

The Hungarian Model for Multiculturalism¹

ANDRÁS L. PAP

This paper focuses on two developments in post-2010 Hungary's legal framework accommodating, or rather targeting multiculturalism: first, the adoption of a new citizenship law, which opens the door for all ethnic kins and provides non-resident voting rights, and second, following the path of an earlier controversial legislation and rhetoric on multiculturalism, the reconceptualization of the Roma as a national (and not an ethnic) minority community.

Protective measures for racial, ethnic, or national minorities can target a number of different things, such as: socio-economic equality, de facto freedom of religion, the protection of potential pogrom victims and the prevention of brutal ethnic conflicts, decreasing cultural conflicts between majority and genuine minority or immigrant groups, combating racial segregation or apartheid, or race-based affirmative measures of compensatory, remedial, or transitional justice. In line with this, laws protecting minorities may take several forms, ranging from affirmative action and social protection measures to declarations of religious and political freedom to setting forth cultural or political autonomy, or controlling political extremists. The context-dependent meaning of minority-protection may also refer to a widely diverse set of policies, such as equal protection (non-discrimination); participatory identity politics (the political participation of identity-based groups in political decision-making); cultural identity politics (the recognition of identity-based groups in cultural decision-making by the state); the protection of historically rooted identity-based sensitivity (the criminalization of hate-speech, holocaust-denial, et cetera); affirmative action; special constitutional constructions form-fitted for the needs of indigenous populations; policies recognizing claims which mirror the state's ethnic kin's Diaspora claims abroad; the right to traditional, pre-colonization life; or simply measures designed to maintain international security.

1 The research project was partly financed from the SASPRO Programme. The research leading to these results has received funding from the People Programme (Marie Curie Actions), the European Union's Seventh Framework Programme under REA grant agreement No. 609427. Research has been further co-funded by the Slovak Academy of Sciences. The paper is an early version of a manuscript that was submitted as a chapter of a book entitled *Democratic Decline*, to Routledge in 2017. (PAP 2017a)

Discussions on Hungarian minority rights and policies need to reach back to 1920, when in the post-WWI treaty Hungary lost two-thirds of its territory and the corresponding population. Ever since, the aspiration to reunite the old glory and territorial integrity, or at least a responsibility for ethnic kins in the neighbouring countries, has been a cornerstone of conservative domestic politics, and after the political transition in 1989, a constitutional responsibility and a foreign policy priority as well. The 1920 Treaty of Trianon also serves as a symbol of Hungary's and Hungarians' victimization and mistreatment by the international community.² Following the signature of the international treaty ending WWI, Hungary lost two-thirds of its territory and the corresponding population (let us add, most of which were not ethnic Hungarians, but there were homogenous Hungarian cities and territories). Let us further add, the dramatic loss of territory and population also led to a dramatic increase in the ethnic homogeneity of post WWI-Hungary. Nevertheless, aspirations to reunite with ethnic kins have been probably the most important reference points in politics, as well as a foreign policy priority – especially for the political right and conservatives. But not only for conservatives. As Pogonyi points out, from the 1970s, the Hungarian democratic opposition openly demanded help for discriminated Hungarians in Romania and Czechoslovakia, and democratization and transborder engagement have become twin projects of the anti-Communist dissidents, nationalists and liberals alike. After the transition, right-wing parties increasingly used transborder Hungarians to strengthen their national image, while liberals and social democrats accused them with nationalism and even irredentism.

Irredentist ideas dominated the politics of the interwar era. One of the reasons for Hungary's involvement in World War II as an ally of Nazi Germany was the prospect of re-annexation of territories with large Hungarian minorities.³ "Responsibility" for ethnic Hungarians living outside the borders, whatever that is to imply, was codified in the 1989 constitution-making. Throughout the 1990s, when new Central East-European democracies were torn between meeting requirements for European integration and giving in to nationalist revivals, the Hungarian governments made use of all the tools they could to strengthen ties with the national homeland and ethnic kins in the Diaspora. Bilateral agreements on minority rights were negotiated and signed with neighbouring states.⁴ Hungary joined European minority rights treaties and conventions that focused on traditional, national minorities (such as the Framework Convention for the Protection of National Minorities, or the European Charter for Regional or Minority Languages) and governments did everything in their powers to pressure neighbouring states to do the same. Of course, their status and position

2 Shortly after the elections in 2010, Parliament passed a law declaring June 4 the 90th anniversary of the Trianon Peace Treaty, a national day of remembrance (Act XLV of 2010).

3 POGONYI, S. (2015): Transborder Kin-minority as Symbolic Resource in Hungary. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 14, No. 3. 83.

4 JESZENSZKY, G. (1996): Hungary's Bilateral Treaties with the Neighbours and the Issue of Minorities. *Ethnos-Nation. Eine europäische Zeitschrift*, Vol. 4, No. 1–2. 123–128. Available: www.hungarianhistory.com/lib/jeszenszky/jesz5.pdf (Downloaded: 20.02.2018.)

was completely different: Hungary was practically ethnically homogenous in terms of national minorities, with a single ethnic minority: the Roma. In 1990, 271,000 people (roughly 2.7 per cent of the total population) out of the 10.4 million inhabitants of Hungary claimed to have an ethnic background other than Hungarian, thus 97.3 per cent declared themselves to be Hungarians.⁵

Political (and legal) measures directly fostering Diaspora-relations, such as the aforementioned bilateral treaties and a so called status law,⁶ were passed in 2001, instituting a soft version of dual quasi-citizenship, visa free entry, limited employment opportunities, and a set of preferences provided in access to mostly educational and cultural services in Hungary, and a passport-like identity card for ethnic Hungarians in the neighbouring states.⁷

Also, granting dual citizenship has been constantly on the political agenda, and even an unsuccessful referendum (initiated by an NGO and supported by Fidesz) was held in 2004. (Voters would have supported the policy, but the voter turnout had been too low for it to be binding.) Other, indirect tools have been put into use as well: the law on national and ethnic minorities, adopted under the first right-wing conservative government as early as 1993, advocated an extremely generous model accommodating multiculturalism for indigenous, meaning traditional national minorities – specifically for those which have homelands in the neighbouring states with large Hungarian minorities. It was designed in a way to provide a politically marketable model and example for the neighbouring countries – but without a reflective engagement for Hungarian citizens of Europe’s largest ethnic minority, the Roma.

Illiberal Transnationalism: The Nation and the Constitution in Internal and External Homelands

Let us first take a look at Diaspora politics during the second Orbán Government after 2010. Several important developments took place.

First, the new constitution, the Fundamental Law, reformulated and expanded references to ethnic kins living beyond the borders. The former constitution stated that Hungary “feels responsibility” for the fate of Hungarians living abroad and was dedicated to “promote and foster their relations with Hungary”. As mentioned above, the Fundamental Law’s lengthy Preamble does not define the subjects of the constitution as the totality of people living under the Hungarian laws, but as the Hungarian ethnic nation: “We, the members of the Hungarian Nation [...] hereby

5 TÁTRAI, P. (2015): Transformations of the ethnic structure in Hungary after the turn of the millennium. *Human Geographies – Journal of Studies and Research in Human Geography*, Vol. 9, No. 1. 76–96.

6 For more see PAP 2005a; 2005b.

7 KÁNTOR, Z. – MAJTÉNYI, B. – IEDA, O. – VIZI, B. – HALÁSZ, I. eds. (2004): *The Hungarian Status Law: Nation Building and/or Minority Protection*. 1st ed., Sapporo, Hokkaido University.

proclaim the following.” The new constitution defines the nation as a community, the binding fabric of which is “intellectual and spiritual”: not political, but cultural and built on the concept of a “single Hungarian nation” that transcends borders. The Preamble promises “to preserve the intellectual and spiritual unity of our nation torn apart in the storms of the last century” and stipulates that Hungary “shall bear responsibility for the fate of Hungarians living beyond its borders”, which includes helping the “establishment of their community self-governments” and “the assertion of their individual and collective rights.”⁸

In a report adopted by the Council of Europe’s advisory body, the Venice Commission, 2011, paras 39–45, held that:

“It is also of particular importance that the constitutional legislator pays proper attention to the principle of friendly neighbourly relations and avoids inclusion of extra-territorial elements and formulations that may give rise to resentment among neighboring states. In this respect, the Preamble seems to be premised on a distinction between the Hungarian nation and (other) nationalities living in Hungary. The Hungarian nation, in turn, also includes Hungarians living in other states. According to the Preamble, “we promise to preserve the intellectual and spiritual unity of our nation torn apart in the storms of the last century”. This statement implies obvious historical references and should be read in conjunction with Art. D, establishing Hungary’s “responsibility for the fate of Hungarians living beyond its borders”. Such a wide understanding of the Hungarian nation and of Hungary’s responsibilities may hamper inter-State relations and create inter-ethnic tension.”

The Venice Commission also found that the statement in Article D that “Hungary shall bear responsibility for the fate of Hungarians living beyond its borders”:

“Touches upon a very delicate problem of the sovereignty of states and, being a rather wide and not too precise formulation, might give reason to concerns. In particular, the Venice Commission finds unfortunate the use, in this context, of the term “responsibility.” This term may be interpreted as authorizing the Hungarian authorities to adopt decisions and take action abroad in favour of persons of Hungarian origin being citizens of other states and therefore lead to conflict of competences between Hungarian authorities and authorities of the country concerned. [...] The Venice Commission recalled that, while states may legitimately protect their own citizens during a stay abroad, as indicated in its Report on the Preferential Treatment of National Minorities by their Kin-State “responsibility for minority protection lies primarily with the home-States”. [...]

8 KÖRTVÉLYESI, Zs. (2012): From “We the People” to “We the Nation”. In TÓTH, G. ed.: *Constitution for a Disunited Nation: On Hungary’s 2011 Fundamental Law*. 1st edition, Budapest, Central European University Press.

Unilateral measures by a State with respect of kin-minorities are only legitimate “if the principles of territorial sovereignty of States, *pacta sunt servanda*, friendly relations amongst States and the respect of human rights and fundamental freedoms, in particular the prohibition of discrimination, are respected.”⁹

By amending Act LV. 1993 on Hungarian citizenship (Act XLIV of 2010) Parliament has allowed the possibility of persons who were previously citizens of Hungary, or whose ancestors were citizens of Hungary, or who are of Hungarian descent but are now foreign citizens, to receive Hungarian citizenship. This law is primarily meant to offer citizenship to persons of ethnic Hungarian descent whose Hungarian ancestors were placed outside the Hungarian borders as a consequence of the Paris Peace Treaties following World War I. The new electoral law abolished residency requirements for eligibility to vote, but instituted a construction, where non-residents’ votes are worth less than half than those of residents, as since they do not have SMDs, and cannot vote for SMD candidates, their votes are counted only in the national list. Estimates of the size of the ethnic Hungarian communities across the border vary, ranging between 2.5–3 million.¹⁰

By 2016 the number of new, non-resident citizens reached 850,000, with a 99.12 per cent approval rate and media reports informed the public on how the Ukrainian mob and a few select Hungarian law firms organized citizenship applications with falsified documents by the ten-thousands.¹¹ The amendment to the citizenship law in the name of “national reunification beyond the borders” was of corollary symbolic importance. The bill was submitted to Parliament only three days after the inaugural session of the new House. Two days later, Fidesz submitted another symbolic proposal on the commemoration of the tragic consequences of the 1920 Trianon Peace Treaty as Hungary’s most enduring national catastrophe. The bill, transformed into law as Act XLV of 2010 on National Belonging, held that Parliament was committed to restoring national unity broken up by the Trianon Treaty and stepping up against the assimilation of Hungarians who were cut from their homelands by shifting borders.¹²

Transnationalism – ties linking people across borders – is not a new phenomenon, nor are identitarian projects to strengthen symbolic nationness across borders or specific state institution building projects regarding Diaspora. Based on Gamlen

9 Venice Commission, 2011, paras 40–41.

10 GYURGYÍK L. (2005): Magyar kisebbségek a kutatások tükrében: A határon túli magyarok számának alakulása az 1990-es években. *Magyar Tudomány*, Vol. 166, No. 2. 132–144. Available: www.matud.iif.hu/05feb/03.html; Transindex.ro (2010): Negyedmillióval csökkent tíz év alatt a magyarok száma a Kárpát-medencében, 7 December. Available: <http://itthon.transindex.ro/?cikk=13124>; Nol.hu (2009): Már csak emlék a 15 milliós magyarság, 23 May. Available: http://nol.hu/kulfold/20090523-letszamjelentes_a_kisebbségi_magyarsagrol-334091 (Downloaded: 20.02.2018.)

11 Index.hu (2016): Továbbra is boldog-boldogtalannak adunk kettős állampolgárságot, 8 July. Available: http://index.hu/gazdasag/2016/07/08/tovabbra_is_boldog-boldogtalannak_adunk_kettos_allampolgarsagot/ (Downloaded: 20.02.2018.)

12 POGONYI (2015): *op. cit.* 84–85.

et al. Pogonyi¹³ claims that literally more than half of the world set up some formal institutional arrangements to include expatriates and Diasporas, using them for lobbying in geostrategically important countries or fostering homeland economies, for example through specifically designed Diaspora investment schemes.

The most common forms of institutionalized transnationalism include quasi or full non-resident citizenship, facilitated repatriation/return migration policies, official recognition (and even financial support) of diaspora institutions, the introduction of separate government offices (including separate ministries) responsible for overseeing diaspora relations, state sponsored education and cultural events outside the borders, birth-right travel frameworks, setting up global television channels and internet forums, and bilateral treaties with states where significant diasporic populations reside.¹⁴

As Joppke¹⁵ and Pogonyi¹⁶ point out, right-wing nationalist parties in traditional emigrant, or in newly independent (such as several post-Soviet or former Yugoslav) states with large ethnic minorities reach out to co-ethnic populations abroad in order to counterbalance increasing immigration and to maintain the dominant national group's claims over the state. The peculiarity of the Hungarian case lies in the fact that Diaspora policies are not intended to serve the economic interests of the homeland and investment is unidirectional: the Hungarian government provides financial support for Hungarian language and culture abroad, expecting no economic geostrategic returns from transborder networks.¹⁷ Also, non-resident citizenship is not intended to facilitate repatriation to Hungary.¹⁸

The new diaspora policies and institutions including birth-right travel programs and language courses were intended to folklorize and diasporize Hungarian expatriates and their descendants in the overseas territories rather than mobilize them.¹⁹

Pogonyi argues convincingly that Diaspora engagement policies were mostly designed to strengthen the government's nationalist image within the homeland constituency. Its reasons are purely symbolic, and despite occasional irredentist rhetoric, it does not even include the classic nationalist desire to make the political and national borders congruent.

13 Ibid. 74–75.

14 Ibid. 80.

15 JOPPKE, C. (2005): *Selecting by Origin: Ethnic Migration in the Liberal State*. 1st edition. Cambridge, Harvard University Press.

16 POGONYI (2015): *op. cit.* 81.

17 Ibid. 91.

18 Ibid. 86.

19 Ibid. 73.

It presents national reunification beyond the borders in the rhetoric framework of a borderless Europe in which individuals may cultivate transnational ties and minority rights (including cultural and territorial autonomy) and they are safeguarded by international treaties. One could argue that the Orbán government's romantic transnational nationalism or, more precisely, trans-state nationalism promotes a rather innocent de-territorialized conception of symbolic and cultural nationness without irredentist claims.²⁰

Hence, Diaspora-politics have been tools for electoral gerrymandering (in regards of the non-resident voters) and a rhetorical pillar of the new regime.

As Pogonyi concludes, Diaspora politics is path dependent. Hungarian minorities in the neighbouring countries always played a central role in political debates since the late 1980s. Before the political transition, the democratic opposition used discrimination against them to contest Communist rule. After 1990, transborder kinpolitics was an identity banner for right-wing parties, as well as a tool to label left-wing and liberal parties as antinational. After 2010, in somewhat of a perfect storm, the long-held and always denied (even by right-wing governments, including the first Orbán Administration between 1998 and 2002) demand of transborder organizations for full non-resident citizenship was fulfilled.²¹

Illiberal Multiculturalism: The Nation and the Minorities

Another characteristic feature of post-2010 Hungary concerns its approach to multiculturalism and accommodating ethno-cultural diversity through minority policies and politics. Similarly to the above-mentioned Diaspora-issues, the Orbán Government's minority politics are path dependent, with a slight twist. Debates and theories applied to multiculturalism in a diversity management context need to be adjusted accordingly when talking about Hungary. Two important demographic and political features need to be stated in the outset.

As for demographics, in the 2011 census, 6.5 per cent of the population declared that they belong to one of the minority groups. Immigration figures are very low, and the overwhelming majority of immigrants are ethnic Hungarians from a neighbouring state who do not constitute a cultural minority. With an overall population of about 10 million, the immigration authorities recorded 213,000 foreigners living legally in Hungary in 2012.²² Based on the 2011 census, the number of minorities living in Hungary is as follows: 3,571 Armenians; 6,272 Bulgarians; 315,583 Roma;

20 Ibid. 76.

21 Ibid. 90.

22 Council of Europe, ERICarts (2016): *Compendium of Cultural Policies and Trends in Europe*. 15th edition. Available: www.culturalpolicies.net/web/hungary.php?aid=424; Hungarian Central Statistical Office (2013): *A népesség anyanyelv, nemzetiség és nemek szerint*. [Population according to native language, nationality and gender.] Available: www.ksh.hu/nepszamlalas/docs/tablak/teruleti/00/1_1_6_1.xls (Downloaded: 20.02.2018.)

26,774 Croatians; 185,696 Germans; 4,642 Greeks; 7,001 Poles; 35,641 Romanians; 3,882 Ruthenians; 10,038 Serbs; 35,208 Slovaks; 2,820 Slovenians; 7,396 Ukrainians. Roma constitute the largest minority group in the country. In the 2011 population census, about 3 per cent of the population identified themselves as Roma,²³ but estimations even suggest that the population is closer to 750,000.²⁴ As for the political: it is, again, the almost 100-year-old 1920 Treaty of Trianon, which left the formerly multinational state practically homogenous, but with about a third of ethnic Hungarians (cca. 3 million people) in the neighbouring states. In 1993 a seminal law on national and ethnic minorities (Act LXXVII of 1993), which has been cited widely in international comparisons as a reference point, in fact was designed to provide a politically marketable example for the neighbouring countries with substantial Hungarian minorities.²⁵ Hungary has thus instituted a cynical legal framework for multiculturalism, which relies on false, or at least deceitful premises. As we will see in this and the next chapter, at the end of the day it will be the Roma, Hungary's largest minority, and the only ethnic community²⁶ (I will return to the difference between ethnic and national minorities shortly), who will pay the price for the inconsistencies that are encoded in the framework. For the Roma, the legal and policy framework will be highly inadequate, and the paternalistic *culturalism* advocated by, for example, the Orbán Government, will foster neither social inclusion nor political empowerment.

Let us first take a closer look at the Hungarian model of multiculturalism. Thereafter, developments instituted after 2010 will be explained, with particular attention to how minorities are conceptualized in the new constitution. Finally, we will look at how the Roma are impacted by recent developments.

The 1993 framework for multiculturalism and minority protection

The 1993 Minority Act defined national and ethnic minorities as groups which have been present in the territory of Hungary for over 100 years and which

constitute a numerical minority within the population of the country, whose members hold Hungarian citizenship and differ from the rest of the population

23 Hungarian Central Statistical Office (2011): *Personal Questionnaire*. Available: www.ksh.hu/nepszamlalas/docs/kerdoivek/szemely_angol.pdf (Downloaded: 20.02.2018.)

24 European Commission (2013): *The European Union and Roma – Country Factsheet, Hungary*. Available: http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2013/hungary_en.pdf (Downloaded: 20.02.2018.)

25 BÍRÓ, A. (2013): The Price of Roma Integration. In GUY, W. ed.: *From Victimhood to Citizenship. The Path of Roma Integration. A Debate*. 1st edition. Budapest, Kossuth Kiadó. 26; PAP, A. L. (2006): Minority Rights and Diaspora-claims: Collision, Interdependence and Loss of Orientation. In IEDA, O. ed.: *Beyond Sovereignty: From Status Law to Transnational Citizenship?* 1st edition. Sapporo, Hokkaido University, Slavic Research Center.

26 If we were to follow the simplifying definition most commonly used by international law, Ruthenians can also be considered as an ethnic minority, as they also lack a nation state.

in terms of their own tongue, cultures and traditions, and who prove to be aware of the cohesion, national or ethnic, which is to aim at preserving all these and at articulating and safeguarding the interests of their respective historically developed communities.

The law also enumerated 13 recognized minorities: Armenian, Bulgarian, Croatian, German, Greek, Polish, Romanian, Ruthenian, Serb, Slovak, Slovenian, Ukrainian and Roma. A complicated procedure was set forth to extend the list, which involves a popular initiative, an advisory opinion of the Hungarian Academy of Sciences and a vote in the Parliament amending the Act, but none of such initiatives were successful so far. The Act guarantees cultural and linguistic rights for these groups, and contains provisions on the establishment and maintenance of minority education and establishes a unique Hungarian institution, the minority self-governments (hereinafter MSG). Funded by the local authorities or by the State where national-level bodies are concerned, MSGs operate at the local, regional and national level and have special competences for protecting cultural heritage and language use, fixing the calendar for festivals and celebrations, fostering the preservation of traditions, participating in public education, managing public theatres, libraries and science and arts institutions, awarding study grants and providing services for to the community (legal aid in particular).²⁷ MSGs are elected bodies that function parallel to mainstream institutions and have certain rights regarding decision making in the areas of local education, language use in public institutions, media and the protection of minority culture and traditions. Minority self-government representatives have the right to provide input on public policy matters through access to the local councils' committee meetings.

The function and design of MSGs is quite ambiguous: political representation and empowerment, cultural competences, and a vague promise of social integration potential are bundled together. In 2006, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) published a detailed report²⁸ and pointed to many problems of the system.²⁹

These included “unclear competencies, the lack of differentiation between various minority needs, deficiencies in financing, and voter enfranchisement regardless of ethnic affiliation”.³⁰ According to the report, the institution is “tinkered with

27 NOVAK-LUKANOVIĆ, S. (2006): *Euromosaic III: Presence of regional and minority language groups in the new member states*. Office for official publications of the European communities. 111–164.

28 NDI (National Democratic Institute) and OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2006): *The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation*. Available: www.osce.org/odihr/25974?download=true (Downloaded: 20.02.2018.)

29 For more see PAP 2001a, 2003, 2006.

30 NDI (National Democratic Institute) and OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2006): *op. cit.* 5.

a fundamentally flawed concept that offers the illusion of political power rather than genuine inclusion.”³¹ The “MSGs tend to marginalize [...] issues by depositing them in a parallel, fairly powerless, quasi-governmental structure rather than addressing them through established governing bodies. [...] The MSG system is inaccurately named. The local and national MSGs fall far short of the range of competencies that the title ‘self-government’ implies. They lack the authority to take action outside of a very limited scope of issues and function more like NGOs than elected governing bodies. The use of the term ‘self-government’ is not merely inaccurate, but actually damages the credibility and legitimacy of the entire system, [...] as it raises unrealistic expectations on the part of constituents regarding what they can accomplish through the MSGs. In truth, the very design of the system prevents it from having a significant impact on issues of greatest concern to most. [...] This is due in part to the fact that these were not the government’s initial aims in creating the system. Rather, its goal was to give minorities a safeguard for preserving their distinct cultural and linguistic traditions, and [...] to provide the means for encouraging neighboring countries to allow Hungarian minority communities the same privilege.”³²

The OSCE also points to flaws in funding, claiming that financial support, with a budget of approximately \$3,000 per year, with no consideration for the size of the town, is inadequate to carry out either socio-cultural projects, per the system’s original intent, or additional projects to improve the living standards of community members. Most MSGs cannot even cover a modest salary for a part-time employee.³³ Also, their limited authority makes them a “‘half-way house’ between a government institution and an NGO, with an undefined, under-funded mandate.”³⁴ The very limited government funding and with competences mostly in the field of education, language and cultural preservation, the MSGs have few advantages over NGOs. “In fact, those MSGs that have the greatest impact function much like a local NGO, securing outside resources for small-scale projects.”³⁵

The Hungarian government’s Janus-faced policies were apparent to the OSCE:

“The government’s stated purpose for creating the Minority Act was to assure the cultural autonomy of minorities. [...] However, another important factor in the development of the act was Hungary’s desire to protect the rights of the large number of ethnic Hungarians living in neighboring countries. By developing the MSG system and other minority institutions, the government hoped to build

31 Ibid. 4.

32 Ibid. 6–7.

33 Ibid.

34 Ibid. 22–25.

35 Ibid; MOLNÁR, E. – SCHAFT, K. A. (2003): Preserving Cultural Autonomy or Confronting Social Crisis? The Activities and Aims of Roma Local Minority Self-governments. *Review of Sociology of the Hungarian Sociological Association*, Vol. 9, No. 1.

that it could use in bi-lateral negotiations with neighboring states on guaranteeing the rights of Hungarians leverage abroad.”³⁶

Several controversial elements characterized this framework. First, that the Act, besides defining the two group constituting requirements, also contains an enumeration of the thirteen minority groups that are recognized by the Act, which means that the Parliament will actually need to pass a formal amendment to these provisions if a new group were to qualify. The House (being sovereign), however, is not obliged to vote affirmatively on the question, which is in sharp contradiction with the otherwise clearly defined requirements.³⁷

The other, even more controversial element of the Hungarian framework relates to the lack of satisfying legal guarantees regarding individuals’ minority affiliations. The Hungarian data protection law prohibits the handling of sensitive data, such as ethnic origin, without the concerned person’s explicit permission (Act CXII of 2011 formerly, in this regard with the same content Act LXIII of 1992). This gives rise to what is commonly known as *ethno-business* or *ethno-corruption* – that is, the utilization and misuse of remedial measures for private means that are contrary to the legislators’ intentions. In the Hungarian model, the exercise of minority rights is not dependent on minimal affiliation requirements. Consequently, several forms of ethno-corruption exist.

Deets documents how school officials pressure parents of *Hungarian* students to declare their children *German*. He states, “according to Hungarian government statistics, in 1998, almost 45,000 primary school students were enrolled in German-minority programs, which, by the census, was about 8,000 more than the number of ethnic Germans who are even in Hungary”³⁸ In its 2011 report The Minority Rights Ombudsman³⁹ drew attention to a school which advertises its German minority class as a *window to Europe*, while not requiring either of the parents to even speak German, eligibility requirements for the students, or an actual curricula on German ethnography or culture. The Minority Rights Ombudsman also pointed out that in the 2001 census, 62,233 people claimed to be German, while in 2011 there were 46,693 students (aged 6–14 years) enrolled in the German minority education scheme.⁴⁰ The Ombudsman also drew attention to the fact that German minority education takes place in several municipalities, where neither the 2001, nor

36 NDI (National Democratic Institute) and OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2006): *op. cit.* 10.

37 A number of Parliamentary and Constitutional Court decisions have been passed on petitions of various ethno-national groups, like the Jews, Aegean Macedons, Russians, the Bunyevac, or Huns seeking recognition.

38 DEETS, S. (2002): Reconsidering East European Minority Policy: Liberal Theory and European Norms. *East European Politics and Society*, Vol. 16, No. 1.

39 The Minority Rights Ombudsman (2011a): *Jelentés a nemzeti és etnikai kisebbségi általános iskolai nevelés-oktatás helyzetéről*. NEK-411/2011. 20. Available: www.kisebbssegiombudsman.hu/data/files/217986220.pdf (Downloaded: 20.02.2018.)

40 Ibid. 39.

the 1944 census (which predated the mass expulsion of some 380,000 ethnic Germans from Hungary) indicated the presence of a German minority. A similar trend can be seen when looking at minority education initiatives targeting Roma students. In most cases, financial incentives are the obvious reason for this, since schools receive additional public funding for minority education – which is often the only source of extra income for educational institutions in underdeveloped, poor regions or small villages. In order to secure this funding, school administration and teachers will do anything it takes: learning a language, getting training in Roma ethnography and culture, and pressuring parents to request minority education.⁴¹

Legal tools developed as instruments for minority protection can, in practice, be abused to provide preference members of the majority community. Minority protection schemes can also be used in a cynically abusive manner, particularly in relation to segregation: either when Roma parents are convinced or forced – without their informed consent – to request specialized minority education for their children.⁴² Another scenario concerns cases where foundations of national minorities are helped to recreate their culture as a way to pressure neighbouring states, so that the demand for minority rights is *fuelled by supply*.⁴³ *Deets is correct in concluding that the Hungarian Government has an interest in developing programs that offer incentives to local governments to create minority children.*⁴⁴

Minority self-government elections have also been constant sources of fraud, as the decision to vote at these elections was left solely to the political culture and conscience of the majority. After repeated reports on permanent abuse of the electoral scheme, in 2005 a *soft* form of registration was implemented, where minority voters needed to sign up in a special register, but there were no objective

41 LAKATOS S. (2010): *A romani nyelv közösségi használatának és közoktatási helyzetének vizsgálata Magyarországon*. PhD thesis. Pécsi Tudományegyetem, „Oktatás és Társadalom” Neveléstudományi Doktori Iskola.

42 See BALOGH, L. (2012a): *Minority Cultural Rights or an Excuse for Segregation? Roma Minority Education in Hungary*. In POP, D. ed.: *Education Policy and Equal Education Opportunities*. 1st edition. New York, Open Society Foundations; BALOGH L. (2012b): *Jog a kultúra őrzésére – vagy ürügy a szegregációra? A roma nemzetiségi oktatás mint kétélű kard Magyarországon*. [The Right to Protect Culture or a Reason for Segregation?] *Pro Minoritate*, Vol. 16, No. 1. In its report on minority education the Parliamentary Commissioner (Ombudsman) for Minority Rights (2011a) pointed to several instances where the voluntary, informed choice of parents can be seriously questioned, and evidence points to various forms of pressure in regards of requests for minority education. The ombudsman (2011b) reaffirmed these findings in his report on 2011 pre-school report in regards of Roma kindergartens. In one of the minority kindergartens, actually a completely different dialect was taught from what the Roma families spoke (or understood). (The Minority Rights Ombudsman 2011b, 43.) Also, Roma language is instructed in several kindergartens, where Romungo Roma live, who have been only speaking Hungarian for generations. (The Minority Rights Ombudsman 2011b, 44.)

43 CARSTOCEA, A. (2011): *Ethno-business – the Manipulation of Minority Rights in Romania and Hungary*. In BHAMBRY, T. – GRIFFIN, C. – HJELM, T. – NICHOLSON, C. – VORONINA, O. eds.: *Perpetual motion? Transformation and Transition in Central and Eastern Europe & Russia*. 1st edition. London, UCL, School of Slavonic and East European Studies. 19.

44 DEETS (2002): *op. cit.* 187.

criteria or formal requirements for affiliation set forth. If they are willing to spend some time navigating the bureaucracy, Hungarian citizens, regardless of their ethnic origin, can vote for minority self-government candidates. Although the phenomenon is not widespread, this also enables members of the majority to abuse the system by taking over the minority self-governments. For example, the non-Roma wife of the mayor of Jászladány – a village notorious for segregating Roma primary school children from non-Roma students – held an elected office in the local Roma minority self-government.

According to a poll by the think tank Századvég in December 2012, 49 per cent of Hungarians had heard about candidates running in minority elections without actually being a member of the given group.⁴⁵ Hungarian minority representatives also repeatedly claim that the fact that some candidates ran as *Gypsies* in one election and then later as Germans in the following term (which is permitted by both the law and the concept of multiple identity-formation) proves the flourishing of local ethno-business.⁴⁶ According to political scientist Andreea Carstocea⁴⁷ the minority most affected by the phenomenon was the Romanian minority in Hungary, where approximately 40 per cent of the Romanian self-governments were said to be headed by non-Romanians.

In order to demonstrate the fallacies of the legal framework, some Roma politicians publicly decided to run under different labels (in most of the reported 17 cases, they ran as Slovaks). There are also several municipalities in which (according to the national census) nobody identified himself/herself as a member of any minority group, yet numerous minority candidates were registered. Following the 2010 elections, several new members of both the Romanian and Ukrainian minority self-governments were accused of not being actual members of the minority community by other members of the newly elected self-government. A faction of the National Ukrainian Self-government failed to stand up during the Ukrainian national anthem, and claiming that they are Hungarians, requested that no Ukrainian be spoken during official sessions, because they did not understand it.⁴⁸ In 2010, a Hungarian appellate court actually admitted the existence of ethno-business in minority self-government

45 Magyar Nemzet Online (2012): Etnobiznisz: magas az új szabályozás lakossági támogatottsága, 21 December. Available: <http://mno.hu/belfold/etnobiznisz-magas-az-uj-szabalyozas-lakossagi-tamogatottsaga-1126477> (Downloaded: 20.02.2018.)

46 In 2005 the law was amended, introducing a self-assessment based registration requirement for the elections, but, according to analysts and the minority rights ombudsman, no significant changes followed in electoral behaviour and results. PCNEM (2006): *Annual report of the Parliamentary Commissioner for National and Ethnic Minority Rights 2005*. Budapest.

47 CARSTOCEA (2011): *op. cit.* 20.

48 **Index.hu** (2011): Megalakult a szerb és ukrán kisebbségi önkormányzat, 5 February. Available: http://index.hu/belfold/2011/02/05/megalakult_a_szerb_es_ukran_kisebbségi_onkormanyzat/ (Downloaded: 20.02.2018.); **Nol.hu** (2011): Kakukktojások? Balhé a román kisebbségnél, 9 February. Available: http://nol.hu/belfold/kakukktojasok_balhe_a_roman_kisebbségnel-974661 (Downloaded: 20.02.2018.)

elections.⁴⁹ The defendant, the Editor in Chief of a minority newspaper, was brought up on libel charges for calling newly elected members of the Romanian minority self-government “ethno-business doers and no members of the Romanian minority community in Hungary.”⁵⁰ The court acquitted him.⁵¹

These loopholes in the legal regime sometimes result in complete absurdity. In order to express their admiration for German football, for example, a small village’s entire football-team registered as German minority-candidates for the election.⁵² In 2010 the mayor of a marginalized village at the edge of bankruptcy, unable to finance its public school, requested all 13 students to declare themselves Roma and request minority education.⁵³ As previously discussed, this qualified the school for extra funds. No Roma officially lived in the village.⁵⁴

Ethno-corruption, a symptom of illiberal multiculturalism is also prevalent in many other facets of collective rights. In 2010, the Parliamentary Commissioner for Minority Rights (a specialized ombudsman) published a lengthy report showing how members of the majority benefited from a government program designed to employ members of the Roma minority community.⁵⁵

Post 2010 developments

Post 2010 developments in majority–minority relations are manifold. First, for the first time in modern Hungarian history, the Prime Minister rejected the idea of a multicultural society. The context did not involve ethnic Hungarians or relations with the neighbouring states; it concerned the refugee crisis. In an interview with the German daily newspaper *Frankfurter Allgemeine Zeitung*, Orbán actually said, “We do not want a multicultural society.”⁵⁶ At the European Parliament in Strasbourg prior to a plenary-session debate regarding the government’s stance on immigration and

49 Beol.hu (2010): Nem rágalmazás, az etnobiznisz létezik, 23 October. Available: www.beol.hu/bekes/kozelet/nem-ragalmas-az-etnobiznisz-letezik-335133/ (Downloaded: 20.02.2018.)

50 For purposes of this discussion, ethno-corruption and ethno-business can be understood as synonymous.

51 EMASA (2010): Pert nyert az újságíró a román önkormányzattal szemben, 23 May. (Downloaded: 20.02.2018.)

52 See an interview with Antal Heizler, President of the Office for National and Ethnic Minorities. CZENE G. (2002): Még nincs kisebbségi panasz. *Népszabadság*, 24 July. 4.

53 NAGY J. (2010): Angyalok kertje. *Népszabadság*, 7 July.

54 Ibid.

55 The Minority Rights Ombudsman (2010a): *Rövid összegzés a nemzeti és etnikai jogok országgyűlési biztosának a „Romák foglalkoztatása a közigazgatásban és az igazságszolgáltatásban” című program vizsgálatáról*. Available: <http://kisebbségiombudsman.hu/hir-526-rovid-osszegzes-nemzeti-es-etnikai.html> (Downloaded: 20.02.2018.); AURESCU, B. (2012): The June 2012 opinion of the Venice Commission of the Council of Europe on the act on the rights of nationalities of Hungary. *Lex et Scientia*, Vol. 19, No. 2.

56 *Frankfurter Allgemeine Zeitung* (2015): Wir wollen keine multikulturelle Gesellschaft, 5 February. Available: www.faz.net/aktuell/politik/europaeische-union/viktor-orban-im-interview-ueber-russland-und-umgang-mit-fluechtlingen-13411128.html (Downloaded: 20.02.2018.)

the death penalty, he said, “We regard it to be a value that Hungary is a homogenous country and that it shows a very homogenous face in its culture, way of thinking and customs of civilization.”⁵⁷ In an interview in the pro-government daily *Napi Gazdaság*, he explained his position:

“Hungary has a multi-nationality root system and cultural background, but this is not multiculturalism. Multiculturalism is the cohabitation of people of various civilizations, the coexistence of Islam, Asian religions and Christianity. We will do everything under our power to spare Hungary from this. We gladly see investors, artists and scientists arriving from non-Christian countries, but we do not want to mix with them at the level of large masses of people.”⁵⁸

At the same time, the new regime, adopting a new minority law, basically preserved the earlier institutional and conceptual framework. The path for the bogus multiculturalism has not been invented by the Orbán Government, but the new regime continued down the road, despite Orbán’s explicit rejection of multiculturalism in the context of immigration (as refugee integration has been labelled and misrepresented.)

Let us first examine how the new constitution conceptualized majority–minority relations. In the constitutional preamble, the National Avowal, “we Hungarians” proclaim that the “nationalities living with us form part of the Hungarian political community and are constituent parts of the State.” According to Article XXIX of the chapter on Freedom and Responsibility:

(1) Nationalities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a nationality shall have the right to freely express and preserve his or her identity. Nationalities living in Hungary shall have the right to use their mother tongue, to use names in their own languages individually and collectively, to nurture their own cultures, and to receive education in their mother tongues. (2) Nationalities living in Hungary shall have the right to establish their self-government at both local and national level. (3) The detailed rules relating to the rights of nationalities living in Hungary, the nationalities, the requirements for recognition as a nationality, and the rules for the election of the self-governments of nationalities at local and national level shall be laid down in a cardinal Act. A cardinal Act may provide that recognition as a nationality shall be subject

57 Politics.hu (2015): Quotable: Viktor Orbán on Hungary and multiculturalism. Available: www.politics.hu/20150522/quotable-viktor-orban-on-hungary-and-multiculturalism/ (Downloaded: 31.12.2016.)

58 The Orange Files (2016): Notable Quotes: Prime Minister Viktor Orbán, 20 May. Available: <https://theorangefiles.hu/notable-quotes-prime-minister-viktor-orban-by-subject/> (Downloaded: 20.02.2018.)

to a certain length of time of presence and to the initiative of a certain number of persons declaring to be members of the nationality concerned.

The opinion of the Council of Europe's advisory body, the Venice Commission⁵⁹ held the following concerning the statement that "the nationalities living with us form part of the state":

While this statement may be seen as an effort towards inclusiveness, it is also to be noted that the Preamble has been written in the name of "we the members of the Hungarian nation", intimating that members of the "nationalities living with us" are not part of the people behind the enactment of the Constitution. The Constitution should be seen as the result of the democratic will-formation of the country's citizens as a whole, and not only of the dominant ethnic group. Therefore, the language used could/should have been more inclusive (such as, for example "We, citizens of Hungary...").

The new law brought a peculiar change in terminology – something one may expect to have a reconceptualization in the background. "National and ethnic minorities", subjects and "objects" of the old law were changed to "nationalities" and "nationality self-governments", replacing the old term "minority self-government".

There is no evidence (for example in parliamentary debates or government documents) that this shift in terminology would have been based on overarching theoretical or conceptual reasoning, or that it would have been accompanied by systematic political commitments. It is not clear what the legislator's problem was with the previous definition of "national and ethnic minority". Presumably, the constitution-maker neither disputed that "nationalities" constitute a numerical minority within society, nor that they suffer from certain disadvantages (which the minority law is designed to redress by setting forth minority rights). Furthermore, putting aside the difficulty of differentiating between "national" and "ethnic" minorities, nothing supports the understanding (and even the Hungarian legislator failed to make this claim) that a "nationality" could or would be regarded as a greater set comprising both. Thus the most accurate description would be that it is synonymous with "national minority". It is no coincidence that the terminology used in international documents also employs the aforementioned distinctions, and that the original draft of the Fundamental Law talked of "nationalities and ethnic groups".

Though no changes were enacted at the level of political communication or in the preamble of the law, new competencies appeared – somewhat confusingly –, codified in a way that makes it difficult to interpret the relevant provisions.

⁵⁹ Venice Commission, 2011, paras 39–45.

Race, ethnicity and nationality: clusters for conceptualizing groups

Let us shortly dwell on terminology and conceptualization.⁶⁰ In social sciences and law, the purpose of typologies and classifications is to help us understand the internal logic and substance of concepts and institutions. Despite the fact that lawyers, legislators and drafters of international documents are well versed in creating definitions for concepts that are widely debated in social sciences and philosophy (consider for example the legal definition for poverty or disability) and notwithstanding the fact that the discourse on minority rights and adjacent policy frameworks is essentially law-based, most international and domestic documents on minority rights, human rights and social inclusion actually refrain from defining several of their core concepts, and we have to settle the vague descriptions of race, ethnicity, and nationality.⁶¹

Race is a controversial category, and in continental Europe its use is mostly limited to race-based discrimination. In social science literature, it is widely understood to be a social construct rather than a biological trait (in the biological sense, the entirety of humanity constitutes one single race) without a theoretically or politically uniform definition.⁶² Race-based international and domestic legal instruments identify race with the apprehension of physical appearance, and put perception and external classifications in the center when prohibiting discrimination or violence on racial grounds. It is rarely distinguished from *ethnicity*, and the two terms are often used interchangeably by lawmakers (and drafters of international documents) and, most of all, judicial bodies. For example, under Article 1 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, “the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.” Despite academic interest and insistence in differentiating between the two concepts, legal formulations seem to be incognizant, and even appear to be unobservant and indifferent concerning a potential difference between the two terms.

One of the most widely cited legal definitions for race and ethnicity comes from the opinion of Lord Fraser of the House of Lords in the *Mandla v Dowell Lee* ruling,⁶³ which concerned whether Sikhs were a distinct racial group under the Race Relations Act:

“For a group to constitute an ethnic [sic! – ALP] group [...] it must, [...] regard itself, and be regarded by others, as a distinct community by virtue of certain characteristics. Some of these characteristics are essential; others are not essential but one or more of them will commonly be found and will help to distinguish

60 PAP, A. L. (2015a): Is there a legal right to free choice of ethno-racial identity? Legal and political difficulties in defining minority communities and membership boundaries. *Columbia Human Rights Law Review*, Vol. 46, No. 2.

61 Ibid.

62 TAJFEL, H. (1981): *Human Groups and Social Categories: Studies in Social Psychology*. 1st edition. Cambridge, Cambridge University Press.

63 *Mandla v Dowell Lee* [1983] 1 All ER 1062 (House of Lords).

the group from the surrounding community. [...] (1) a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; (2) a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance. [...] (3) either a common geographical origin, or descent from a small number of common ancestors; (4) a common language, not necessarily peculiar to the group; (5) a common literature peculiar to the group; (6) a common religion different from that of neighbouring groups or from the general community surrounding it; (7) being a minority or being an oppressed or a dominant group within a larger community [...].”

Using these criteria, he held that Sikhs “are a group defined by a reference to ethnic origins for the purpose of the (Race relations!) Act of 1976, although they are not biologically distinguishable from the other peoples living in the Punjab.”⁶⁴

The Permanent Court of International Justice held in the Case of Greco–Bulgarian “Communities” that a minority community is:

“A group of persons living in a given country or locality, having a race, religion, language and traditions of their own, and united by the identity of such race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, securing the instruction and upbringing of their children in accordance with the spirit and traditions of their race and mutually assisting one another.”⁶⁵

We can argue that if we want to grasp the substance of these definitions, there is one common overarching element: the protection from maltreatment in the form of discrimination, hate crimes, hate speech and physical violence. Reflecting on anti-discrimination logic, the groups need to be defined by following the perpetrators’ method, which is based on the definition of the group on the perception of either biologically determined characteristics or cultural attributes.

In a sense, however, ethnic minorities are multifaceted groups. While many of their claims are grounded in the anti-discrimination rhetoric employed by racial minorities, some *ethnically defined* groups (such as the Roma) may also have cultural claims (and protections) that national minorities would make. The international legal terminology habitually differentiates between the two groups on the grounds that ethnic minorities are different from national minorities in the sense that they do not

64 Human Rights Commission Ireland (2004): *Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination. A Discussion Paper*. Available: www.ihrec.ie/download/doc/travellers_discussion_paper.doc (Downloaded: 20.02.2018.)

65 Permanent Court of International Justice (1930): *Greco–Bulgarian Communities, Advisory Opinion*. Ser. B., No. 17, July 31.

have nation states as national homelands.⁶⁶ In this way, ethnic minorities constitute a sort of hybrid categorization that blends and often mirrors the claims made by racial and national groups.

The 1995 Council of Europe *Framework Convention for the Protection of National Minorities*, probably the most important international document on national minorities, also fails to provide a definition for its targets. A relevant definition, also endorsed by the European Parliament's resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe,⁶⁷ is provided by Article 1 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe on an additional protocol on the rights of national minorities to the European Convention on Human Rights:

“National minority’ refers to a group of persons in a state who reside on the territory of that state and are citizens thereof; maintain longstanding, firm and lasting ties with that state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.”

When it comes to defining *national minorities*, I offer to settle for the definition that describes these groups as ones that are based on their claims for collective rights, bypass the anti-discriminatory logic, and seek recognition of cultural and political rights, particularly autonomy or the toleration of various cultural practices that differ from the majority's, which often require formal exceptions from generally applicable norms and regulations.⁶⁸ In this case, we are dealing with claims for preferential treatment. According to Will Kymlicka, cultural minorities can be divided into two types, nations and ethnicities. The former is a historical community, more or less institutionally complete, occupying a given territory or homeland and sharing a distinct language or culture. The latter is a group with common cultural origins, but whose members do not constitute an institutionally complete society concentrated in one territory.⁶⁹

Concerning a special form of relationship between these clusters, the (in Hungary not very common, but well-documented) case needs to be added, when segregation is

66 HANNUM, H. (2001): International Law. In *Encyclopedia of Nationalism*. 1st edition. Academic Press.

67 European Parliament (2005): *Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe*. 2005/2008(INI).

68 KYMLICKA, W. (2001): Western Political Theory and Ethnic Relations in Eastern Europe. In KYMLICKA, W. – OPALSKI, M. eds.: *Can Liberal Pluralism Be Exported?* 1st edition. Oxford, Oxford University Press.

69 YOUNG, I. (1997): A Multicultural Continuum: A Critique of Will Kymlicka's Ethni-Nation Dichotomy. *Constellations*, Vol. 4, No. 1.

achieved by Roma parents being pressured to request specialized minority education, aimed originally at safeguarding Roma culture.⁷⁰ The result is that Roma children are provided low-quality Roma folklore classes once a week, but are kept in separate, segregated classes, among inferior conditions.⁷¹

Based on the claims they make, Will Kymlicka (2001) distinguishes between several ethno-cultural groups in the West: 1. National minorities, complete and functioning societies in historic national homelands which are either sub-state nations or indigenous peoples; 2. Immigrants, who do not want to engage in competing nation-building strategies, but want to negotiate the terms of integration (food, customs, holidays); 3. Voluntarily isolationist ethno-religious groups, which are unconcerned about marginalization and seek exemption from certain laws; and 4. Racial caste groups and Metics.⁷² Minority rights claims, he concludes, may vary from immigrant multiculturalism to multination federalism, Metic inclusion, or religion-based exemptions from general laws. As the late University of Chicago professor Iris Marion Young argued:

“[A]ccording to Kymlicka, justice for national minorities requires self-government rights of the national minority to govern their own affairs within their own territory, alongside and distinct from the larger society. [...] Polyethnic rights, on the other hand give special recognition to cultural minorities in order to compensate for the disadvantages they would otherwise have in political participation and economic opportunity in the larger society. The objective of polyethnic rights is thus to promote the integration of ethnic minorities into the larger society, whereas self-government rights of national minorities have a separatist tendency. [...] The distinction between national minority and ethnic minority turns out to be a distinction between a cultural group that wishes to and has the right to be a separate and distinct society, on the one hand, and a cultural minority that wishes to or is expected to integrate into a larger nation.”⁷³

In line with this assessment, instead of a semantic analysis of the types of minorities, a categorical distinction for minorities based on the aim of the particular protection mechanism sought would make more sense. Instead of an empty typology, a more complex set of criteria for distinguishing between minority groups, taking into consideration at least the origin of the group; the basis for group-formation and the aspirations, needs and demands of the group towards the majority should be applied. Let us not forget, rights protecting minorities may be dignity-based

70 See BALOGH (2012a): *op. cit.*; BALOGH (2012b): *op. cit.*

71 See The Minority Rights Ombudsman (2011a). The ombudsman reaffirmed these findings in his report on 2011 pre-school report in regards of Roma kindergartens (The Minority Rights Ombudsman, 2011b).

72 He admits though that some groups like the Roma in Europe or African Americans are peculiar and atypical.

73 YOUNG (1997): *op. cit.*

identity-claims, equality-based (synchronic or diachronic) justice claims, or even reciprocal diaspora claims.⁷⁴

Also, these questions cannot be separated from discussions concerning which concepts of social justice and equality our decision makers endorse for particular communities. As McCrudden (2005) points out, there are at least four different meanings of equality, and what may be suitable in one context may not be in another. McCrudden's *individual justice model* focuses on merit, efficiency and achievement and aims to *reduce discrimination*. The *group justice model* concentrates on outcomes and the improvement of the relative positions of particular groups, with *redistribution* and economic empowerment at its core. Equality as the *recognition* of diverse identities is yet another dimension, since the failure to accord diversity is a form of oppression and inequality in and of itself. Finally, the fourth conception of equality includes social dialogue and *representation*, the meaningful articulation of group priorities and perspectives.⁷⁵ Each of these has a different concept at its core that corresponds respectively to: direct discrimination; indirect discrimination, group-level marginalization and oppression; and cultural and linguistic rights. Participation in political and public policy decision-making is at the center.

A useful set of terminology therefore should centre around the substance of legal and policy claims and frameworks. Under this approach there are three clusters. *Minority rights* have in focus the recognition and accommodation of cultural claims both of groups and individuals, as well as identity politics. The second array of legal and policy frameworks is individual rights oriented, and has *anti-discrimination* in focus. The term should be understood in a broad sense, including protection from hate crimes or even hate speech, and several other related individual-based human rights claims. The third batch includes those various and diverse *social inclusion measures*, which *ethnicize* social policies or, when endorsing multiculturalism, include recognition of other forms of group-based collective claims. *National minorities* and *nationalities* are adequate terminologies for the first cluster, *racial* and *ethnic minorities* for the second, while the third approach institutionalizes a curious mix of all three.

While acknowledging that in Tajfelian⁷⁶ terms both *ethnicity* and *nationality* are group-like social constructs (and imagined cultural communities, even if conceptualized and essentialized as biologically determined), and that *race* functions as a category created by essentialist external perceptions and criteria, this does not mean that an ethno-national vs. racial binary would not be a useless simplification. Also, while arguably external perceptions and classifications are corollary in defining

74 In certain ethno-political situations (in Hungary, for example), the approach to ethnic and national minority rights is defined by reference to ethnic kin's diaspora-rights (in the neighbouring states). (PAP 2006)

75 McCrudden, Ch. (2005): Thinking about the Discrimination Directives. *European Anti-Discrimination Law Review*, No. 1.

76 TAJFEL (1981): *op. cit.*

and differentiating between these approaches, a national vs. ethno-racial binary is similarly reductionist. My point is that the recognition of ethno-cultural claims and policies for enhancing certain groups' capabilities for participating in cultural and public life and for preserving their identities needs to be differentiated from measures providing equal treatment, or setting forth group-conscious social policies.

Finally, some notes on operationalization. Ethno-national identity can be defined in several ways: through self-identification; by other members or elected, appointed representatives of the group (leaving aside legitimacy-, or ontological questions regarding the authenticity or genuineness of these actors); classification by outsiders, through the perception of the majority; or by outsiders but using *objective* criteria, such as names, residence, et cetera. As noted earlier, for anti-discrimination measures, subjective elements for identification with the protected group are irrelevant, and external perceptions serve as the basis for classification. Policies implementing this anti-discrimination principle may rely on a number of markers: skin colour, citizenship, place of birth, country of origin, language (mother tongue, language used), name, colour, customs (like diet or clothing), religion, parents' origin, or even eating habits.⁷⁷ Defining membership criteria comes up in a completely different way when group formation is based on claims for different kinds of preferences and privileges. In this case, subjective identification with the group is an essential requirement, but the legal frameworks may establish a set of objective criteria that needs to be met besides. In the context of drafting affirmative action and ethnicity-based social inclusion policies, external perception, self-declaration, and anonymized data collection may be varied and combined. A special form of opting in to groups concerns mixed partnerships or marriages, where protections are extended to victims of discrimination by association.

When it comes to choosing legal or policy means to identify community membership, solutions should be tailored to match the policy frameworks. Thus, for hate crimes and discrimination, the perception of the majority and the perpetrators should be taken into consideration. In political representation, the perception of the minority community should matter. And in preferential treatment (remedial measures and affirmative action), self-identification along with community identification or endorsement should be key.

Policy makers may even find that attempts to misuse the system will inevitably happen. In fact, *explicit but not exclusive targeting* is currently a dominant approach in the context of the European Union's Roma inclusion policies:

“This approach implies focusing on Roma people as a target group without excluding others who live under similar socio-economic conditions. Policies and projects should be geared towards ‘vulnerable groups’, ‘groups at the margins of the labour market’, ‘disadvantaged groups’, or ‘groups living in deprived areas’,

77 SIMON, P. (2007): “Ethnic” statistics and data protection in the Council of Europe Countries. *Study Report*. 1st edition. Strasbourg, Council of Europe.

etc. with a clear mention that these groups include the Roma. This approach is particularly relevant for policies or projects taking place in areas populated by the Roma together with other ethnic minorities or marginalized members of society.”⁷⁸

Returning to the Hungarian case, it is not only unclear whether there was an intentional shift in the philosophy of minority rights, but even if there was, it had been shown that terminology itself was not a reliable indicator for policy frameworks. Still, regarding the Roma, the contradictory and ambiguous group terminology may be a useful signal for the underlying issue of inconsistent, confusing and confused policies. This may be the product of decision makers failing to take sides in broader debates concerning the multicultural or multi-ethnic nature of the states or avoiding a straight forward commitment towards targeted minority rights or privileging individuals over groups.⁷⁹

For one thing, during the drafting of the new constitution in 2011, the Croatian⁸⁰ and the Ruthenian⁸¹ national minority self-governments welcomed the change in terminology, which was also recommended by the minority rights ombudsman, because for some unexplained reason they considered the term *minority* demeaning. It needs to be added that only four NMSG’s took the effort to comment on the draft constitution, as requested by the parliamentary committee in charge. The Roma minority self-government remained silent.

In line with the spirit of the 1993 regulation, the preamble of the new law only refers to classic minority rights, that is the preservation of the culture of national minorities, the cultivation and development of their language, the freedom to profess and preserve their identity, active participation in public life, the realization of cultural autonomy, the right to self-administer their real communities (sic!), and their right to self-governance. At the same time, in a stunning solution in terms of legal codification, Article 81 (1) also features equal opportunities, social inclusion and social care as national minority rights.⁸² The implications of this will be elaborated in the forthcoming subchapter on the Roma.

78 European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2011): The 10 common basic principles on Roma inclusion. *Vademecum*. Available: www.coe.int/t/dg4/youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf (Downloaded: 31.12.2016.)

79 KAUFMAN, E. (2014): Immigration and Integration in Britain: The Great Nationalism Debate. *Nationalities Papers*, Vol. 42, No. 6. 1072–1077.

80 Const. Prep Comm. (2010b): *Opinion submitted to the parliamentary sub-committee on preparing the new constitution by the Croatian National Minority Self-Government*. Budapest. Available: www.parlament.hu/biz39/aeb/info/horvat_onk.pdf (Downloaded: 20.02.2018.)

81 Const. Prep Comm. (2010d): *Opinion submitted to the parliamentary sub-committee on preparing the new constitution by the Ruthenian National Minority Self-Government*. Budapest. Available: www.parlament.hu/biz39/aeb/info/ruszin_onk.pdf (Downloaded: 20.02.2018.)

82 “Any local government decision affecting the national minority population in its quality as a national minority, in terms of its national minority rights defined in this law, especially the rights

Parliamentary representation: gerrymandering and beyond

As mentioned above, besides the new terminology, the new regime also adopted a new minority law, Act CLXXIX of 2011 on the Rights of Minorities. The law more or less copied the conceptual framework, the enumeration, the (lack of) definition of recognized minorities,⁸³ and, again, the lack of legally defined criteria for membership in the communities, even for the purposes of the various preferential treatment measures the law(s) set forth.⁸⁴ The 1993 regulation, which was essentially left unchanged by the new legal framework, was unable to prevent abuses of the privileges accorded to minorities, even though, as we could see, the persistence of such abuses can result in the hollowing out of these privileges. The new regulation did not bring substantial changes in the minority self-government elections. As compared to 2010, there was only a slight rise in the number of those on the voter rolls. There were 228,038 names in 2010, while in 2014 the number had risen to 241,030 persons. Only the Roma actually increased its voter registry, from 133,492 to 158,101, i.e. by 18 per cent. Most national minorities saw their rolls decline: 35 per cent in the case of the Bulgarians, 33 per cent for Slovenians and 30 per cent for Serbs. In terms of participation, there were no substantial changes either. In 2006, turnout had stood at 63.81 per cent, in 2010 it was 63.47 per cent and in 2014 it reached 65.14 per cent.⁸⁵ Nor did the results change appreciably: 2,321 local national minority elections were held in 2010, and in 2014 this number increased to 2,163.⁸⁶

An important provision of the new law concerns *sui generis* parliamentary representation for the recognized minorities. Let us not forget the context. First, that minority political parties are not relevant actors in the Hungarian political life, and

of collective language use, education, preserving its traditions and culture, local press, equal opportunities, social inclusion and social care, shall only be taken by the municipal assembly if the local national minority self-government of the national minority population affected by the decision, or, in the absence of a local national minority self-government, the regional national minority self-government, has expressed its consent." For more see also CHRONOWSKI 2012.

83 According to § "(1) ... ethnic groups resident in Hungary for at least one century are minorities which are in a numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of collective affiliation that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities. [...] (3) If a minority other than those listed in Appendix No. 1 wishes to verify that they meet the relevant conditions, minimum one thousand electors forming part of that minority may initiate that the minority be declared an ethnic group native to Hungary. [...] The procedure shall be governed by the provisions of the Act relating to the initiation of national referenda. [...] In the course of its procedure, the National Election Committee shall seek the position of the President of the Hungarian Academy of Sciences with respect to the existence of the statutory conditions."

84 For more on the subject matter of parliamentary representation of minorities, see for example PAP 2001b.

85 The Minority Rights Ombudsman (2010b): *Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosának tevékenységéről.* J/2427. Available: www.kisebbségiombudsman.hu/data/files/205796771.pdf (Downloaded: 20.02.2018.)

86 See Jogiforum.hu 2010; Valasztas.hu 2010 and SZALAYNÉ 2014.

their role in parliamentary representation is subsequently insignificant.⁸⁷ Second, the size of parliament was decreased to nearly half (199 MPs from 386), the right to vote was extended to non-resident ethnic Hungarians (whose numbers were multiplied by the new citizenship law), and in addition to state-sponsored campaigns to mobilize these new (overwhelmingly Fidesz-supporter) voters, electoral districts were redrawn in an explicitly gerrymandering fashion, favouring pro-Fidesz blocks.⁸⁸ True, the question of parliamentary representation for minorities has been on the agenda of Hungarian politics and legislation since the 1989 political transition. Laws were passed but never implemented, constitutional court decisions declared the lack of appropriate legislation a form of constitutional omission,⁸⁹ and dozens of reports by international organisations, the specialized minority rights' ombudsman, minority advocates, and politicians have demanded to remedy the situation.

The legal and political debate was caused by the fact that Article 68 of the 1949 Constitution, in force until 2011, set forth that:

“The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages. (3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.”

87 See DOBOS, B. (2013a): The Role of Elections in Minority Contexts: The Hungarian Case. In NIMNI, E. – ALEXANDER, O. – SMITH, D. eds.: *The Challenge of Non-Territorial Autonomy: Theory and Practice*. 1st edition. Oxford, Peter Lang Academic Publishers. 163–180; DOBOS, B. (2013b): Roma political parties in Hungary after 1989. In DÁ CZ, E. ed.: *Minderheitenfragen in Ungarn und in den Nachbarländern im 20. und 21. Jahrhundert*. 1st edition. Baden-Baden, Nomos. 279–291; MCGARRY, A. (2009): Ambiguous Nationalism? Explaining the Parliamentary Underrepresentation of Roma in Hungary and Romania. *Romani Studies*, Vol. 19, No. 2. 103–124; RÖVID, M. (2012): Options of Roma Political Participation and Representation. *Roma Rights*. 9–17. Available: www.errc.org/cms/upload/file/roma-rights-1-2012-challenges-of-representation.pdf (Downloaded: 20.02.2018.); SOBOTKA, E. (2001): The Limits of the State: Political Participation and Representation of Roma in the Czech Republic, Hungary, Poland and Slovakia. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 2, No. 1. 1–23.

88 See for example Transparency International 2014; Freedom House 2016 and OSCE/ODIHR 2014.

89 Article 68 of the 1949 Constitution (ACT XX of 1949), in force until 2011, set forth that “The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State. (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, the fostering of their cultures, the use of their native languages, education in their native languages and the use of names in their native languages. (3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.”

In 1992, before the adoption of the comprehensive 1993 minority rights act, the Constitutional Court decision declared a constitutional omission in regards of failure to enact such legislation, and in 1994, again, referred to its holding (35/1992 and 24/1994). However, the Court's position was not unambiguous – it did not explicitly mention “parliamentary representation” – but referred to “general representation.” Therefore, the legislation in question could be regarded as completed by 1993. The 1993 Act stipulated parliamentary representation, but never actually instituted it, and since there was no direct constitutional language on the issue, the debate was never resolved, but Hungary was repeatedly criticized for not meeting its self-induced obligations. The issue was lingering and dozens of consultations and meetings were held over the two decades since the political transition.

Recognized minorities are now entitled to win preferential seats in the 199-member Parliament as part of the contingent of 93 seats distributed based on national lists. Should any of the minority lists win a preferential seat, then the seats that must be allocated between party lists will be reduced by the corresponding amount. Minority lists can only be nominated by national (level) self-governments. In other words, the parliamentary representation of minorities is based on representation through minority self-governments, which implies that other players, such as for example parties, have no influence on the composition of the list and cannot nominate candidates. Each minority can only win a single preferential seat; to win more than one seat, a nationality list can compete for additional seats based on the general election rules, that is by winning sufficient votes to take the five percent threshold. A citizen can choose to vote either for a party list nominated according to the general election rules or, if he/she is registered in the nationality voter roll, for one of the nationality lists. One can only enrol in one minority register, meaning that the expression of multiple identities is not supported in the electoral law.

According to the law on Electoral Procedures (Act XXXVI of 2013), the rules for registering in the nationality voter rolls is not different from the rules applicable to the elections of nationality self-governments – essentially a principle of free and unfettered self-identification prevails in this context. The law also provides for a minimum number of votes necessary to win a seat. This effectively implies that some 20,000–25,000 votes are needed for parliamentary representation. This number is considerably less than would be needed based on the generally applicable rules, yet given the demographics of minorities in Hungary, only the Roma and the German minorities have a chance to actually succeed in passing this threshold.

According to Article 18 of the Act on the Elections of Members of Parliament, *“(1) Any nationality, which drew up a nationality list, but failed to win a mandate by such list shall be represented by its nationality advocate in Parliament. (2) The nationality advocate shall be the candidate who ranked first on the nationality list.”*

Nationality advocates

Let us review the legal status of the nationality advocate (who, just like a member of parliament representing a nationality, cannot be the president or member of a nationality self-government, even though he/she was to be nominated by the latter). According to the 2012 Act XXXVI on Parliament, the advocate may speak during plenary sessions – if the House Committee (the committee in charge of parliamentary procedures) assesses that a given issue pertains to the rights or interests of nationalities. Indeed, he/she may even submit proposals for a decision to Parliament, submit questions to the government, members of the cabinet, the Prosecutor General, the President of the National Audit Office, or the Commissioner of Fundamental Rights on issues pertaining to the rights and interests of nationalities.

Although it has not (yet) been documented to have occurred, the fact that the House Committee (which is made up of the Speaker of Parliament, his/her deputies, and the leaders of the parliamentary factions) is entitled to decide whether a given item on the agenda pertains to the rights and interests of nationalities constitutes an inherent limitation of the advocate's powers.⁹⁰ It may even decide that such an issue does not exist.

Parliament is also under obligation to set up a parliamentary committee that represents nationalities. This committee submits initiatives and proposals that serve the interests and rights of national minorities, issues opinions on relevant proposals, and is also involved in monitoring the government's work relating to nationalities.⁹¹

90 According to Act XXXVI of 2012 on the National Assembly Section 11, within the framework of the provisions of the Rules of Procedure, the House Committee shall... specify the items on the orders of the day affecting the interests or rights of nationalities... Section 13 holds that the chair of the committee representing the nationalities or, if he or she is prevented from acting, the deputy chair of the committee delegated by the chair, may attend the sitting of the House Committee... The chair of the committee representing the nationalities may initiate with the Speaker the convening of the House Committee in the interest of the House Committee identifying an item on the orders of the day as an item affecting the interests or rights of nationalities. The Speaker shall decide on convening the House Committee.

91 Act XXXVI of 2012 on the National Assembly Section 22 (1) The committee representing the nationalities shall be an organ of the National Assembly acting in the field of the interests and rights of nationalities, in charge of putting forward initiatives, making proposals, delivering opinions, and contributing to supervising the work of the Government, exercising the powers specified in the Fundamental Law, in Acts, in the provisions of the Rules of Procedure laid down in a resolution and in other resolutions of the National Assembly. (2) The committee representing the nationalities shall take a position on the report prepared by the Government on the state of the nationalities, and on the annual report of the Commissioner for Fundamental Rights. (3) The members of the committee representing the nationalities shall be the Members obtaining mandate from a nationality list, and the nationality advocates. (4) After considering the motions put forward by the Members obtaining mandate from a nationality list and by the nationality advocates, the Speaker shall make a proposal to the National Assembly concerning the name, the adaptation of the functions, the persons of the chair and deputy chair of the committee representing the nationalities. (4a) The costs incurred in relation to using mother tongues by the Members belonging to a nationality, the Members obtaining mandate from the list of nationalities, and the nationality advocates shall be borne by the relevant targeted expenditure

This is the only parliamentary committee in which the nationality advocate is a voting member.⁹² Apart from the limitations on his/her right to vote, and the fact that his/her competencies are limited to nationality affairs, the advocate and his/her status is equal to that of other members of parliament: he/she enjoys immunity, receives remuneration, has an expense account, et cetera.⁹³

The nationality advocate, or a member of parliament who is a member of a nationality and obtained his/her seat as a nominee on a nationality list, may speak and submit bills and other documents in his/her native language. At the same time, if Parliament or one of its committees takes up his/her proposal, then it is debated in Hungarian.

of the committee representing the nationalities. [...] Section 15 (4) The [...] committee may discuss, at the request of the National Assembly or in its discretion, any question concerning its functions, and may take a position on it. The [...] committee may present its position taken, together with sending it to the Speaker, in an information paper of the committee.

- 92 Act XXXVI of 2012 on the National Assembly Section 29 (1) The nationality advocates shall have equal rights and obligations, they shall perform their activities in the interest of the public and the nationality concerned, and they shall not be given instructions in that respect. (2) The nationality advocate may speak at the sitting of the National Assembly if the House Committee considers that the item on the orders of the day affects the interests or rights of nationalities. In an extraordinary matter, following the debate on the items on the orders of the day, the nationality advocate may speak in the manner determined in the provisions of the Rules of Procedure laid down in a resolution. The nationality advocate shall have no right to vote at the sittings of the National Assembly. (3) The nationality advocate shall participate with a right to vote in the work of the committee representing the nationalities, and he or she may – on the basis of the decision of the chair of the standing committee or of the committee on legislation, or if the House Committee decides so in the framework of its decision according to paragraph (2) – attend, in a consultative capacity, the sittings of the standing committees or of the committee on legislation. (4) The nationality advocate may address questions to the Government, the member of the Government, the Commissioner for Fundamental Rights, the President of the State Audit Office and the Prosecutor General about matters within their functions and affecting the interests or rights of nationalities. Section 29/A (1) The nationality advocate shall be entitled to immunity. The rules pertaining to the immunity of Members shall apply to the immunity of the nationality advocate.
- 93 Act XXXVI of 2012 on the National Assembly Section 98 (1) State authorities shall assist the Members in the fulfilment of their mandate and shall provide the Members with the information necessary for their work. Should the Member request in writing information from a person obliged to provide a report to the National Assembly, and the Member's question is related to a matter falling within the person's functions he or she is obliged under an act to provide a report on to the National Assembly, the person obliged to provide a report to the National Assembly shall reply to the Member in writing within fifteen days of the receipt of the request. [...] (4) The Member's ID card shall grant access to all public authorities as well as public institutes and public institutions. The Member shall also be entitled to enter [...] the territory operated by the Hungarian Defence Forces, the Military National Security Service, the law enforcement authorities and the customs authority of the National Tax and Customs Administration. [...] Section 104 (1) The Member shall be entitled to receive a monthly remuneration from the date of his or her oath-taking until the termination of his or her mandate; the amount of the remuneration shall be equal to the remuneration of the Deputy State Secretary consisting of basic remuneration, remuneration supplement and executive supplement, as determined in the Act on Public Service Officials.

By April 2016, within 23 months, the committee of nationalities,⁹⁴ consisting of all the advocates, submitted six motions⁹⁵ and co-sponsored another 43.⁹⁶ All four amendment motions (on the electoral law, the minority rights act, the budget and provisions on the advocates' funding) received government support and were adopted by parliament. The committee held 46 meetings (the shortest was 10 minutes, the longest almost four hours long). Its enforcement sub-committee met three times, the other two six times, for 151, 556, and 538 minutes respectively.

The activity of the advocates varied.⁹⁷ Romanian advocate Traján Kreszta never once spoke during the plenary sessions. Félix Farkas, vice-chair of the committee and advocate for the Roma community, only spoke once when he addressed the budget subchapter on minority expenditures and remained quite loyal and appreciative towards the government. The Ukrainian Jaroslava Hartyylav only spoke once, as well. She praised the activity and the diligence of their committee, which at the time, in fact, was the third most active in the House. She also commended the successful budget amendment, which provided additional resources to underfinanced regions. Laokratisz Koranisz, Greek and Vera Giricz, Ruthenian advocates spoke twice on trademark, registration and education, and the ombudspersons' report, respectively. Croatian advocate, Mihoko Hepp and Polish advocate, Land Pol Csúcs took the floor three times on trademark, census and on the good Hungarian–Polish interstate relationships, respectively. Armenian advocate, Tamás Turgyli spoke five times, twice in the budget debate and once on curtailing bureaucracy around minority theatre funds, but mostly on the deterioration of the Armenian–Hungarian interstate relationship. He also criticized the government's refugee-policy. Slovenian advocate, Erika Kissné Köles spoke seven times. Bulgarian advocate, Szimeon Varga took the floor 11 times, ailing bureaucracy around minority theatre funds, but mostly on the deterioration of the Armenian–Hungarian state relationship. He also criticized the government's refugee-policy. Slovenian advocate Erika Kissné Köles spoke seven times. Bulgarian advocate Szimeon Varga 11 times – mostly on education, budget and the report on the situation of minorities. Slovakian advocate and chair and the committee János Fuzik spoke 12 times: on the minority rights act, on budget, on the law on parliament, and on the ombudspersons' reports. In other speeches, he praised the government's refugee-policy and international cooperation in building fences. German advocate Imre Ritter was the most active, speaking 26 times (including 11 times on budget, two on the report on minorities, three on registration and education, two on state audit,

94 The committee established three sub-committees on minority rights enforcement; self-government, foreign affairs and budget; and education and culture.

95 These included proposed amendments to the minority rights act, the electoral procedure law, the budget, and the law on national trademarks. Two were withdrawn and resubmitted.

96 For example, 13 on budget, 4 on the report of the reports of the ombudspersons, 6 on education and on trademarked products, 2 on census, on petty criminal law, on the situation of nationalities, on the national cultural fund, on consular protection, on museums, and on curtailing bureaucracy, 1 on the report of the national audit, and on parliament.

97 See the webpage of the Parliament www.parlament.hu/szoszolo-k-listaja (list of advocates).

on petty offences, and on cultural funds, one on the minority rights act). Once he questioned the Prime Minister on the government's restrictive refugee policy, and on a speech held in Strasbourg where he claimed that Hungary has never been a multicultural society and cultural homogeneity is a value that should be maintained.

We can conclude that the advocate committees and sub-committees sit regularly, but are not very active in the legislative process. The government and the House have supported most of their motions. The advocates are also not very active in the parliamentary and political advocacy work. Only two formal questions on instruments for the political control and accountability of the government were submitted. Most interventions concerned the debates of bills, particularly around the budget. In addition to the many interventions consisting of government appraisal, a significant number took on issues that are actually outside the scope of the minority rights law, such as inter-state relations (between their home and kin states), refugee policy and consular protections. This last point suggests that this newly introduced institution succeeded in providing a forum for the representatives (advocates) of minorities to make their voices heard in public in whichever issue they consider relevant.⁹⁸

Still, in light of the above, these advocates⁹⁹ are likely to remain the dominant legal institution in case of the 11 minorities other than the German or the Roma. Apart from the limitations on his/her right to vote, and the fact that his/her competencies are limited to nationality affairs, the advocate and his/her status are equal to those of other members of parliament – he/she enjoys immunity, receives remuneration, has an expense account, et cetera. Although this has not (yet) been documented to happen, the fact that the House Committee, made up of the Speaker of Parliament, his/her deputies, and the leaders of the parliamentary factions, is entitled to decide whether a given item on the agenda pertains to the rights and interests of nationalities, constitutes an inherent limitation of the advocate's powers. It may even decide that such an issue does not exist.¹⁰⁰

98 For a detailed analysis, on which this chapter is based see PAP, A. L. (2017): Recognition, representation and reproach: new institutional arrangements in the Hungarian multiculturalist model. In VÍZI, B. – TÓTH, N. – DOBOS, E. eds.: *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*. Baden-Baden, Nomos. 101–136.

99 According to Act XXXVI of 2012 on Parliament, the advocate may speak during plenary sessions – if the House Committee (the committee in charge of parliamentary procedures) assesses that a given issue pertains to the rights or interests of nationalities. Indeed, he/she may even submit proposals for a decision to Parliament, submit questions to the government, members of the cabinet, the Prosecutor General, the President of the National Audit Office or the Commissioner of Fundamental Rights on issues pertaining to the rights and interests of nationalities.

100 As mentioned above, during the constitution-making process, the recognized nationalities mostly remained silent. The Bulgarian, Croatian, German and Ruthenian National Self-Governments expressed a request for parliamentary representation. (Const. Prep Comm. 2010a, 2010b, 2010c, 2010d) The Jewish community in Hungary has been divided even on the question seeking recognition as (national or ethnic) minority.

Criticism of the parliamentary representation model

A significant amount of criticism of the Hungarian model for minority parliamentary representation concerns its conceptual background and questions the representative capabilities of the system. There are three basic recognized forms of minority representation and representation of their interests in legislative bodies: a) through the second chamber of a bicameral legislature, i.e. a functionally distinct body within parliament; b) through parliamentary representatives within a unicameral system; c) legislative and political decision-making realized through specialized and particularized solutions.

Representation through minority MPs can be realized in one of three ways: through the election of minority parties and candidates based on the general rules of the election laws (majoritarian, proportional, or mixed); *other* candidates nominated by competitive/majority parties but in some form of official alliance with minority organizations; and preferential procedures, e.g. quotas established for minority representatives or seats allotted in the form of delegation or co-optation. There are serious concerns about this last form of minority representation that stem from the theory of representation, briefly outlined as following: 1. A Member of Parliament represents only and exclusively the politically unitary nation which embodies sovereignty (which does not rule out and is not antithetical to the concept of a multinational or multicultural state) and performs his/her duties in the interest of the public, safeguarded by the guarantees attached to a free mandate. 2. A representative whose role is exclusively to represent a minority does not mesh well with a party system based on competing parties, because in debates on issues that are neutral to the needs of minorities, it would be difficult for an MP or a faction who won their seats exclusively to provide minority representation to justify their presence. Moreover, the votes they cast would be mired in the problem of lacking real legitimacy of representation, for they won their mandates outside regular political competition. 3. In light of the fact that MPs who won a preferential seat cannot actually prevent anti-minority decisions, their presence in Parliament will end up being yet another symbolic gesture meant to provide media publicity. This symbolic act comes with significant costs, however, that stem from both constitutional theory and theory of representation.

Based on the electoral rules and the regulations on the actual legislative powers of the nationality representatives and their factions, the Hungarian model of parliamentary presence of nationalities creates a forum for the *presence* of the representatives of nationalities rather than a platform for actual representation.

The draft constitution drawn up by the constitutional scholar András Jakab¹⁰¹ in 2011 explicitly rejected the idea of parliamentary representation for minorities. He argues:

101 See JAKAB A. (2011): *Az Alaptörvény keletkezése és gyakorlati következményei*. [The Origins and Practical Consequences of the Fundamental Law.] Budapest, HVG Orac.

“(a) It is not clear why nationality should be treated as the one minority feature that ought to be afforded distinct parliamentary representation. (b) There is a risk that resentments against national minorities might increase. A situation when the parliamentary support of a government teeters on the brink of a majority could prove very awkward. If national minority representatives support the government in such a situation, then anti-national minority sentiments might surge on the opposition side; and if they side with the opposition, then resentments could rise among government party politicians. If they abstain or fail to vote, then they could be subject to the charge that they are indifferent towards national affairs, which could arouse the ire of both sides. (c) It is unnecessary for ensuring national minority rights (survival, fostering culture). It would be considerably more effective to strengthen the school system, supporting cultural activities (be it through minority self-governments or outside the minority self-government system). (d) Finally, it is also unclear why national minorities would be politically united. In light of this, the parliamentary representation of minorities is something that at the time of the regime transition was benevolently but nevertheless unfortunately incorporated into the Constitution, without studying the relevant foreign examples (the goal was to provide a model for the policies towards Hungarians in the neighboring countries, which has visibly failed to materialize).”

The legitimacy of the representatives of nationalities in parliament has been in the centre of severe criticism (a criticism that is more academic than political). These arguments concern four points: the overall conceptualization of the recognized minority communities, the lack of proper affiliation criteria for eligibility for minority rights (which include political participatory rights), the use of census data, and equating the active and passive right to vote.

Bearing in mind the above detailed cases of ethno-corruption in case of minority self-government elections, a cause of major concern is that based on the prevailing rules, politicians belonging to the ethnic majority could be elected to parliament as representatives of the currently identified thirteen minorities, which would constitute an abuse of minority privileges and could significantly influence the election outcome. Though the 2014 election results have not borne out this concern – none of the national minorities won a preferential seat in Parliament (a fact that could also be construed as a key critique of the existing regulations, for it seems that in its current form, this institution is incapable of realizing the legislative objective underlying its creation) – in future elections the existence of a 13-member faux minority faction among the 199 MPs could significantly alter election outcomes. This is especially a cause for concern because, as it was shown, the persistent practice of ethno-business and the inadequacy of the relevant regulations will continue to allow for this possibility to happen in the future.

Also, several concerns regarding the legitimacy of the system have been raised with respect to one of the major novelties of the post-2011 regulations: the use of census

data in the context of national minority election rules and in the determination of levels of state funding and minority elections. Pursuant to Government Decree 428/2012 (XII. 29.) on the conditions of funding disbursed through budget allocations earmarked for national minorities:¹⁰²

“[T]he budgetary allocation to fund the operations of municipal national minority self-governments and some national minority self-government is defined as a proportion of the average funding available for all local national minority self-governments.”¹⁰³

The issue is relevant in the context of voting, as according to Article 56 (1) of the new minority law, elections for new local national minority self-governments must be held when the number of persons who belong to the given minority in the municipality reaches 30. The number is determined by aggregating responses that indicate an affiliation with the given national minority in the most recent census questionnaire. Nevertheless, according to Article 242 (2), until 2024, 25 persons will suffice to meet this requirement.

As the Commissioner for Fundamental Rights noted in his submission to the Constitutional Court, it is problematic that when the last census was compiled, respondents were unaware of the electoral implication of their responses to the question concerning their national minority identity, or specifically of the consequences of failing to identify themselves as belonging to a given minority group. Unfortunately, the Constitutional Court addressed these concerns with unprecedented cynicism in its decision,¹⁰⁴ in which it rejected the petition and held:

102 Article 2. § (3).

103 According to the following formula: “It amounts to a) 100% of the aforementioned average amount if the number of persons who belong to a national minority in the given municipality is at least 25 but no more than 50; b) it is 200% of the average if the number of those who belong to a national minority exceeds 50 persons. The budgetary allocation to fund the operations of regional national minority self-governments is defined as the proportion of the average funding available for all local national minority self-governments, according to the following formula: It amounts to a) exactly the abovementioned average amount if the total number of municipal (including the districts of the capital) national minority self-governments and transformed national minority self-governments in the county (the capital) is fewer than 10; b) twice the abovementioned average amount if the total number of municipal (including the districts of the capital) national minority self-governments and transformed national minority self-governments in the county (the capital) is more than 10 but fewer than 20; c) four times the abovementioned average amount if the total number of municipal (including the districts of the capital) national minority self-governments and transformed national minority self-governments in the county (the capital) exceeds 20.” Also see MÓRÉ S. (2014a): Népszámlálási adatokhoz és konkrét létszámhoz kötöttség a nemzetiségi önkormányzatok szabályozásában. [Connecting census to local governance.] *Új Magyar Közigazgatás*, Vol. 7, No. 4. 18–22; and MÓRÉ S. (2014b): Új irányok a nemzetiségi önkormányzatok létrehozásában. [New directions in electing nationality local governance.] *Jogtudományi Közlöny*, Vol. 69, No. 9. 429–434.

104 Decision 41/2012 (XII. 6.) AB.

“[36] The petition, the observations of certain national minority self-governments, and the documents of the Venice Commission¹⁰⁵ referenced here all emphasize the notion that respondents were not aware that the aggregated results would have an influence on whether a minority self-government would be established. [...] However, [...] already before the census was conducted, in 2010, the government had indicated that census data would play a far more substantial role than hitherto; that in essence it would use these as the starting point in charting its [minority policy] measures and in setting levels of funding.”

As the Minority Commissioner noted:

“By using census data they wish to prevent elections from being held in municipalities where the given community is not present at all, and voter rolls from becoming ‘inflated’ as a consequence of deliberate actions to abuse the system. But whether or not elections ought to be held cannot be determined solely on the basis of census data, since these also include persons who are not entitled to vote (e.g. children). Moreover, census data cannot be considered an accurate reflection of how large the national minority population of a given municipality is, for they rely on voluntary statements concerning sensitive information. That is why I think it is important that elections be held – in line with the prevailing regulations – in municipalities where the number of persons in the voter rolls indicates this. In my assessment, the current 30 person voter roll does not provide sufficient community legitimacy for establishing a representative body; it would be necessary to raise this number to ensure legitimacy.”¹⁰⁶

It is important to keep in mind Léna Pellandini-Simányi’s observations about the census questions concerning ethnic identity:

“This method only helps to measure how many people consider themselves Roma, which is nowhere near identical with how many people are identified as Roma by others. The two are not the same. Previous research shows that leaving it up to external observers – the interviewer, neighbors, etc. – to determine who is Roma will yield a Roma population that is up to 2.5 to 3 times larger than the numbers indicated by surveys based on self-identification. [...] The results can be distorted by several factors. [...] [A]ccording to earlier research, the data reveal fluctuations that cannot be explained by demographics [...] presumably because responses depend to a significant extent on the prevailing strength of racism, and on whether the respondent is confident that his/her answer professing his/her ethnic identity

105 Opinion No. 671/2012, CDL-AD (2012) 011. 10.

106 KÁLLAI E. (2011): Vélemény a készülő nemzetiségi törvény tervezetéről. Available: www.kallaierno.hu/data/files/velemen_y_keszulo_nemzetisegi_torveny_tervezeterol_2011_11_04_yZofei.pdf (Downloaded: 20.02.2018.)

will not result in further discrimination. [...] [O]nly a third of persons who are identified as Roma by their social environment appear in these data.”¹⁰⁷

Nóra Chronowski points out that even though census data show that the number of citizens who are members of a national or ethnic minority has surged from 313,812 in 2001 to 555,507 in 2011,¹⁰⁸ since estimates suggest that the Roma minority alone makes up 5-10% of the entire population,¹⁰⁹ and since roughly a million and a half persons did not make a statement concerning their national or ethnic identity, these estimates cannot be regarded as exact.¹¹⁰

It is also important to discuss the regulation of the right to vote and the right to stand as a candidate in minority elections (also relevant in the context of parliamentary representation), which are also handled in a problematic manner. Viewed from the perspective of representation theory, the rule mandating that minority representatives and candidates must belong to the minority is unfounded, for representation itself is but the exercise of the decision-making rights of a community of voters by a smaller and more operative body. Thus from a voting rights perspective, it appears unnecessary to limit the right to stand as a candidate to members of the minority community, since a representative does not need to share the attributes of those she represents. Auto-representation is not a requirement in any serious body that serves as a representative institution. Beyond jurisprudential reasons, the prevailing practice also does not indicate a reason for excluding a candidate from the electoral procedure if he/she can credibly and successfully persuade voters that they should elect him/her. Just as there is no general requirement that an executive managing an athletic association be himself/herself an athlete, or even a former athlete, the representative of a local Roma self-government could be a non-Roma doctor. Likewise, a member of a national-level nationality self-government could be a former president of the republic.

Prohibiting a person who served as the representative of any nationality to run on the list of another nationality – which is legitimated by the nationality law¹¹¹ – is a radical and unjustifiable restriction of the previously broad recognition of the principle of multiple identity affiliations, and is incompatible with international legal recommendations.

107 PELLANDINI-SIMÁNYI L. (2011): *Mire (nem) jók a népszámlálás etnikai adatai?* Budapest, IDEA Intézet.

108 www.ksh.hu/nepszamlalas/tables_regional_00

109 MAGICZ András (2013): „Re-regulation of National Minority Rights” in HAJAS Barnabás – SZABÓ Máté (ed.): *Their Shield is the Law. The Ombudsman's Protection for Vulnerable Groups* (Budapest: Office of the Commissioner for Fundamental Rights 2013) 27.

110 Chronowski, Nóra: Alaptörvény és etnicitás – avagy az alkotmányozás viharában részekre szakadt nemzetünk, (Ethnicity and the Fundamental Law: our nation divided in the storm of constitution-making) *Állam- és Jogtudomány* 2015/1

111 Article 11. § (3).

The possibility of winning preferential seats, which is a necessary concomitant of providing minority representation, inherently implies a restriction of equal voting rights. But the particular solution used by the legislator also restricts the right to freely nominate candidates and party lists. This is in addition to the fact that an unjustifiable condition of auto-representation and an unnecessary restriction on multiple identity affiliations are also part of the effective regulations.

It is worth considering that Commissioner for Minorities Ernő Kállai noted in his opinion on the bill that this was the first legislative proposal by a government pertaining to minority issues that the minority ombudsman was not involved in drafting, wherefore the legislation lacked his professional input. The final bill was sent to Kállai with a deadline to respond in a mere one and a half working days.¹¹²

The representation of minorities in parliaments can serve a number of goals: power-sharing, the aim for equality through recognition,¹¹³ proposal by a government pertaining to minority issues that the minority ombudsman was not involved in the drafting, nor does it answer documented minority demands. Subsequently it cannot and does not seem to be able to fulfil its goals. While it carries several risks for potential fraud and abuse, it also suffers from theoretical and procedural weaknesses, such as unclear policy objectives, a constitutionally controversial imbalance in the right to vote, and a problematic approach to passive and active voting rights. Also, the parliamentary representation of nationalities carries the theoretical, political, and constitutional stigma of long held deficiencies in the Hungarian model of defining the recognized minorities and affiliation criteria.

As argued above, in the Hungarian context, the following arguments were raised in favour of the parliamentary representation of minorities: 1. Though it never really entered into effect because it was never fully specified in the form of concrete electoral law provisions, pursuant to the May 25, 2010 amendment of the constitution,¹¹⁴ parliamentary representation is an acquired right. 2. The recommendations and reports of numerous international organizations and the Constitutional Court have determined that a constitutional omission has occurred here through the failure to enact such a solution. Moreover, this constitutional requirement was already

112 The ombudsman concludes: "One of the fundamental goals of the new national minority law is to prevent abuses of national minority rights. Yet this ambition is undermined by the fact that the bill's creator continues to give primacy to the principle of freely choosing one's identity without providing any safeguards to prevent persons who are not members of a national minority from exercising the rights of national minorities. As a result, therefore, the regulation establishing that the exercise of given national minority rights is contingent merely on a statement by the individual asserting his/her affiliation with the national minority, rather than a recognition by the national minority of his/her membership, continues to prevail." (The Minority Rights Ombudsman 2010b)

113 See for example MCCRUDDEN, Ch. – PRECHAL, S. (2009): *The Concepts of Equality and Non-Discrimination in Europe: A practical approach*. European Network of Legal Experts in the Field of Gender Equality. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.2.

114 The text is available at www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK10085.pdf (Downloaded: 20.02.2018.)

present in the previous constitution. 3. The Hungarian minorities and the Minority Commissioner relentlessly emphasized this point. 4. This is an efficient and necessary instrument of legal protection and the representation of interests. 5. This type of legal protection and interest representation provides a model that is ready for export: It is a form of realizing the underlying objectives that set standards that we can also expect the neighbouring countries to comply with.

The following arguments were raised against the parliamentary representation of minorities: 1. The notion that the previous constitution contained an obligation to provide for the parliamentary representation of minorities rests on a mistaken reading of the document. Based on a Constitutional Court decision rendered before the adoption of the minority law, a plausible reading of the previous Constitution suggested that a legally established mode of alternative political representation (realized specifically in the form of minority self-governments) was sufficient to comply with constitutional standards. Correspondingly, though minority self-governments are suboptimal solutions on account of ethno-corruption and other deficiencies they are fraught with, they nevertheless undeniably constitute acquired rights, and since they happen to comply with constitutional requirements concerning political representation, it would be logical to retain them in the new constitutional framework, for otherwise the latter would genuinely realize a step back in terms of legal protections, more accurately, in terms of providing special rights. It is also important to mention that international organizations did not condemn Hungary on the grounds that this particular solution fails to live up to the relevant international expectations (in this context we cannot speak of standards or generally established practices). Instead, based on an interpretation of the Constitutional Court's decision, they called Hungary to task for failing to comply with its voluntary commitments. 2. The phenomenon of ethno-corruption and the abuses experienced in minority elections counsels caution the introduction of such an institution, primarily because the notion of regulating minority registration and the free choice of one's identity is not supported by either minorities or by the majority of the political elite. 3. There are serious theoretical concerns about minority representation. 4. The fact that minorities and the minority commissioners have relentlessly embraced this position does not imply that there is an automatic obligation to accept the underlying arguments. Their mandates would naturally lead them towards such a position. 5. An approach that places minority law in the service of diaspora politics uses the former to advance objectives associated with the latter, or in other words, uses minority law to justify its own policies in representing the interests of ethnic Hungarians abroad. This may be indubitably useful and politically justifiable, but is nevertheless hardly defensible on jurisprudential or moral grounds. Though several such arguments were voiced during the parliamentary debate on the 1993 Minority Act, we have never officially encountered such efforts to justify legislative proposals concerning minority law.

The constitutional language does not specify the means of parliamentary "presence," so the Hungarian legislator could have chosen several, constitutionally

and politically less controversial models. Examples include the right of national minority self-governments or other minority organizations to initiate legislation (which could be extended in certain cases to motions for parliamentary decisions or plenary debates), the broadening (and not limiting which the 2011 legislation actually did) of the competences of the specialized minority ombudsman (parliamentary commissioner), or even a political agreement between the parties that formally lays down the rules for ethnic/national minority quotas that must be respected in compiling the slate of each party's candidates.

The constitutional language does not specify the means of parliamentary national minorities to delegate an advocate to Parliament, this could also have been achieved if all the national-level national minority self-governments delegated advocates outside the system of parliamentary elections, without a subset of voting-age citizens having to forgo the possibility of expressing their political preferences. Those citizens namely sacrifice their party list votes in the interest of a representation scheme that is embodied by the institution of the advocate, and hence the integration of this system into the electoral system is a specious solution that does not create a genuine opportunity for achieving the parliamentary representation of national minorities.¹¹⁵

Overall, the legislator unduly restricted the principle of equal voting rights, especially in light of the unbroken string of domestic practices involving abuses of minority elections. Though the time bomb of ethno-corruption failed to explode in the 2014 elections, all the necessary preconditions for a future explosion are given. Moreover, in addition to legislative choices that are difficult to justify in terms of how they handle multiple identities and the right to stand as a candidate, the legislator has introduced a model that will in all probability effectively limit the right to win a preferential mandate to the Roma and German national minorities, while the other national minorities are practically limited to the institution of the advocate – which, incidentally, is unproblematic in terms of both representation theory and practical application. It is too early to assess how this institution works. In any case, the advocates' rather modest activities in the first months hardly justify the hopes vested in this institution (as an instrument of representing the interests of national minorities and strengthening their identity) – assuming that such hopes actually exist.¹¹⁶

Having outlined the general features of Hungarian multicultural legal and policy frameworks, let us turn our attention to the nation's only ethnic minority.

115 CHRONOWSKI (2015): *op. cit.* 3–18.

116 For more and a more recent assessment based on this draft see PAP, A. L. (2017): *op. cit.* 101–136.

Roma in the Hungarian multiculturalist model

The Hungarian Roma

In Hungary, the Roma are practically the only visible minority, and have been present for centuries. The Roma are Hungarian citizens. They are documented and linguistically assimilated: they all speak Hungarian, some only Hungarian, others are bilingual, and they also do not differ significantly from the majority in religious affiliation. As mentioned above, they constitute the largest minority group in the country. During the 2001 census less than 2 per cent of the general population (190,046 persons) identified themselves as Roma,¹¹⁷ but estimations suggest that this ratio is closer to 7 per cent. Before the 2011 census the President of the National Roma Self-government encouraged the open declaration of ethnicity, and a group of Roma rights activists organized a civil movement *We belong here* [Ide tartozunk] campaigning for active declaration. Eventually, slightly more than 3 per cent of Hungary's population (308,957 persons) declared themselves to be Roma in 2011.¹¹⁸

Also, the Roma in Hungary live a sedentary lifestyle. Unlike some Roma communities in Europe, only a very small group of Sinti are semi-sedentary (estimated to be less than 1 per cent among the Roma population, some operating travelling carnivals/carousels.)¹¹⁹

The Hungarian Roma population is very diverse. There are three main groups (and twenty-seven subgroups) of Roma in Hungary, in the cultural and linguistic senses: the Romungros – who are linguistically assimilated and speak Hungarian as a mother tongue; the Boiash (or Beás), who speak a language which is based on an ancient version of Romanian; and the speakers of different dialects of the Romani language (the most widespread version is the Lovari).¹²⁰ The Hungarian Roma community is extremely heterogeneous, unified only by the *othering* of the majority and the political concept of the Roma as constituted by state policies (and to a very limited degree, the international Romani movement).¹²¹

As a report by the Hungarian Helsinki Committee shows, members of the Roma community are discriminated against in almost all fields of life and prejudice runs deep in the Hungarian society. A 2009 survey showed that 29 per cent of the respondents would not accept a Roma person as a co-worker, 43 per cent of the respondents would

117 Hungarian Central Statistical Office 2013.

118 Hungarian Central Statistical Office 2013.

119 SZUHAY P. (2003): Ez egy eredeti cigányélet. *Beszélő*, Vol. 8, No. 4. Available: <http://beszelo.c3.hu/cikkek/%E2%80%9Eez-egy-eredeti-ciganyelet%E2%80%9D> (Downloaded: 20.02.2018.)

120 KEMÉNY I. – JANKY B. (2003): A 2003. évi cigány felmérésről. [About the Gypsy Survey in 2003.] In KÁLLAI E. ed.: *A magyarországi cigány népesség helyzete a 21. század elején*. [The Situation of the Gypsy Population in Hungary at the Beginning of the 21st Century.] 1st edition. Budapest, MTA Etnikai-Nemzeti Kisebbségkutató Intézet. 24–25.

121 FOSZTÓ, L. (2003): Diaspora and Nationalism: An Anthropological Approach to the International Romani Movement. *Regio – Minorities, Politics, Society*, Vol. 3, No. 1. 102–120.

not accept a Roma as a neighbour, and 76 per cent would not accept a Roma person as a partner.¹²²

According to a UNDP/EC/WB Survey conducted in 2011, 2 per cent of the Roma in Hungary live in absolute poverty, and 71 per cent in relative poverty, and 29 per cent of the Hungarian Roma do not have secure housing. As the major international NGO Minority Rights Group (2012) reports on Hungary, the Roma unemployment rate is estimated at 70 per cent, more than 10 times the national average, and most Roma live in extreme poverty. NGOs report racial discrimination in adoption and high rates of removal of children from Roma families by child protective services. According to a 2002 World Bank report, slightly more than 80 per cent of Roma children completed primary education, but only one-third continued studies into the intermediate (secondary) level, as compared to the 90 per cent proportion of non-Roma. In 2013, the European Court of Human Rights ruled in favour of two Roma children who complained that their placement in special schools was based on their ethnic identity. The Court underlined in its ruling that there is a long history of wrongful placement of Roma children in special schools in Hungary.¹²³ Violent attacks against Roma and racist statements by public officials, as well as the activities of extremist paramilitary groups are also widely documented.¹²⁴

*Roma in the Hungarian minority rights framework*¹²⁵

In order to understand the status and position of Roma in the Hungarian minority rights framework, we need to point out in the outset that in terms of the identity and advocacy, there are two competing ideologies and movements among Roma intellectuals in Hungary: one centered around a civil rights oriented emancipatory politics,¹²⁶ another with ethno-national cultural identity in focus. The former emphasizes antidiscrimination and desegregation, the latter groupism and cultural rights. András Bíró calls them modernists and culturalists:

“Modernists are mostly drawn from a younger urban elite who see themselves as representatives of an ethnic minority group facing multiple social, economic,

122 Hungarian Helsinki Committee (2011): *General Climate of Intolerance in Hungary*. Available: http://helsinki.hu/wp-content/uploads/General_climate_of_intolerance_in_Hungary_20110107.pdf (Downloaded: 20.02.2018.)

123 Horváth and Kiss v. Hungary [2013] 11146/11 (the Second Section of the European Court of Human Rights).

124 Harvard (2014): *Accelerating Patterns of Anti-Roma Violence in Hungary. A Report from the François-Xavier Bagnoud Center for Health and Human Rights*. Boston, Harvard University, Harvard School of Public Health.

125 This chapter is based on an earlier writing: PAP, A. L. (2015): Racial, Ethnic, or National Minority? Legal Discourses and Policy Frameworks on the Roma—In Hungary and Beyond. *Social Inclusion*, Vol. 3, No. 5. 78–89.

126 VÍZI B. (2013): *Európai kaleidoszkóp. Az Európai Unió és a kisebbségek*. 1st edition. Budapest, L'Harmattan. 19; HORVÁTH A. (2004): Magyar nemzet, roma nemzet. *Népszabadság*, 12 July. 14.

educational, but primarily, discrimination problems. Consequently, their problems focus on equal opportunities, human rights and integration. Culturalists are located primarily in rural areas and while less visible, are a significant presence in Roma communities. Headed by an older leadership, these prefer retaining tradition to integration.”¹²⁷

The practice of ethno-corruption concerning the minority self-government elections, which are the most important institutions in the legal framework, has already been mentioned. But this is not the only or even the most important fallacy of the legislation. The ambiguity of the function and the design of the MSGs is most apparent with regards to the Roma: political representation and empowerment, cultural competences and a vague promise of social integration potential is bundled together. Generally, while acknowledging that it serves as a *training school* for up-and-coming Romani politicians to gain skills that they can use in the mainstream political arena, observers are quite critical of the institutional design. As Melanie Ram notes, the MSG-system:

“Which at times has been touted as a possible model for other countries, has not brought a substantial improvement in Roma lives. While it has increased participation of Roma to some extent, it has hardly enhanced social inclusion of Roma, largely because its mandate is limited to cultural autonomy (basic education, media, language, and promotion of culture. The language provisions are simply not so helpful for a community that largely speaks Hungarian at home, and local self-governments do nothing to directly address either discrimination or socioeconomic inequalities.”¹²⁸

According to the National Democratic Institute Assessment Report, the minority self-government scheme actually *marginalized Roma issues by depositing it in a powerless, quasi-governmental structure*.¹²⁹ *Claude Cahn argued that the framework is not only “largely inappropriate for addressing the situation of Roma” but has also “reified the exclusion of non-white minorities in Hungary”*.¹³⁰ *In 2006, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in*

127 BÍRÓ (2013): *op. cit.* 33–34.

128 RAM, M. H. (2014a): Europeanization and the Roma: Spreading the Norms of Inclusion and Exclusion. In *10th Biennial Conference of the European Community Studies Association-Canada*. 13. Available: www.ecsa-c.ca/wp-content/uploads/2014/11/4A_Ram.pdf (Downloaded: 20.02.2018.); RAM, M. H. (2014b): Europeanized Hypocrisy: Roma Inclusion and Exclusion in Central and Eastern Europe. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 13, No. 3.

129 NDI (National Democratic Institute) and OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2006): *op. cit.*

130 CAHN, C. (2001): Smoke and mirrors: Roma and minority policy in Hungary. *European Roma Rights Centre*, 7 November. Available: www.errc.org/cikk.php?cikk=1255; CUREJOVA, L. (2007): Hungary: Self-abusive Governance. *Transitions Online*. Available: www.tol.org/client/article/18943-self-abusive-governance.html (Downloaded: 20.02.2018.)

Europe published a detailed report and pointed to many problems with the system. According to the report, although Hungary was among the first countries to create a system to promote minority rights and its minority self-government offers a unique approach to fostering Roma participation, many suggest, including Roma activists and analysts, that it is based on “a fundamentally flawed concept that offers the illusion of political power rather than genuine inclusion.”¹³¹

Ten years ago the report identified the lack of governance over socio-economic policy, which was never within the scope of the 1993 minority rights law, a crucial fallacy.¹³² In sum, according to the OSCE:

“While other minorities are primarily concerned with protection of cultural and linguistic autonomy, the Roma population faces an almost opposite challenge, needing more integration to combat segregated education, discrimination, unemployment, and problems with housing and healthcare.”¹³³

As Emilia Molnár (currently of the Swedish International Development and Cooperation Agency) and Kai Schaft¹³⁴ from Penn State College of Education point out, Hungarian Roma leaders repeatedly call for a redistribution, rather than recognition-oriented minority policy:

“Roma self-governments see as their main objective the improvement of social conditions in their community rather than the preservation of minority culture and strengthening of minority identity. The ambitions of local Roma leaders are influenced primarily by the marginalization of their community, while the protection of Roma identity remains secondary.”

It also needs to be added that neither of the targeted minority communities ever voiced their demands in a politically compelling way (and Roma representatives certainly would not have advocated such a framework), and, as shown above, the first freely elected Hungarian government acted in a proactive manner, exceeding international minority rights commitments and created an identity-politics oriented minority

131 NDI (National Democratic Institute) and OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2006): *op. cit.* 4.

132 *Ibid.* 6–7.

133 *Ibid.* 5. For more see KOVÁTS, M. (1996): The Roma and minority self-governments in Hungary. *Immigrants & Minorities: Historical Studies in Ethnicity, Migration and Diaspora*, Vol. 15, No. 1. 42–58; THORNBERRY, P. (2001): An Unfinished Story of Minority Rights. In BÍRÓ, A. – KOVÁCS, P. eds.: *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe*. 1st edition. Budapest, Local Government and Public Service Reform Initiative – Open Society Institute. 46–73; BARANY, Z. (2001): *The East European Gypsies. Regime Change, Marginality and Ethnopolitics*. 1st edition. Cambridge, Cambridge University Press.

134 MOLNÁR–SCHAFT (2003): *op. cit.* 15.

rights framework – even if partly, or mostly in order to fuel national sentiments and political commitments towards ethnic Hungarians in the Diaspora.

In defence of the 1993 law, Balázs Vizi (2013) argues that despite all its flaws, for the first time in Hungarian history, it formally recognized the Roma as a group with legitimate claims for a separate identity. Admittedly, the law facilitated a peculiar nation-building project, conceptualizing a Roma national minority, a distinct political group, incorporating all its diverse subgroups.¹³⁵ Also, to a certain degree, the law successfully endorsed cultural aspirations of certain Roma communities and created a Roma political elite.¹³⁶ Its declaration concerning the prohibition of discrimination, a daily practice for Roma in Hungary in all facets of life, received very little attention. For example, the first comprehensive anti-discrimination law was adopted only in 2003, 10 years after the minority rights law, necessitated by EU-accession obligations. And in 2000, only three years before its adoption, the Constitutional Court rejected complaints pertaining to the lack of such a legislation (45/2000). Likewise, the law was unfit to meet social inclusion demands in dire need for Roma communities. Despite the shocking sweep of market economy that hit the impoverished Roma the hardest, in the first decade or so after the political transition there were no serious attempts to institutionalize social inclusion measures targeting the Roma, as the Hungarian legislators' priorities concerned enhancing exportable cultural identity for national minorities.¹³⁷

An important remark needs to be made in defence of the 1993-framework: controversial as it may have been to conceptualize the Roma as a national minority (especially lacking a massive grass-root Roma *nationalist* cultural and political elite at the time), it would have been politically and morally unacceptable to exclude the Roma from the communities that the minority rights act was to enumerate and address. (It is important to note that, as Judit Sansum Molnár¹³⁸ points out, *Roma* was the most commonly used word in the almost year-long debate of the 1993 bill, almost twice as often used as *German* or *Slovak*, the next ones in line.)

From “Cigány” to “Roma”

The new minority law in 2011 also officially replaced the term *Cigány* with *Roma*. Again, no theoretical or political explanation was given. It has been shown that terminology is not a reliable indicator for policy frameworks.

It is an interesting theoretical question, whether minority communities can have multiple dimensions, and claims that are to be accommodated, that is, just because

135 FOSZTÓ (2003): *op. cit.*

136 BÍRÓ (2013): *op. cit.*

137 MAJTÉNYI B. – MAJTÉNYI G. (2012): *Cigánykérdés Magyarországon, 1945–2010*. 1st edition. Budapest, Libri.

138 SANSUM MOLNÁR J. (2017): Az 1993-as magyarországi kisebbségi törvény parlamenti vitája. *Regio*, Vol. 25, No. 3. 186.

a group is *ethnic*, it can also be a *national minority or nationality*. Still, it would not be too far-fetched to claim that the inconsistent terminology for the Roma as ethnic, racial, and national minorities signals the fluidity and the indecisive nature of conceptualizing and targeting.

Roma minority self-governments exemplify a rather curious development in Hungary, as they have formally been involved in social inclusion measures, creating an even more confusingly hybrid, mutant model. As an annex to the 2011 national social inclusion strategy,¹³⁹ the government signed a framework agreement with the National Roma Self-Government,¹⁴⁰ and competences including the supervision of schools, developing new employment schemes, monitoring programs have been assigned to the NRSRG. In fact, it has been appointed as one of the core implementing bodies of the Strategy.

The new legislation, backed up by constitutional language, clearly signals that on the one hand the legislator, the right wing populist elite, conceptualizes Roma issues foremost as issues of identity politics. On the other hand, government rhetoric and initiatives¹⁴¹ use cultural identity as a tool for social integration, and presents it in a simplified, essentialist, manner. Let us see some examples from the national social integration strategy, adopted in order to reflect policy aims set forth by the European Framework for National Roma Integration Strategies (which, following the *explicit but not exclusive targeting* principle, targets several vulnerable groups):¹⁴²

“The fostering and popularisation of Roma culture [...] should not result in an effect contrary to the desired goal by overly emphasising the cultural ‘differentness’ [...] As the fostering of Roma culture contributes to the positive shaping of the social image of the Roma [...] we must [...] enable the majority society to acquaint

139 Ministry of Public Administration and Justice, State Secretariat for Social Inclusion (2011a): *National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma – 2011–2020*. Budapest. Available: <http://romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF> (Downloaded: 20.02.2018.)

140 Ministry of Public Administration and Justice, State Secretariat for Social Inclusion (2011b): *Annex 2 to the National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma – 2011–2020. Framework Agreement between the Government of Hungary and the National Roma Self-Government*. Budapest. Available: <http://romagov.kormany.hu/download/8/58/20000/Annex%202.PDF> (Downloaded: 20.02.2018.)

141 Romagov.kormany.hu (2014): Balog Zoltán: A kultúrára kell építeni a felzárkóztatást, 11 May. Available: <http://romagov.kormany.hu/balog-zoltan-a-kulturara-kell-epiteni-a-felzarkoztatatast> (Downloaded: 20.02.2018.)

142 European Commission (2011): *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An EU Framework for National Roma Integration Strategies up to 2020*. COM(2011). 173; VÍZI, B. (2011): The Hungarian Presidency of the Council of the European Union: Focus on the Neighbourhood and on a European Roma Strategy. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 10, No. 1.

themselves with the values of Roma traditions and culture in Hungary and abroad alike.”¹⁴³

“Learning about the life, values and culture of the other community is an effective means of the fight against stereotypes. We must therefore lay particular emphasis on providing information in public education on the culture and history of the Roma as a part of the multi-faceted Hungarian culture as well as on presenting the effects of the Roma culture on the national and Eastern European culture.”¹⁴⁴

This approach is further articulated in the updated version of the integration plan¹⁴⁵ which emphasizes the role of maintaining cultural traditions, which can function as a source of pride and confidence and, “*which is a prerequisite for the self-esteem, the consciousness-raising, and the re-creation of the integrity of Roma community.*” While the document sets forth the goal to “*re-shelve projects fostering Roma culture from social issues to cultural identity*”¹⁴⁶ it also calls for the integration of a social inclusion approach to Roma educational and cultural programs.¹⁴⁷

Flaws in the Strategy and its policy environment have been thoroughly criticized in the monitoring report commissioned by the Decade of Roma Inclusion Initiative and compiled by an NGO coalition involving most of the relevant organizations.¹⁴⁸ For example, it points out that effective anti-discrimination and equal opportunity policies are missing, which is even more acute due to the abolishment of the independent institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the move of this function to the portfolio of the deputy of the Commissioner for Fundamental Rights. Also, authorities were found to be lenient in sanctioning hate speech, and, as we will see, criminal provisions designed to protect groups facing bias are more often applied by the authorities to sanction Roma rather than non-Roma.¹⁴⁹ Correspondingly, connecting public security measures with Roma inclusion gives the impression that ethnic origin is intrinsically linked with criminality.¹⁵⁰

143 European Commission (2011): *op. cit.* 96–98.

144 European Commission (2011): *op. cit.* 100–102.

145 Ministry of Human Resources (2014): *Magyar Nemzeti Társadalmi Felzárkózási Stratégia II. Tartósan rászorulóok – szegény családban élő gyermekek – romák (2011–2020). Frissített változat.* Emberi Erőforrások Minisztériuma, Szociális és Társadalmi Felzárkózásért Felelős Államtitkárság. Available: www.kormany.hu/download/1/9c/20000/Magyar%20NTFS%20II%20_2%20mell%20NTFS%20II.pdf (Downloaded: 20.02.2018.)

146 Ministry of Human Resources (2014): *op. cit.* 87–88.

147 *Ibid.* 91.

148 BALOGH et al. (2013): *op. cit.*

149 *Ibid.* 9–10.

150 *Ibid.* 37.

Conclusion

This article showed that the hypocritical model for multiculturalism, which was originally designed to foster minority-friendly legislation for ethnic Hungarians in the neighbouring states, was not overridden in the Orbán era. The path-dependent Janus-faced framework was modified in a way to allow for a dual-powered electoral gerrymandering: providing non-resident citizenship and voting right for Hungarians in the Diaspora, and introducing a set of preferential mandates for traditional minorities in a legal framework that allows for abusing minority rights and a large-scale ethno-corruption.

As for the broader relevance of the Hungarian case, it shows that confusing terminology (in our case of ethnic and national minorities and nationalities) reflects and reveals confused conceptualization and the lack of clearly defined political and policy objectives.

In sum, the terminology and the institutional framework originally designed to lobby for minority rights for ethnic Hungarians in the neighbouring states, as well as the new constitution, laws and policy frameworks, each fail to comprehend the complexity of Roma-related issues, and even the essential difference the various policy models (minority rights, anti-discrimination, social inclusion) carry and require.

References

- Act XX of 1949. The Constitution of the Republic of Hungary.
- Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.
- Act CXII of 2011 on Informational Self-Determination and Freedom of Information.
- Act CLXXIX of 2011 on the Rights of Minorities.
- Act XXXVI of 2012 on Parliament.
- Act XXXVI of 2013 on Electoral Procedures.
- AURESCU, B. (2012): The June 2012 opinion of the Venice Commission of the Council of Europe on the act on the rights of nationalities of Hungary. *Lex et Scientia*, Vol. 19, No. 2. 166–179.
- BALOGH, L. (2012a): Minority Cultural Rights or an Excuse for Segregation? Roma Minority Education in Hungary. In POP, D. ed.: *Education Policy and Equal Education Opportunities*. 1st edition. New York, Open Society Foundations. 207–222.
- BALOGH L. (2012b): Jog a kultúra őrzésére – vagy ürügy a szegregációra? A roma nemzetiségi oktatás mint kétélű kard Magyarországon. [The Right to Protect Culture or a Reason for Segregation?] *Pro Minoritate*, Vol. 16, No. 1. 207–223.
- BALOGH et al. (2013): *Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 in Hungary*. 1st edition. Budapest, Decade of Roma Inclusion Secretariat Foundation.
- BARANY, Z. (2001): *The East European Gypsies. Regime Change, Marginality and Ethnopolitics*. 1st edition. Cambridge, Cambridge University Press.
- Beol.hu (2010): Nem rágalmozás, az etnobiznisz létezik, 23 October. Available: www.beol.hu/bekes/kozelet/nem-ragalmozas-az-etnobiznisz-letezik-335133/ (Downloaded: 20.02.2018.)

- BÍRÓ, A. (2013): The Price of Roma Integration. In GUY, W. ed.: *From Victimhood to Citizenship. The Path of Roma Integration. A Debate*. 1st edition. Budapest, Kossuth Kiadó. 11–40.
- CAHN, C. (2001): Smoke and mirrors: Roma and minority policy in Hungary. *European Roma Rights Centre*, 7 November. Available: www.errc.org/cikk.php?cikk=1255 (Downloaded: 20.02.2018.)
- CARSTOCEA, A. (2011): Ethno-business – the Manipulation of Minority Rights in Romania and Hungary. In BHAMBRY, T. – GRIFFIN, C. – HJELM, T. – NICHOLSON, C. – VORONINA, O. eds.: *Perpetual motion? Transformation and Transition in Central and Eastern Europe & Russia*. 1st edition. London, UCL, School of Slavonic and East European Studies.
- CUREJOVA, L. (2007): Hungary: Self-abusive Governance. *Transitions Online*. Available: www.tol.org/client/article/18943-self-abusive-governance.html (Downloaded: 20.02.2018.)
- CHRONOWSKI, N. (2012): The New Hungarian Fundamental Law in the Light of the European Union's Normative Values. *Revue Est Europa*, (numéro spéciale 1). 111–142.
- CHRONOWSKI, N. (2015): Alaptörvény és etnicitás – avagy az alkotmányozás viharaiiban részekre szakadt nemzetünk. [Ethnicity and the Fundamental Law: Our nation divided in the storm of constitution-making.] *Állam- és Jogtudomány*, Vol. 56, No. 1. 3–18.
- Constitutional Court Decision 35/1992 (VI.10.)
- Constitutional Court Decision 24/1994 (V.6.)
- Constitutional Court 45/2000 (XII. 8.)
- Const. Prep Comm. (2010a): *Opinion submitted to the parliamentary sub-committee on preparing the new constitution by the Bulgarian National Minority Self-Government*. Budapest. Available: www.parlament.hu/biz39/aeb/info/bolgar_onk.pdf (Downloaded: 20.02.2018.)
- Const. Prep Comm. (2010b): *Opinion submitted to the parliamentary sub-committee on preparing the new constitution by the Croatian National Minority Self-Government*. Budapest. Available: www.parlament.hu/biz39/aeb/info/horvat_onk.pdf (Downloaded: 20.02.2018.)
- Const. Prep Comm. (2010c): *Opinion submitted to the parliamentary sub-committee on preparing the new constitution by the German National Minority Self-Government*. Budapest. Available: www.parlament.hu/biz39/aeb/info/mnoo.pdf (Downloaded: 20.02.2018.)
- Const. Prep Comm. (2010d): *Opinion submitted to the parliamentary sub-committee on preparing the new constitution by the Ruthenian National Minority Self-Government*. Budapest. Available: www.parlament.hu/biz39/aeb/info/ruszin_onk.pdf (Downloaded: 20.02.2018.)
- Council of Europe (1993): *Additional protocol on the rights of minorities to the European Convention on Human Rights*. Recommendation 1201 (1993).
- Council of Europe, ERICarts (2016): *Compendium of Cultural Policies and Trends in Europe*. 15th edition. Available: www.culturalpolicies.net/web/hungary.php?aid=424 (Downloaded: 20.02.2018.)
- CZENE G. (2002): Még nincs kisebbségi panasz. *Népszabadság*, 24 July. 4.
- DEETS, S. (2002): Reconsidering East European Minority Policy: Liberal Theory and European Norms. *East European Politics and Society*, Vol. 16, No. 1. 30–53.
- DOBOS, B. (2013a): The Role of Elections in Minority Contexts: The Hungarian Case. In NIMNI, E. – ALEXANDER, O. – SMITH, D. eds.: *The Challenge of Non-Territorial Autonomy: Theory and Practice*. 1st edition. Oxford, Peter Lang Academic Publishers. 163–180.
- DOBOS, B. (2013b): Roma political parties in Hungary after 1989. In DÁCZ, E. ed.: *Minderheitenfragen in Ungarn und in den Nachbarländern im 20. und 21. Jahrhundert*. 1st edition. Baden-Baden, Nomos. 279–291.
- European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2011): The 10 common basic principles on Roma inclusion. *Vademecum*. Available: www.coe.int/t/dg4/

- youth/Source/Resources/Documents/2011_10_Common_Basic_Principles_Roma_Inclusion.pdf (Downloaded: 31.12.2016.)
- European Commission (2011): *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An EU Framework for National Roma Integration Strategies up to 2020.* COM(2011) 173.
- European Commission (2013): *The European Union and Roma – Country Factsheet, Hungary.* Available: http://ec.europa.eu/justice/discrimination/files/roma_country_factsheets_2013/hungary_en.pdf (Downloaded: 20.02.2018.)
- EMASA (2010): Pert nyert az újságíró a román önkormányzattal szemben, 23 May. Available: www.emasa.hu/print.php?id=6880 (Downloaded: 20.02.2018.)
- European Parliament (2005): *Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe.* 2005/2008(INI).
- Frankfurter Allgemeine Zeitung (2015): Wir wollen keine multikulturelle Gesellschaft, 5 February. Available: www.faz.net/aktuell/politik/europaeische-union/viktor-orban-im-interview-ueber-russland-und-umgang-mit-fluechtlingen-13411128.html (Downloaded: 20.02.2018.)
- FOSZTÓ, L. (2003): Diaspora and Nationalism: An Anthropological Approach to the International Romani Movement. *Regio – Minorities, Politics, Society*, Vol. 3, No. 1. 102–120.
- Freedom House (2016): *Freedom in the World: Hungary.* Available: <https://freedomhouse.org/report/freedom-world/2016/hungary> (Downloaded: 20.02.2018.)
- GAMLEN, A. – CUMMINGS, M. – VAALER, P. – ROSSOUW, L. (2013): *Explaining the Rise of Diaspora Institutions.* IMI Working Paper 78, International Migration Institute, University of Oxford.
- GYURGYÍK, L. (2005): Magyar kisebbségek a kutatások tükrében: A határon túli magyarok számának alakulása az 1990-es években. *Magyar Tudomány*, Vol. 50, No. 2. 132–144. Available: www.matud.iif.hu/05feb/03.html (Downloaded: 20.02.2018.)
- HANNUM, H. (2001): International Law. In *Encyclopedia of Nationalism*. 1st edition. Academic Press. 405–419.
- Harvard (2014): *Accelerating Patterns of Anti-Roma Violence in Hungary. A Report from the François-Xavier Bagnoud Center for Health and Human Rights.* Boston, Harvard University, Harvard School of Public Health.
- HORVÁTH A. (2004): Magyar nemzet, roma nemzet. *Népszabadság*, 12 July. 14.
- Horváth and Kiss v. Hungary [2013] 11146/11 (the Second Section of the European Court of Human Rights).
- Human Rights Commission Ireland (2004): *Travellers as an ethnic minority under the Convention on the Elimination of Racial Discrimination. A Discussion Paper.* Available: www.ihrec.ie/download/doc/travellers_discussion_paper.doc (Downloaded: 20.02.2018.)
- Hungarian Central Statistical Office (2011): *Personal Questionnaire.* Available: www.ksh.hu/nepszamlalas/docs/kerdoivek/szemely_angol.pdf (Downloaded: 20.02.2018.)
- Hungarian Central Statistical Office (2013): *A népesség anyanyelv, nemzetiség és nemek szerint.* [Population according to native language, nationality and gender.] Available: www.ksh.hu/nepszamlalas/docs/tablak/teruleti/00/1_1_6_1.xls (Downloaded: 31.12.2016.)
- Hungarian Helsinki Committee (2011): *General Climate of Intolerance in Hungary.* Available: http://helsinki.hu/wp-content/uploads/General_climate_of_intolerance_in_Hungary_20110107.pdf (Downloaded: 20.02.2018.)
- Index.hu (2011): Megalakult a szerb és ukrán kisebbségi önkormányzat, 5 February. Available: http://index.hu/belfold/2011/02/05/megalakult_a_szerb_es_ukran_kisebbségi_onkormanyzat/ (Downloaded: 20.02.2018.)

- Index.hu (2016): Továbbra is boldog-boldogtalannak adunk kettős állampolgárságot, 8 July. Available: http://index.hu/gazdasag/2016/07/08/tovabbra_is_boldog-boldogtalannak_adunk_kettos_allampolgarsagot/ (Downloaded: 20.02.2018.)
- JAKAB A. (2011): *Az Alaptörvény keletkezése és gyakorlati következményei*. [The Origins and Practical Consequences of the Fundamental Law.] Budapest, HVG Orac.
- JESZENSZKY, G. (1996): Hungary's Bilateral Treaties with the Neighbours and the Issue of Minorities. *Ethnos-Nation. Eine europäische Zeitschrift*, Vol. 4, No. 1–2. 123–128. Available: www.hungarianhistory.com/lib/jeszenszky/jesz5.pdf (Downloaded: 20.02.2018.)
- Jogiforum.hu (2010): Választás 2010 – Kisebbségi önkormányzatok – 1.592 településen 2.315 eredményes választás zajlott le vasárnap, 4 October. Available: www.jogiforum.hu/hirek/23865 (Downloaded: 20.02.2018.)
- JOOPKE, C. (2005): *Selecting by Origin: Ethnic Migration in the Liberal State*. 1st edition. Cambridge, Harvard University Press.
- KÁLLAI E. (2011): Vélemény a készülõ nemzetiségi törvény tervezetérõl. Available: www.kallaierno.hu/data/files/velemeney_keszulo_nemzetisegi_torveny_tervezeterol_2011_11_04_yZofei.pdf (Downloaded: 20.02.2018.)
- KÁNTOR, Z. – MAJTÉNYI, B. – IEDA, O. – VIZI, B. – HALÁSZ, I. eds. (2004): *The Hungarian Status Law: Nation Building and/or Minority Protection*. 1st edition. Sapporo, Hokkaido University.
- KAUFMAN, E. (2014): Immigration and Integration in Britain: The Great Nationalism Debate. *Nationalities Papers*, Vol. 42, No. 6. 1072–1077.
- KEMÉNY I. – JANKY B. (2003): A 2003. évi cigány felmérésrõl. [About the Gypsy Survey in 2003.] In KÁLLAI E. ed.: *A magyarországi cigány népesség helyzete a 21. század elején*. [The Situation of the Gypsy Population in Hungary at the Beginning of the 21st Century.] 1st edition. Budapest, MTA Etnikai-Nemzeti Kisebbségkutató Intézet. 24–25.
- KOVÁTS, M. (1996): The Roma and minority self-governments in Hungary. *Immigrants & Minorities: Historical Studies in Ethnicity, Migration and Diaspora*, Vol. 15, No. 1. 42–58.
- KÖRTVÉLYESI, Zs. (2012): From “We the People” to “We the Nation”. In TÓTH, G. ed.: *Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law*. 1st edition, Budapest, Central European University Press. 85–110.
- KYMLICKA, W. (2001): Western Political Theory and Ethnic Relations in Eastern Europe. In KYMLICKA, W. – OPALSKI, M. eds.: *Can Liberal Pluralism Be Exported?* 1st edition. Oxford, Oxford University Press. 13–107.
- LAKATOS S. (2010): *A romani nyelv közösségi használatának és közoktatási helyzetének vizsgálata Magyarországon*. PhD thesis. Pécsi Tudományegyetem, „Oktatás és Társadalom” Neveléstudományi Doktori Iskola.
- MAGICZ, A. (2013): Re-regulation of National Minority Rights. In HAJAS, B. – SZABÓ, M. eds.: *The Ombudsman's Protection for Vulnerable Groups*. Budapest, Office of the Commissioner for Fundamental Rights. 27.
- Magyar Nemzet Online (2012): Etnobiznisz: magas az új szabályozás lakossági támogatottsága, 21 December. Available: <http://mno.hu/belfold/etnobiznisz-magas-az-uj-szabalyozas-lakossagi-tamogatottsaga-1126477> (Downloaded: 20.02.2018.)
- MAJTÉNYI B. – MAJTÉNYI G. (2012): *Cigánykérdés Magyarországon, 1945–2010*. 1st edition. Budapest, Libri.
- Mandla v Dowell Lee [1983] 1 All ER 1062 (House of Lords).
- MCCRUDDEN, Ch. (2005): Thinking about the Discrimination Directives. *European Anti-Discrimination Law Review*, No. 1. 17–23.

- McCrudden, Ch. – Prechal, S. (2009): *The Concepts of Equality and Non-Discrimination in Europe: A practical approach*. European Network of Legal Experts in the Field of Gender Equality. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.2.
- McGarry, A. (2009): Ambiguous Nationalism? Explaining the Parliamentary Underrepresentation of Roma in Hungary and Romania. *Romani Studies*, Vol. 19, No. 2. 103–124.
- Ministry of Human Resources (2014): *Magyar Nemzeti Társadalmi Felzárkózási Stratégia II. Tartósan rászorulóok – szegény családban élő gyermekek – romák (2011–2020). Frissített változat*. Emberi Erőforrások Minisztériuma, Szociális és Társadalmi Felzárkózásért Felelős Államtitkárság. Available: www.kormany.hu/download/1/9c/20000/Magyar%20NTFS%20II%20_2%20mell%20_NTFS%20II.pdf (Downloaded: 20.02.2018.)
- Ministry of Public Administration and Justice, State Secretariat for Social Inclusion (2011a): *National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma – 2011–2020*. Budapest. Available: <http://romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF> (Downloaded: 20.02.2018.)
- Ministry of Public Administration and Justice, State Secretariat for Social Inclusion (2011b): *Annex 2 to the National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma – 2011–2020. Framework Agreement between the Government of Hungary and the National Roma Self-Government*. Budapest. Available: <http://romagov.kormany.hu/download/8/58/20000/Annex%202.PDF> (Downloaded: 20.02.2018.)
- Minority Rights Group (2012): *World Directory of Minorities and Indigenous Peoples: Roma*. Available: <http://minorityrights.org/minorities/roma-8/> (Downloaded: 20.02.2018.)
- Molnár, E. – Schaft, K. A. (2003): Preserving Cultural Autonomy or Confronting Social Crisis? The Activities and Aims of Roma Local Minority Self-governments. *Review of Sociology of the Hungarian Sociological Association*, Vol. 9, No. 1. 27–42.
- Móré S. (2014a): Népszámlálási adatokhoz és konkrét létszámhoz kötöttség a nemzetiségi önkormányzatok szabályozásában. [Connecting census to local governance.] *Új Magyar Közigazgatás*, Vol. 7, No. 4. 18–22.
- Móré S. (2014b): Új irányok a nemzetiségi önkormányzatok létrehozásában. [New directions in electing nationality local governance.] *Jogtudományi Közlöny*, Vol. 69, No. 9. 429–434.
- Nagy J. (2010): Angyalok kertje. *Népszabadság*, 7 July.
- NDI (National Democratic Institute) and OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2006): *The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation*. Available: www.osce.org/odihr/25974?download=true (Downloaded: 20.02.2018.)
- Nol.hu (2009): Már csak emléke a 15 milliós magyarság, 23 May. Available: http://nol.hu/kulfold/20090523-letszamjelentes_a_kisebbségi_magyarsagrol-334091 (Downloaded: 20.02.2018.)
- Nol.hu (2011): Kakukktójasok? Balhé a román kisebbségnél, 9 February. Available: http://nol.hu/belfold/kakukktojasok_balhe_a_roman_kisebbssegnel-974661 (Downloaded: 20.02.2018.)
- Novak-Lukanovič, S. (2006): *Euromosaic III: Presence of regional and minority language groups in the new member states*. Office for official publications of the European communities. 111–164.
- OSCE/ODIHR (Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights) (2014): *Parliamentary Elections 6 April 2014 OSCE/ODIHR Limited Election Observation Mission Final Report*. Available: www.osce.org/odihr/elections/hungary/121098?download=true (Downloaded: 20.02.2018.)

- PAP, A. L. (2001a): Ethnicity and Politics – Definitions and Scopes. *East Central Europe/L'Europe Du Centre-Est. Eine wissenschaftliche Zeitschrift*, Vol. 28, No. 2. 41–68.
- PAP, A. L. (2001b): Ethnic Minorities in Parliaments. *Columbia Journal of Eastern European Law*, Vol. 7, No. 2. 261–339.
- PAP, A. L. (2003): Ethnicization and European Identity Policies: Window-shopping with Risks. *Dialectical Anthropology*, Vol. 27, No. 3–4. 227–248.
- PAP, A. L. (2005a): The Hungarian Status Law: Nation Building and/or Minority Protection. *Acta Juridica: Hungarian Journal of Legal Studies*, Vol. 46, No. 3–4. 287–299.
- PAP, A. L. (2005b): The Status Law Syndrome: The Hungarian Status Law: Nation Building and/or Minority Protection (review). *Central European Political Science Review*, Vol. 5, No. 16. 99–106.
- PAP, A. L. (2006): Minority Rights and Diaspora-claims: Collision, Interdependence and Loss of Orientation. In IEDA, O. ed.: *Beyond Sovereignty: From Status Law to Transnational Citizenship?* 1st edition. Sapporo, Hokkaido University, Slavic Research Center. 243–252.
- PAP, A. L. (2015a): Is there a legal right to free choice of ethno-racial identity? Legal and political difficulties in defining minority communities and membership boundaries. *Columbia Human Rights Law Review*, Vol. 46, No. 2. 153–232.
- PAP, A. L. (2015b): Racial, Ethnic, or National Minority? Legal Discourses and Policy Frameworks on the Roma – In Hungary and Beyond. *Social Inclusion*, Vol. 3, No. 5. 78–89.
- PAP, A. L. (2017a): *Democratic decline in Hungary: Law and Society in an Illiberal Democracy (Comparative Constitutional Change)*. Abingdon, Routledge.
- PAP, A. L. (2017b): Recognition, representation and reproach: new institutional arrangements in the Hungarian multiculturalist model. In VIZI, B. – TÓTH, N. – DOBOS, E. eds.: *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*. Baden-Baden, Nomos. 101–136.
- PCNEM (2006): *Annual report of the Parliamentary Commissioner for National and Ethnic Minority Rights 2005*. Budapest.
- PELLANDINI-SIMÁNYI L. (2011): *Mire (nem) jók a népszámlálás etnikai adatai?* Budapest, IDEA Intézet.
- Permanent Court of International Justice (1930): *Greco-Bulgarian Communities, Advisory Opinion*. Ser. B., No. 17, July 31.
- POGONYI, S. (2015): Transborder Kin-minority as Symbolic Resource in Hungary. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 14, No. 3. 73–98.
- Politics.hu (2015): Quotable: Viktor Orbán on Hungary and multiculturalism. Available: www.politics.hu/20150522/quotable-viktor-orban-on-hungary-and-multiculturalism/ (Downloaded: 31.12.2016.)
- RAM, M. H. (2014a): Europeanization and the Roma: Spreading the Norms of Inclusion and Exclusion. In *10th Biennial Conference of the European Community Studies Association-Canada*. Available: www.ecsa-c.ca/wp-content/uploads/2014/11/4A_Ram.pdf (Downloaded: 20.02.2018.)
- RAM, M. H. (2014b): Europeanized Hypocrisy: Roma Inclusion and Exclusion in Central and Eastern Europe. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 13, No. 3. 15–44.
- Romagov.kormany.hu (2014): Balog Zoltán: A kultúrára kell építeni a felzárkóztatást, 11 May. Available: <http://romagov.kormany.hu/balog-zoltan-a-kulturara-kell-epiteni-a-felzarkoztatast> (Downloaded: 20.02.2018.)

- RÖVID, M. (2012): Options of Roma Political Participation and Representation. *Roma Rights*. 9–17. Available: www.errc.org/cms/upload/file/roma-rights-1-2012-challenges-of-representation.pdf (Downloaded: 20.02.2018.)
- SIMON, P. (2007): “Ethnic” statistics and data protection in the Council of Europe Countries. *Study Report*. 1st edition. Strasbourg, Council of Europe.
- SANSUM MOLNÁR J. (2017): Az 1993-as magyarországi kisebbségi törvény parlamenti vitája. *Regio*, Vol. 25, No. 3. 182–202.
- SOBOTKA, E. (2001): The Limits of the State: Political Participation and Representation of Roma in the Czech Republic, Hungary, Poland and Slovakia. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 2, No. 1. 1–23.
- SZALAYNÉ SÁNDOR, E. (2014): A 2014. évi választások a magyarországi nemzetiségekért felelős biztoshelyettes szemszögéből. *Kisebbségkutatás*, Vol. 23, No. 1. 7–14.
- SZUHAY P. (2003): Ez egy eredeti cigányélet. *Beszélő*, Vol. 8, No. 4. Available: <http://beszelo.c3.hu/cikkek/%E2%80%9Eez-egy-eredeti-ciganyelet%E2%80%9D> (Downloaded: 20.02.2018.)
- TAJFEL, H. (1981): *Human Groups and Social Categories: Studies in Social Psychology*. 1st edition. Cambridge, Cambridge University Press.
- TÁTRAI, P. (2015): Transformations of the ethnic structure in Hungary after the turn of the millennium. *Human Geographies – Journal of Studies and Research in Human Geography*, Vol. 9, No. 1. 76–96.
- The Minority Rights Ombudsman (2010a): Rövid összegzés a nemzeti és etnikai jogok országgyűlési biztosságának a „Romák foglalkoztatása a közigazgatásban és az igazságszolgáltatásban” című program vizsgálatáról. Available: <http://kisebbségiombudsman.hu/hir-526-rovid-osszegzes-nemzeti-es-etnikai.html> (Downloaded: 20.02.2018.)
- The Minority Rights Ombudsman (2010b): Beszámoló a Nemzeti és Etnikai Kisebbségi Jogok Országgyűlési Biztosságának tevékenységéről. J/2427. Available: www.kisebbségiombudsman.hu/data/files/205796771.pdf (Downloaded: 20.02.2018.)
- The Minority Rights Ombudsman (2011a): Jelentés a nemzeti és etnikai kisebbségi általános iskolai nevelés-oktatás helyzetéről. NEK-411/2011. Available: www.kisebbségiombudsman.hu/data/files/217986220.pdf (Downloaded: 20.02.2018.)
- The Minority Rights Ombudsman (2011b): Jelentés a nemzeti és etnikai kisebbségi általános iskolai nevelés-oktatás helyzetéről, NEK-368/2010. Available: www.kisebbségiombudsman.hu/data/files/205104474.pdf (Downloaded: 20.02.2018.)
- The Orange Files (2016): Notable Quotes: Prime Minister Viktor Orbán, 20 May. Available: <https://theorangefiles.hu/notable-quotes-prime-minister-viktor-orban-by-subject/> (Downloaded: 20.02.2018.)
- THORNBERRY, P. (2001): An Unfinished Story of Minority Rights. In BÍRÓ, A. – KOVÁCS, P. eds.: *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe*. 1st edition. Budapest, Local Government and Public Service Reform Initiative – Open Society Institute. 46–73.
- Transindex.ro (2010): Negyedmillióval csökkent tíz év alatt a magyarok száma a Kárpát medencében, 7 December. Available: <http://itthon.transindex.ro/?cikk=13124> (Downloaded: 20.02.2018.)
- Transparency International (2014): Hungary’s Elections: Free But Not Fair. Available: www.transparency.org/news/feature/hungarys_elections_free_but_not_fair (Downloaded: 20.02.2018.)
- Treaty of Peace Between The Allied and Associated Powers and Hungary And Protocol and Declaration, Signed at Trianon June 4, 1920. Available: wwi.lib.byu.edu/index.php/Treaty_of_Trianon (Downloaded: 20.02.2018.)

- Valasztas.hu. (2010): 2010: Önkormányzati Választások. Available: www.valasztas.hu/54 (Downloaded: 20.02.2018.)
- Venice Commission (2011): *Opinion on the new constitution of Hungary*. Strasbourg, 20 June 2011, Opinion no. 621.
- VÍZI, B. (2011): The Hungarian Presidency of the Council of the European Union: Focus on the Neighbourhood and on a European Roma Strategy. *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 10, No. 1. 123–134.
- VÍZI B. (2013): *Európai kaleidoszkóp. Az Európai Unió és a kisebbségek*. 1st edition. Budapest, L'Harmattan.
- YOUNG, I. (1997): A Multicultural Continuum: A Critique of Will Kymlicka's Ethni–Nation Dichotomy. *Constellations*, Vol. 4, No. 1. 48–53.

