56.[5]

Article 62 established an exception to the automatic change of nationality. According to this provision, persons who acquired rights of citizenship after 1 January 1910 in territories transferred to the Serb-Croat-Slovene State or to the Czecho-Slovak State could only acquire the Serb-Croat-Slovene or the Czecho-Slovak nationality with a permission of the successor state. In other words, such persons had to apply for nationality and the state could accept or refuse their applications. If the application was not made or was refused, persons automatically acquired the nationality of the state which exercised sovereignty over the territory in which they had rights of citizenship on 1 January 1910.[6] These persons were evidently regarded as nationals of the state of their former rights of citizenship until their application, the submission of which had no time limit. This provision may even have brought about a change in their nationality at the time of the entry into force of the Peace Treaty. For example, a person who had been a Hungarian national before the entry into force of the treaty and had acquired rights of citizenship in a territory transferred to Czechoslovakia after 1 January 1910, but his or her rights of citizenship were attached to a territory transferred to Romania on 1 January 1910, lost his or her Hungarian nationality, and was to be considered a Romanian national until having been granted Czechoslovakian nationality. Incomplete records of Hungarian municipalities also caused difficulties in the determination of rights of citizenship beginning with 1 January 1910.[7]

3. Rights of Citizenship of Persons Affected by the Transfer of Territory

The scope of persons affected was based on the provisions governing the "rights of citizenship".[8] The application of this term was proposed by the delegations of Austria and Czechoslovakia at the negotiations of the Peace Treaty of St. Germain-en-Laye,[9] since they considered it to be more definite than residence or

5 Article 56 of the Trianon Peace Treaty.

6 Article 62 of the Trianon Peace Treaty. For example, a Hungarian national who acquired the rights of citizenship in Pozsony after 1 January 1920 remained a Hungarian national, if he or she did not apply for Czechoslovak nationality. Jacobi & Peregriny 1930, p. 34.

7 Rudolf Graupner, 'Statelessness as a Consequence of Sovereignty over Territory after the Last War', *in* World Jewish Congress British Section, *The Problem of Statelessness, No. 12*, British Section of the World Jewish Congress, London, 1944, p. 34.

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

9 Treaty of Peace between the Allied and Associated Powers and Austria, St. Germain-en-Laye, 10 September 1919.

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habitual residence as contained by the Peace Treaty of Versailles.[10] However, the 'rights of citizenship' was not defined by the peace treaties, and as such, they were endowed with meaning by the domestic regulation of the states concerned. Numerous problems arose from the differences of regulation within the Austro-Hungarian Monarchy: *(i)* there were separate legal rules in the Austrian and Hungarian territories,[11] *(ii)* a combination of these rules were in force in the Croatian-Slovenian territories,[12] and *(iii)* rights of citizenship did not exist in Bosnia and Herzegovina.[13] Therefore interpretation of the rights of citizenship was different in successor states.[14]

Notwithstanding the fact that the rights of citizenship appeared on its own in the text of the Peace Treaty, it was obviously hinged on nationality, since only nationals could possess rights of citizenship at the time of the aforementioned cases of state succession.[15] The rights of citizenship formed not only a legal right, but also an obligation, since every national had to belong to a municipality. Each person could possess one set of rights of citizenship only; consequently, former

10 Treaty of Peace between the Allied and Associated Powers and Germany, Versailles, 28 June 1919. Norman Bentwich, 'Statelessness through the Peace Treaties After the First World-War', *British YearBook of International Law*, Vol. 21, 1944, p. 172; Molony 1934, p. 163.

11 Act of 2 December 1863 on the regulation of the legal relationship of the rights of citizenship, as amended by the Act of 5 December 1896, was in force at the time of the state succession, and as such, it was applicable for the determination of the rights of citizenship of the Austrian nationals. Act XXII of 1886 on municipalities was in force at the time of the Trianon Peace Treaty and regulated the rights of citizenship in Hungarian territory. It is worth mentioning that this legal relationship only ceased to exist in the Hungarian legal system with Act LXI of 1948 on the termination of the rights of citizenship. *See* Mónika Ganczer, 'The Effects of the Differences between the Austrian and the Hungarian Regulation of the Rights of Citizenship in a Commune (Heimatrecht, Indigénat, Pertinenza, Illetőség) on the Nationality of the Successor States of the Austro-Hungarian Monarchy', *Journal on European History of Law*, Vol. 8, Issue 2, 2017, pp. 100-107.

12 *See* Molony 1934, pp. 151-152 and 160.

13 *See* Sir Walter Napier, 'Nationality in the Succession of States of Austria-Hungary', *Transactions of the Grotius Society*, Vol. 18, 1932, p. 2; Graupner 1944, p. 33; Molony 1934, p. 152; Marc Vichniac, 'Le statut international des apatrides', *Recueil des Cours*, Tome 43, 1933-I, pp. 151-152.

14 Bentwich 1944, p. 172.

15 Act XXII of 1886, Section 15; Judgment No. 1080/1935 K. of the Administrative Court, cited by Aladár Bródy & Kálmán Bán, *Állampolgárság és illetőség. A Magyarországon érvényben lévő jogszabályok összefoglaló ismertetése, különös tekintettel a belügyminisztérium és a közigazgatási bíróság legújabb gyakorlatára*, Published by Aladár Bródy and Kálmán Bán, Budapest, 1938, p. 52; Gesetz vom 5. December 1896, Artikel I(5). At that time, a foreigner could acquire rights of citizenship simultaneously with the acquisition of nationality. Interestingly enough, according to the first Hungarian legislation of the rights of citizenship, foreigners who had been residing continuously in the country for two years, had paid their taxes and were not subjects of any other state, could belong to the bond of a municipality. Act XVIII of 1871, Section 19. The Act V of 1876 merely envisaged the acquisition of rights of citizenship before the acquisition of Hungarian nationality. Act V of 1876, Section 11. The Act L of 1879 required for the acquisition of Hungarian nationality by a foreigner that "he or she is admitted to the bond of a municipality or his or her admittance is envisaged by a municipality." Section 8(2) of Act L of 1879 on the acquisition and loss of Hungarian citizenship. The first part of the requirement referred to persons who were admitted to the bond of a municipality between 1871 and 1876, as this was not possible after 1876.

rights of citizenship were replaced upon acquisition of new rights of citizenship in another municipality.

An interesting characteristic of the rights of citizenship was that they were not necessarily tied the place of habitual residence. The ways of acquisition were rather similar to the grounds for acquiring nationality.[16] For example, children's rights of citizenship were based on descendance, and as such, the rights of citizenship of legitimate or legitimized children followed the rights of citizenship of the father, and the rights of citizenship of illegitimate children followed the rights of citizenship of the mother.[17] Furthermore, a married woman acquired her husband's rights of citizenship upon marriage.[18]

The main difference between the relevant Hungarian and Austrian rules, which caused serious problems in the event of state succession, was the acquisition of the rights of citizenship by persons on their own right, through settling and residence. Persons could only acquire rights of citizenship by settling upon a request and an explicit admittance by the municipality in Austrian territory.[19] According to the Hungarian Act, the acquisition of the rights of citizenship could be only be applied for after settling in the municipality, but the rights of citizenship could also automatically[20] change due to a four year-long continuous residence and the payment of tax.[21] Further difficulties emerged from two Czechoslovak judgments, which set conditions for the acquisition of the rights of citizenship which deviated from the Hungarian regulation and practice. One of these judgments stated in 1921 that the rights of citizenship ensued on the condition that the contributions provided to the municipality had been continuous during a period of four years.[22] The other judgment, which was

16 Diethard Krombach, *Erstabgrenzungen im Staatsangehörigkeitsrecht im 19. Jahrhundert und am Anfang des 20. Jahrhunderts*, Bauknecht-Dissertations-Drückerei, München, 1967, p. 22.

17 Gesetz vom 3. Dezember 1863, Section 6; Act XXII of 1886, Section 6.

18 Gesetz vom 3. Dezember 1863, Section 7; Act XXII of 1886, Section 7.

19 Gesetz vom 5. Dezember 1896, Artikel I(1).

20 Act XXII of 1886, Section 10; exception: if in the municipality from where he or she moved in, he or she continuously provided contribution to the municipality, or if without such a contribution, he or she intended to maintain her previous rights of citizenship in the municipality with the consent of that same municipality. For a similar opinion, *see* Napier 1932, p. 9; Graupner 1944, p. 33. For more details, *see* Népies Irodalmi Társaság, *Magyar-román békeszerződés magyarázata*, Népies Irodalmi Társaság, Budapest, 1921, p. 12.

21 The rule of four years was introduced by Section 6 of the Act V of 1876. Paragraph a) of Section 10 of Act XVIII of 1871 only contained two years. In line with Hungarian judicial practice, it was sufficient to only pay tax once to meet the requirement of tax payment, and it could even be performed in kind. Judgments Nos. 999/1924, 1676/1922, 4285/1926 K. of the Administrative Court, cited by Jenő Czebe, *Útmutató honosítási, visszahonosítási, elbocsátási és illetőségi ügyekben. Kiegészítve az elszakított területeken érvényben lévő állampolgársági rendelkezésekkel és jogesetekkel*, Székesfőváros Tanácsa, Budapest, 1930, p. 35; and Bródy & Bán 1938, p. 60. Judgment No. 3268/1910 K. of the Administrative Court, cited by Jenő Pongrácz, *Magyar állampolgárság és községi illetőség. Törvények, rendeletek, elvi határozatok, díjak és illetékek, magyarázat, iratminták*, Magyar Törvénykezés, Budapest, 1938, p. 64. Besides, the amount collected as sales tax qualified as a public burden. Népies Irodalmi Társaság 1921, p. 12.

22 Rights of Citizenship (Establishment of Czechoslovak Nationality) Case, Czechoslovakia, Supreme Administrative Court (No. 16.748.), 15 December 1921. *Annual Digest of Public International Law Cases*, Vol. 1, 1919-1922, Case No. 6, p. 17; Napier 1932, p. 9.

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delivered in 1923, pronounced that an explicit declaration on the admittance of a person by a municipality was also necessary in addition to residence and continuous contributions.[23] This judgment appears to have interpreted the erstwhile nature of the Hungarian rights of citizenship in a rather peculiar manner which ran counter to the technique of automatic acquisition. A number of persons were unable to meet this requirement due to the earlier practice of automatic acquisition. The automatic creation of the rights of citizenship also entailed that records were not always kept as up-to-date in the old Hungarian municipalities as in Austria. Due to the deficiencies of these records, there were persons who theoretically possessed rights of citizenship, but had no means to prove it.

It was not easy to achieve recognition of the rights of citizenship in the municipalities. Moreover, it was particularly difficult for persons belonging to minorities in the states concerned. Their documents were thoroughly examined even if they possessed all the necessary certificates, with special attention paid to those who were about to become pensioners, or whose admittance created financial obligations for the municipality.[24] Debates between two or more municipalities concerning the rights of citizenship posed a particularly serious problem if these municipalities happened to be in different states following the transfer of territories. Since municipalities were not necessarily interested in determining that a person belongs to them, the situation could become exacerbated. The same held true for persons who resided elsewhere. In these cases the municipalities were often reluctant to stand up for such persons, even if it could be proven that their rights of citizenship pertained to the municipality.[25] Disputes concerning the rights of citizenship relating to municipalities that remained in Austrian and Hungarian territories were resolved by the Austrian and the Hungarian Supreme Administrative Court. Disputes concerning municipalities in the transferred territories were decided by the courts of the states concerned.[26] In Hungary, the final decision on the question whether the rights of citizenship of a person were in a transferred territory, and whether a person had lost his or her Hungarian nationality was made by the Minister of Interior by virtue of Act XVII of 1922.[27] Order No. 167.335/1922 of the Minister of Interior accordingly pointed out that the decision whether the rights of citizenship of a person existed on the day of entry into force of the Trianon Peace Treaty had to be within the competence of the Hungarian state, even if the municipality was in a transferred territory, under the sovereignty of another

23 Supreme Administrative Court of Czechoslovakia, Decision of 6 December 1923, cited by Seton Watson, *Slovakia, Then and Now. A Political Survey*, George Allen & Unwin Ltd., Orbis Publishing Co., London, Prague, 1931, p. 56; Napier 1932, p. 9; Czebe 1930, p. 62.

24 Napier 1932, p. 2.

25 Molony 1934, p. 165.

26 Graupner 1944, p. 33.

27 Act XVII of 1922 on the covering of public burdens and expenditures of the state in first six months of the fiscal year 1922/23, Section 24.

state.[28] Certainly, this only had relevance when it came to the loss or the reacquisition of Hungarian nationality, since the decision of the Minister of the Interior could not influence the acquisition of the nationality of another state.

4. Right of Option

The purpose of the right of option is to provide an opportunity for persons affected by state succession to choose their nationality.[29] The fundamental idea underlying the theory of the will of the individual is that persons may not be deemed *glebae adscripti*, therefore, their nationality may not change against their free will.[30] A judge of the ICJ also stated – in another context – that territory may not determine the fate of its inhabitants.[31] One part of this theory suggests that an explicit request or an implicit consent of the inhabitants of the territory is necessary for the acquisition of the nationality of the successor state.[32] The other part recognizes the principle of automatic change of nationality on the condition that the right of option has to be afforded to affected persons to enable them to reacquire their former nationality.[33] The provisions concerning the right of option of the Trianon Peace Treaty was formulated in vein of the latter part of the theory. Both the texts of Article 61 ("to the exclusion of Hungarian nationality") and Article 63 ("losing their Hungarian nationality") denote that persons who had rights of citizenship on the transferred territories lost their Hungarian nationality *ipso facto* with the entry into force of the Peace Treaty. Article 63 afforded the right of option to persons over 18 years of age "losing their Hungarian nationality and obtaining *ipso facto* a new nationality under Article 61" within a period of one year from the entry into force of the treaty.[34] The wording of the treaty seemed unambiguous: persons concerned lost their nationality automatically and they reacquired their former nationality based on their option.

28 Circular Decree 167.335/1922 B. M. of Hungarian Royal Minister of Interior, cited by Czebe 1930, p. 38-39.

29 *See* Mónika Ganczer, 'Az optáláshoz való jog a nemzetközi jogban', *Állam- és Jogtudomány*, Vol. 54, Issue 3-4, 2013, pp. 55-80.

30 *See* Rudolf Graupner, 'Nationality and State Succession. General Principles of the Effect of Territorial Changes on Individuals in International Law', *Transactions for the Year – Grotius Society*, Vol. 32, 1946, p. 90.

31 *Western Sahara,* Advisory Opinion of 16 September 1975. ICJ Reports 1975. (Separate Opinion of Judge Dillard), p. 114.

32 Henry W. Halleck, *International Law; or, Rules Regulating the Intercourse of States in Peace and War*, D. van Nostrand, New York, 1861, p. 816.

33 Eugène Audinet, 'Les Changements de nationalité résultant des récents Traités de Paix', *Journal du Droit International Privé*, Tome 48, 1921, p. 383; Luella Gettys, 'The Effect of Changes of Sovereignty on Nationality', *American Journal of International Law*, Vol. 21, Issue 2, 1927, p. 268.

34 The declaration of the right of option could be withdrawn within the given time limit. Bródy & Bán 1938, p. 25.

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Hungarian practice nevertheless interpreted that option as having a retrospective effect,[35] reaching back to the change of sovereignty. Hence, persons who made a declaration of option had to be considered as not having lost their former nationality and not having acquired the nationality of the successor state.[36] This was explicitly confirmed by the Czechoslovak-Hungarian Mixed Arbitral Tribunal, which decided that in case of an option the individual concerned had to be considered a Hungarian national even in respect of the period prior to the option, since by providing for that right, the Peace Treaty had offered him the Hungarian rather than the Czechoslovak nationality. The Tribunal also held that, by virtue of the exercise of the right of option, individuals had to be considered as never having lost their Hungarian nationality.[37] In other words, the option had a retrospective effect, and the principle of automatic loss of nationality, although expressly laid down in the treaty, could be rebutted by exercising the right of option. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon also referred to this interpretation, when it used the phrase "preservation of Hungarian nationality".[38] This may be the reason why the relevant Hungarian scholarly literature took a stand for the retrospective effect of the option.[39] Hungarian case-law, therefore, ran counter to the text of the Peace Treaty.

This theory of the retrospective effect of the right of option has numerous followers,[40] notwithstanding the fact that it can hardly be substantiated. The negative consequences of the retrospective effect on the status of individuals are obvious,[41] particularly because it may be problematic from the point of view of rights and obligations assumed in the period between state succession and option. If the rights and obligations assumed in the period between these two dates are upheld,[42] it seems rather doubtful whether the individual can properly be seen as not having changed his or her previous nationality. If the point of departure is the preservation of nationality, the validity of rights and obligations

35 *See* about the retrospective effect of the option László Buza & Gyula Hajdu, *Nemzetközi jog*, Tankönyvkiadó, Budapest, 1968, p. 179; Albert Zorn, *Grundzüge des Völkerrechts*, Verlagbuchhandlung von J. J. Weber, Leipzig, 1903, p. 62; Josef L. Kunz, *Die völkerrechtliche Option I*, Hirt, Breslau, 1925, p. 153; Yaël Ronen, 'Option of Nationality', *in* Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law VII*, Oxford University Press, Oxford, 2012, p. 998.

36 *See* John Westlake, *International Law I*, Cambridge University Press, Cambridge, 1902, p. 73.

37 *Ladislaus Chira Fils v. Czechoslovak State,* Czechoslovak-Hungarian Mixed Arbitral Tribunal (Schreiber, Szladits, Hora), 9 July 1929. *Annual Digest of Public International Law Cases 5*, 1929-1930. Case No. 149, p. 246.

38 Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 3.

39 Buza & Hajdu 1968, p. 179.

40 *See* Kunz 1925, pp. 156-157.

41 Sir Hersch Lauterpacht, 'Nationality of Denationalized Persons', *The Jewish Yearbook of International Law*, 1948, p. 168.

42 Emile Szlechter, *Les Options conventionelles de nationalité à la suite de cessions de territoires*, Recueil Sirey, Paris, 1948, p. 334.

assumed while the individual appeared to have been a national of the successor state becomes rather dubious.[43]

The retrospective effect of option does not and cannot secure the interest of the individual regarding the certainty of his or her status and the rights and obligations flowing from that status. For that reason, the solution laid down in the text of the Peace Treaty seems to have been more workable: the loss of Hungarian nationality with the transfer of territory and the reacquisition of that nationality by exercising the right of option. But this solution was also far from perfect. In this case, nationality would have changed twice; this was simply unacceptable to some commentators,[44] while others pointed out that these rapid changes of nationality would not have been accompanied by an actual change in the allegiance of the individual.[45] The allegiance to the successor state would certainly not have formed, had the individual wished to exercise his or her right of option. George Scelle held that this was in effect a renaturalization upon a declaration or a preferential naturalization, while the acquisition of a new nationality upon state succession was to be considered a temporary naturalization.[46] Having taken all these factors into account, the least disadvantageous solution for the individual would have been the reacquisition of the former nationality by exercising the right of option. This appraisal also finds support in the conceptualization of the right of option as a 'reparation'.[47]

Under Article 64 of the Peace Treaty "persons possessing rights of citizenship in a territory forming part of the former Austro-Hungarian Monarchy, and differing in race and language from the majority of the population of such territory" were entitled to exercise their right of option within six months after the entry into force of the treaty with a view to acquire Hungarian nationality, if they were of the same race and language as the majority of the population of Hungary.[48] The Ministerial Decree 6.500 M. E. of 1921 made it absolutely clear that this was a 'gaining' of Hungarian nationality, irrespective of the prevailing nationality of the individual.[49] Meanwhile, persons of a different 'race' and language and possessing rights of citizenship on Hungarian territory were likewise entitled to opt for Austria, Italy, Poland, Romania, the Kingdom of Serbs, Croats and Slovenes or Czechoslovakia.[50] Thus, persons within the scope of Article 64 had a right of option, provided they met the conditions, regardless of whether or not their nationality had changed in the wake of territorial changes.

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

44 Id. p. 161.

45 George Cogordan, *Droit des gens. La nationalité au point de vue des rapports internationaux*, L. Larose, Libraire-Éditeur, Paris, 1879, p. 305.

46 George Scelle also thinks that it undermines the stability of law. Scelle 1934, p. 161.

47 Károly Kisteleki, *Az állampolgárság fogalmának és jogi szabályozásának fejlődése. Koncepciók és alapmodellek Európában és Magyarországon*, Martin Opitz, Budapest, 2011, p. 202.

48 Article 64 of the Trianon Peace Treaty.

49 Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 4.

50 Article 64 of the Trianon Peace Treaty.

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The Peace Treaty envisaged that in both cases an "option by a husband will cover his wife and option by parents will cover their children under 18 years of age",[51] in accordance with the principle of family unity. A similar provision in the Peace Treaty of Saint-Germain with Austria[52] was at times interpreted so narrowly that a woman possessing rights of citizenship in Czechoslovakia, and married to a man missing in the wake of the war, was not allowed to exercise her right of option with a view to reacquire her Austrian nationality in her husband's absence, since they had never divorced, so the reasoning of the court.[53] Divorce could have taken place in the course of the period open for option, following which the woman could obviously have exercised her right of option of her own accord.[54] In Hungarian law, the aforementioned provision of the Peace Treaty was construed in a way that the nationality of a husband determined that of his wife only if she "lived together with him",[55] meaning that both marriage and cohabitation were required for any adjustment of the nationality of a woman. This is also confirmed by a Hungarian decision, which allowed for a distinct treatment of the wife's nationality in case of a separation of considerable duration.[56] The status of children under the age of 18 and under the power of a father was determined by the father's declaration of option. The declaration of option was made by the legal representative of children under the age of 18 and not under the power of a father or of persons under custodianship, for they had no capacity to act. At the same time, children who had already reached the age of 12 had to be heard prior to the declaration of option.[57]

The declaration of option had to be made in written form; if the declaration was made orally, it had to be recorded.[58] It is worth mentioning that nationality was preserved or acquired by option at the moment when the minister of interior determined that the requirements of the right of option were fulfilled. Hence neither the declaration of option, nor the certificate issued thereupon by the authority resulted in a change of nationality.[59] The exercise of the right of option

51 Id. Article 63.

52 Treaty of Peace between the Allied and Associated Powers and Austria, St. Germain-en-Laye, 10 September 1919, Article 78.

53 *Kugler v. (Austrian) Federal Ministry for the Interior,* Austria, Administrative Court *(Vervaltungsgerichtshof)*, Vienna. 29 September 1921. (No. 12.891 A.), *Annual Digest of Public International Law Cases*, Vol. 1, 1919-1922, Case No. 153, pp. 220-221.

54 *A. P. v. Federal Ministry of the Interior,* Austrian Administrative Court, 6 October 1925, *Annual Digest of Public International Law Cases 4*, 1927-1928, Case No. 212, p. 318.

55 Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 9.

56 *Julianna M. v. Josef Sch.,* Supreme Court of Hungary, 14 December 1927, *Annual Digest of Public International Law Cases 4*, 1927-1928, Case No. 203, p. 309.

57 *See* Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 5; Bródy & Bán 1938, p. 25.

58 *See* Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 11.

59 Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 12.

was, in essence, a claim (referred to as *'igény'*[60] in Hungarian) for the preservation or acquisition of nationality, and as such, the declaration was not unilateral. It was the state that made the final decision concerning the exercise of that right, and the declaration of the individual was followed by an act of acceptance on the side of the state.

There was generally a deadline for the exercise of the right of option. In this period, the individual only had to make a declaration, since the right of option was, in fact, exercised by making such a declaration. Nevertheless, the periods of one year and of six months as laid down in the Peace Treaty proved to be too short. Persons affected by territorial changes could only acquire Hungarian nationality following the expiration of the deadline by way of preferential renaturalization offered under Act XVII of 1922.[61]

There are different views as to the withdrawal of the option. Some authors believe that the option could be withdrawn before the deadline for option.[62] Others, however, are convinced that the declaration could not be withdrawn,[63] and that the former nationality could only be reacquired through naturalization.[64] The possibility of withdrawal was included in the Hungarian Royal Ministerial Decree 6.500 M. E. of 1921, but only for certain groups of individuals. Persons who reached the age of 18 before the deadline could withdraw the declaration of option made by a legal representative, as well as those who previously had no capacity to act, but its grounds had lapsed in the meantime.[65]

In order to safeguard the interests of the individual, it was essential to regulate the consequences of option, as well. The Peace Treaty stated that persons who had opted for another state had to transfer their place of residence to the state whose nationality they acquired within one year after the making of the declaration. They could carry with themselves all their movable property without any export or import duties, and they could either retain or sell their immovable property.[66] The Ministerial Decree 6.500 M. E. of 1921 was more lenient than the Peace Treaty in two respects. Firstly, it formulated the deadline in the following

60 Trianon Peace Treaty 1920, Article 63 [Hungarian version]. *See* Iván Halász & Gábor Schweitzer, '69. § [Állampolgárság]', *in* András Jakab (ed.), *Az Alkotmány kommentárja II*, Századvég, Budapest, 2009, p. 2436.

61 Act XVII of 1922 on covering of public burdens and expenditures of the state in first six months of the fiscal year 1922/23, Section 24.

62 Bródy & Bán 1938, p. 25.

63 *Dittmann v. Governor of Pomorze (Pomerania),* Poland, Supreme Administrative Court, 16 June 1924, *Annual Digest of Public International Law Cases 2*, 1923-1924, Case No. 139, pp. 255-256; *J. E. v. Federal Ministry of the Army,* Austrian Administrative Court, 6 October 1925. (No. 13.981 A.), *Annual Digest of Public International Law Cases 4*, 1927-1928, Case No. 213, p. 319.

64 *Dittmann v. Governor of Pomorze (Pomerania),* Poland, Supreme Administrative Court, 16 June 1924, *Annual Digest of Public International Law Cases 2*, 1923-1924, Case No. 139, p. 256; *Option of Nationality (Austria) Case,* Austria, Administrative Court, 17 May 1932, *Annual Digest of Public International Law Cases 6*, 1931-1932, Case No. 131, p. 259.

65 Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 5.

66 Article 63 of the Trianon Peace Treaty.

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manner: "within one year following [...] the expiry of the period of time open for option".[67] Second, it added that the persons concerned were allowed to retain, along with their immovables, any "equipment necessary for their cultivation and use".[68] However, the Peace Treaty failed to regulate the public service employment, military obligations, pension, and widow and orphan care of individuals who exercised their right of option. These issues were settled *e.g.* by Austria and Hungary in a separate treaty.[69]

5. Other Treaties Concerning Nationality

Under the terms of the Peace Treaty, the city of Sopron and its surroundings should have been transferred to Austria, but the takeover was never carried out due to the occupation of the territory by Hungarian paramilitary units. Italian diplomatic efforts resulted in the signing of the Protocol of Venice of 1921 and a subsequent referendum,[70] in which 65 per cent of the local population expressed its intention to remain in Hungary. The Austrian Administrative Court examined the issue of nationality in this period and pronounced that the local population did not become Austrian nationals, as Austria could not exercise her sovereignty over the territory concerned. Since the territory had to be considered as a part of Hungary prior to the referendum, the individuals remained Hungarian nationals all along.[71]

Austria, Czechoslovakia, Hungary, Italy, Poland, Romania and Yugoslavia, successor states that retained or acquired parts of the former Austro-Hungarian Monarchy, signed a convention on nationality in 1922.[72] The convention envisaged that if a dispute arose with respect to the granting of nationality under the peace treaties, it would be resolved by a commission composed of one delegate from each of parties concerned and of a chairman, who would be mutually appointed or lacking an agreement of the parties, would be appointed by Switzerland.[73] The convention was ratified by Austria, Italy and Poland only; therefore, its application was rather limited.

67 Hun. Roy. Ministerial Decree 6.500 M. E. of 1921 on the Exposition and Implementation of Nationality Provisions Contained in the Peace Treaty of Trianon, Section 6.

68 Id. Section 7.

69 Staatsvertrag zwischen der Republik Österreich und dem Königreich Ungarn über die Behandlung von Angestellten, Pensionisten, Witwen und Waisen aus dem auf Grund der Staatsverträge von Saint-Germain-en Laye und von Trianon von Ungarn an Österreich abgetretenen Gebiete samt Zusatzprotokoll vom 31. März 1924, BGBl. Nr. 138/1925, p. 581; Zusatzprotokoll zu dem am 12. Jänner 1924 zwischen der Republik Österreich und dem Königreich Ungarn abgeschlossenen Staatsvertrag, BGBl. Nr. 139/1925, p. 591. *See* Isidor Schwartz, 'Zur Lehre von der Staatensukzession', *Niemeyers Zeitschrift für Internationales Recht*, 1933-1934, pp. 166-176.

70 Protocol of Venice, Venice, 13 October 1921, Section II.

71 *Oedenburg (Change of Nationality) Case,* Austrian Administrative Court, 2 September 1927. A. 317/26, *Annual Digest of Public International Law Cases*, Vol. 4, 1927-1928, Case No. 201, p. 307.

72 Convention concerning Nationality, Rome, 6 April 1922.

73 Id. Article 4.

The Romanian minority treaty[74] was concluded months before the Peace Treaty of Trianon in December 1919, and it entered into force on 4 September 1920. Romania was obliged, subject to the peace treaties, to automatically and *ipso facto* recognize as her nationals persons who habitually resided on the day of entry into force of the treaty in her prevailing or subsequently expanded territory.[75] Furthermore, Romania automatically recognized as her nationals persons who were born in, and whose parents habitually resided in the transferred territories, even if they did not stay in the territory on the day of the entry into force of the treaty. However, these individuals were entitled to renounce their Romanian nationality within two years; the declaration of the husband covered his wife and children under 18 years of age.[76] These provisions broadened the scope of affected persons, as nationality was granted not only to persons with rights of citizenship, but also to habitual residents, albeit at different points in time as provided for in the treaties. While the requirement of rights of citizenship could only be applied to Hungarian nationals, habitual residency could have been applied to foreigners and stateless persons alike. Birth in the territory and territorial linkage *via* parents both supplemented the Peace Treaty and authorized the granting of Romanian nationality to additional groups of individuals. Romania also undertook to automatically grant nationality to stateless Jews inhabiting her territory.[77] The minority treaty did not provide for the loss of Hungarian nationality simultaneously to the acquisition of Romanian nationality, and as a result, it did not preclude the dual nationality of individuals who met the conditions laid down in that treaty, but did not lose their Hungarian nationality under the Peace Treaty of Trianon. The Romanian Law of Nationality of 1924[78] modified the group of persons entitled to citizenship in a way that was contrary to international law. According to that law, all inhabitants of former Hungarian territories who had possessed rights of citizenship in these territories on 18 November 1918 and had not opted for another nationality prior to the promulgation of the law automatically qualified as Romanian nationals.[79] Since the rights of citizenship presupposed the nationality of a predecessor state, the scope was narrowed down to Hungarian nationals with rights of citizenship on that particular date. Notwithstanding that the base date for the determination of the existence of rights of citizenship should have been 21 July 1921, Romania chose a different point in time. It is most likely that not all individuals who would have acquired Romanian nationality under the Peace Treaty could meet this new requirement, and it is equally likely that many who would not have acquired Romanian nationality under the peace treaty could acquire it under the Law of Nationality.

74 Treaty between the Principal Allied and Associated Powers and Romania, Paris, 9 December 1919.
75 Id. Article 3.
76 Id. Article 4.
77 Id. Article 7.
78 Romanian Law of Nationality of 23 February 1924.
79 Id. Article 56(1). *See* Napier 1932, p. 12; Graupner 1944, p. 37.

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6. Conclusion

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

The most important criterion for the determination of nationality was the possession of rights of citizenship, which was governed by the domestic laws of the states concerned. The Acts set forth that everyone had to have rights of citizenship, but it was not always realized. Some persons did not possess rights of citizenship, some could not prove their rights of citizenship by presenting the required documents, and the place of the rights of citizenship of some were debated. It caused difficulties that the successor states did not always interpret the rights of citizenship similarly to the relevant regulation of the predecessor state. First, the automatic change of rights of citizenship was not necessary recognized by the successor states in a way that was similar to the Hungarian regulation. The automatic creation of the rights of citizenship also entailed that records were not always kept as up-to-date in the old Hungarian municipalities as in Austria. Due to the incomplete character of these records, there were persons who theoretically possessed rights of citizenship, but could not prove it.

Hence, the peace treaties used a criterion as a basis of the acquisition of nationality and of the exercise of the right of option which could not be unequivocally determined in respect of a number of persons. This primarily originated from the differences between earlier domestic regulations. The international regulation carried a further problem: persons who acquired rights of citizenship after 1 January 1910 in territories that later became part of the Czecho-Slovak State and the Serb-Croat-Slovene State needed a permit of the successor state for the acquisition of nationality. If the permit was not requested or was refused, persons acquired the nationality of the state in which they had rights of citizenship before that time. However, if former rights of citizenship could not be determined or proved, which could easily happen due to the passing of time, the persons concerned became stateless.

For these reasons, a number of persons did not possess or could not prove the rights of citizenship at the time of the entry into force of the peace treaties. The peculiar interpretation of the conditions of the rights of citizenship by certain courts had a result that tens of thousands of Hungarian nationals became

stateless, and their number was still around twenty or thirty thousand in 1926,[80] the preferential naturalization in Czechoslovakia and the renaturalization in Hungary notwithstanding.

The right of option was, on the one hand, offered to persons affected by an automatic change of nationality on the basis of their former nationality and rights of citizenship. The peace treaty spoke of the reacquisition of Hungarian nationality, but the Hungarian practice resulted in a retention of nationality as the option was applied with retrospective effect to the entry into force of the treaty. The retention of nationality was brought about by an administrative decision concerning the declaration of option by virtue of which the individual had be considered as not having lost his or her Hungarian nationality. The right of option, on the other hand, was also offered to persons on the basis of their rights of citizenship in the former Austro-Hungarian Monarchy, depending on 'race and language' to enable them to acquire the nationality of their respective kin states; this came to be known as 'ethnic option'. The nationality of spouses and children were only regulated in the context of option. The nationality of women living in marriage and minors under 18 years of age followed the option of the head of the family in accordance with the principle of family unity. Hence, married women were not entitled to exercise their right of option of their own accord, although in some cases it was permitted on grounds of prolonged separation. Foreigners and stateless persons living in transferred territories were not entitled to become nationals of the successor state. Divergent interpretations of, and difficulties in the determination of the rights of citizenship resulted in statelessness on a massive scale. Stateless persons could only become Hungarian nationals if they were born within the Trianon borders and later acquired rights of citizenship in transferred territories. Their situation was ameliorated under Act XVII of 1922, which authorized their preferential renaturalization.

The Romanian minority treaty broadened the scope by automatically granting nationality to individuals with only habitual residence in the territories transferred to Romania. In addition, persons living abroad with links to the territory as well as foreigners and stateless persons living in the territory concerned could also become nationals. The personal scope of the Romanian Law of Nationality of 1924 was different from both treaties, which could result in statelessness or dual citizenship.

Even though a century has passed since the post-war territorial changes, their profound impact on nationality can still be detected, as shown by the 2010

80 Watson 1931, p. 57.

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amendment of Act LV of 1993 on Hungarian Citizenship.[81] The amended act provides for the preferential naturalization of a non-Hungarian citizen "whose ascendant was a Hungarian citizen, or who demonstrates the plausibility of his or her descent from Hungary and provides proof of his or her knowledge of the Hungarian language",[82] irrespective of his or her place of residence.

81 *See* Mónika Ganczer, 'International Law and Dual Nationality of Hungarians Living Outside the Borders', *Acta Juridica Hungarica*, Vol. 53, Issue 4, 2012, pp. 316-333; Mónika Ganczer, 'The Recent Amendment of the Hungarian Citizenship Act', *in* Péter Smuk (ed.), *The Transformation of the Hungarian Legal System 2010-2013*, CompLex Wolters Kluwer, Széchenyi István University, Budapest, 2013, pp. 69-80; Mónika Ganczer, 'Hungarians Outside Hungary – The Twisted Story of Dual Citizenship in Central and Eastern Europe', *Verfassungsblog (VerfBlog)*, 8 October 2014, at www.verfassungsblog.de/en/hungarians-outside-hungary-twisted-story-dual-citizenship-central-eastern-europe/; Mónika Ganczer, 'A határon túli magyarok kettős állampolgárságának nemzetközi jogi és belső jogi aspektusai: a kollektív elvesztéstől a könnyített megszerzésig', *Jog-Állam-Politika*, Vol. 3, Issue 3, 2011, pp. 45-61; Mónika Ganczer, 'Sarkalatos átalakulások: az állampolgársági jog átalakulása', *MTA Law Working Papers*, No. 63, 2014, pp. 1-18.

82 Act LV of 1993 on Hungarian Citizenship, Section 4(3).