E.MA European Master's Degree in Human Rights and Democratisa

Hungary's policy towards its kin minorities:

The effects of Hungary's recent legislative measures on the human rights situation of persons belonging to its kin minorities

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Abstract:

This thesis focuses on the recent legislative measures introduced by Hungary aimed at kin minorities in the neighbouring countries. Considering as relevant the ones with the largest Hungarian minorities (i.e. Croatia, Romania, Serbia, Slovakia, Slovenia and Ukraine), the thesis starts by presenting the background to the controversy, looking at the history, demographics and politics of the relevant states. After introducing the human rights standards contained in international and national legal instruments for the protection of minorities, the thesis looks at the reasons behind the enactment of the laws. To do so the politically dominant concept of Hungarian nation is examined. Finally, the author looks at the legal and political restrictions these measures face from the perspective of international law and the reactions of the affected countries, respectively. The research shows the strong dependency between the measures and the political conception of the nation, and points out the lack of amelioration of the human rights situation of ethnic Hungarians in the said countries. The reason given for this is the little effects produced on them by the measures adopted by Hungary and the potentially prejudicial nature of the reaction by the home states. The author advocates for a deeper cooperation between Hungary and the home states.

Keywords: citizenship, ethnic preference, Fundamental Law, home state, human rights, Hungary, kin state, minorities, nation, Nationality Law, preferential treatment,Status Law.

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Table of abbreviations

In this thesis the following abbreviations will be used:

CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
DAHR	Democratic Alliance of Hungarians in Romania
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
MSZP	Hungarian Socialist Party
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

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1. Introduction

In recent times much has been discussed in academia, but also in the generalist press and political circles, about Hungary's approaches towards its kin minorities. I believe it is a topic of significant relevance in the human rights field, especially following the new Hungarian Constitution and the laws enacted in recent times which underline the responsibility of the Hungarian State in regard to the minorities of people of Magyar ethnic origin living outside the current territory of Hungary.

This is the topic addressed by this thesis. In particular, the question that is being posed is whether the recent measures adopted by Hungary with regards to its kin minorities have translated into an amelioration of their human rights situation.

What I intend to research upon is the effect that the extension of citizenship as well as other forms of rights, such as the cultural and educational aid provided by the so-called Status Law, help strengthening the kin minority abroad (culturally, socio-economically and institutionally). This is one of the goals of kin-state activism,[1] and it has also been one of the main arguments used by defenders of these measures, which look upon the members of the Hungarian kin-minority as an integral part of the Hungarian nation, given their position of ethnic nationalism. These aspects behind the motivation for the enactment of these measures will be also part of the analysis contained in this thesis.

The research will be based upon literature and factual data. With this the author aspires to provide a comprehensive approach to the topic, not only from an ideal, academic, point of view, but also looking at the actual situation on the field.

The thesis is structured in four parts. The second chapter is dedicated to introducing the topic from a geographical, political, historical, social and cultural perspective, needed in order to adequately examine the issue under investigation, especially one which is so intertwined with historic and cultural factors as that of minorities in the Carpathian basin.

The third chapter presents the relevant legal framework. It does not only focus on the Hungarian legal order, but also looks at that of the relevant neighbouring

1 Csergo, Zsuzsa, *Kin-State Politics in Central and Eastern Europe: the Case of Hungary*, Wilson Center, at http://www.wilsoncenter.org/topics/pubs/MR%20315%20Csergo.doc, last accessed on 1 July 2013.

countries (Serbia, Romania, Slovakia), the European Union and international treaties, including, the International Bill of Human Rights, but also specific binding documents on minority rights, most notably those of the Council of Europe, such as the Framework Convention on National Minorities.

In the fourth chapter I analyse the theoretical construction behind Hungary's legislative measures. In this sense, I focus on the conception of the Hungarian nation dominant in the political discourse in Hungary, which is the basis for their enactment. To do this I will look at the different notions of nation present in the literature and then identify that which is utilised by the Hungarian policy-makers, in particular in the enactment of kin state activism measures contained in the Constitution, the Status Law, and the amendment to the nationality law giving preferential naturalisation to non-resident ethnic Hungarians.

The fifth chapter addresses directly the thesis question, by focusing on the legal and political implications of the measures. With this I look at the situation in which the minorities are left not only by the new laws, but by the limitations they present from a legal and political point of view. I will also look at the reaction of the home states to their adoption. I consider this to be in the end the most relevant element in terms of the actual human rights situation, as the affected persons are under the jurisdiction of these neighbouring states.

Lastly, the final chapter presents a conclusion, summarising the findings and introducing recommendations in order to ensure that Human Rights and are safeguarded with regards to Hungarian minorities in the surrounding countries. With this I also intend to transcend a merely theoretical outcome of this thesis, by also presenting practical advice which could help improving the situation of the persons belonging to Hungarian minorities in the neighbouring countries.

2. Historical, demographic and political approach to minorities in Hungary

The impact that the recent legal developments in Hungary had on the treatment of minorities inside and outside its territory constitutes the central point of this academic paper. However, before tackling the main question we must first look into the cultural, historical, political and social aspects of the situation in the region. The complexities of this situation are the causes which have resulted in the current situation, which can be considered to a certain point as exceptional, precisely because of these entanglements in different aspects which shape the whole Carpathian Basin.

I will start by defining and taking a look at the history of the Hungarian nation, which is to a large extent also that of the countries that surround it. While doing this, I will also touch upon the historical background of the minorities living in what today is the territory of Hungary. I will be looking at one of the most decisive influences in the current status of the matter, as well as delimiting the relevant subject. This is due to the emotional charge that kin minorities, i.e. Hungarian minorities in the countries surrounding Hungary, have for the Hungarian people, given their association with troubled episodes of their past.

After this historical trail, the next logical step will be an overview of the current demographic balance in the relevant countries. I will present the relative weight of Hungarians and other significant minorities in these States, using whenever it is possible official sources, censuses in most of the cases.[2] This information will provide a picture of the magnitude of the existing tensions and disputes, as well as frame the research in concrete figures.

The third and last part of this chapter will be dedicated to the political representation of minorities. Minority parties, in particular Roma parties in Hungary and Hungarian parties elsewhere will be introduced. I will focus on their aims as well as their representativeness in legislative, executive or other official organs. The goal of this is not only to approach the political sensitivity of these groups to the questions under review, but also to use it as one of the basis against which comparison will be done to

[2] This is without prejudice of the use of other sources. The databases will be the most up to date; however, and even though some censuses have taken place recently, not all of the information has been yet released. This impedes the use of this data, for which I will then utilise the most recent one available.

answer the research question of whether newly achieved political rights from the kin state contribute to ensure minorities' human rights.

2.1. The Hungarian nation

In the first place we must address an issue which is a keystone around which the topic at stake revolves: the Hungarian nation or, more precisely, the belonging thereto, since it delimitates the subjects of this research.

We could qualify Hungary as a country with an ethnic nationalistic model. In this type of nation, the nation is conceived as a community of culture, imagined descent, and destiny that has a right to self-determination. A nation's membership need not coincide with the resident population of a state where this nation is dominant.[3] Notwithstanding this, it is often part of the ambitions from this nationalistic prism, and this aspiration can result in irredentist claims, among others. In this type of nation, an individual's deepest attachments are inherited, not chosen, because it is the nationalist community that defines the individual; not the individual who defines the national community.[4]

In this respect, I believe the best example we can find in the Fundamental Law of Hungary, i.e. its Constitution, a document which will be extensively analysed later in this thesis. The Fundamental Law starts by proclaiming "WE, THE MEMBERS OF THE HUNGARIAN NATION" (sic). The Preamble, or National Avowal, amidst other mentions to the past, future and values of the nation, states that "The nationalities living with us form part of the Hungarian political community and are constituent parts of the State", and vows to promote and safeguard "our (i.e., the Hungarian) unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary […]".[5]

[3] Bauböck, Rainer, 'Expansive Citizenship: Voting beyond Territory and Membership', pp. 683 – 687 in *Political Science and Politics*, vol. 38, no. 4, 2005.

[4] Ignatieff, Michael *Blood and Belonging: Journeys into the New Nationalism*, New York: Farrar, Strauss and Giroux, 1993, Freedland, Jonathan, *Bring Home the Revolution. How Britain Can Live the American Dream*, London: Fourth Estate, 1998 and Kymlicka, Will, 'Misunderstanding nationalism' in *Multicultural Citizenship*, Oxford: Clarendon Press, 1996. Cited in Kuzio, Taras, 'The myth of the civic state: a critical survey of Hans Kohn's framework for understanding nationalism', pp. 20 – 30 in *Ethnic and Racial Studies,* Vol. 25 no. 1 January 2002.

[5] Similarly to the Slovak Constitution, where the Preamble reads "We, the Slovak Nation (…)together with members of national minorities and ethnic groups living on the territory of the Slovak Republic (…)", making clear the ethnic concept of the nation. A redaction that was significantly opposed by the Hungarian Coalition Party, which proposed the formula "We, the citizens of the Slovak Republic"

From these terms it seems quite clear that, although considered part of the polity, the non-Magyar nationalities (or ethnic groups) are not seen as part of the nation, a nation which has survived through the centuries, and for whose future members the current ones bear responsibility, and whose culture and heritage, the very foundations of nationhood, shall be preserved.

Hence, according to this view, being Hungarian is neither a matter of choice, nor one of residence, citizenship or upbringing, but rather one of birth, which determines not only the permanence of non-Magyar minorities in Hungary through the centuries, but also that of Hungarians outside the borders of the State. This conception is clear in the Fundamental Law, which in the Preamble mentions "the intellectual and spiritual unity of our nation torn apart in the storms of the last century". It also includes a so-called responsibility clause in article D, which will be an object of detailed examination in Chapter 4, and which speaks of "one single Hungarian nation that belongs together". This language reinforces the ethnic nationalistic concept, which will be the background around which the research questions will be addressed.

2.2. History

History explains to a large extent the importance that to this day minorities retain in the Hungarian political discourse and national conscience. I will briefly tour the more than a millennium of Hungarian history with diverse aims. The period until the 18th century, which I treat more concisely, will help understanding the multi-ethnic situation in the Carpathian Basin. The last two centuries, on which I focus, will greatly illustrate the centrality of the minority question in contemporary Hungary. In particular three events are key for this: the Hungarian revolution and independence war of 1848 – 1849, the Austro-Hungarian Compromise of 1867 and the Dual Monarchy period that ensued, and the Treaty of Trianon of 1920, perhaps the biggest tragedy in history for the Hungarian collective memory.

Despite diverse myths about its origin, the majority of the historiography agrees that the Magyar people, originally coming from an area around the central Urals, arrived in the Carpathian – or Pannonian – Basin, in the late IX century, with their settlement

(Meijknecht, Anna K., *Minority Protection: Standards and Reality*, The Hague, T·M·C·Asser Press, 2004, p. 41)

taking place in 895 – 896, under the leadership of the chieftain Árpád. However, we can only speak of Hungary since Vajk, later St. Stephen, who embraced Christianity and was crowned in the year 1000, creating a Kingdom which would stand in place uninterruptedly – albeit, with changing borders – until 1526, when the Ottoman expansion overtook it and killed King Louis II at the Battle of Mohács.[6] The unification under St. Stephen significantly determined Hungarian history, maintaining a clearly defined State through the centuries and different dynasties ruling it. The public and church administration and territorial division established at the time still constitute the basis of the public administration system today.[7]

It is important to mention that it was around this time when the Roma first started appearing in Hungarian territory. After their arrival in Byzantium around the 13th century, the Roma moved from the Balkans to Central and Western Europe in the 14th and 15th centuries, roughly the same time as the conquering Ottoman Turks, whose policy was more tolerant towards them than that of Western countries.[8] I would lie to point this out given their status as Hungary's most numerous minority, as well as a long-established one. I consider this very important in relation to the previous point, since even 600 years after their arrival Roma are not considered to be part of the Hungarian nation, even if they are Hungarian citizens, but as a "nationality" of the Hungarian State.

After the Ottoman invasion, the Hungarian kingdom was split in three parts, as a consequence of the Ottoman conquest and the internal struggles between diverse Hungarian factions. As a result, there was an "occupied" Hungary under the control of the Ottoman Empire, a "Royal" Hungary, under Habsburg, i.e. Austrian rule, and a newly created state, the Principality of Transylvania, under the protection of the Sultan, which remained a bastion of Hungarian resistance against the Habsburgs, with a

[6] Engel, Pál, 'The Early Middle Ages', pp. 23 - 43 in Tóth, István György, (ed.), *A Concise History of Hungary*. Budapest, Corvina, 2005.
[7] Szaló, Péter, 'Explore Hungary!', pp. 3 – 4 in *Journal of the Hungarian Central Statistical Office*, vol. 14 (51), Special Issue 1, 2011.
[8] Petrova, Dimitrina, 'The Roma between a Myth and the Future', in *Social Research*, vol. 70, No.1, 2003, available at http://www.errc.org/cikk.php?cikk=1844, last accessed 10 April 2013.

population of around 955,000, with 500,000 Hungarians of which around a half were Székelys.[9]

The following 150 years would consist of a struggle of Hungarians to achieve their independence. However, it was only after the Treaty of Karlowitz, in 1699, when the Turks finally left Hungary, after 156 years.[10] This was followed almost immediately by the insurrection of Ferenc Rákóczi, descendant of Transylvanian rulers, and Hungary's wealthiest magnate,[11] which concluded with the Szatmar Accord of 1711, by which the Hungarians recognised the Habsburg Emperor as King and He upheld the laws passed at earlier Hungarian diets, and agreed that the more recent grievances also be dealt with at a diet.[12] After the liberation from Ottoman rule, the country had to be resettled and repopulated, which further differentiated its ethnic composition, the way of life and the settlement structure in the country.[13]

Hungary's status in the Austrian Empire would remain largely unchanged until the mid-19th Century. On 15 March 1848 one of the most significant events of Hungarian history took place, the start of the Revolution. Amidst the revolutionary climate in Europe – barely 19 days earlier, on 24 February, the French had deposed Louis Philip as king and declared the republic –[14] a group of young writers printed and demanded the fulfilment of twelve points, which included the freedom of speech and the creation of an army, among others. They were quickly supported by a crowd of around 10,000 who took Pest's council and demanded the release of political prisoners.[15] Within a couple of days a new corpus of laws was granted, the so-called "April Laws", which sanctioned Hungarian as the official language,[16] the right of unification with

[9] Lendvai, Paul, *The Hungarians: A Thousand Years of Victory in Defeat*. Princeton, NJ, Princeton University Press, 2003, p. 106.
[10] Cartledge, Bryan, *The Will to Survive: A History of Hungary*. London, Timewell Press Ltd., 2006, pp. 118 – 119.
[11] Tóth, István György, 'Between the Sultan and the Emperor', pp. 206 – 231 in Tóth, István György, 2005.
[12] Ibid.
[13] Szaló, 2011.
[14] Hermann, Róbert, 'Revolution and War of Independence', pp. 381 – 401 in Tóth, István György, 2005, pp. 381 – 383.
[15] Ibid.
[16] This did not apply to Croatia for the county assemblies [Cartledge, 2006, p. 204].

Transylvania, sovereignty over Croatia-Slavonia, and the recognition of a new Government, among others.[17]

The non-Magyar ethnic groups living in Hungarian lands at first welcomed the revolution, with rallies by Serbs, Romanians and Slovaks in support.[18] But this would soon change. These same groups made demands for recognition of their own nations and the use of their languages. The Croats demanded an almost complete autonomy with Josip Jelačić as *Ban*. Hungarian failure in dealing with these demands resulted in open conflict. The Hungarians, who had fought for the decentralisation of the Viennese Court, were now reluctant to decentralise in favour of the Slavs and Romanians.[19] In the summer of 1848 the Serbs revolted with the help of 10,000 armed irregulars, and on 11 September 50,000 Croats entered Hungary led by Jelačić, who was now serving the Austrian Emperor.[20] After this, the war for independence started. In December attacks were made by Serbs, Austrians and Croats, and on the war eventually came to an end in August 1849, when the remainder of the Hungarian forces surrendered to the Russian Army which had come in the aid of the Austrian Emperor.[21] An important contribution to this conclusion was the bad management of the mentioned "question of the nationalities", as some historians have dubbed it.

The 1867 Compromise (*Ausgleich*) transformed the Austrian Empire into a Dual Monarchy, the Austro-Hungarian Monarchy. It was adopted by the Hungarian Parliament on 29 May of that year, and it created a complex structure, where each half of the Empire possessed its own bicameral parliament, its own government and, to some extent, armed forces, while there were three common ministries: foreign affairs, defence and common finance.[22]

Following the Compromise, the liberal Hungarian elite tried to abolish the contradiction between an ideal unified nation state and the reality of a multinational

[17] Lendvai, 2003, pp. 222 – 223.
[18] Cartledge, 2006, pp. 205-206.
[19] Lendvai, 2003, pp. 222 - 241
[20] Ibid.
[21] Lendvai, 2003, p. 240.
[22] Lendvai, 2003, pp. 261 – 298.

state with the non-Magyar population striving for independence.[23] As a result, Act XLIV of 1868, also called the 'Nationalities Act' was concluded. Although it declared Hungary to be a 'unitary national state' and its inhabitants members of the 'unitary political nation', and it established Hungarian as the official language of local governments, it tolerated the communication with non-Hungarians in other languages and did not make the language compulsory.[24] According to Szász it ensured large-scale use of national languages, allowing individual communities to choose their language of management, as well as that of schools, in which the State had to grant education in the mother tongue.[25] Churches could also choose their mother tongue. Moreover, some collective rights were recognised, including the right to create societies to promote the language, based on individual liberty.

However, he also notes that the political individuality of nationalities was absent, which was unacceptable to the demands of minorities. The restriction of suffrage favouring the upper class, most of which was Magyar, further restricted nationalities' demands.[26] In fact, there is a stark contrast with the narrative of those nationalities regarding the law, even affirming "[t]hat law was not given to ensure equal rights but the equal deprivation of rights of the nationalities, or, more truthfully stated, their equal annihilation".[27]

This situation, which did not grant national equality, collective rights much less self-determination, was worsened in the 1870s, when Hungary embarked on a policy of 'Magyarisation', a forcible drive toward assimilation which would last until the end of World War I and the Dual Monarchy,[28] and which would prove remarkably successful in achieving its objectives.[29] One of its main tools was the 1879 Education Act which made the teaching of Hungarian compulsory in state primary schools.[30] This relatively

[23] Szász, Zoltán, 'Government Policy and the Nationalities', pp. 23 – 43 in Glatz, Ferenc (ed.), *Hungarians and Their Neighbors in Modern Times*, New York, NY, Columbia University Press, 1995.
[24] Ibid.
[25] Ibid.
[26] Ibid.
[27] Pâclişanu, Zenobius, *Hungary's Struggle to Annihilate its National Minorities*, Romanian Historical Studies, Miami Beach, FL, 1985, p. 16.
[28] Borsody, Stephen, 'State- and Nation-building in Central Europe', pp. 3 – 31 in Borsody, Stephen (ed.), *The Hungarians: A Divided Nation*, Columbus, OH, Yale Russian and East European Publications, 1988.
[29] Pâclişanu,1985, pp 126 – 135.
[30] Borsody, 1988, p. 21.

short period of time, however, was enough for the oppressed minorities to forget the centuries of peaceful existence and create a myth of millennial Magyar national oppression.[31]

The Dual Monarchy stood in place until 1918, with the end of World War I. In the last days of October, Czechoslovaks, Croatians and Ukrainians declared their independence.[32] Soon after, the Republic was proclaimed on 16 November, which was followed by a brief period as a Soviet Republic. However, the most important event that would shape Hungary's history would take place on 4 June 1920, when with the signing of the Treaty of Trianon the Kingdom of Hungary lost Transylvania, including the Székely region, the Eastern Bánát, most of the Körös and Tisza counties and the southern part of Máramaros to Romania, 63,000 km^2 to Czechoslovakia, the Bácska, the Baranya and the western Bánát to the new Kingdom of Serbs, Croats and Slovenes, as well as part of the Burgenland to Austria.[33] The consequences of this were the loss of two-thirds of her previous extension, the reduction of the population by more than half and the transfer of over three million ethnic Magyars to Czechoslovak, Romanian, Yugoslav or Austrian rule,[34] which took effect in July 1921. This left rump Hungary as a homogeneous state, where only 10.4% of the population did not speak Hungarian as a mother tongue.[35]

Trianon was a trauma from which Hungary has never recovered.[36] It was a symbolic blow, with the coronation city of Pozsony, the symbolic embodiment of Hungarian history, suddenly renamed Bratislava,[37] access to the sea was lost with Fiume, the port in the Adriatic, and especially traumatic was the loss of Transylvania, which was regarded as the cradle of the nation, and larger than what remained of Hungary after the Treaty. In the following years in schools, churches and the press, the hope was kept alive that the lost territories could one day be recovered,[38] and slogans

[31] Ibid.
[32] Lendvai, 2003, p. 261 – 298.
[33] Lendvai, 2003, p. 373 – 388.
[34] Cartledge, 2006, p. 343.
[35] Lendvai, 2003, p. 375.
[36] Lendvai, 2003, p. 374.
[37] Ibid.
[38] Ibid.

that refused to accept the losses,[39] giving birth to a national obsession with borders and Hungarian minorities beyond them.[40] Although relations with Romania and the former Yugoslav States have improved, the Slovakians still defined themselves to a large extent in opposition to Hungary, and revere the Trianon Treaty, with institutional hostilities as recently as 2010,[41] when the President of Hungary was denied entrance to Slovak territory for an act with ethnic Hungarians.

The Treaty not only sanctioned the rightful desire of other nationalities to be independent, but also attached a considerable area inhabited purely by Hungarians to the newly created states. This state of affairs was worsened by the fact that these states pursued, to a certain extent, an oppressive national minority policy similar to that of the old Hungarian ruling classes.[42] Even during the Paris Peace Conference Lloyd George, British Prime Minister, warned of a possible future threat to the peace of Central Europe by a Hungarian revenge: "There will never be peace in Southeastern Europe if all of these newly-established small states have a considerable Hungarian minority".[43] This led to a massive immigration of refugees, totalling around 300,000, which for years lived in railway carriages packed on dead-end tracks.[44]

Together with the Peace Treaties, some special treaties for the protection of annexed ethnic groups – the so-called 'Minority Treaties' – were forced upon the defeated nations as well as the newly-created Czechoslovakia, Romania and Yugoslavia.[45] These treaties, under the guarantee of the League of Nations, intended to protect language, race and religion. In some cases they also included specific clauses. A system under the League of Nations was devised to ensure compliance, but with very little success,[46] while abusive practices towards Hungarians in the new states continued, such as confiscation of land, although he points out that in Czechoslovakia the situation was relatively better than in Romania and Yugoslavia.

[39] Schubert, Frank N., *Hungarian Borderlands*, Norfolk, Continuum, 2011, p. 18.
[40] Ibid.
[41] Schubert, 2011, p. 10.
[42] Pamlényi, Ervin (ed.), *A History of Hungary*, Budapest, Corvina, 1973, p. 462.
[43] Lendvai, 2003, p. 376.
[44] Ormos, Mária, 'World War and Revolutions', pp. 167 – 215 in Király, Béla K. and Ormos, Mária, *Hungary: Governments and Politics 1848 – 2000*, New York, NY, Columbia University Press, 2001, p. 210.
[45] Váli, Ferenc A., 'International Minority Protection', pp. 101 – 115 in Borsody 1988.
[46] Ibid., pp. 101 – 105.

Shortly before Trianon, on 1 March 1920, admiral Miklós Horthy had been appointed as Regent with extensive powers, and would remain in power until 15 November 1944, thus symbolising the Interwar Period,[47] during which a growing dependence on the Third Reich, and a military alliance with Germany, allowed for the recovery of 40% of the territories lost at Trianon between November 1938 and April 1941. The First Vienna Award on 2 November 1938 granted Hungary a large portion of Slovakia, with 1,060,000 inhabitants of whom 84% were Magyars. At this time Hungary seized the lost part of Carpatho-Ukraine, and on 30 August 1940 it was agreed in the Second Vienna Award that Romania had to cede to Hungary northern Transylvania.[48] All of this would be lost after World War II, as a consequence of the defeat and the capture by Soviet and Romanian troops in February 1945 and the Treaty of Paris of 1947.

At the end of the war, Hungarian minorities were persecuted in Czechoslovakia, with 97% of Hungarians in Upper Hungary being deprived of their citizenship, property and job, while many were interned.[49] More than 30,000 people were forcibly transferred to Hungary. Following these events, and under Allies' pressure, an agreement on population exchanges was reached on 26 February 1946, after which 73,273 Slovaks left Hungary voluntarily and 68,407 Hungarians were deported from Czechoslovakia, and a further 200,000 were intended to be transferred, but finally the Peace Treaty did not include this.[50]

After the war, Hungary remained in the Soviet influence area, becoming a "People's Republic" under a new constitution, promulgated on 20 August 1949,[51] and would remain so until 1989, even after the October 1956 uprising, which was crushed by the Soviet tanks on 4 November of that year, followed by the imprisonment and trial of the Prime Minister Imre Nagy.

Since the first parliamentary elections on 25 March and 8 April 1990 Hungary has become an integral part of the liberal democratic international society, especially

[47] Romsics, Ignác, 2005, pp. 494 – 500.
[48] Lendvai, 2003, pp. 409 - 411.
[49] Vida, István, 'Sovietization and the Nation's Response', pp. 275 – 358 in Király et al., 2001, p. 297 – 300.
[50] Ibid.
[51] Cartledge, 2006, p. 445.

after its accession to the European Union on 1 May 2004, yet minority issues still loom over her as a consequence of its troubled past.

2.3. Demographics

In this section of the chapter I will present the demographic data of the relevant countries for the scope of this research. I will start by presenting an "ethnic picture" of Hungary today, underlining the homogeneity of the population and the presence of Roma as the largest and main minority. After this, I will pass on to the surrounding countries, focusing on the size of the Hungarian minorities in them. This information will to a certain extent explain the political representation, which will be examined in the next section, given the relative weight of the minorities.

2.3.1. Hungary

As a result of the historical processes outlined in the previous section, we find a scenario in which the current population of Hungary is 9,937,628, according to the first results of the 2011 census, of which 8,409,049, declare themselves as Hungarian, therefore making up 84.6% of the total population.[52]

We can observe the declared population of Roma consists of 315,583 people (3.18% of the population), Germans of 185,696 (1.87%), and Romanians 35,641 (0.36%), being those three the most significant minority national communities in the Hungarian territory,[53] which largely confirms Hungary as a polity with an ethnic nationalist concept of the nation manifested in a largely homogeneous population.

It must be pointed out, however, that estimates for the Roma are much higher than the official figures, making it by far the largest minority in Hungary. The Hungarian government has stated that "[p]rofessional estimates claim the size of the Roma population to be approximately 450 to 600,000",[54] but some Romani civil society organisations provide figures as high as 800,000-1,000,000, or up to 10% of the total

[52] Hungarian Central Statistical Office, *2011. Évi Népszámlálás 3. Országos adatok*, available at:. http://www.ksh.hu/docs/hun/xftp/idoszaki/nepsz2011/nepsz_03_00_2011.pdf, last accessed 13 May 2013. p.64.
[53] Ibid.
[54] ComECSR, Third periodic report: Hungary, E/C.12/HUN/3, 28 September 2005, available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/404/73/PDF/G0640473.pdf, para. 78, last accessed 13 May 2013.

population of Hungary.[55] One of the main reasons of this difference is because the census relies on Roma self-identification. The pervasiveness of anti-Roma racism and discrimination means that most Roma families are understandably reluctant to reveal their ethnicity to officialdom for fear of reprisals, as well as the memories from the Roma Holocaust, for which data from censuses was used to locate and deport Roma to Nazi concentration camps.[56] It also must be noted that Roma are statistically treated as a homogeneous group, when Hungarian Roma are divided between Romungros or Gypsies who speak Hungarian, the Roms who speak Romani (Lovari) and the Beash who speak an archaic version of Romanian.[57] Lovari and Beash are what qualifies as 'Roma language' for the Hungarian census, but much of Hungary's Roma population has been linguistically assimilated and speak Hungarian. This has occurred since at least as far as Maria Theresa's reign,[58] and may have also spread during the "Magyarisation" era. In summary, not only is Hungary a mostly ethnically homogeneous state, but the minorities have been to a large extent assimilated.

2.3.2. Other countries

The statistical information of the Hungarian population in the surrounding countries is distributed as shown in the following table:

Table 1.3.2.A: Population of Hungarians in the surrounding countries

	Hungarians	%country	%totalHuOut
Croatia	14,048	0.32%	0.66%
Romania	1,237,746	6.50%	58.06%
Serbia	253,899	3.48%	11.91%
Slovakia	458,467	8.49%	21.50%
Slovenia	6,243	0.32%	0.29%
Ukraine[59]	161,618	0.34%	7.58%
Total	2,132,021		100.00%

Source: compiled by author based on data from the national censuses

[55] Cahn, Claude, *The Unseen Powers: Perception, Stigma and Roma Rights*, available at http://www.errc.org/cikk.php?cikk=2870, last accessed 13 May 2013.
[56] Clark, Colin, *Counting Backwards: the Roma 'numbers game' in Central and Eastern Europe*, available at http://www.radstats.org.uk/no069/article4.htm last accessed 13 May 2013.
[57] Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples: Hungary: Roma*, available at http://www.minorityrights.org/?lid=5800, last accessed 13 May 2013.
[58] Petrova, 2003.
[59] Due to the lack of information on the ethnic composition of the Ukrainian population this figure represents those with Hungarian as a mother tongue, which comprise almost all the members of the Hungarian minority, in a quasi-exclusive manner.

As we can see, there are around 2,130,000 Hungarians living in the bordering countries, with especially large populations in Romania, Slovakia and Serbia.

2.3.2.1.Romania

The largest Hungarian minority is constituted by those in Romania, which are, according to the preliminary data of the 2011 Romanian census, 1,237,746, amounting to a 6.5% of the total population of the country. Hungarians constitute the majority in two Romanian counties, Harghita and Covasna, which figures we can see in the following tables:

Table 1.3.2.1.A: Ethnic composition of the population of the Harghita and Covasna Counties

Harghita County		
Total resident population	2011	
	abs.	%
	304,969	100
Romanian	40,431	13.26%
Hungarian	258,615	84.80%
Roma	5,422	1.78%

Covasna County		
Total resident population	2011	
	abs.	%
	206,261	100
Romanian	45,560	22.09%
Hungarian	151,787	73.59%
Roma	8,238	3.99%

Source: Romanian Central Population and Housing Census Commission.[60]

These two provinces constitute the largest part of what is known as Szeklerland, or *Székelyföld*, and therefore most of the population considered Hungarian in these counties is Székely, a Magyar-speaking people who have, nonetheless, been considered as having a different ethnic background. The largest ethnic Hungarian party in Romania, the Democratic Alliance of Hungarians in Romania, which will be presented later in this chapter, has planned to submit a bill to the Romanian Parliament proposing territorial autonomy and settle the legal status of Szeklerland,[61] as the party chairman recently announced.

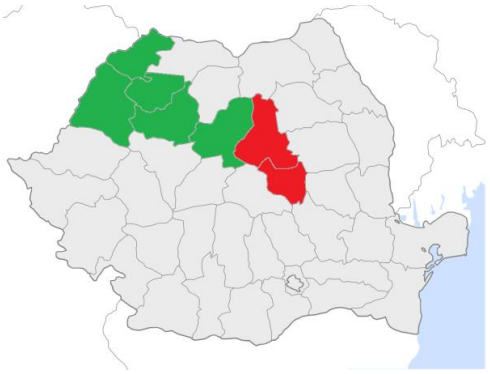
Furthermore, there are notable populations in the Mureş (37.82%), Satu Mare (34.50%), Bihor (25.18%), Sălaj (23.25%) and Cluj (15.69%) counties. It is to note that

[60] Central 2011 Population and Housing Census Commission, *Press Release February 2, 2012 on the provisional results of the 2011 Population and Housing Census*, available at http://www.insse.ro/cms/files%5Cstatistici%5Ccomunicate%5Calte%5C2012%5CComunicat%20DATE%20PROVIZORII%20RPL%202011e.pdf, last accessed 18 April 2013.

[61] Magyar Távirati Iroda, *Fidesz, MSZP voice support for Transylvanian kinfolk at RMDSZ congress*, at http://www.politics.hu/20130526/fidesz-mszp-voice-support-for-transylvanian-kinfolk-at-rmdsz-congress/, last accessed 28 May 2013.

these counties are located in Transylvania,[62] as can be seen in the following map, in which the ones with a majority are marked in red and those with significant populations in green:

Figure 1.3.2.1.A: Romanian counties with a significant ethnic Hungarian population



Source: compiled by author

This situation is explained by the history of the region, which, as it has been explained in the previous section, was historically an important part of the Hungarian nation, constituting for more than 150 years an independent principality that preserved an independent Hungarian state, in contrast to the occupied Hungary under Turkish rule and the Habsburg Royal Hungary, and being only part of Romania since 1921, following the Treaty of Trianon.

2.3.2.2.Slovakia

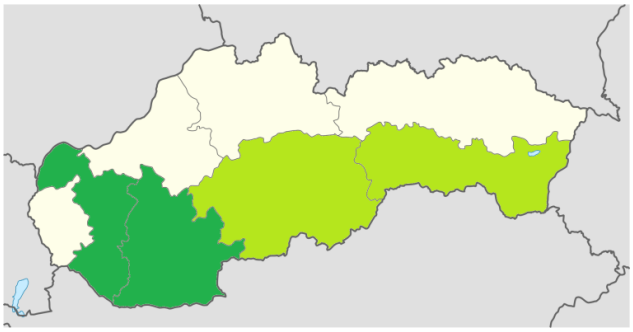
There are slightly more than 450,000 Hungarians living in Slovakia,[63] therefore constituting the second largest Hungarian minority in absolute terms, and the largest in its relative weight, representing almost 8.5% of the population of the country. This minority is concentrated in southern Slovakia, in the regions on the Hungarian border, especially in the Nitra (24.56%) and Trnava (21.77%) regions, and to a lesser extent in

[62] Transylvania covers central, western and north-western Romania, including the counties of Cluj, Sălat, Bistriţa-Năsăud, Alba, Mureş, Harghita, Hunedoara, Sibiu, Braşov and Covasna, as well as the historical provinces of Banat, Crişana and Maramureş, with its counties Caraş-Severin, Timiş and Arad, Bihor, Maramureş and Satur Mare. [Pop, Grigor, 'Transylvania, Banat, Crişana, Maramureş Geographic Features', pp. 11 – 27 in Pop, Ioan-Aurel & Nägler, Thomas (coords.), *The History of Transylvania. Vol. I*. Cluj-Napoca, Romanian Cultural Institute, 2005.]

[63] Statistical Office of the Slovak Republic, *The 2011 Population and Housing Census, Results: Slovak Republic, Population by nationality*, available at: http://portal.statistics.sk/files/table-10.pdf, last accessed: 14 April 2013.

the Banská Bystrica (10.23%) and Kosice (9.44%) regions,[64] which we can see in the following map marked in green, with the former two in a darker shade:

Figure 1.3.2.2.A: Slovak regions with a significant ethnic Hungarian population



Source: compiled by author

However, the results of the 2001 and 2011 census show that the Hungarian population is diminishing, as we can see in the following table:

Table 1.3.2.2.A: Ethnic Hungarian population in Slovakia and the regions with a relevant Hungarian presence

Slovakia		
2011	2001	Var.
458,467	520,528	-11.92%
Trnava		
2011	2001	Var.
120,784	130,740	-7.62%
Nitra		
2011	2001	Var.
169,460	196,609	-13.81%
Banská Bystrica		
2011	2001	Var.
67,596	77,795	-13.11%
Košice		
2011	2001	Var.
74,743	85,415	-12.49%

Source: compiled by author

[64] Statistical Office of the Slovak Republic, *The 2011 Population and Housing Census, Resident Population by nationality by regions*,, available at: http://portal.statistics.sk/files/krtable9.pd, last accessed: 14 April 2013.

2.3.2.3.Serbia

The overwhelming majority (99%) of Hungarians in Serbia are located in the Autonomous Province of Vojvodina, where its 251,136 members constitute a 12.83% of the population. They are concentrated mainly in the North Banat and North Bačka districts, which are the closest to the Serbian-Hungarian, and make up 57.81% of the Hungarian minority population, and 46.64% and 40.80% of the total population, respectively, but a significant number is also present in other districts, namely South Bačka – which includes the capital and most populous city, Novi Sad – and Central Banat. Nevertheless, significant numbers are present in all districts of Vojvodina, with the only low number being that at the Sremska District.

2.3.2.4. Croatia, Slovenia and Ukraine

The remaining minorities, those present in Croatia, Slovenia and Ukraine make up a low percentage of the population of their host countries. In Croatia they represent a 0.32% of the total population, with almost 60% concentrated in the border Osijek-Baranja county[65] and a 12% in the adjacent Vukovar-Sirmium county.[66] In Slovenia Hungarians also make up 0.32% of the population, of which 83.5% reside on the ethnically mixed area in five municipalities in the Prekmurje region (Lendava, Dobrovnik, Hodoš, Šalovci, and Moravske Toplice).[67]

In Ukraine, although only constituting 0.34% of the population of the country, the figure in absolute terms of Hungarians is more significant than its relative size seems to indicate: 160,000 people mostly concentrated in the Transcarpathia region, which houses more than 98% of the minority,[68] and even more concretely in 124 settlements situated in a strip of about 20 km wide along Ukraine's border with

[65] Croatian Bureau of Statistics, *2011 Census: Population by ethnicity, by towns/municipalities*, available at: http://www.dzs.hr/Eng/censuses/census2011/results/htm/E01_01_04/e01_01_04_RH.html, last accessed 16 April 2013.
[66] Ibid.
[67] Republic of Slovenia Office for National Minorities, *Hungarian National Community Statistical Data*, available at: http://www.arhiv.uvn.gov.si/en/minorities/hungarian_national_community/, last accessed 16 April 2013.
[68] According to the Ukrainian census of 2002 [State Statistics Service of Ukraine, *All-Ukrainian Population Census 2011*, available at http://database.ukrcensus.gov.ua/MULT/Database/Census/databasetree_en.asp, last accessed 16 April 2013] out of 161,618 Hungarians in Ukraine (vid. footnote 4) 158,729 lived in the Transcarpathia region.

Slovakia, Hungary and Romania.[69] They also have a significant weight in the region, representing 12.65 % of the Transcarpathian population.

2.4. Political representation

The demographic and historical significance of Hungarian minorities has already been addressed. However, it is also important to understand their political participation, in order to contribute to assessing the sentiment and *revindication* of those members of these minority communities.

I will present the main Hungarian political organisations abroad and their aims, as well as their representation in Parliament and other organs. The diverging history and attitude to the host nations following Trianon, which was addressed before, should explain some of the differences in the aims of the parties. We can therefore see them not as a homogenous mass, but rather as individuals with different concerns and priorities, which respond to the particularities of each one. These divergences will re-emerge in Chapter 5 when seeing the political reactions of the different countries to the measures adopted by Hungary.

2.4.1. Romania

In Romania there is a large ethnic-based party, the Democratic Alliance of Hungarians in Romania (DAHR) – Romániai Magyar Demokrata Szövetség – which currently has 18 representatives in the Romanian Chamber of Deputies,[70] 9 in the Romanian Senate[71] and 3 at the European Parliament.[72] The party exists since 25 December 1989, and has "the purpose of representing the interests and community of Hungarians living in Romania",[73] and since February 2011 it emphasises the importance of turning Hungarian into regional official language and of implementing actual

[69] Tóth, Mihaly, 'Hungarian National Minority of Ukraine: Legal and Practical Aspects of Realisation of Minority Rights', pp. 143 – 148 in *Acta Universitatis Sapientiae Legal Studies*, vol. 1, no. 1, 2012 (http://acta.sapientia.ro/acta-legal/legal-main.htm, online journal last accessed 20 April 2013.

[70] Romanian Chamber of Deputies, *The parliamentary group of the Democratic Alliance of Hungarians in Romania*, available at http://www.cdep.ro/pls/parlam/structura.gp?idl=2&idg=5, last accessed 16 April 2013.

[71] Parlamentul României, Senat, *Grupul parlamentar al Uniunii Democrate Maghiare din România*, available at http://www.senat.ro/ComponentaGrupuri.aspx?Zi&GrupID=45df3d5e-0653-42f5-96cb-1759638b1065, last accessed 16 April 2013 [in Romanian].

[72] European Parliament, *MEPs: Romania*, available at http://www.europarl.europa.eu/meps/en/search.html?country=RO, last accessed 13 April 2013.

[73] Democratic Alliance of Hungarians in Romania, *About Us*, available at http://www.dahr.ro/page/about-us, last accessed 17 April 2013.

multilingualism in Romania, among others.[74] This party is part of the European People's Party, like FIDESZ, the current ruling party in Hungary, and the Christian Democratic People's Party (KDNP), who holds 37 seats in the Hungarian parliament. Nevertheless, the Hungarian Socialist Party – *Magyar Szocialista Párt (MSZP)* – also supports the party's initiatives for autonomy.[75] In my opinion this could be a move intended to avoid FIDESZ's image as the party in Hungary which supports ethnic Hungarians outside, for reasons which will be later examined in chapters 3 and 4.

Although other ethnic Hungarian parties exist in Romania the Hungarian People's Party in Transylvania – *Erdélyi Magyar Néppárt* – is the only one that ran in the past elections aside from the DAHR. This party has allegedly received financial support from the Hungarian Government under FIDESZ.[76] In my opinion this could be a move towards establishing a party more dependent upon the directions from Budapest. Nevertheless, it did not obtain parliamentary representation.

2.4.2. Slovakia

In Slovakia Mečiar-led government coalitions repeatedly distorted political processes in a way that clearly disadvantaged, among others, ethnic Hungarians. One of the most significant obstacles was a 5% vote threshold to enter into governing coalitions. As a consequence, ethnic Hungarian politicians now depend almost exclusively on the 'ethnic vote', without being able to define more ideologically, forcing smaller parties to merge, for example creating the Hungarian Coalition Party– *Magyar Koalíció Pártja* – (MKP) merging parties with a clearer left/right divide.[77] This party is now a member of the European People's Party, which was part of government coalitions between 1998 and 2006 and currently has two representatives in the European Parliament[78] although it is no longer the main ethnic Hungarian party in Slovakia.

[74] Ibid.
[75] Vid. footnote 59.
[76] Atlatszo.hu, *Fidesz spends public money to build its hinterland in Transylvania*, available at http://atlatszo.hu/2013/05/24/fidesz-spends-public-money-to-build-its-hinterland-in-transylvania/, last accessed 10 July 2013.
[77] Auer, Stefan, 'Slovakia: from marginalisation of ethnic minorities to political participation (and back?), pp. 195 – 209 in Bechel, Bernd (ed.), *Minority Righs in Central and Eastern Europe*, Routledge, 2009, pp. 204 – 205.
[78] European People's Party, Member Parties, available http://www.epp.eu/member-parties, last accessed 12 May 2013.

That position now corresponds to Most-Híd, although it does not declare itself as an ethnic party. It obtained 13 seats in the Slovakian National Council in the latest legislative elections, in 2012.[79] Among its stated goals we can find the representation of the interests and constitutional rights of citizens, European cooperation and good neighbourly relations between neighbouring states, guarantee for the peaceful coexistence and equality of citizens of Slovakia irrespective of national or ethnic origin and the improvement of Slovak – Hungarian relations, establishment of mutual tolerance and cooperation of national and ethnic communities.[80] As it can be observed, these do not explicitly advocate for ethnic goals, which would constitute a characteristic of a party along ethnic lines.

2.4.3. Serbia

In Serbia there is representation on the autonomous provincial level at the Assembly of Vojvodina[81] and on the national level at the National Assembly of the Republic of Serbia.[82] In both cases the most representative political party, and the only one with representation in these organs, is the Alliance of Vojvodina Hungarians – *Vajdasági Magyar Szövetség* –, which was established to unify the Hungarian of Vojvodina and to inspire it for action and self-organization, furthermore, to connect it in terms of language, culture, economically and socially with the kin state, with the Hungarians of the Carpathian Basin and the world, and at the same time, to strengthen the relations with the nationalities living together with it and with other national communities.[83] Furthermore, Serbia uses a system of self-governing councils for some aspects of minority life, which will be explained in the next chapter.

[79] Statistical Office of the Republic of Slovenia, Assignment of seats to political parties, at http://volbysr.sk/sr/tab4_en.html, last accessed 17 April 2013.
[80] Most-Híd, What are our goals?, available at http://www.most-hid.sk/content/what-are-our-goals, last accessed 19 April 2013.
[81] Assembly of the Autonomous Province of Vojvodina, Representation of Parties, at: http://www.skupstinavojvodine.gov.rs/?s=ZastupljenostStranaka&mak=Stranke, last accessed 19 April 2013.
[82] National Assembly of the Republic of Serbia, Parliamentary Groups, at: http://www.parlament.gov.rs/national-assembly/composition/parliamentary-groups.498.html, last accessed 19 April 2013.
[83] Alliance of Vojvodina Hungarians, Programme, at http://vmsz.org.rs/content/program, last accessed 20 April 2013 [in Hungarian].

2.4.4. Ukraine

In Ukraine, as happens in Serbia, the ethnic Hungarian parties are concentrated in the Transcarpathia region, where they hold the absolute majority in numerous local self-governments.[84] However, and although between 1994 and 2006 there had been representatives of the Hungarian community in the Parliament, or *Verkhovna Rada (Supreme Council)*, since the 2006 elections there are no Hungarian deputies at the national level.

Nevertheless, the Hungarian community in Transcarpathia is organised in two political parties, the Hungarian Party in Ukraine and the Hungarian Democratic Party in Ukraine, both created by associations who needed a political party in order to run for elections.[85]

2.4.5. Croatia and Slovenia

In Croatia and Slovenia Hungarians are represented in the respective national parliaments by specific deputies for the national minorities in the country. In Slovenia there are no ethnic Hungarian parties, therefore electing directly the representative, who is currently Dr. László Göncz.[86] Moreover, there is a "Pomurje Hungarian Self-Governing National Community", to which I will refer in the next chapter.

In Croatia the two main Hungarian organisations are the Democratic Union of Hungarians of Croatia, which aims to represent the Hungarians in Croatia above all in terms of human rights and minority rights; in terms of self-definition, consciousness and religious freedom, public education and culture, usage of language and the preservation of traditions, as keeping contact with the kin state, with Hungarian communities living in other countries, and with the minorities living in Croatia;[87] and the Union of Hungarian Associations, which intends to coordinate the cooperation of all Hungarian

[84] Bakirov, Vil, Kizilov, Alexander, Kizilova, Kseniya, *The Hungarian Minority in Ukraine*, available at: http://www.enri-east.net/wp-content/uploads/hu%28UA%29_Final_WEB_09072012.pdf, last accessed 18 April 2013, pp. 17 – 18.
[85] Ibid.
[86] National Assembly of the Republic of Slovenia, *Italian and Hungarian National Communities Deputy Group*, available at http://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/KdoJeKdo/PoslankeInPoslanci/poslanec?idOseba=P117, last accessed 13 May 2013.
[87] HMDK, Statutes, at http://www.mpsz.net/index.php?option=com_content&view=article&id=189:alapszabalyzata&catid=80:mpsz-dokumentumok&Itemid=75, last accessed 20 April 2013 [in Hungarian].

organizations and associations in Croatia, to represent the collective interests of Hungarians in Croatia.[88] Here as well a system of Self-governing communities is used, and it will be addressed in the following chapter.

[88] MESZ, Statutes, at http://www.smu-mesz.hr/szervezetrol/alapszabaly.html, last accessed 20 April 2013 [in Hungarian].

3. Legal framework

In line with the topic and scope of the thesis, it is necessary to present the legal framework in which the minority situation in Hungary and the surrounding countries of the Carpathian basin develops. In order to do so I will present the relevant legal documents dedicated to this topic in the area.

The review will follow a thematic structure, approaching the two pillars on which adequate minority protection systems are based: non-discrimination and the measures designed to protect and promote the separate identity of the minority groups.[89] With this systematic approach I intend to give a clear framework in which the standards of minority human rights should be seen, and serve as the backdrop against which the new legislative measures will be measured in terms of human rights compliance and protection for the members of the national minorities under examination.

Each part will start by analysing the international instruments applicable to the relevant States, to then proceed by looking in more detail to the national legal order. Thus, the starting point will be the analysis of the texts produced of the two main international organisations which are of compulsory observance by the States within the scope of this thesis, the United Nations (UN) and the Council of Europe (CoE), of which they are all members. Afterwards the focus will shift to those enacted in the frame of the European Union, mainly in the form of regulations and directives, is of application to those who are Members of this regional organisation, i.e. Croatia, Hungary, Romania, Slovakia and Slovenia. They are also very relevant to Serbia, since this country is since 1 March 2012 a candidate for accession to the Union.[90] Finally, I will proceed to examine the national legislation of the relevant countries.

Other organisations, most notably the International Labour Organisation also deal with the issue of minorities, even elaborating conventions binding for the States parties. These are not included in this review, as their effect is very limited for the case under analysis, therefore falling outside the scope of the thesis.

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[89] Henrad, Kristin, 'Non-Discrimination and Full and Effective Equality', pp. 75 – 147 in Weller, Marc (ed.), *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, New York, NY, Oxford University Press, 2007, pp. 75 – 76.

[90] European Commission, *Enlargement: Detailed country information: Serbia*, available at http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm, last accessed 4 May 2013.

What is intended with this focus and structure is to portray the architecture of the protection of the rights of minorities and people belonging to them in the states within the scope of this thesis. As a result, this chapter should clarify the level of existing protection, which will contribute to establish the current status and, therefore, also the need for the legislation enacted by Hungary, which constitutes the main focal point of this thesis. For this reason, I will concentrate on the aforementioned two pillars, and in particular the one on non-discrimination. This is because I consider that, given that the level of human rights protection in the countries under review is of the highest standards because of their participation in all the important human rights protection instruments and mechanisms, as it will be seen, a non-discriminatory treatment would set the bar high in terms of the human rights situation of these populations. This would be further improved by specific measures aimed at minorities, which are more discretional to the states sovereignty, and therefore will be analysed more in brief.

3.1. Non-discrimination

Non-discrimination is considered one of the two pillars of a 'fully fledged' minority protection system, together with the measures designed to protect and promote the separate identity of the minority groups.[91] Therefore, in this section I will analyse the provisions on non-discrimination which are included in the different international instruments pertaining to the abovementioned organisations, as well as in the national frameworks of the countries in the scope of the research.

3.1.1. International legislation

3.1.1.1. United Nations

We can find mentions to non-discrimination already in the foundational document of the UN, the Charter of the United Nations, which in articles 1.3 establishes as a purpose of the organisation "[t]o achieve international co-operation […] in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". Moreover, in art. 55.c the Charter establishes that the UN shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex,

[91] Henrard, Kristin, *Devising and Adequate System of Minority Protection: individual human rights, minority rights and the right to self-determination*, The Hague, Kluwer Law International, 2000, p. 8.

language, or religion". These are nevertheless provisions directed to the organisation in itself and not its members.

However, we can already recognise rights for persons belonging to minorities in a document aimed at Member States in the Universal Declaration of Human Rights (UDHR), in particular the right to non-discrimination. The Convention, approved by the General Assembly (GA) on 10 December 1948, is widely considered to be binding as international customary law. Thus, the Declaration establishes, in its first two articles, that: "[a]ll human beings are born free and equal in dignity and rights" and that:

> "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

The first part of the second article can be considered the basis for the different non-discrimination provisions included in international and national legal texts. This will be a central point in the following analysis.

The UDHR together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) form what is considered the "International Bill of Human Rights". The latter two, both adopted on 16 December 1966 by the General Assembly, include a non-discrimination clause identical to that of the UDHR,[92] the main difference being that these documents are directly binding upon States parties, and not as international custom.

The ICCPR goes further by determining that:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion,

[92] Article 2.1 ICCPR and art. 2.2. ICESCR.

> political or other opinion, national or social origin, property, birth or other status".[93]

In this way, the ICCPR deepens the prohibition against discrimination by including an article with a general reach, as opposed to the others, concentrated on the rights included in the respective instrument.[94] Interestingly, the Human Rights Committee (HRC) has determined that articles 2.1 and 26 are also applicable to persons belonging to minorities.[95] This view has been reinforced by the ruling of the Committee in cases such as the Waldman v. Canada case.[96] Furthermore, the same text includes specific non-discrimination clauses with regards to gender[97] and minors.[98]

Neither the UDHR nor the ICCPR or the ICESCR include a definition or concept of 'discrimination'. In this regard, we can draw attention to the General Comment No. 18 of the HRC, which determines that the term:

> "[s]hould be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".[99]

Although General Comment 18 was elaborated in reference to the ICCPR, the redaction of this text is identical to that of the other two texts. For this reason we can consider it can be interpreted in the same way. Hence, it will be considered in this thesis as the general definition of non-discrimination in the different conventions,

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[93] Article 26 ICCPR.
[94] Henrard, 2007, p. 78.
[95] Human Rights Committee, General Comment No. 23: The rights of minorities (art. 27), CCPR/C/21/Rev.1/Add.5, 4 August 1994, available at http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/fb7fb12c2fb8bb21c12563ed004df111?Opendocument, para. 4, last accessed 9 July 2013.
[96] Human Rights Committee, Waldman v. Canada, CCPR/C/67/D/694/1996, 5 November 1999, available at http://www.unhchr.ch/tbs/doc.nsf/0/b3bfc541589cc30f802568690052e5d6?Opendocument, last accessed 9 July 2013.
[97] Art. 3 ICCPR.
[98] Art. 24.1 ICCPR.
[99] Human Rights Committee, General Comment No. 18: Non-discrimination, 11October 1989, available at http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/3888b0541f8501c9c12563ed004b8d0e?Opendocument, para. 7, last accessed 9 July 2013

notwithstanding the specific non-discrimination clauses with regards to certain rights, included in the relevant articles.

General Comment 18 of the HRC makes reference to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as one of the references for the clarification of the term. The ICERD does not include the word 'minority' in its text. However, the first article establishes that the term "racial discrimination" shall mean:

> "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life"[100]

The article, and by extension, the Convention, are therefore being applicable to national minority populations in the same sense as General Comment 23 of the HRC established for arts. 2.1 and 26 of the ICCPR.[101] This is especially important given the mechanisms to ensure the implementation of the ICERD, in particular the role of the Committee on the Elimination of Racial Discrimination.[102] A similar general clause on non-discrimination is also included in the Convention on the Rights of the Child, [103] to which almost every Member State of the UN is part.[104]

A specific provision on non-discrimination for people belonging to minorities is established in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (the "Declaration on Minorities").[105] The Declaration is not binding in nature, yet it retains its importance as a Declaration of the General Assembly.

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[100] Article 2.2 ICESCR.
[101] Vid. footnote 95.
[102] Office of the United Nations High Commissioner for Human Rights, the Committee on the Elimination of Racial Discrimination, http://www2.ohchr.org/english/bodies/cerd/, last accessed 9 July 2013
[103] General Assembly, Convention on the Rights of the Child, A/RES/44/25, 20 November 1989, available at http://www.ohchr.org/en/professionalinterest/pages/crc.aspx, art. 2.1, last accessed 9 July 2013.
[104] The only exceptions are Somalia, South Sudan and the United States of America.
[105] General Assembly, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, A/RES/47/135, 18 December 1992, available at http://www.un.org/documents/ga/res/47/a47r135.htm, art. 3.1, last accessed 9 July 2013.

Overall we can affirm that non-discrimination is a principle which is deeply embedded in the human rights protection system of the UN. It is particularly relevant for minorities, constituting one of the pillars for the protection of their rights and those of the people belonging to them.

3.1.1.2. Council of Europe

There are two main tools the Council of Europe has at its disposal for the protection of minorities. They are the European Convention on Human Rights (ECHR) and the Framework Convention for the Protection of National Minorities (FCNM). The former is especially important, as the Convention is implemented, among others, by the judgements of the European Court of Human Rights (ECtHR), whose sentences are binding for States Parties.

The ECHR's article 14 is dedicated to the prohibition of discrimination. It states that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". As we can see, and differently to the there is an explicit mention to national or social origin and association with a national minority. As it is mentioned within a *numerus apertus* enumeration, not much legal importance should be attached to it,[106] although its explicit mentions does contribute to the visibility of the discrimination of minorities. What is relevant is that article 14 has an accessory character, which means it may only be invoked in connection to another right or freedom protected by the Convention.[107] Although this seems to limit the scope of application of the non-discrimination principle in the Council of Europe architecture, some measures have been taken in order to expand it. The most relevant is Protocol 12 to the Convention, which includes a general clause which the scope of the prohibition of discrimination to "any right set forth by law", and not only to those included in the ECHR.

Non-discrimination is again not defined in the article, as happens with other instruments such as the UDHR or the ICCPR, as it has been seen. We can therefore use

[106] Henrard, 2000, p. 73.
[107] Ibid., pp. 71 – 72.

the definition that was given in the abovementioned Advisory Opinion 18 of the HRC.[108] Moreover, the ECtHR has established in the *Belgian Linguistics Case*[109]that:

> "Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention".

This interpretation has found confirmation in the *Petrovic v. Austria* and *Larkos v. Cyprus* cases.[110] This is what permits so-called "positive discrimination" or "affirmative action" measures. This conception is reinforced in the FCNM, the most comprehensive multilateral treaty devoted to minority rights.[111] This treaty includes a specific prohibition of discrimination "based on belonging to a national minority",[112] and also an obligation for states to adopt special measures to achieve equality,[113] which explicitly do not amount to discrimination,[114] and may be permanent, contrary to the ICERD.[115] We can therefore conclude that discrimination is not equal to distinct treatment under the CoE scheme, and that different treatments may be allowed provided they comply with the conditions set out by the ECtHR and the FCNM and its Explanatory Report.

The relevance of this system will be manifest later in the thesis, when faced with the issue of preferential treatment of kin minorities. The Reports and Opinions of the Venice Commission – itself an organ from the Council of Europe – will be the reference point for the analysis of the measures under consideration in this research. Moreover, given that all of the relevant countries are members of this organisation; its system is the paramount in the minority policy under examination.

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[108] Vid. footnote 99.
[109] Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium, (Merits), 1968.
[110] Henrard, 2000, p. 74.
[111] Office of the United Nations High Commissioner for Human Rights, *Pamphlet No. 8 of the UN Guide for Minorities*, available at http://www.ohchr.org/Documents/Publications/GuideMinorities8en.pdf, last accessed 6 May 2013.
[112] Art. 4.1 FCNM.
[113] Art. 4.2 FCNM.
[114] Art. 4.3 FCNM. Although it only demands a legitimate goal, the Explanatory Report adds the "adequate" criteria, hence proportionality (Henrard, 2007, p. 83).
[115] Henrard, 2007, p. 83.

3.1.1.3. European Union

The final international organisation under scrutiny we shall address the EU. As it was stated, five of the target countries, i.e. Croatia, Hungary, Romania, Slovakia and Slovenia, are members of the organisation, while one more, Serbia, is a candidate country for accession, thus the norms of the Union are also pertaining to her.

There is vast legislative production of the Union which relates to minorities, directly or indirectly. Given its extension, an attempt to cover it all in this thesis would be absurd, but I will address the main documents which, from my point of view, constitute the scaffolding of the Union's minority protection. Articles 2 and 3 of the Treaty on the European Union (TEU) already contain provisions related to non-discrimination, introducing it as a value of the Union[116] and establishing discrimination as something the Union shall combat.[117] Moreover, the Treaty on the Functioning of the European Union (TFEU) introduces non-discrimination as an aim of the Union policies.[118] These constitute the provisions in the two main texts of the Union, yet there are more specific ones in other legislative texts.

The Charter of Fundamental Rights of the European Union – which has the same legal value as the Treaties–[119] also includes anti-discrimination provisions. This Charter, in article 21 states that "[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".[120] It is complemented by article 19 TFEU, which provides for competence to adopt measures intended to fight discrimination on certain grounds.[121]

Aside from the Treaties, there are three Directives which need to be considered: the Directive implementing the principle of equal treatment between persons

[116] Art. 2 TEU.
[117] Art. 3.3 TEU.
[118] Art. 10 TFEU.
[119] Art. 6 TEU.
[120] Charter of Fundamental Rights of the European Union, 2000/C 364/01, 18 December 2000, available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf, art. 6, last accessed 8 May 2013.
[121] Dashwood, Alan, Dougan, Michael, Rodger, Barry, Spaventa, Eleanor and Wyatt, Derrick, *Wyatt and Dashwood's European Union Law*, Oxford, Hart Publishing, 2011, p. 371.

irrespective of racial or ethnic origin,[122] the Directive establishing a general framework for equal treatment in employment and occupation[123] and the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.[124]

The first of them includes in its Preamble a mention to the Employment Guidelines 2000,[125] which "stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities", to then establish a series of measures to achieve non-discrimination for racial or ethnic origin. Moreover, according to article 1, "the purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment". However, article 3(2) of the Directive leaves out of its scope the "difference of treatment based on nationality". This Directive has been the subject of different sentences by the European Court of Justice (ECJ), which has clarified the scope of the article.[126]

The second Directive relates to the particular problematic of employment, making a reference to the former Directive, thus strengthening protection on this field. The third and last Directive, although including provisions for all the citizens of EU Member States, does include a significant paragraph in the Preamble, which reads:

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[122] Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43/EC, 29 June 2000, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:180:0022:0026:EN:PDF, last accessed 8 May 2013.

[123] Council Directive establishing a general framework for equal treatment in employment and occupation, 2000/78/EC, 27 November 2000, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF, last accessed 8 May 2013.

[124] Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 2004/38/EC, 29 April 2004, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:EN:PDF, last accessed 8 May 2013.

[125] Council Decision on guidelines for the employment policies of the Member States, 2010/707/EU, 21 October 2010, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:308:0046:0051:EN:PDF, Guideline 10, last accessed 8 May 2012.

[126] As a paramount decision, vid Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV (Feryn Case), C-54/07, 10 July 2008, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0054:EN:HTML, last accessed 10 July 2013.

> "[t]his Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation".[127]

All of these documents are binding on the Member States – and candidates for accession if they want to be successful – although in different ways, depending on their nature[128], and there are ways to ensure they comply.

3.1.2. National legislation

I will now proceed to examine the basic laws which relate to minorities in the different countries subject of the investigation. I will not be analysing the Hungarian legislation, since this would be out of the scope of the research, which focuses on minorities outside of the Hungarian territory, and would add little to the non-discrimination legislation of the surrounding countries, contrary to the measures specifically aimed at minority identity. These will be presented also for the Hungarian case when examined, as it intended to set an example for other countries. I will not be analysing in detail each country's provisions, since, as stated, many are common, and inspired by the international legislation. Therefore only the most significant and divergent provisions of each national framework will be presented

A non-discrimination clause is included in the Constitutions of all the relevant countries (i.e. Croatia,[129] Romania,[130] Serbia,[131] Slovakia,[132] Slovenia[133] and

[127] 2004/38/EC, 29 April 2004, par. 31.
[128] For example, the Treaties are part of the *acquis communautaire*, regulations have a direct effect whereas Directives need to be transposed, among others. However, as this would require a lengthy explanation and it is not the object of this thesis, it will not be explained here.
[129] Art. 14 of the Constitution of the Republic of Croatia.
[130] Art. 16 of the Constitution of Romania.
[131] Art. 21 of the Constitution of the Republic of Serbia.
[132] Art. 12.2 of the Constitution of the Slovak Republic.
[133] Art. 14 of the Constitution of the Republic of Slovenia.

Ukraine).[134] We must interpret it as in line with the previously examined international legislation, and therefore employ not only the same definition, but also the same corollary, it does not forbid distinct treatment if the required conditions are met, thus allowing for affirmative action measures.

There exist more specific anti-discrimination measures in Croatia, Romania, Slovakia, Slovenia and Ukraine. In particular the Anti-Discrimination Acts in the different countries should be highlighted. These kind of legislative texts, enacted in compliance with the EU and/or CoE standards, define discrimination and its types, establish protection measures and remedies, as well as, in some of the cases, bodies specifically empowered to fight discrimination and denounce violations of its prohibition. These type of norms exist in Croatia,[135] Romania,[136] Slovakia,[137] Slovenia[138] transposing the relevant EU Directives. A law of this type has also been recently adopted in Ukraine.[139]

The application of these laws has been modelled by the interpretation given by the competent bodies. In Romania its scope was limited by the Constitutional Court in 2009, with regards to legislative acts, by declaring a provision of the law unconstitutional.[140] In Slovakia the provision on affirmative action for people of certain racial and ethnic origin – which have a notable interest for this thesis, given its scope– have been criticised and in October 2005 the Constitutional Court declared it unconstitutional.[141] Moreover, other laws also include measures aimed at eliminating discrimination, *inter alia* the education laws and criminal codes of some of these countries.

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[134] Art. 24 of the Constitution of Ukraine.
[135] Law on the suppression of discrimination, text no. 2728, 9 May 2008.
[136] Law No.48/2002, concerning the adoption of the Government Ordinance 137/2000 regarding the Prevention and the Punishment of All Forms of Discrimination, 31 January 2002.
[137] Act No. 365/2004 on Equal Treatment in Certain Areas and Protection against Discrimination, 20 May 2004.
[138] Principle of Equal Treatment Act, No. 4600, 27 September 2007.
[139] Law on the Bases of Prevention and Fight Against Discrimination, Law 5207-17, 6 September 2012.
[140] European Network of Legal Experts in the Non-Discrimination Field, *Main legislation: Romania*, available at http://non-discrimination.net/content/main-legislation-7, last accessed 10 July 2013.
[141] European Network of Legal Experts in the Non-Discrimination Field, *European Anti-discrimination Law Review, No. 6/7, 1 October 2008*, available http://www.migpolgroup.com/public/docs/145.EuropeanAnti-discLawReview_6_7_en_11.08.pdf, last accessed 10 July 2013, p. 116.

In general we can state that there are legislative measures aimed at the prohibition of discrimination in all the relevant States. However, as it will be seen in following chapters, practice is not always concurrent with what is established in the laws.

3.2. Measures for minority protection

The specific measures designed to protect and promote the separate identity of the minority groups constitute the second pillar of an adequate minority protection system.[142] Therefore, in this section I will analyse the international and national legislation introducing such type of mechanisms. Once again, commonalities and interrelations exist between different provisions, which will be exposed in the most concise and clear manner.

3.2.1. International legislation

Although it was long assumed that the management of ethnic minorities by states was a sovereign power, the truth is that already since the late 19th and early 20th century the international community has considered the minority question to be relevant.[143] This was mostly due to the conflicts caused by the struggles of minorities, which also contributed to the outbreak of both World Wars. The evolution of the systems of protection has resulted in the current one, which, although layered, has some instruments of international protection, while still leaving much up to each state, as will be manifested in the different systems which can be observed in the countries within the scope of this thesis. What is relevant is that states are the main responsible for minorities in their territory, even if a kin state exists, as will be seen in Chapter 4 when looking at the report of the Venice Commission.

3.2.1.1. United Nations

There are two paramount texts with regards to minority protection in the frame of the United Nations. One is the ICCPR, and in particular its article 27, which extent has been the subject of scholarly discussion and interpretation by the HRC, and the Declaration on Minorities. Both will be briefly presented, with a focus on the analysis given by the HRC to article 27 of the ICCPR.

[142] Kymlicka, Will, *Multicultural Odysseys: Navigating the New International Politics of Diversity*, Oxford, Oxford University Press, 2007, p. 28.
[143] Henrard, 2000, p. 8.

Article 27 ICCPR establishes that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". The most comprehensive interpretation of the article has been provided by the HRC in its already mentioned General Comment no. 23.[144] In this interpretation a lot of aspects of the extension of the article are clarified, drawing on previous interpretations made by the HRC in different Communications.

In the first place, the right is applicable to everybody, and not restricted to the citizens of the State party.[145] Moreover, the existence of a minority is of a factual nature, not dependant on the declaration by the affected state,[146] as had been argued by France. [147] The Covenant also obliges the States parties to protect the right of people belonging to minorities against the violation of these rights with positive measures.[148] Lastly, the ICCPR for affirmative action measures.[149] Summarising, we can state that article 27 sets the foundations for the protection of minority rights in the UN system, destined to guarantee the preservation of a minority's culture, religion and language; in sum, to enjoy and preserve minority identity.

A more elaborate document related to minority rights in the UN system is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly on 18 November 1992. It also introduces duties of a positive character towards the States for the protection and promotion of these rights. For this purpose the principal provision is article 4 of the Declaration, which lists diverse obligations in regards to different fields, such as culture, education, language or human rights. It then lists a plethora of rights to be enjoyed by minority populations. It is a Declaration, hence not binding upon States safe for

[144] CCPR/C/21/Rev.1/Add.5, 4 August 1994.
[145] Ibid. Para 5.1.
[146] Ibid. Para 5.2.
[147] For instance, in the T.K v. France and the M.K. v. France cases. The HRC interpreted this declaration as a reservation (Pentassuglia, 2002, p. 98).
[148] CCPR/C/21/Rev.1/Add.5, para. 6.1.
[149] Ibid. para 6.2.

international custom. For this reason it will not be researched deeper in this thesis, focusing on more relevant texts with a larger effect.

3.2.1.2. Council of Europe

As it happened with non-discrimination, the specific measures introduced by the Council of Europe with regards to minorities are contained in the ECHR and the FCNM. In this regard, the latter is much more relevant, recognising substantive individual rights to persons belonging to minorities, which may be exercised also "in community with others". This does not equate to collective rights of minority populations. The award of these is still up to each state as a sovereign competence.[150] In this aspect I will present some of the most relevant ones, and the interpretation debates which have arisen.

Article 3 states the individual and communal exercise of rights, as well as the principle of freedom of choice. This, however, must be linked to the existence of objective criteria.[151] Article 5.1 imposes on the parties "the promotion of the conditions to maintain and develop the minority culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage". However, as Thornberry notes, there is a difference with the more open expression "right to identity".[152] The prohibition of forced assimilation of article 5.2 leaves an open door to integration measures, even making the latter more significant,[153] which has been often used as the backdoor to introduce forced assimilation. The FCNM then goes on listing specific rights. The author considers article 15 the most significant for the scope of this thesis. According to this provision, an obligation is imposed on States parties for the creation of the necessary conditions for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. This goes along the lines of article 2 of the aforementioned UN Declaration on Minorities.[154] However, the explanatory memorandum introduces a range

[150] Venice Commission, *Opinion on the new Constitution of Hungary*, CDL-AD (2011) 016, 20 June 2011, para. 44.
[151] Pentassuglia, 2002, p. 133.
[152] Thornberry, Patrick, 'Minority rights', pp. 143 – 206 in *Collected Courses of the Academuy of European Law*, III-2, 1992, cited in Pentassuglia, 2002, p. 133.
[153] Pentassuglia, 2002, p. 134.
[154] Ibid., p. 135.

of possible modalities to put it into practice.[155] This is very important as it will be presented later, given that in different countries minority self-governments have been introduced, following the example set by Hungary. It complements the right to freedom of assembly for minorities enshrined in article 7 FCNM, and which has been confirmed by the ECtHR in the Stankov case.[156]

Hence, it can be clearly stated that the protection of minorities is comprehensive in the Council of Europe level. This not only refers to the prohibition of discrimination, analysed in the previous section, but also to the recognition of substantive rights, as has been manifested here. This is reinforced by the protection given by the ECtHR, with the power to enforce decisions regarding the ECHR. Overall, the standards set by the CoE can be considered as high human rights standards, which can be taken as a reference to answer the thesis question.

3.2.1.3. European Union

The standards on measures for minority protection set by the European Union will be now briefly addressed. The reason for the short space dedicated to them is that most are confined to non-discrimination, which has been presented in the previous section. In this particular, only one provision stands out as substantive, and this without a detailed elaboration. It is article 22 of the Charter of Fundamental Rights of the EU. This article states that "[t]he Union shall respect cultural, religious and linguistic diversity". Therefore it can be interpreted as an obligation on states to protect minority identity to preserve and respect this diversity. However, it has been considered a principle, not constituting a free standing right, but rather only cognisable in relation to acts of the Union and of Member States implementing Union Law, according to article 52(5). [157]

The more substantive provision on specific minority protection measures, is the Copenhagen Criteria, which establishes the conditions which countries that wish to join the Union must meet. Among these, the Council stated that "[m]embership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the

[155] Ibid.
[156] ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2 October 2001.
[157] Dashwood et al., 2011, p. 371.

rule of law, human rights and respect for and protection of minorities […]". [158] This means that in order to become part of the Union minorities are not a minor condition, but a mandatory one, which is relevant to access the EU. However, it is also not elaborated, and therefore its application is very much left open to the States and Union discretion. Therefore, for the author the CoE should be taken as a reference, given its much more elaborate nature and the enforcement protection given by the ECtHR.

3.2.2. National legislation

The national framework of the relevant countries will be now the focus of the chapter. The first country under examination will be Hungary, as previously described, for being the country around which the research revolves, and because it elaborated a system for minority protection which, although outside the scope of this research, intended to serve as an example for the surrounding countries where Hungarian minorities were present. The Hungarian scheme will be presented in brief, and then the protection mechanisms of the other countries will be introduced. As it has been previously pointed out, commonalities will be addressed in conjunction, in order to have a clearer and more concise presentation, as well as to enable the observation of influences and trends in the region.

3.2.2.1.Hungary

As we can understand from the Hungarian history presented in the previous chapter, the issue of minorities remains a very sensitive political topic in the country. Hence, regulating minority rights was of great importance after the fall of the Communist regime.[159] Thus, in Act XXXI which modified the 1949 Constitution "to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy", as it reads in the Preamble, important provisions with regards to minorities were included, which outlined the basic principles of minority policy in Hungary,[160] included in article 68:

[158] Conclusions of the Presidency of the European Council in Copenhagen, 21 – 22 June 1993, DOC/93/3, available at http://europa.eu/rapid/press-release_DOC-93-3_en.htm, par. 7.A.3, last accessed 8 May 2013.
[159] Vizi, Balázs, 'Hungary, a model with lasting problems', pp. 119 – 134 in Bechel, Bernd (ed.), *Minority Righs in Central and Eastern Europe*, Routledge, 2009.
[160] Ibid.

(1) "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.

(4) National and ethnic minorities shall have the right to form local and national bodies for self-government.

(5) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the rights of national and ethnic minorities."

Along with this provision, the Constitution created a Parliamentary Ombudsman for the Rights of National and Ethnic Minorities, "responsible for investigating or initiating the investigation of cases involving the infringement of the rights of national or ethnic minorities which come to his attention and initiating general or specific measures for their remedy".[161] This position that has subsequently been abolished following the enactment of the new Fundamental Law in 2012.

Accordingly, the Minority Law[162] was adopted on 7 July 1993, and built a system which intended to be a "good example" for other countries of the region, as was emphasised by all political sides in the parliamentary debate on the bill, due to the concern for the situation of Hungarian minorities in neighbouring States,[163] and is generally regarded as such, despite its deficiencies.[164] The National Assembly declares in the Preamble and article 3 of the Law that "the right to national and ethnic identity as

[161] Act XX of 1949: The Constitution of the Republic of Hungary, amended by act XXXI of 1989, available at http://www.parlament.hu/angol/act_xx_of_1949.pdf, art. 32/B/2, last accessed 9 May 2013.
[162] Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, available at http://www.nek.gov.hu/data/files/128823812.pdf, last accessed 9 May 2013.
[163] Vizi, 2009.
[164] Minority Rights Group International, World Directory of Minorities and Indigenous Peoples: Hungary Overview, available at http://www.minorityrights.org/?lid=5804, last accessed 9 May 2013.

a universal human right",[165] and consequentially recognises numerous individual and collective rights for people belonging to Hungary's thirteen 'historical minorities',[166] mostly of a cultural nature, different means to protect them, as well as, in article 4, prohibiting any policy that

> "aims at, or leads to, the assimilation of a minority into the majority nation, its exclusion of the majority nation or its segregation; aims to alter the national or ethnic conditions of territories inhabited by minorities; persecutes a national or ethnic minority or any of its members because of their national status, makes their living conditions more difficult, or prevents them from exercising their rights or aims at the forced evacuation or resettlement of a national or ethnic minority".

This can be easily interpreted as an attempt not only to avoid this type of measures against Hungarian minorities elsewhere – with a clear memory of the Beneš Decrees –, but also as a way to impede a new policy of assimilation such as the *Magyarisation* explained in Chapter 1. This is relevant as it created some of the climate which lead to the posterior minority problems in the region.

Most importantly, the Act also introduces a system of a person-based, non-territorial cultural autonomy[167] through the establishment of minority self-governments on the local, county[168] and national level. These bodies have the right to make decisions in their own spheres of authority within the areas of local education, language use, printed and electronic media, and the nurturing of their traditions and culture.[169] Due to different problems with the law, amongst which the most notable was the use of the

[165] Act LXXVII of 1993 on the Rights of National and Ethnic Minorities.
[166] According to Article 61.1 they are "Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovak, Slovenian and Ukrainian". Others have the possibility to be added, but must prove the requirements of article 2, i.e., "having been living on the territory of the Republic of Hungary for at least one century, representing a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together".
[167] Vizi, 2009.
[168] Following the amendment of the Act by the Law No. 114/2005.
[169] National Democratic Institute for International Affairs, *The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation*, available at http://www.osce.org/odihr/25974, last accessed 9 May 2013, p. 10.

self-governments by people not belonging to the minority, the Act was amended by Law 114/2005, introducing new requirements, such as the registry for voting.

It is important to note that although under art. 20.1 of the law, "minorities have the right – as determined in a separate Act – to be represented in the National Assembly", this separate law which should regulate it has never been enacted, effectively denying this right, even though at least twice – in 1992 and 1994 – the Constitutional Court declared .this to be unconstitutional and several proposals having been put forward unsuccessfully.[170]

Three main texts have deliberately been omitted in the brief analysis at this point, since they constitute the focal point of the research, and will be therefore addressed in full in the next two Chapters. Firstly, the new Constitution, or Fundamental Law. In second place, the 2001 Act LXII on Hungarians Living in Neighbouring Countries. Thirdly, the Nationality Act of 1993, which underwent a major amendment in 2010, which introduced the system of "preferential naturalisation".

3.2.2.2.Other countries

The systems of the surrounding countries relevant for the research will now be the focus of attention, in particular on those texts and questions which may affect Hungarian minority populations, as the spotlight of this thesis. Two main groups of rights can be identified which will be presented conjunctly. The first group is that of political rights, most notably in the form of allocated seats in the national Parliament for members of the minorities. The second one is cultural rights, in particular related to the use of their own language – in this case Hungarian – in relations with the authorities and in education. Especially this second one adopts different manifestations in the different states. Due to space constraints and the broad spectre of norms to cover, the presentation will be brief, bearing in mind that the relevance of these norms is to serve as a standard setting for the human rights situation of Hungarian minorities in the relevant states.

With regards to political rights, most of the Constitutions recognise some kind of role for minorities in the participation in public affairs, in particular with regards to the issues intimately related to them. The only exception, in the view of the author, is found in Slovakia which, although it recognises the "right to participate in the solution of

[170] Vizi, 2009.

affairs concerning national minorities and ethnic groups" [171] it does not mention any particular manner, least a political one, to enforce this right.

The most usual way in which the political rights of minorities is brought forward in the legislation is by the allocation of reserved seats in the Parliament for representatives of the minorities. This is the case in Croatia,[172] Romania,[173] Serbia[174] and Slovenia.[175] In Ukraine, on its part, the role of minorities in political decision making is handled through a Council of Representatives of National Minority Public Organisations created in 2000.[176] It is important to make some precisions to these provisions. Thus, in Serbia it is applied "in those autonomous provinces and local self-government units with the population of mixed nationalities", whereas in Romania it is only previewed for "national minorities which fail to obtain the number of votes for representation in Parliament", which exclude the Hungarians, due to the results of the DAHR presented in the previous chapter. In any case, in the opinion of the author, and in line with what was presented in chapter 2, it can be said that the political rights of the Hungarian minorities are well protected in the legal framework of most of the said states, with the possible exception of Slovakia. This does not preclude practice from differing, but it establishes a high standard.

With regards to cultural rights, all of the concerned national legal orders protect minority culture. The cases of Croatia Serbia and Slovenia are particularly significant, as they have introduced a system of minority self-governments with competences on this field very similar to that of Hungary which has been presented above. In the case of Romania, Slovakia and Ukraine the use of the mother tongue – in this case Hungarian – is **in theory** allowed in relations with the authorities, and it should be also an educational language, according to the constitutional provisions. However, practice has differed from the legal provisions in different cases, as has been reported, for example,

[171] Constitution of the Slovak Republic, article 34.2.3.
[172] Constitution of the Republic of Croatia, article 15.
[173] Constitution of Romania, article 59.
[174] Constitution of the Republic of Serbia, article 180.
[175] Constitution of the Republic of Slovenia, article 64.
[176] Decree of the President of Ukraine on the Council of Representatives of National Minority Public Organisations of Ukraine, 600/2000, available at http://www.minelres.lv/NationalLegislation/Ukraine/Ukraine_DecreeMinorityCouncil_English.htm, 19 April 2000, last accessed 9 April 2013.

in Romania.[177] A more significant, notable and controversial case is the restrictive Language Law enacted in Slovakia in 2009, which limited the use of languages other than Slovak causing outrage among the Hungarian community,[178] which openly contradicts article 34.2 of the Constitution of the Slovak Republic.

Overall we can assess that the level of protection of cultural and educational rights of minorities, and of the Hungarian minority in particular, in the relevant countries is varied. While in Croatia, Serbia or Slovenia the example of minority self-governments has been picked up, the situation in Romania and especially in Slovakia is not as positive. This leaves room for kin state activism destined to the preservation of the minority culture and the ties to the kin state. This is something which will be examined in the next two chapters. Nevertheless, it must not be forgotten, as pointed out earlier in this chapter, that the main burden of minority protection still resides in the home states, therefore they should make the efforts to improve the situation. This could be done in cooperation with the kin state, thus fostering good relations between them, and contributing to more stability and progress.

[177] Minorities at Risk Project, University of Maryland, *Assessment for Magyars (Hungarians) in Romania*, available at http://www.cidcm.umd.edu/mar/assessment.asp?groupId=36002, last accessed on 9 May 2013.
[178] BBC, *Protests over Slovak Language Law*, 2 September 2009, available at http://news.bbc.co.uk/2/hi/europe/8232878.stm, last accessed 29 June 2013.

4. The rationale behind the measures recently adopted by Hungary with regards to the human rights of external kin minorities.

I will dedicate this chapter to the examination of the theoretical reasoning behind the recently adopted measures in Hungary with regards to the human rights of external kin minorities. I will present the most relevant explanations of this type of phenomena in the academic literature, and then focus on the particularities of the case under review. I will not look at the legal implications or international political implications, as this will be dealt with in the following chapter.

In the first place I will start by presenting the legal measures which will be the centre of attention of the current and the next chapter, and of the thesis as a whole. I will only introduce them briefly, as they will be developed along the different perspective examinations in the respective part of the paper. It is therefore a preliminary stage, but one without which the thesis would be incomplete, as it introduces the object under inspection, even if just as an outline.

Then I will proceed by taking a look at the literature on identity, minorities and the concept of nation. This is the keystone to understand the reasons which pushed the Hungarian legislators to adopt these decisions. The interest here lies not only in the reasons as seen from an academic point of view *per se*, but also in the parallelism or opposition to this discourse by the home States which are affected by the decisions adopted in Hungary according to this narrative. These aspects will be presented in the following chapter, and then the discrepancies and similarities will be then understood in their full significance.

I will end the chapter by trying to summarise or outline the theoretical foundations of the Hungarian nation, the concept and conception of it by the kin State, and the potential responses that could be used to answer the issue of minorities in this context. I will hypothesise which would be the one that would better achieve its purpose, while respecting and enhancing the human rights situation.

This last part will serve as a link and introduction to the next chapter, in which the reactions of the external countries and the consequences their interaction with the measures have for the population will be tackled. In this next chapter I will answer the question posed at the beginning of this thesis as its central point, according to the

research results, and within the possibilities that such a broad and controversial field allows, therefore anticipating the conclusions of the paper as a whole, which will be summarised in the last chapter.

4.1. Recent measures adopted by Hungary with respect to its external kin minorities

The central question of this thesis is the scrutiny of the recent measures Hungary has adopted with respect to its external kin minorities and how do they affect the human rights of these minorities and the people belonging to them. However, it has not been yet clarified what these "recent measures" are. I will now briefly introduce, as presented before, these legal acts, in order to then proceed to the review of the relevant human rights aspects.

The term "recent" is not only relative, but also personal, since the perception of what is recent or not will very much depend on the perception of each person. It also depends on the historic period we are taking as a reference. The concept I will use here is rather concrete, as it will be marked with respect to one of the relevant legal instruments, in particular, the Act LVII of 2001 on Hungarians Living in Neighbouring Countries[179] (also commonly called "Status Law" or "Benefit Law").[180]

Therefore the first text to which I must make a reference is the aforesaid "Status Law". It was adopted by the Hungarian Parliament on 19 June 2001. This law is very relevant for this research, not only because of the controversy surrounding it, but mostly because it contains many provisions which relate to the concept of nation endorsed by the Hungarian state, and in particular by the party which was in power at the time – and significantly, also in this moment, 2013 – FIDESZ.[181]

The law has been amended a number of times, most notably already in 2003, partly as a response to the criticism which it received from the surrounding countries,

[179] Act LVII of 2001 on Hungarian Living in Neighbouring Countries, 19 January 2001, available at http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=NATLEGBOD&type=&coi=HUN&rid=&docid=3f460e764&skip=0, last accessed 11 July 2013.

[180] Ieda, Osamu, 'Post-communist Nation Building and the Status Law Syndrome in Hungary', pp. 3 – 57 in Halász, Iván, Ieda, Osamu, Kántor, Zoltán, Majtényi, Balázs and Vizi, Balázs (eds.), *The Hungarian Status Law: Nation Building and/or Minority Protection*, Slavic Research Center, Sapporo, Hokkaido University, 2004, p. 11.

[181] Ieda, 2004, p. 13.

which saw this unilateral act as a threat to their national integrity and, to a certain extent, of irredentism.[182] Another notable amended was introduced in 2010 to avoid people with the Hungarian card who acquired Hungarian nationality under the new amendment to the Nationality Law – which will be also presented – losing the benefits to which they were entitled.[183] All these amendments will not be studied in detail, although they may be touched upon to contribute to the dissection of the original intention and purposes and the Act, and the consequences of the negative reception it suffered from the affected countries and their adverse political reactions, which led the Hungarian legislature to introduce changes in the bill after it had been approved, i.e. not in its parliamentary discussion, but rather by means of another Act time after it had already entered into force.

The law gives preferential treatment to people of Hungarian origin in Croatia, Romania, Slovakia, Slovenia, Serbia and Montenegro[184] and Ukraine in the field of social security, health, transportation and education benefits, as well as giving the right to work in Hungary for three months a year.[185] In order to obtain these benefits the applicants need to obtain a certificate on their Hungarian origin from ethnic Hungarian organisations in the relevant country.[186]

The second law I will deal with is the 1993 Act on the Hungarian Citizenship (also called 'Nationality Act').[187] This is the legal text which governs the acquisition and loss of Hungarian citizenship. Although it is chronologically precedent to the Status Law, I will focus on one of the recent amendments to the text which was introduced by Act XLIV of 2010 on 26 May 2010 and entered into force on 1 January 2011, abolishing the residency requirement for the "preferential naturalisation", as well as Act

[182] Waterbury, Myra, 'From Irredentism to Diaspora Politics: States and Transborder Ethnic Groups in Eastern Europe', Working Paper no. 6 in *Project on Global Migration and Transnational Politics*, July 2009.
[183] Magyar Távirati Iroda, *Status Law benefits to ethnic Hungarians remain even if obtaining citizenship*, available at http://www.politics.hu/20110110/status-law-benefits-to-ethnic-hungarians-remain-even-if-obtaining-citizenship/, last accessed 10 July 2013.
[184] Which, at the time of the approval of the law, was still one country.
[185] Meijknecht, Anna K., *Minority Protection: Standards and Reality*, The Hague, T·M·C·Asser Press, 2004, p. 131.
[186] Ibid.
[187] Act LV of 1993 on Hungarian Citizenship, available at http://www.mfa.gov.hu/NR/rdonlyres/93F5CE78-6F49-4FBB-9360-D99B09BBB6D0/0/ActLVof1993onHungarianCitizenship.pdf, last accessed 2 June 2013.

CCVII of 2012, which simplified the so-called "preferential naturalisation" procedure in particular. For this I have believed it is more appropriate not to consider the Nationality Act as the reference point for the consideration on whether a measure is recent or not, instead preferring the Status Law criterion.

The most significant innovation the 2010 amendment introduced was the option of preferential naturalisation for non-Hungarian citizens whose ascendant was a Hungarian citizen or *whose origin from Hungary is probable, and whose Hungarian language knowledge is proved*, without the requirement of residence. This is principally aimed at the people belonging to a Hungarian minority in the surrounding countries, who would be able to obtain Hungarian citizenship, and not just the benefits provided for in the Status Law. It could also have some implications regarding the right to vote of these minorities, as the democratic principle of the State could be discussed, according to some scholars. Moreover, not every country permits dual nationality, introducing another legal constraint which directly influences the effects of the law upon the Hungarian minorities in other countries and the individuals belonging to them.

The third and final legal instrument which will be an object of the research is the new Fundamental Law of Hungary, which was adopted by the Parliament on 18 April 2011, signed by the President on 25 April and entered into force on 1 January 2012. This text includes a relevant provision with regards to external minorities in its article D, similar to those in the Constitutions of other countries promulgated following the end of the Cold War and the collapse of communism in Central and Eastern Europe.[188] Although the constitutional framework is developed by different laws, among which we can find the aforementioned Status Law and Nationality Act, the Fundamental Law retains its relevance both formally – as the hierarchically superior norm, thus not susceptible to be violated by those of inferior rank – and substantially. This is manifested in the preamble of the Status Law, which clearly makes a reference to the text of the former Constitution – similar to the one in the new Fundamental Law, as will be examined in the posterior chapter – as the source of inspiration and the mandate to be promulgated. Moreover, it instils a "sense of responsibility" in the Hungarian State and

[188] *Report on the Preferential Treatment of National Minorities by their Kin-State*, CDL-INF (2001) 19, 22 October 2001, Historical Background.

in particular in its policy makers for the kin minorities beyond the borders, thus also constituting the "emotional" and theoretical foundation in which the type of measures under observation in this thesis.

Summarising, when speaking about the "recent measures adopted by Hungary with relation to its external kin minorities" in this paper I am referring to three legal instruments: Act LV of 1993 on the Hungarian Citizenship, in particular the 2010 and later Amendments (Act XLIV of 2010 and Act CCVII of 2012, respectively); the Act LVII of 2001 on Hungarians Living in Neighbouring Countries (Status Law) with its amendments; and the new Fundamental Law of Hungary, which entered into force in 2012.[189]

4.2. The theoretical foundations of the Hungarian kin minority legal constructions

While there are legal and political factors, both national and international, which influenced the adoption of the measures presented above, there are also theoretical foundations behind them. In this sense there are two which I deem utterly important: the concept of the nation and the identity paradigm that the Hungarian policy makers take as a reference, as they will directly affect the kin state legislation.

I will firstly present the Hungarian concept of nation which is dominant in the public discourse and policy. It is important to note that there are different conceptions of the nation, and that the one which has served as the basis for the enactment of the relevant laws is that of FIDESZ, the party in government under which all of these measures were adopted. Hence, I do not intend to present a concept common to every Hungarian, or an absolute one, rather the one that has been behind the adoption of the measures under analysis in this thesis. Therefore, in order to do so the different theoretical alternatives will be introduced, and then the one which better corresponds to the reality will be isolated.

Secondly, albeit intimately related with the previous section, I will introduce the identity paradigm, which defines who is Hungarian, given that this will determine who is a part of the Hungarian nation, hence at whom the measures are aimed. For this

[189] Although the Fundamental Law has been amended as well, with its Fourth Amendment proving especially controversial, the innovations these modifications introduced were not relevant for the topic of this thesis, and as such fall out of its scope.

purpose I will use the instruments under examination, from which the criteria can be extracted, as it will be presented.

4.2.1. The Hungarian nation

As I have stated previously, I will now explain the Hungarian nation concept, which is the ideological foundation behind the adopted measures with regards to the Hungarian kin-minorities. I will start by presenting the different conceptions of nation according to different authors. They will be complimentary, in order to elaborate a structure which better reflects the complexities of the Hungarian case. I will then situate Hungary in the categories previously defined, to then proceed to the next section, in which the question of who is a Hungarian will be considered.

As the Parliamentary Assembly of the Council of Europe has stated, there are major differences in the way the word "nation" is used in the different parts of Europe and in the different European languages. In many countries and languages, the word "nation" is synonymous with "state" or the totality of a state's citizens.[190] This statement is just a reflection of a reality which has been an object of academic discussions for much of the past 200 years. Traditionally two different types of nation have been identified in the literature: the so-called "political nation" and "cultural nation". The first type is usually presented as a result of the free association of citizens, a rational and voluntary political construction; oppositely, the second is displayed as the concretisation of a historical community with historical ties – language, culture, history –, the expression of an identity feeling, the reflection of a natural order.[191] They have also been identified as the French and German ideas of nationhood, respectively. Historically nationalism in the West has been identified with the former, while in Central and Eastern Europe it was linked to past myths and dreams of an ideal fatherland in the future.[192] Even if this distinction and association is not always clear cut, I consider that traits of the latter can be identified in the contemporary Hungarian

[190] Council of Europe Parliamentary Assembly, *The concept of "nation" report*, Doc. 10762, 13 December 2005, para. 10, available at http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=11332&Language=EN, last accessed 28 June 2013.
[191] Dieckhoff, Alain, 'Beyond Conventional Wisdom: Cultural and Political Nationalism Revisited', pp. 62 – 77 in Dieckhoff, Alain and Jaffrelot, Christophe (eds.), *Revisiting Nationalism*: *Theories and Processes*, New York, NY, Palgrave MacMillan, 2005, p. 62.
[192] Kohn, Hans, *The Idea of Nationalism*, New York, NY, MacMillan, 1960, p. 330.

approach to the concept of nation, and the one that is present behind the recent measures in relation to kin minorities, as I will develop later on.

I coincide with Brubaker in thinking "in terms of practical categories".[193] Therefore, as Kántor underlines "we should not think of nations as existing and definable groups, rather of politics and institutionalisations that rely on one or the other conception of the nation."[194] This has also been embraced by the Council of Europe report on the concept of "nation", which concludes that it is not important to formulate a new concept, "but the acceptance of a new way of thinking, of rethinking the nation, and specifically the transversality of the nation across boundaries – a nation often, but not always, deeply rooted in history".[195] For this reason I will now concentrate on the concept of nation used by Hungary to shape its legal framework, and in particular in the paramount examples which have previously been set out.

Majtényi questions whether the concept of nation can be institutionalised in the legal order of democratic states; and, if so, with which interpretations.[196] I consider this fundamental in understanding the movements – in the shape of legislative measures – undertaken by the Hungarian State with regards to its external kin-minorities. By now it should seem evident that the intention behind the aforementioned measures is the consecration of a particular idea and conception of the nation, enshrining the 'cultural nation' on the side of the internationally relevant 'political nation', embodied in the nation-state. It must be bore in mind that the latter is still the dominant actor in the international sphere, and that its validity is almost unchallenged, even by integration processes such as the EU or international organisations like the UN.

In the Hungarian case the Council of Europe report on "The Concept of 'Nation'" stated that the concepts of "nation" and "people" coexisted in the – previous – Constitution, the former as an entity that gives identity and the second as a sovereign

[193] Brubaker, Rogers, 'Ethnicity Without Groups' in *Archieves européennes de sociologie*, Vol. 43, No. 2, 2002, p. 167, cited in Kántor, Zoltan, 'The Concept of Nation in the Central and East European "Status Laws"', pp. 37 – 51 in Ieda, Osamu (ed.), *Beyond Sovereignty: From Status Law to Transnational Citizenship?*, Slavic Research Center, Sapporo, Hokkaido University, 2006, p. 44 – 45.
[194] Kántor, 2006, pp. 44 – 45.
[195] Doc. 10762, para 103.
[196] Majtényi, Balázs, 'Special Minority Rights and Interpretations of the Nation in the Hungarian Constitution', pp. 4 – 20 in *Regio*, Vol. 8, 2005, p. 5.

entity, even if the word "nation" only appeared once in the former Constitution.[197] This can only be explained by the Hungarian ethnic conception of the "nation", which identifies the "Hungarian nation" with those of Magyar ethnic origin, while ascribing sovereignty to those living within the borders of Hungary, including those who are not considered part of the Hungarian nation, and excluding those who are, but live in other countries.

Accordingly, the Hungarian Constitution, Status Law and Nationality Law, aim at establishing a new narrative for the Hungarian nation in its cultural dimension as a modern community[198] after its dismemberment as a political community with the Treaty of Trianon,[199] and reaffirming Hungary as a state which mainly comprises the Hungarian ethnocultural community.[200] Using the ethnic affinity link, the legislation intends to make the borders more diffuse or permeable, using Roter's terminology,[201] and present Hungary as the guardian of all the Magyars, within and outside of its territory. This poses the risk, as the same author rightly points out, of Hungary becoming the Hungarian minority's "self-appointed champion, depriving the minority of its status as an independent player and condemning it to the sidelines".[202]

These intentions are clearly manifested in the National Avowal of the Fundamental Law, which clearly states that those enacting it are "the members of the Hungarian nation", thus including those residing outside the borders of Hungary, and excluding the residents in Hungary who are not Magyar. Along the same lines, article A, the first of all the Fundamental Law, determines that "The name of OUR COUNTRY is Hungary". The use of the possessive "our" in capital letters being very significant, from the author's perspective, as it reinforces the view of Hungary as a polity based on ethnic grounds. I consider both of these expressions to utilise the "ethnic

[197] Doc. 10762, 2005, para. 45.
[198] Schöpflin, George, 'Citizenship and Ethnicity: The Hungarian Status Law', pp. 87 – 20 in *Regio*, Vol. 8, 2005, p. 5.
[199] Vid. supra.
[200] Kántor, Zoltan, 'Status Law and "Nation Policy"', pp. 105 – 119 in Halász et al., 2004, p. 112.
[201] Roter, Petra, 'Minorities, states and international security: The contribution of the Bolzano/Bozen Recommendations to managing the "minority problem"', pp. 45 – 61 in Palermo, Franceso and Sabanadze, Natalie, *National Minorities in Inter-State Relations*, Martinus Nijhoff, 2011, p. 52.
[202] Ministry of Foreign affairs of the Netherlands, Advisory Committee on Human Rights and Foreign Policy, *National minorities with particular reference to Central and Eastern Europe*, 1 March 1997, cited in Roter, 2011, p. 53.

nation" concept. In the first case, because the Avowal continues by mentioning "[t]he nationalities living with us" as "part of the Hungarian political community and (…) constituent parts of the State", a mention which would not be needed should they be considered part of the "Hungarian nation" who makes the avowal. With regards to article A, the writing of the Constitution is made by the "Hungarian nation" which heads the Avowal, therefore the possessive can only refer to that nation which, as has been previously pointed out, is the ethnic nation. This is reinforced by the very significant mention of "one single Hungarian nation that belongs together" in article D of the Fundamental Law. This is also very relevant for the topic of this thesis given that it charges Hungary with the "responsibility for the fate of Hungarians living beyond its borders".

This conception seems to confirm, in the eyes of the author, a line of thought which can be said to have been inaugurated by the first Prime Minister of Hungary after the collapse of socialism, Jozsef Antall, who heartedly stated he was working "in spirit" for "fifteen million Hungarians", instead of the country's ten million citizens.[203] This line, which has been continued by the subsequent political leaders of the country, clearly demonstrates the ethnocultural conception of the nation. Although the statement did not expressly include irredentist ambitions, its ambiguous formulation allowed for different political sensitivities to interpret it in their own manner, leaving also room for such an interpretation which was non conformant with the borders of the state. A fear of this was manifested by the governments of some of the surrounding countries, as it will be presented later on.

Similarly, and not surprisingly,[204] the first of the original objectives of the Status Law – before its amendment in 2003 – was "to ensure that Hungarians living in neighbouring countries form part of the unitary Hungarian nation".[205] The reason for the amendment was the concern of the affected countries that the meaning of this

[203] Ayres, R. William and Saideman, Stephen, *For Kin or Country: Xenophobia, Nationalism and War*, New York, NY, Columbia University Press, 2008, p. 111.
[204] Vid. Kántor, 2006, p.45.
[205] Ieda, Osamu, 'Ideological Background of the Amendment Status Law Controversy in Hungary', pp. 185 – 213 in 107 in Ieda, 2006, p. 196

expression could be interpreted as disconformity with the state borders.[206] The basis of the law is to give benefits to people "declaring themselves to be of Hungarian ethnic origin who are not Hungarian citizens and who reside in the Republic of Croatia, Romania, Serbia and Montenegro, the Republic of Slovenia, the Slovak Republic or Ukraine".[207] This clearly demonstrates the ethnic paradigm of the nation, basing the aid on the ethnic origin of the potential beneficiaries, precisely the criterion which gave rise to questions over the discriminatory character of the law, which will be examined in the following Chapter.

Logically, the modifications to the nationality law which allowed for a preferential naturalization procedure for non-Hungarian citizens whose ascendant was a Hungarian citizen or *whose origin from Hungary is probable, and whose Hungarian language knowledge is proved* follows the same paradigm. This relates very much to the question over the definition of who is Hungarian, a fundamental theoretical question to answer the one about the definition of the nation, and which will be the focal point of the next part of this Chapter.

4.2.2. Who is Hungarian?

The presented conception of the Hungarian nation is very intimately related to the question of Hungarian identity, that is, who is Hungarian? In this section I will confront this question, which has been widely debated in the literature.[208] With this I hope to come up with a delimitation of the Hungarian nation, a matter directly influenced and shaped by this question,[209] thus also defining the scope of Hungary's recent laws regarding the kin minorities in neighbouring countries, and, with it, the scope of this thesis, by identifying those groups whose human rights are the matter of study.

In the first place, if a clear definition of who is Hungarian must be found, it must be isolated who is competent to establish the criteria for this identification. As Zoltán Kántor points out, the "state is the sole agent which has the authority to institutionalise a

[206] Nagy, Csongor István, 'The Moral of the Hungarian Status Law Saga', pp. 295 – 306 in *Acta Juridica Hungarica*, Vol. 48 No. 3, 2007, p. 301.
[207] Art. 1.1 (as amended in 2003).
[208] Kántor, 2006, p. 46.
[209] Ibid.

definition of nation".[210] Therefore, as some authors, like Judit Tóth or Attila Varga, affirm that the state cannot define one person's belonging to the nation, since it cannot define what is the concept of the nation either.[211] However, lacking any clearer method, the author considers that in order to identify who is Hungarian we must look at the legislation enacted related to this matter, from which we can extract the criteria for membership in the ethnocultural nation for the purposes of this thesis.

The Fundamental Law and the nationality law neither offer a definition of the Hungarian nation – although they cite it – and the former does not give an idea of who is Hungarian. The Nationality Law only expresses this idea in broad terms, by granting persons "whose ascendant was a Hungarian citizen or who demonstrates the plausibility of his or her descent from Hungary and provides proof of his or her knowledge of the Hungarian language" access to the "preferential naturalisation" procedure.[212] This already gives an idea of inherited belonging to the nation, corresponding to an ethnic nationalistic concept, as presented in Chapter 2 of this thesis.[213] A more complete approach is provided by the Status Law, which establishes the requirements to become a holder of the "ethnic Hungarian card".[214] This card gives the possibility of being a beneficiary of the rights and different forms of aid provided for in the Act. Although 'as far as the practical implementation of the law is concerned, the Hungarian certificate certifies not the ethnicity, but the eligibility for the benefits and services',[215] following the recommendations from the Venice Commission Report, the criteria have a clear ethnic basis. Hence, they can be considered as an indirect definition of who is Hungarian, as different authors have done, such as Zoltán Kántor or Osamu Ieda.

The original law of 2001 introduced two apparently contradictory criteria. In article 1 it established that the law "shall apply to persons declaring themselves to be of Hungarian nationality who are not Hungarian citizens […]". However, article 20 determined that the issue of the "certificate of Hungarian nationality" was depending

[210] Kántor, 2004, p. 106.
[211] Ibid.
[212] Art. 4(3) of the Nationality Law.
[213] Vid. Supra.
[214] It is important to note that the 2003 amendment changed the name of the card from "certificate of Hungarian nationality to ethnic Hungarian card in its official English version, though keeping the name in the Hungarian version unchanged (*magyar igazolvány*). Ieda, 2006, p. 191.
[215] Ieda, 2006, p. 191.

upon a recommendation by the relevant authority.[216] Therefore self-identification was necessary but not sufficient to attest the belonging to the Hungarian nation. However, the question of which requisites were necessary to obtain the aforementioned recommendation was left unanswered by the law.

In order to fill this void, the Hungarian Standing Conference celebrated a meeting in October 2001 to reach a consensus among the different organisations, finally determining three criteria: self-declaration of Hungarian origin, mastering of the Hungarian language and membership of any of the registered Hungarian organisations and/or treated as Hungarian by any of the church registries and/or the country of citizenship.[217] The use of the conjunction and/or – *illetve* in Hungarian – was especially problematic, leaving room for arbitrary or inconsistent decisions.[218] These criteria were included in the law by the 2003 amendment, which also eliminated the grey areas by substituting *illetve* for "or" – Hungarian *vagy* –, therefore opening the possibility to obtain the benefits by a self-identification and proof of proficiency in the language.[219] This could significantly enlarge the people entitled to benefits, and, consequently, belonging to the Hungarian nation.

However, the definition presents some problems, most notably, the exclusion of Hungarians which lived in different parts of the world out of Eastern Europe, the contradiction between the objective requirements of the new article and the self-identification prescribed by article 1, and the extension of benefits to spouses and children of people belonging to Hungarian kin minorities even if they did not identify themselves as Hungarian.[220] As a consequence, the definition of the nation is inconsistent. Furthermore, it raises issues in relation to minorities living in Hungary, who are "constituent parts of the state", but not part of the nation. In particular, it is

[216] The issue of the "relevant authorities" recognised by the Law was also controversial, given the recognition to organisations representative of the Hungarian minorities in the relevant countries. This raised concerns about the possible breach of sovereignty by the Venice Commission, (CDL-INF (2001) 19, 22 October 2001, para. D.a.ii), this will be an object of analysis in the following Chapter.[216]
[217] Annex to the Final Statement of the Fourth Session of the Hungarian Standing Conference, 26 October 2001, pp. 537 – 538 in Ieda, 2004.
[218] Ieda, 2004, p. 22.
[219] Ieda, 2006, p. 193.
[220] Ieda, 2004, pp. 22 – 26.

relevant with regards to Jews and Roma, who could identify themselves as Hungarian and be able to receive the certificate, even if not seen as part of the "nation".

As a consequence, the definition of the Hungarian nation by the legal texts could be labelled as inconsistent.[221] In the next section I will outline in short the implications this has for the legislation enacted by Hungary, from an internal as well as from an external point of view. This will be complemented by the examination of concrete legal and political consequences in the following chapter.

4.3. Implications of the Hungarian "nation policy"

As it has been presented in this chapter, we can qualify the Hungarian conception of nation as an ethnocultural one. This implies the existence of the nation across state borders in Eastern Europe, encompassing an alleged 15 million people of Magyar ethnic origin, although the more accurate number according to the statistics presented in the second Chapter would be of around 11 million, taking into account the non-Magyar citizens in Hungary and the ethnic Magyars beyond the borders.[222] In the opinion of the author the larger alleged numbers than the actual ones corresponds very well to a nationalistic rhetoric in order to, in a certain manner, "increase" the importance or relevance of this particular nation. Although with nuances, the author considers it is an accepted position across the Hungarian political spectrum, as shown by the overwhelming parliamentary majority which approved the Status Law and the amendment to the Nationality Law, which will be presented in the upcoming chapter. For this reason, legislation has been enacted aimed at this community, in particular the three relevant instruments presented in this Chapter, and which will be further analysed in the next one.

This definition of nation has raised concerns in the surrounding countries, in particular regarding irredentist ambitions trying to overturn the loss of Hungarian territory as a consequence of the Trianon Treaty, as was pointed out by the explanatory memorandum of the report of the Council of Europe Parliamentary Assembly.[223]

[221] Ibid.
[222] Vid. Table 1.3.2.A. and footnote 50.
[223] Council of Europe Parliamentary Assembly, *Report on the Preferential treatment of national minorities by the kin-state: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries ("Magyars")*, Doc. 9744 rev., 13 May 2003, para. 46, available at

Furthermore, it has had legal and political implications – which the author would mostly label as "complications" – for Hungary, but also for the affected minorities. As a result, their human rights situation, both individual and collective, has not been improved, but actually suffered a potential setback, as it will be now presented.

http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=10094&Language=EN, last accessed 11 July 2013.

5. Political and legal approach to the recent measures adopted by Hungary and their impact on the human rights situation of the minorities.

In this chapter I will focus on the question which I intend to respond to in this thesis, whether the measures adopted in recent times in regards to citizenship and other political rights by Hungary result in an amelioration of the human rights situation of its kin minorities. I will do it from a legal and political perspective, taking into account the possible existing legal limitations, as well as the political reactions from within Hungary as well as from the surrounding countries, home to the minorities. In doing this I expect to be able to draw the conclusion of this thesis on the effect these measures have in the amelioration of the human rights situation of the Hungarian kin minorities and the individuals belonging to them. As explained in the previous chapter, the focus will be the recent legal modifications, in particular three, i.e. the new Fundamental Law – Constitution – of Hungary, the controversial 2001 "Status Law" and the amendments to the Act on the Hungarian Nationality.

I will start by briefly addressing the new Fundamental Law which entered into force in 2012, focusing on the provisions which relate to Hungarians living outside the borders of Hungary for the abovementioned reasons. Although a relatively new norm, and, as it will be observed, only slightly different in the reference to kin minorities to its predecessor, I believe its legal and political analysis will prove to be interesting. This is because the slight changes do, in my opinion, imply a change in the policies, not so much in the law. As practice is what will directly affect the human rights of the people in question – Hungarian kin minorities – I consider this behavioural and attitudinal change, already briefly addressed in the previous chapter, of the utmost relevance.

Afterwards I will proceed to the analysis of the 1993 Act on the Hungarian Nationality, and singularly on the recent amendments to it, and how – if – they contribute to improving the human rights situation of the Magyar minorities abroad. I have given it precedence over the Status Law mainly due to the fact that acquiring the nationality may award the recipients with political rights, and is not limited to the cultural or social rights the former was intended to grant.

The examination of the Status Law will logically be the third and last part of this chapter. A highly controversial Act it has been subject to criticism from the

neighbouring countries, monitoring by the Venice Commission and scholarly discussion. Although we could not properly qualify the rights it touches upon as political it is a key instrument in the Hungarian policy towards its kin minorities, and therefore it must not be overlooked in this thesis.

In order to assess the potential human rights safeguards these instruments could bring for the kin minorities, I will use the international texts which were presented in Chapter 2 and their interpretation by the relevant bodies as a reference not only because they are internationally recognised standards but also constitute binding obligations upon the States under consideration.

5.1. The Fundamental Law of Hungary

Article 6 of the former Hungarian Constitution – as revised in 1989 – provided that "[t]he Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary". This was not an unusual provision, and similar ones could be found in the Romanian,[224] Slovenian,[225] Macedonian,[226] Croatian,[227] Ukrainian,[228] Polish[229] or Slovak[230] constitutions. The new Fundamental Law of Hungary, which was adopted by the Parliament on 18 April 2011, signed by the President on 25 April and entered into force on 1 January 2012 includes a similar provision. However, what may seem as small changes are, from my point of view, of great significance.

[224] Article 7 of the Constitution of Romania: "The State shall support the strengthening of links with Romanians living abroad and shall act accordingly for the preservation, development and expression of their ethnic, cultural, linguistic and religious identity under observance of the legislation of the State of which they are citizens".
[225] Article 5 of the Constitution of the Republic of Slovenia: "Slovenia shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and shall foster their contacts with the homeland. (…) Slovenes not holding Slovene citizenship may enjoy special rights and privileges in Slovenia. The nature and extent of such rights and privileges shall be regulated by law".
[226] Article 49 of the Constitution of the Republic of Macedonia: "The Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries (…), assists their cultural development and promotes links with them".
[227] Article 10 of the Constitution of the Republic of Croatia: "Parts of the Croatian nation in other states are guaranteed special concern and protection by the Republic of Croatia".
[228] Article 12 of the Constitution of Ukraine: "Ukraine provides for the satisfaction of national and cultural, and linguistic needs of Ukrainians residing beyond the borders of the State".
[229] Article 6 of the Constitution of the Republic of Poland: "The Republic of Poland shall provide assistance to Poles living abroad to maintain their links with the national cultural heritage".
[230] Article 7a of the Constitution of the Slovak Republic: "The Slovak Republic shall support national awareness and cultural identity of Slovaks living abroad and their institutions for achieving these goals as well as their relationships with their homeland".

The normative force of this article has been discussed by Hungarian constitutional lawyers, as well as how it could be met by the public power.[231] Yet, it became the constitutional ground of an ethnic preference policy.[232] In my opinion this is a consequence of the ethnic conception of the Hungarian nation, which was presented in the previous Chapter. The existence of similar clauses in other constitutions may be a sign of this vision not being particular just to Hungary, but to most of the countries in the Central and Eastern European region.

The main provision of the new norm is the already mentioned Article D of the Fundamental Law, which reads:

> "Bearing in mind that there is one single Hungarian nation that belongs together, Hungary shall bear responsibility for the fate of Hungarians living beyond its borders, and shall facilitate the survival and development of their communities; it shall support their efforts to preserve their Hungarian identity, the assertion of their individual and collective rights, the establishment of their community self-governments, and their prosperity in their native lands, and shall promote their cooperation with each other and with Hungary".

As it can be seen the article is similar to the precedent, from which it draws inspiration, yet there are changes not only in the wording, but also with the addition of specific rights which shall be supported by the Hungarian State.

The Venice Commission in its Opinion on the New Constitution of Hungary (hereinafter "the Opinion") has criticised the formulation of this article for being "rather wide and not too precise",[233] in particular due to the use of the term "responsibility". This term requires interpretation, and will generate debates such as the ones about the precedent constitutional article.[234] In this case, the Commission is concerned that it "may be interpreted as authorising the Hungarian authorities to adopt decisions and take

[231] See: Smuk, Peter, *Protection of Minorities by their Kin-States in the EU – The Case of Hungary*, Masaryk University Faculty of Law Conference for Young Lawyers, 2008 paper, available at http://www.law.muni.cz/sborniky/cofola2008/files/pdf/evropa/smuk_peter.pdf, last accessed 2 June 2013; Kovács, Mária M. and Tóth, Judit, 'Country Report: Hungary', in EUDO Citizenship Observatory, 2013 (http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=2013-18-Hungary.pdf, last accessed 2 June 2013.
[232] Kovács et al., 2013, p. 10.
[233] CDL-AD (2011) 016, 20 June 2011, para. 41.
[234] Vid. footnote 231.

action abroad in favour of persons of Hungarian origin being citizens of other states", as that could result in a conflict with the competence of the home States of Hungarian minorities, on whom the responsibility for minority protection primarily lies.[235] In my opinion this constitutes an element of tension with these countries, which could have the opposite effect of what was intended with the provision, worsening the situation of Hungarian communities.

In the Report on the Preferential Treatment of National Minorities by their Kin-State of 2001[236] (hereinafter, "the Report") the Venice Commission indicated that kin-States play a role in the protection and preservation of their kin-minorities "aiming at ensuring that their genuine linguistic and cultural links remain strong".[237] Hence, it distinguishes between the benefits related to education and culture and others. In the latter "preferential treatment might be granted only in exceptional cases and when it is shown to pursue the genuine aim of maintaining the links with the kin-States and to be proportionate to that aim".[238] Moreover, and although provisions regarding kin-minorities are widespread in the region, as has been previously pointed out, the Commission considers that these kind of measures are not international custom, and 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".[239] This statement is similar to article 2 of the Framework Convention for the Protection of National Minorities (hereinafter "the Framework Convention"), which determines that "[t]he provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good

[235] CDL-INF (2001) 19, 22 October 2001, Conclusions.
[236] Incidentally, this report was elaborated upon the request of the Romanian Prime Minister, Mr. Nastase, to the Venice Commission to examine the compatibility of the Act on Hungarians living in neighbouring countries and the request of the Hungarian Minister for Foreign Affairs, Mr. Martonyi, to carry out a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship (CDL-INF (2001) 19, 22 October 2001, Introduction).
[237] CDL-INF (2001) 19, 22 October 2001, Conclusions.
[238] Ibid., para. D.d.
[239] Ibid., Conclusions.

neighbourliness, friendly relations and co-operation between States", as the Commission itself reminded in the Opinion.[240]

Although not directly applicable – we must remember the discussions and need for interpretations of the law – the constitutional provision does not, in my view, respect all of these criteria. Particularly problematic is the responsibility of the State to support for "the assertion of their individual and collective rights, the establishment of their community self-governments, and their prosperity in their native lands". In the first place, the "rights" of the minorities are generically included, and therefore not restricted to cultural and economic ones. This objection was also raised by the governments of Slovakia and Romania in relation to the "Status Law",[241] which will be later scrutinised. Although the restriction would not be applicable if not before a situation of preferential treatment the Fundamental Law distinguishes between citizens of other countries according to their ethnic origin, hence constituting such a case.

The second objection regards the character of these rights as "individual and collective". The Venice Commission reminds that the Explanatory Report of the Framework Convention establishes that while "the rights and freedoms flowing from the principles of the Framework Convention may be exercised individually or in community with others (…) no collective rights of national minorities are envisaged".[242] This gives a State the freedom to grant collective rights in its own territory, where it exercises sovereignty as a principle of international law, but only within its borders. The same would be applicable to "the establishment of their community self-governments", which corresponds to the home state. Therefore, I believe that the article contravenes the sovereignty of other nations, and therefore also international law, in particular article 21 of the Framework Convention.[243] Even if collective rights were awarded by the relevant nations, the Hungarian Constitution should not include a provision which could interfere with the sovereignty of other nations. This opinion seems to be shared by the Venice Commission, who, nevertheless, was more cautious in its Opinion,

[240] CDL-AD (2011) 016, 20 June 2011, para. 42.
[241] Smuk, 2008, p. 6.
[242] CDL-AD (2011) 016, 20 June 2011, para. 44.
[243] "Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of State".

understandable given the political implications of its work. The Commission leaves a room for an interpretation compatible with international law, assured by the Hungarian authorities, based on article Q of the Fundamental Law: "(…) Hungary shall ensure harmony between international law and Hungarian law in order to fulfil its obligations under international law. (…) Hungary shall accept the generally recognised rules of international law".[244] If such is the case, it seems to be implicitly recognised the article is not applicable and hence it should not, I hypothesise, be included in the Constitutional text, since it can only cause trouble.

Summarising, I believe, that the article can only contribute to safeguarding the human rights of Hungarian minorities to a very limited extent. In this sense, a provision similar or even identical to the one in the previous Constitution would have been a much better option. The rest of the new article should not be included in such a relevant text as the Constitution, as it could have effects opposite to those intended, and act as a provocation towards the surrounding nations, thus having a perverse effect for the situation of ethnic Hungarians, as some authors have also stated.[245] This could manifest in measures such as a restrictive electoral threshold or the denial of collective rights, which are not mandatory[246] as has been explained before. Moreover, some fragments, like the reference to the adjacent countries where Hungarians live as "their (Hungarians') native lands" could amount, at least, as a violation of other states sovereignty, which would amount to a violation of the criteria set by the Venice Commission, or even be interpreted by some as an irredentist statement[247] implying the land belongs to them and that non-Magyar are not "native",. Although this has been denied by the Hungarian authorities it could nonetheless contribute to a tenser atmosphere in the region. This vision is reinforced by the absence of a provision

[244] CDL-AD (2011) 016, 20 June 2011, para. 43.
[245] Körtvélyes, Zsolt, Kovács, Mária M. and Pogonyi, Szabolcs, *The Politics of External Kin-State Citizenship in East Central Europe*, EUDO Citizenship Observatory, Florence, 2010, available at http://eudo-citizenship.eu/docs/ECEcompreport.pdf, last accessed 26 June 2013, p. 12.
[246] Vid. supra.
[247] Cfr. Ambrosio, Thomas, 'Vanquishing the Ghost of Trianon: Preventing Hungarian Irredentism through Western Integration', pp. 39 – 52 in *Seton Hall Journal of Diplomacy and International Relations*, Vol. 3 No. 1, Winter/Spring 2002, available at http://blogs.shu.edu/diplomacy/files/archives/ambrosio.pdf, last accessed 2 June 2013, p. 41.

regarding the national borders "as established in international treaties" – an implicit reference to Trianon – which did exist in the previous Constitution.[248]

5.2. Act on the Hungarian Citizenship

I will now proceed to the examination of the 1993 Act on the Hungarian Citizenship (hereinafter 'Nationality Act').[249] This is the legal text which governs the acquisition and loss of Hungarian citizenship. I will focus in particular on the recent amendment to the text which was approved on 26 May 2010 and entered into force on 1 January 2011, as well as Act CCVII of 2012, which simplified the so-called "preferential naturalisation" procedure. My aim is to comprehend whether these recent legal changes improve the human rights situation of Hungarian minorities beyond the borders of Hungary, and I will therefore concentrate on this problematic, not entering into considerations of the possible discriminatory nature of the amendment towards "non-preferential" applicants for citizenship, as that would be out of the scope of this thesis.

Act XLIV of 2010 amending the 1993 Nationality Law was approved by the Hungarian Parliament with 344 votes for, 3 against and 5 abstentions. [250] I believe it is important to mention the result of the parliamentary vote, as all the major parties supported the amendment, whereas a similar reform in 2004 was staunchly opposed by the social democratic MSZP.[251] This proposed reform did not succeed, as the referendum on it held in December 2004 did not reach the necessary participation of at

[248] Art. 5 of the Constitution of the Republic of Hungary (Act XX of 1949, as amended by Act XXXI of 1989): "The State of the Republic of Hungary shall defend the freedom and sovereignty of the people, the independence and territorial integrity of the country, and its national borders as established in international treaties".
[249] Act LV of 1993 on Hungarian Citizenship.
[250] Barbulescu, Roxana, 'Update on the Hungarian citizenship reform' in *EUDO Citizenship Observatory*, 2010, available at http://eudo-citizenship.eu/citizenship-news/310-the-political-context-of-the-hungarian-proposal-qethnic-hungarians-in-transborder-states-may-well-be-the-biggest-losers-and-victims-of-hungarys-dual-citizenship-reformsq, last accessed 2 June 2013.
[251] Kovács, Mária M and Pogonyi, Szabolcs, 'Ethnic Hungarians in transborder states may well be the biggest losers and victims of Hungary's dual citizenship reforms' in *EUDO Citizenship Observatory*, 2010, available at http://eudo-citizenship.eu/citizenship-news/310-the-political-context-of-the-hungarian-proposal-qethnic-hungarians-in-transborder-states-may-well-be-the-biggest-losers-and-victims-of-hungarys-dual-citizenship-reformsq, last accessed 2 June 2013.

least 50% of the electorate (only 37.5% participated), although 51.57% of the voters supported the "yes". [252]

It will also be of significance when later looking at the possible political opportunism of this Act by the currently ruling party, FIDESZ.

The main modification the law introduces, and which I will try to link to the human rights of the Hungarian minorities is the option of preferential naturalisation for non-Hungarian citizens whose ascendant was a Hungarian citizen or "whose origin from Hungary is probable, and whose Hungarian language knowledge is proved" (sic), with some requirements with regards to the criminal record of the applicant.[253] Therefore the requirements of residence and the test of knowledge of the Constitution are waived, when compared to 'ordinary' naturalisations. It once again consecrates the ethnic conception of the nation in a legal norm, reinforcing the 'exclusive' character of the Fundamental Law when referring to the "unity of the Hungarian nation".[254] Its aim is, at least in theory, "to help Hungarians living abroad to maintain their Hungarian identity and foster ties with Hungary", which is legitimate under international law and the relevant treaties,[255] as the Constitutional Court has also confirmed.[256]

However, the new Fundamental Law also leaves room for active and passive voting rights being granted to citizens without residence,[257] which inevitably may lead to thoughts about political motives. In fact, Act CCIII of 2011 on the Election of Parliamentary Members opens the gate for non-resident citizens in its article 12.[258] This concern has been voiced by different experts, like Mária Kovács and Judit Tóth[259], who

[252] Körtvélyesi, Zsolt, and Tóth, Judit, '23 May 2010: Hungarian government proposes access to citizenship for ethnic Hungarians in neighbouring countries' in *EUDO Citizenship Observatory*, 2010, available at http://eudo-citizenship.eu/citizenship-news/310-the-political-context-of-the-hungarian-proposal-qethnic-hungarians-in-transborder-states-may-well-be-the-biggest-losers-and-victims-of-hungarys-dual-citizenship-reformsq, last accessed 2 June 2013.
[253] Tóth, Judit, 'Changes in the Hungarian Citizenship Law and adopted on 26 May 2010 ' in *EUDO Citizenship Observatory*, 2010, available at http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=HungaryRev.pdf, last accessed 2 June 2013, para. 4.a.ii.
[254] Kovács et al., 2013, p. 20.
[255] Vid. footnote 238.
[256] Decision No. 188 of 2010.
[257] Article XXIII (4): "The exercise or completeness of active suffrage may be subject to the requirement of residence in Hungary, and passive suffrage may be subject to further criteria under a cardinal Act".
[258] Kovács et al., 2013, p. 19.
[259] I bid, p. 18.

war about the "government's secret desire to ensure 500,000 new voters who would be grateful for naturalisation in the forthcoming elections in 2014". I consider the cast of a cloud of doubt over the real purpose of the law – further than the sentimental value which is explained by the "Trianon trauma" presented in Chapter 1 – as an indication of the (very) limited improvement – if at all – it can ensure on Hungarian minorities, since, should this be clear a criticism of this kind would not be expected, if we accept the corollary that human rights are strived for by society.

I will now try to answer the nucleus of the question, i.e. whether the law in fact improves the human rights situation of Hungarian minorities across the borders of the kin-State. Looking back at Chapter 2, I presented the international and national legislation regarding minorities. The Constitutions of the relevant States, as well as in different International Conventions, most notably the two 1967 Covenants, all included non-discrimination clauses which extended to "nationality" or "national origin".

The Nationality Act allows dual citizenship, albeit implicitly, in articles 2.2, 8 and 9. The first refers to "a Hungarian citizen who is simultaneously also a citizen of another state", while the latter two address the "Termination of citizenship", and do not include the citizenship of another state as a cause. However this is not the case in all of the relevant states, most notably in Slovakia and Ukraine, as I will subsequently present, which could constitute a prejudice for ethnic Hungarians with those nationalities in case they acquire the Hungarian one while still residing there. I will not assess, however, as some scholars have done, who is the main responsible for the situation of conflict, as that falls out of the scope of this research; but I must point out that the amendment was not negotiated with the territorial states in order to prevent conflicts of dual citizenship.[260]

Slovakia's reaction to the adoption of the amendment to the Nationality Act was the most virulent of all the surrounding countries. Slovakia retaliated to this legal measure by, in turn, approving on the same day – 26 May 2010 – to amend its citizenship law so that those who voluntarily acquire another citizenship by naturalisation (rather than automatically by birth or through marriage) will immediately

[260] Kovács et al., 2013, p. 18.

lose their Slovak citizenship.[261] This is allowed by international law, and in particular the 1997 European Convention on Nationality, which in article 7(1) contains a list of permissible reasons for the withdrawal of citizenship with which the Slovak Law complies.[262] Moreover, a recent sentence of the ECtHR declared inadmissible two applications of members from the Hungarian minority in Slovakia who lost their Slovak citizenship following the acquisition of the Hungarian one.[263] This backs the argument that this consequence is in full compliance with the ECHR. Although in 2010 the elected government wanted to abolish the dual citizenship ban,[264] the new government in 2012 did not include this in its program[265] and the truth is that different initiatives to modulate it have failed,[266] not having reached a solution at the moment of the writing of this thesis.

What does this mean for ethnic Hungarians residing in Slovakia who naturalise Hungarian citizens? It would mean the loss of the right of active and passive suffrage, save for local elections, given the membership in the EU. In the case of the Hungarian MPs in Slovakia, they would cease to be citizens of the country in which they represent the largest ethnic minority and could no longer run in future elections. It could also result in the deprivation of public offices and access to public service, including loss of office for a public servant who was granted Hungarian citizenship [267] or even in the restriction of political activity, in line with what is allowed by art. 16 of the European Convention on Human Rights.[268]

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[261] Bauböck, Rainer, 'Dual citizenship for transborder minorities? How to respond to the Hungarian-Slovak tit-for-tat' in *EUDO Citizenship Observatory*, 2010, available at http://eudo-citizenship.eu/citizenship-news/322-dual-citizenship-for-transborder-minorities-how-to-respond-to-the-hungarian-slovak-tit-for-tat, last accessed 2 June 2013.
[262] Ibid.
[263] ECtHR, *Fehér and Dolník v. Slovakia*, 21 May 2013.
[264] Zrubec, Martin, *External Citizenship for Trans-border Minorities: Case of Hungary and Slovakia*, Budapest: Central European University, 2012, unpublished MA thesis, p. 33.
[265] Government Office of the Slovak Republic, Manifesto of the Government of the Slovak Republic: Strengthening the Position of the Slovak Republic in the European Union and the World, at http://www.vlada.gov.sk/strengthening-the-position-of-the-slovak-republic-in-the-european-union-and-the-world/, last accessed 11 July 2013.
[266] TheDaily.sk, *Presidents Make No Progress on Dual Citizenship*, at http://www.thedaily.sk/presidents-make-no-progress-on-dual-citizenship/, last accessed 11 July 2013.
[267] Körtvélyesi, Zsolt and Tóth, Judit, 'Naturalisation in Hungary: Exclusion by Ethnic Preferences', pp. 54 – 73 in *Open Citizenship*, Vol. 2, Summer 2011 "Exclusion and Discrimination", p. 71.
[268] "Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens".

For the rest they would enjoy the same rights as before, granted by the non-discrimination clauses the Constitution and international treaties ratified by Slovakia I presented in the previous chapter as well as by European citizenship. What would be the gain? Should electoral rights be granted in Hungary without residence, they would earn the right of active and passive suffrage in a country in which they do not live, as well as the right to access the public sector, or at least the positions which are restricted to Hungarian nationals. Bearing this in mind not only do I believe that the human rights situation of the ethnic Hungarians in Slovakia does not improve with the benefits granted by the amendment to the Nationality Act, but I consider that it would worsen.

In the Ukrainian case there was no official reaction, although some political commentators, experts and the opposition in Ukraine expressed their negative attitude to the Hungarian law.[269] However, Ukrainian law forbids dual citizenship, mostly due to fears of Russian expansionism, and thus article 19.1 of the 2001 Ukrainian Citizenship Law establishes that "citizenship of Ukraine shall be lost if a citizen of Ukraine voluntarily acquired citizenship of another state". This loss is not automatic, and the risk to lose Ukrainian citizenship is small.[270] This would affect the ethnic Hungarians in Ukraine acquiring Hungarian citizenship mostly in the same way as has been exposed for the Slovakian case. However, they would also lose the right to inherit agricultural land, which according to the Ukrainian Land Code can only be inherited by Ukrainian citizens,[271] which can be a very big prejudice. It must be noted that although private property is not considered a universal human right it is included in the First Additional Protocol to the ECHR[272] which Ukraine has ratified, although it allows for restrictions. On the positive side, Hungarian nationals would earn the right of free movement within the European Union. However, that would oblige them to obtain a residence permit to

[269] Shevel, Oxana, 'Reactions in Ukraine' in *EUDO Citizenship Observatory*, 2010, available at http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries, last accessed 2 June 2013.
[270] Ibid.
[271] Ibid.
[272] Article 1: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties"

live in their own home land. Overall, and as it happened with the Slovakian situation, I consider that the human rights of the people belonging to the Hungarian minority in Ukraine are not only not improved by the benefits the 2010 amendment to the Nationality Act introduces, but could actually be prejudice by the acquisition of the Hungarian citizenship.

In both cases nationality would be withdrawn only upon knowledge from the home states of the acquisition of the Hungarian passport. Even if the Hungarian authorities have promised discretion there would always be a risk. Furthermore, as Péter Balázs, former European Commissioner has expressed: "A nationality that you shall keep in secret and that you shall not wear in your homeland is worthless".[273] Also, the acquisition of citizenship without residence in Hungary would not provide access to social and health care, which could also prove dangerous.[274]

The rest of the relevant States for the scope of this thesis – Croatia, Romania, Serbia and Slovenia – allow dual citizenship, and therefore ethnic Hungarians who acquired the nationality would not be in a different situation internally from before, although they would benefit from the political rights mentioned before, and, in the case of Serbia, from free movement in the European Union. However, this does not exclude that nationalist rhetoric spread in these countries,[275] who could see it as an attack to their independence, sovereignty or territorial integrity.

Summing up, I believe the disruption of relations with Hungary's neighbours, and the potential risks and loss of rights in their home countries attached to ethnic Hungarians obtaining the nationality do not compensate the political rights they would gain in the kin State, and could also open a spread of retaliation measures which would end up prejudicing them, as in the case of Slovakia. Overall, the human rights situation would not improve, or would even worsen. However, it does not seem to be an impediment compared to the sentimental significance it holds for them, since the most recent official statistics show that more than 422,000 requests have been submitted.[276] It

[273] Kovács et al., 2013, p. 18.
[274] Ibid.
[275] Kovács et. al, 2010.
[276] Magyar Távirati Iroda, *More than 422,000 apply for Hungarian citizenship through expedited scheme*, at http://www.politics.hu/20130405/more-than-422000-apply-for-hungarian-citizenship-through-expedited-scheme/, last accessed 2 June 2013.

seems in the author's point of view, that the significance of acquiring Hungarian citizenship is large for the people belonging to Hungarian kin minorities. The low number of applications from Slovakia points out, however, that not many are willing to risk losing their current citizenship, then becoming "foreigners in their own land".

5.3. Act on Hungarians Living in Neighbouring Countries ("Status Law")

The Status Law was adopted by the Hungarian parliament on 19 June 2001, with 306 votes for, 17 against and 8 abstentions.[277] Once again we can see the overwhelmingly majoritarian approval of an Act which later proved to be controversial. This shows, in my understanding, the widespread consensus among the Hungarian political elite not only on what is understood as support for the "nation beyond the borders", as it can be labelled, but with regards to the ways to channel this support, even if the initiative came from the ruling FIDESZ party.

The Status Law provides for giving assistance to the Hungarian minorities living in Croatia, Serbia and Montenegro,[278] Romania, Slovenia, Slovakia and Ukraine, and excluding that in Austria, for the preservation of their linguistic and cultural links with Hungary.[279] This assistance was concretised in different fields, including culture, and education, but also others such as most favourable conditions of entry into Hungary (art.3), granting of awards and scholarships (art. 6), and the possibility to receive a work permit in Hungary for a maximum duration of in general 3 months per calendar year without the prior assessment of the situation in the labour market (art. 15).[280]

Adverse reactions from the countries home to those minorities soon arose, most notably from Romania and Slovakia, home, as has been presented, to the two largest groups of Hungarians outside of Hungary. It also drew criticism from different international organisations, amongst which the OSCE, the Council of Europe and the

[277] Breuer, Marten, 'The Act on Hungarians Living in Neighbouring Countries Challenging Hungary's Obligations under Public International Law and European Community Law', pp. 255 – 297 in *Zeitschrift für Europarechtliche Studien* Vol. 5 No. 2, 2002, p. 256.
[278] At the time still one country.
[279] Council of Europe Parliamentary Assembly, Preferential Treatment of National Minorities by the Kin-state: The Case of the Hungarian Law on Hungarians Living in Neighbouring Countries ('Magyars'), Resolution 1335 (2003), 19 June 2001, available at http://www.assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/ERES1335.htm, last accessed 28 June 2013.
[280] Breuer, 2002, pp. 262 – 263.

European Union.[281] The main point of criticism was the unilateral adoption of such a Law.[282] This is a stark contrast with similar Acts, for example the Polish Law which introduced the so-called "Polish Card", which were adopted after duly informing and consulting the affected countries.[283] Romania was particularly concerned about the possible discriminatory nature of the law as well as the possible infraction of its sovereignty.[284] As a result, Prime Minister Nastase requested the Venice Commission to examine the compatibility of the act with the European standards and the norms and principles of contemporary public international law,[285] in response to which the Commission issued its Report on the Preferential Treatment of National Minorities by their Kin-State, which constitute the reference for the analysis of this instrument.

As has already been presented when examining the Fundamental Law, the Report stated that "the possibility for states to adopt unilateral measures on the protection of their kin-minorities abroad, irrespective of whether they live in neighbouring or other countries, is conditional upon the respect of the following principles: territorial sovereignty, *pacta sunt servanda*, friendly relations amongst states and respect for human rights and fundamental freedoms – in particular the prohibition of discrimination".[286] This would lead to the analysis of whether the Law complies with all of these requisites, as otherwise it would be unlawful.

As for the possible infringement territorial sovereignty, it must be first clarified what it means. A basic principle of international law is that states are sovereign and equal,[287] thus prohibiting the extraterritorial application of domestic laws.[288] In the case of the Hungarian Status Law there was one particularly controversial provision in this regard, which was addressed by the Venice Commission. This was the need, in order to obtain the "certificate of Hungarian nationality" necessary to receive the benefits

[281] Vizi, Balázs, 'The Evaluation of the "Status Law" in the European Union', pp. 89 – 107 in Ieda, 2006, p. 89.
[282] Resolution 1335 (2003), para. 9.
[283] Palermo,Francesco, 'National Minorities in Inter-State Relations: Filling the Legal Vacuum?', pp. 3 – 27 in Palermo, et al., 2011, p. 14
[284] Kovács et al., 2010, p. 11.
[285] Vid. footnote 235.
[286] Resolution 1335 (2003), para. 8.
[287] Also enshrined in art. 2.1 of the Charter of the United Nations.
[288] Varennes, Fernand de, 'An Analysis of the "Act on Hungarians Living in Neighbouring Coutnries" and the Validity of Measures Protecting and Promoting the Culture and Identity of Minorities Outside Hungary', pp. 411 – 429 in Halász et al., 2004, p. 412.

granted by the law, of "a recommendation issued by a recommending organization representing the Hungarian national community in the neighbouring country concerned, and being recognised by the Government of the Republic of Hungary as a recommending organization". This was particularly problematic, as the grant of "administrative, quasi-official functions to non-governmental associations registered in another country constitutes an indirect form of state power: as such, it is not permissible unless specifically allowed", according to the Venice Commission.[289] For this reason, the law was amended in 2003, following the recommendations issued by the same body, to avoid extraterritoriality.[290] The new provision completely removed the recommending powers awarded to associations, and put the burden of the issue of certificates on the Hungarian "diplomatic mission or consulate". It did leave a small room for the involvement of Hungarian diaspora associations, but only to provide information upon request of the diplomatic mission or consulate,[291] thus ending the possible violation of territorial sovereignty in this respect.

The law seems to comply with the respect of the principle of *pacta sunt servanda* demanded by the Commission in its substantive aspects, i.e. it does not violate any of the provisions of International Treaties ratified by Hungary. However, and although as it has previously been examined there is no violation of the sovereignty of other States, the Venice Commission has warned that "[u]nilateral measures on the preferential treatment of kin-minorities should not touch upon areas demonstrably pre-empted by bilateral treaties without the express consent or the implicit but unambiguous acceptance of the home-State".[292] Given that the law had an unequivocal unilateral character, and that treaties existed between Hungary and the neighbouring States (e.g. Slovakia),[293] we can affirm that Hungary should have conducted prior consultation with the relevant States before enacting the Law.

The discriminatory character of the law has been argued by some since the beginning as one of the staunchest criticisms. In particular it was seen as discriminatory since it granted benefits to citizens of other countries depending on their ethnic origin. I

[289] Ibid., para. D.a.ii.
[290] Ieda, 2006, p. 194.
[291] Ibid.
[292] CDL-INF (2001) 19, 22 October 2001, Conclusions.
[293] Treaty of Good Neighbourly Relations and Friendly Co-operation between the Republic of Hungary and the Slovak Republic, available at http://ungarisches-institut.de/dokumente/pdf/19950319-1.pdf, last accessed 29 June 2013.

do not consider Breuer's approach to the applicability *ratione loci* of the ECHR.[294] Breuer casts a doubt over the applicability of the Convention following the *Bankovic* sentence, comparing it with previous ones, such as the *Drozd* case[295] to prefer the interpretation in the latter regarding jurisdiction.[296] I believe the comparison with the *Bankovic* case[297] does not hold ground, given the notably different circumstances of the Status Law – which may have effects on countries all of which have ratified the ECHR – with a military action in a country which had not, at the time, done so. It is hard to see how jurisdiction in military actions is comparable to benefits given to citizens outside the state that grants them. I agree with Breuer on the applicability of the ECHR, not only based on the interpretation given by the ECtHR in cases like *Drozd*, but also given the important fact that all of the relevant countries have signed and ratified the Convention. Aside from these considerations, it must be reminded that article 14 of the Convention

> …does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention.

This was stated by the European Court of Human Rights (ECtHR) in the *Belgian Linguistics Case*.[298] Moreover, the Venice Commission stated in its Report that "[p]referential treatment may be granted to persons belonging to kin-minorities in the fields of education and culture, insofar as it pursues the legitimate aim of fostering cultural links and is proportionate to that aim"[299] Therefore, it can be stated that a different treatment of different situations is permitted, if it is proportional to a legitimate aim pursued. In this case, it can be considered that the preferential treatment awarded by the law to ethnic Hungarians pursues the legitimate aim to protect the identity of these minorities, and is

[294] Breuer, 2002, pp. 269 – 272.
[295] Drozd and Janousek v. France and Spain (ECtHR, 1992).
[296] Breuer, 2002, pp. 271 – 272.
[297] Bankovic et al. v. Belgium et al. (ECtHR, 2002).
[298] Case "Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium" v. Belgium, (Merits), 1968.
[299] CDL-INF (2001) 19, 22 October 2001, Conclusions.

done through proportionate means that make it an acceptable difference of treatment,[300] hence not being possible to qualify the Act as discriminatory. From the author's perspective, most of the measures are related to education and culture, therefore with a clear link to the preservation of the minority's culture. Other benefits, in particular the grant of work permits up to three months annually, can also be defended by arguing that by limiting the time are only aimed at maintaining the link of persons belonging to the minority with the kin-state. However, it must also be noted that the European Commission, in its 2001 Regular Report on Hungary's Progress Towards Accession noted that "the Law will need to be aligned with the *acquis* at the latest upon accession, since it is currently not in line with the principle of non-discrimination laid down in the Treaty".[301] We can consider that this has been achieved through the 2003 amendments, which, among others, adopted the counsel of the Venice Commission, stating that 'as far as the practical implementation of the law is concerned, the Hungarian certificate certifies not the ethnicity, but the eligibility for the benefits and services'.[302] In any case, as has been stated above, the law can be considered non-discriminatory and as such complying with one of the requirements set by the Venice Commission.

The issue of friendly relations between States remains, from the author's perspective, the most significant one, not only in terms of respect for the requirements enunciated by the Commission's Report, but also in the practical effects, direct and indirect, the law has had on the Magyars beyond the borders. The reaction from the surrounding countries, in particular Romania and Slovakia, to the law was, as has already been stated, negative, even when these countries themselves have similar norms. This was mostly due to the unilateralism with which the law was adopted, but I also consider the historical perspective, where Hungary was the regional power for centuries, as striking fears of irredentism, which were ill received by her neighbours. This resulted in the appeal to the Venice Commission from Romania, and important political reactions. Romania and Hungary signed an agreement on the implementation of the

[300] Varennes, 2004, pp. 422 – 428.
[301] European Commission, 2001 Regular Report on Hungary's Progress Towards Accession, SEC (2001) 1748, 13 November 2001, available at http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/hu_en.pdf, last accessed 29 June 2013, p. 97.
[302] Ieda, 2006, p. 191.

Law in 2003,[303] which decreased the tensions, together with the amendments to the Law, some of which have already been addressed. However, the same amendments were seen in a much more negative perspective in Slovakia, where Prime Minister Dzurinda stating they were "totally unacceptable" and that Slovakia "will take appropriate measures to prevent the implementation of the law due to the remaining 'extraterritorial and discriminatory aspects' and because it is 'in violation of international legislation'".[304] These statements are very significant if we consider a Hungarian ethnic party was part of the coalition government at the time, as it was presented in Chapter One. The positions in this last case have varied little, and relations have even worsened with other measures taken over the years, in particular the already analysed nationality law or the amendment of the Slovak Language Law of 2009[305] as well as diplomatic incidents such as the prohibition of entrance of the Hungarian President to Slovakia in 2009.[306] Therefore we can confidently state that the status of relations between both countries has worsened over the years, even if both have become part of the European Union in 2004. The Status Law has made a contribution to this deterioration, thus we cannot consider it to have complied with the friendly relations between States as defined by international practice, and understood in particular by the Venice Commission. Its unilateral adoption in particular goes against the principle of consulting with other countries measures that may directly or indirectly affect them, as it is the case.

Overall we can affirm that the law has not been very successful in improving the human rights situation of Hungarian kin-minorities. Although it has provided funds for institutions and some cultural and educational benefits to members of these communities, in most of the cases these type of rights were granted by the internal laws and international agreements ratified by the relevant countries. Furthermore, the two more relevant cases, Romania and Slovakia, have had different outcomes. In the Romanian case the basis for implementing the provisions of the Law has been the

[303] Meijknecht, 2004, p. 133.
[304] Ibid.
[305] BBC, 2009.
[306] The Telegraph, *Hungarian President Banned from Slovakia*, 23 August 2009, available at http://www.telegraph.co.uk/news/worldnews/europe/hungary/6077063/Hungarian-president-banned-from-Slovakia.html, last accessed 29 June 2013.

aforementioned Treaty. Hence we can consider this treaty as the basis for the initiatives which have tried to improve the situation of the minority, together with the self-efforts of Magyars in Romania. When it comes to Slovakia, the situation has not only not improved, but rather worsened as a consequence of political tensions, which have left as a consequence restrictive legislation. In this particular case, the author considers that relations should be improved between both countries in order to better protect the interests of the minority population. This is however hard, given the historical vicissitudes introduced in Chapter 2, and the Slovakia being defined by opposition to Hungary.

5.4. Conclusion

As it was stated at the start of the chapter, with this thesis I intended to analyse whether the recent measures incepted by the Hungarian legislature aimed at kin minorities – Fundamental Law, Nationality Law and Status Law – had an effect on the amelioration of the human rights situation of Hungarian minorities and people belonging to them. In this chapter the concrete political and legal effects of these laws has been presented and scrutinised.

Based on this analysis it can be inferred that article D of the new Fundamental Law of Hungary has suffered modifications with respect to the previous Constitution which make it legally doubtful, while not increasing or enforcing its intended effects on the situation of the Hungarian kin minorities. The recent modifications of the Nationality Law do not significantly increase the human rights situation of the people belonging to the minorities, either. On the contrary, most of the acquired rights were already enforced without it, and the people who could risk losing their own nationality – most notably in Slovakia and Ukraine – would be left in an even worse condition than before. Even if not significant, this means the law did not have any positive influence on the minority situation. Something similar could be said for the Status Law, which has not increased the cultural or educational status of Magyars in neighbouring countries. Notwithstanding this view, Hungarian ethnic representatives and parties have supported

the adoption of the law, in particular in Slovakia,[307] where, as it has been seen, the consequences were more problematic.

All of these measures, however, have actually created tensions and rifts with Hungary's neighbours. This could translate in adverse reactions not only by the relevant states, but by the majority populations in them, which could result in a more negative climate for the Hungarian minorities, even in places where they were an integrated part of the society. Therefore it can be stated that the risks created by laws which intended to have a positive effect were too high, and alternative ways should have been explored to increase the human rights standards and practices with regards to Magyar minorities in these territories, such as multilateral approaches or the application of international standards and instruments. This would have allowed the affected countries to progress in their general human rights position, and in particular with regards to minorities, creating a more favourable social climate, acceptance and integration. For this reason, these measures must be criticised as a unilateral approach which could hide populist electoral interests, at home and abroad, as a consequence of the emotional significance of the issue for the Hungarian population given its history, which was outlined in Chapter One.

[307] The Slovak Spectator, *ECHR rejects challenges to Slovakia's citizenship law*, 17 June 2013, at http://spectator.sme.sk/articles/view/50404, last accessed 11 July 2013.

6. Conclusions and policy advice

This thesis intended to answer the question of whether the recent legislative measures adopted by Hungary with respect to its kin minorities have improved their human rights situation. In this chapter I will provide with a conclusion which replies to the question, by reviewing and summarising all the aspects which were touched upon throughout the paper. I will also present policy advice which would contribute to enhancing the referred situation, that of Hungarians in neighbouring countries. With this I intend to provide with a practical outcome for this thesis, which complements its theoretical nature.

I will start with an overview of the thesis in a chronological order. I consider this will contribute to streamline the ideas presented along all these pages, as well as serve as a reminder of all the topics which have been touched upon. This is of particular relevance given the variety of topics and the need to connect them all in a logical sequence. I will not, however, present new data or research, as I consider a conclusion should be based on what was already presented, and not be used to introduce new information to the reader.

After finalising the summary I will answer the thesis question recalling what was presented in the previous section, and, in particular, in Chapters 4 and 5. At this point the author deems the answer to the question to be clear, an outcome which was doubtful at the beginning of the thesis. If the answer were negative, which at this moment it can be anticipated will be, possible explanations to the adoption of these laws would be also hypothesised. They will be based on existing literature, as an academic work like this requires, and not on mere speculations.

Lastly, policy advice will be introduced, in order to add to the debate on the protection of minority rights, in particular when dealing with kin minorities. In this sense the most important task is to define the role to be played by the kin and the home states. Although the particular case of Hungary will be used, give the scope of the thesis, it can be extrapolated to other similar situations, thus giving the thesis a more universalist approach.

6.1. Summary

The Hungarian nation is based on an ethnic nationalistic model. This implies that the belonging to it is not a consequence of election, but rather an inherited trait, which shapes the individual. This implies that Hungary, as the state in which the ethnic group is dominant, shall be responsible for the kin minorities, which live outside of it, in order to preserve nationhood.

The history of Hungary explains, from the author's perspective, the sentimental importance of kin minorities for the Hungarian nation. In particular I consider the history of the XIX and XX centuries as the most relevant for the current relevance given to the issue. Already after the 1848 revolution Hungarian governments did not successfully manage the identity demands of other ethnic groups in the Kingdom – Croats, Romanians, Slovaks –, similar to those of the Hungarians to the Vienna government. The period between 1870 and 1918 only worsened the situation, due to the "Magyarisation" policy implemented by the Hungarian government, which also resulted in a negative image of Hungary as an oppressive power by these nationalities following their independence. This independence came as a consequence of the Austro-Hungarian defeat in World War I, and the Treaty of Trianon of 1920, according to which Hungary lost two thirds of her territory, more than half of her population, and more than three million ethnic Magyar residents. The Treaty is still a trauma from which Hungary has never recovered, and which has paved the way for nationalistic rhetoric that rose after the fall of communism in 1990, and that as a consequence has paved the way for some of the legislative measures which are the object of this thesis, aimed at the "protection" of kin minorities' rights and the preservation of their links to Hungary as the kin state.

Currently more than two million ethnic Hungarians live in the neighbouring countries.[308] The largest minorities are those located in Romania and Slovakia. In the former they are mostly concentrated in Transylvania and Szeklerland, whereas the latter are mainly located in the Southern districts of the country.[309] Significant minorities are also present in Ukraine and Serbia, while the smallest in number are those in Croatia and Slovenia.

[308] Vid. table 1.3.2.A.
[309] Vid. figures 1.3.2.1.A and 1.3.2.2.A.

These minorities are politically relevant in most of their home states. The largest and most influential ethnic Hungarian party remains the Democratic Alliance of Hungarians in Romania.[310] However, Hungarian parties have also played a role elsewhere, especially in Slovakia and Serbia, concentrated in the Vojvodina.[311]

Currently there are international and national mechanisms in place for the protection of minorities. All the relevant states are parties to all of the international treaties concerning the issue, as well as to the ECHR. Moreover, most of them also belong to the European Union or are in the process of accession (Serbia), therefore ensuring the highest level of minority protection – at least theoretically – in the world. This does not rule out the possibility of kin-state activism, but it does diminish the need for it, making it only relevant in issues related to education and culture, as per international custom, like the Venice Commission has correctly pointed out.

The theoretical reasons behind the measures adopted by the Hungarian legislature were scrutinised in this thesis. In particular the concept of the Hungarian nation and the belonging thereto were the object of study. The examination confirmed the ethnic nationalist concept of the Hungarian nation. This has the consequence of a nation spread across the borders of different states, and therefore under diverse jurisdictions. The identification of this is the key to understanding the drive behind the legislative efforts of Hungary beyond its territory, as they are aimed at preserving "the unitary Hungarian nation".[312]

By analysing the legal and political consequences of the Hungarian legislation the author tried to obtain the answer to the thesis question, of whether the new laws positively affect the human rights circumstances of the Hungarian minorities in Hungary's neighbouring countries. The three relevant texts – Fundamental Law, Nationality Law and Status Law – were subject to study. In the three cases the respective laws were found not to be very effective in safeguarding the human rights of these minorities. With regards to the Fundamental Law, the author considered that it contained provisions that exceeded the sovereignty of the Hungarian state. This could prone the neighbouring countries to negative reactions which have already been

[310] Vid. figures 1.3.2.1.A and 1.3.2.2.A.
[311] Vid. supra.
[312] Vid. Kántor, 2006, p.45.

manifested with regards to the other two texts, and which would actually worsen the circumstances of the minorities. For all of these reasons, a multilateral approach would have had a considerably better effect, by attributing the protection of these minorities' rights to the home state, on whom the burden mainly rests, as recognised by the Venice Commission.[313]

6.2. Conclusion

As an answer to the thesis question, I consider it can be clearly stated that the measures adopted recently by the Hungarian legislature regarding kin minorities do not contribute to improving their human rights situation. This is a combination of the limited effect of these provisions, given the lack of extraterritorial jurisdiction, and the adverse political reaction from the home countries, which has been presented in detail in chapter five.

I consider these measures to have been adopted with a clearly sentimental approach to minorities, based on the so-called "Trianon trauma", as well as a dominant perception of the nation from an ethnic perspective. Moreover, I deem some of these measures, in particular the Nationality Law, to have an electoral intention, as has been pointed out by some authors.[314] These interests correspond mainly to the ruling FIDESZ party, which by presenting itself as the "champion" of minorities expects to earn their support should citizens without residence be granted electoral rights, in a manner similar to what occurred in Croatia in the 1990s, when the nationalist Tudjman took advantage of the voting rights granted to Croats in Bosnia and Herzegovina.[315]

6.3. Policy advice

Taking into account what has been presented, we can conclude that the situation of Hungarian minorities in neighbouring countries has not improved, but even deteriorated in recent times. This clearly demands a call for a different approach towards minorities and bilateral relations with their home states by Hungary.

The author would therefore recommend three changes to be operated in the policy, in order to actually see an improvement in the situation of the said minorities. In the first place, Hungary should leave the main responsibility of the protection of its kin

[313] CDL-INF (2001) 19, 22 October 2001, Conclusions.
[314] Vid. footnote 259.
[315] Körtvélyesi et al., 2010, p. 14.

minorities to the home states, as recommended by the Venice Commission. Secondly, any measures which may affect minorities in the surrounding countries and their links to the kin state should be taken prior consultation with the affected states. Thirdly, and since most of the relevant states are part of the European Union, the EU institutions should be more directly involved in the design and implementation of policies that guarantee the human rights of these minorities are respected.

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