

JUDIT TÓTH

## The Hungarian Diaspora in the legal regulations

*What is a Diaspora law?*

As part of research<sup>1</sup> we are trying to find the answer to the question of how Hungarian legal regulations have managed or desired to handle the historic circumstance of members of the nation living as citizens of different countries all over the world. Is it possible at all to reduce the disadvantage of members of the nation of a diversity of legal standing, resulting from not being the citizens of one single state, Hungary, and if yes, how? Do these, belonging to a Diaspora, possess a specific legal standing? Is there such thing as Diaspora law, or is it too much to expect from the law to regulate such a sensitive and diverse matter?

The simplest legal classification of the members of the nation is as follows:

1. A part of them are citizens of the Hungarian Republic.
2. Several million Hungarians are exclusively foreign citizens (they became citizens of the neighbouring countries as a result of peace treaties or bilateral international agreements, on the other hand, having migrated from Hungary in the past decades, they obtained citizenship in a new, farther, European or overseas country, losing their Hungarian citizenship).
3. Finally, the family relationships of the groups mentioned above have created multiple citizenship and second citizenship was also obtained in individual procedures.

Attachment on the basis of citizenship is just one aspect, the other being that of registered, lawful residence. In accordance with the latter, a differentiation is made among

- A. Hungarian citizens living in Hungary,
- B. Hungarian citizens living abroad, and
- C. Foreign citizens living abroad, belonging to the Hungarian nation.

On the basis of formal logic, by creating pairs from them, we establish six groups, the only common trait of which is belonging to the Hungarian nation:

1. Hungarian citizens living in Hungary;

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<sup>1</sup> The research (1998–99) modelling the Ukrainian–Russian–Hungarian minority politics (1989–1999) is being carried out with the support of the Open Society Foundation, Budapest.

- II. Foreign citizens living in Hungary;
- III. Multiple citizens living in Hungary, one citizenship of whom being Hungarian;
- IV. Hungarian citizens living abroad;
- V. Foreign citizens living abroad;
- VI. Multiple citizens living abroad, one citizenship of whom is Hungarian.

The above simplified classification immediately allows two conclusions to be drawn. It may only be used if it can be defined legally what belonging to Hungarian ethnicity means, moreover if the requirements of “living, dwelling” somewhere are also determined. It is on that basis that we may define whether the Diaspora is constituted by the members of the nation living, dwelling outside the borders of the state only or by those persons who have emigrated from their original place of living/dwelling for a longer or shorter period of time. In a somewhat premature fashion, it is indicated already here that belonging to the Hungarian nation can be determined by law only formally and not substantially. At the same time, in theory law would be able to define the requirements of “living, dwelling”, however, in the hustle and bustle of the past decade, the energies of the lawmaker failed to reach that far.

One important conclusion to be drawn from analysing the legal regulations is that the lawmakers have failed to strive at a consistent, unequivocal use of words either in harmony with what was revealed above or different from it. Let us quote a few examples, indicating the diversity of the group under examination: “Hungarian citizens living abroad”, “Hungarian citizens having settled down in foreign states”,<sup>2</sup> “Hungarians living outside the borders of Hungary”, “Hungarians living in the world”, “Diaspora”,<sup>3</sup> “Hungarians living outside the territory of the Hungarian Republic”,<sup>4</sup> “Hungarian citizens returning from abroad”,<sup>5</sup> “persons leaving the country with the intention of settling down abroad”, “citizens settling down abroad”, “persons returning from abroad with the intention of settling down”, “persons living abroad but having a place of residence in Hungary”,<sup>6</sup> while the expression most frequently encountered in the legal material is “Hungarians beyond the borders”.<sup>7</sup>

From all that the following conclusion is justified: the lawmaker possesses but a very incomplete knowledge of the circumstances characteristic of the different members of the nation. Consequently, the lawmaker fails to adjust the aim, subject of regulation to the totality of those concerned/the nation, but reacts to the requirements of regulation in an ad hoc and situational manner instead.

Is it possible to apply one single expression to all the members of the nation living abroad or/and staying in Hungary? In view of international comparative research, we have used the expression Diaspora. With that we intended to stop the debate in literature which seems to be endless since the authors fail to use uniform concepts in professional

<sup>2</sup> Parliamentary resolution No. 119/1996 (XII.21.) on the plans to regulate the constitution of the Hungarian Republic.

<sup>3</sup> Governmental decree No. 90/1992. (V.29.) on the Office of the Hungarians beyond the Borders.

<sup>4</sup> Governmental decree No. 161/1998. (IX.30.) on the tasks and competences of the minister of cultural heritage.

<sup>5</sup> Governmental decree No. 147/1993. (X.26.) on the transitory rules of issuing, and keeping records of identity cards.

<sup>6</sup> Act LXVI of 1992 and Governmental decree No. 146/1993. (X.26.) on keeping records of personal data and residence addresses.

<sup>7</sup> For instance, Parliamentary resolution No. 26/1999 (III.26.) on the tasks related to the establishment of the Hungarian Standing Conference.

literature<sup>8</sup> and it is not our objective either to create a definition to be followed universally. At the same time we have concluded that the lawmaker made to effort to treat Diaspora in a uniform manner merely for the sake of the linguistic and legal precision of wording. The reason for it was that there was a lack of political intention to do so although it was just in the period under examination that the political division of the world into “East” and “West” was discontinued, whereas the members of the Diaspora live just there. In this way, it was the differences, rather than the similarities, among the individual groups of the Diaspora that became prevalent in politics.

From the legal point of view, it is just a few thin threads that unite the groups of the people belonging to the Diaspora.<sup>9</sup> Therefore, research considered it a significant result to have defined

– those common legal, administrative elements applicable to the whole of the Diaspora supported by politics thinking in terms of the uniform nation,

– on the other hand, those differences which separate the individual groups of the Diaspora from each other in terms of legal standing and administration. Those differences may prove that the government politics relating to the Diaspora has hidden or overt priorities, on the other hand, tries to take into account the specificities of groups, living and organised in different countries, being in different life situations.

If in the past ten years, in addition to those differences, something in common has been created – since national attachment, ethnic identity may not be expressed contentually but formally at most – it is definitely some development in the realm of law. Examples for those connecting threads are the regulated benefits (in terms of legal standing, support financed from public resources) provided by the government of the members of the Diaspora on the basis of national attachment.

The benefits to be summarised below are not measured with a uniform yardstick by politics since the intention is to support those living in the Carpathian Basin while hardly any benefits are allocated to migrants.

While the building stones of the legal-administrative system serving Diaspora politics were gradually placed one upon the other, it is rather remarkable that it did not disturb those applying the law at all that the legal regulations on the support rendered to the members of the Diaspora failed to define the scope of the beneficiaries, i.e. the persons belonging to the Diaspora. That may hardly be considered as compatible with the programme of the rule of law.<sup>10</sup> Examples for similarly “hazy” regulation may be detected in other fields as well, and that is always related to the immaturity, rudimentary nature or lack of strength of the policy hidden behind the regulation in question.<sup>11</sup>

In 1989 it was at the level of the Constitution that the political objective was worded, expressing national attachment and the intention to foster the co-operation and the

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<sup>8</sup> In spite of the diversity of interpretation, however, there are common elements: A community, created by migration, possessing identical linguistic, cultural roots and identity, desiring to maintain it, institutionalised to a certain degree, fostering real or nostalgic relations with the fatherland where it wishes to return as part of the common identity.

<sup>9</sup> There are views, according to which the people from Transylvania, Voivodina settling down in the mother country are also emigrants, moreover those moving from Transylvania to Voivodina are emigrants too, thus they may constitute a further subgroup of the Diaspora. (Conference of the European Protestant Free University, May 10-12, 1999.) Other believes that the concept of parts of the nation should be applied for those cases. (Erdélyi Hivogató /Transylvanian Call/, Új Folyam /New Flow/ 1998/1.)

<sup>10</sup> Par 2, Section (1) of the Constitution of the Hungarian Republic.

<sup>11</sup> An example for that is the whole of the fragmentary, contradictory regulation relating to the NGOs and non-profit sector and, concretely, the vicissitudes of Act CLVI of 1997.

relationship between Hungarians, wherever they may live, and the mother country.<sup>12</sup> At the same time, the legal regulations, the decisions relating to the national budget, as well as the administrative measures aiming at realising the objective never provide unequivocal information about who are the members of the Diaspora, who are the Hungarians. One reason is that targeted support requires relationships free from conflicts with the territorial state of the Hungarians living beyond the Hungarian borders and communication which is clear from the legal point of view might carry a threat of causing conflicts. A further explanation may be that there is no need to define the scope of the persons concerned in the legal regulations since everyone knows who are the people involved and the Diaspora policy of the government may be carried out in this way too.<sup>13</sup>

However, the seemingly comfortable situation and the consensus of the political players are jeopardised by a diversity of dangers. For example, it might qualify the consensus among the parties if it were discussed in public whether the presumption can be justified by facts, according to which an exemplary minority policy is to be established in respect to the minorities in Hungary, by international standards too, joining and applying the international agreements on the protection of minorities, supplementing them with autonomous regulation, policy – and that, in turn, will radiate into the neighbouring countries, i.e. contribute to the maintenance of the Diaspora, the guarding of its identity and staying on the motherland. Since 1920 this precept has been the basis, but no proof, of Diaspora politics. A different kind of danger might be evoked by investigating the question of “who are Hungarians” since it might change the social acceptance in Hungary of the immigration of Hungarians beyond the borders of Hungary, making it more diverse, moreover creating more conflicts in the future. Although prejudice against Hungarian immigrants has raised but moderately<sup>14</sup> compared to other migrants, politics should react to that. Therefore the question of “Who are the members of the Hungarian Diaspora?” needs an answer also because it touches the basis of belonging together and to the nation. Without that, even greater doubt is to be cast upon the principle of Diaspora politics treated as an axiom that there is consensus among the Hungarian population in respect to the reception and assistance of the members of the nation arriving in Hungary.

It presents a problem that it cannot be defined precisely legally, and pragmatically from the point of view of the application of law, who are the Hungarians who may be looked upon as members of the Diaspora too. That originates from the incompleteness of law, thus in vain should we wait for a full elaboration of legal regulation. Today the legal regulations run along two paths: those are Hungarians who 1. are/or have ever been Hungarian citizens, or are the offspring of such persons, 2. and/or proclaim themselves to be of Hungarian nationality.

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<sup>12</sup> Par 6, Section (3) of the Constitution.

<sup>13</sup> This is what happened, for example, to the refugees following World War II. Since the international community wished to settle their legal standing, the UN agreement endorsed on July 28, 1951 actually defined the concept but failed to create procedural rules as to how to identify those proclaiming themselves to be refugees with what was included in the agreement. The starting point of the deputies wording the agreement was that encouraged the states from joining the agreement.

<sup>14</sup> *Csepeli-Sik: Changing Content of Political Xenophobia in Hungary – Is the Growth of Xenophobia Inevitable? In: refugees and Migrants – Hungary at a Crossroads* (Eds.: Fullerton-Sik-Tóth) Hungarian Academy of Sciences, Institute of Political Sciences, Budapest, 1995. pp. 121–128.

*Parallels in legal history*

Antecedents in our legal history even today exert an influence on our Diaspora politics, certain elements of Diaspora politics of today are to be discovered when analysing our old law. For example, *ius sanguinis*, citizenship based upon the principle of origin, has been unbroken since the first act on citizenship,<sup>15</sup> which cannot be lost even by emigration since 1929. Consequently, a significant number of “latent” Hungarians are roaming around the world today. Although the question of registration has been raised on several occasions, we only possess estimated figures about the number of “potential Hungarian citizens” since it has not been carried out so far.<sup>16</sup> It follows from the principle of *ius sanguinis* too that multiple identity and multiple attachment were considered as undesirable in our citizenship acts, and a real development was only brought about in this respect by our most recent legal practice.<sup>17</sup>

The other element of historical heritage is that, outside the order of origin, granting citizenship was rather liberal on the basis of the rules of settlement attachment<sup>18</sup> and *taciturn naturalisation*.<sup>19</sup> However, this flexible principle of gaining admittance into the local community was broken by the central regulation of central administration and foreign policing gradually introduced since the turning of the century<sup>20</sup>, which has, since that time, given equal treatment to all aliens who are not Hungarian citizens. That is how all the members of the Hungarian Diaspora became part of the faceless group of aliens in case they have lost their Hungarian citizenship. Since 1921, those persons who failed to opt Hungarian citizenship for being Hungarian,<sup>21</sup> have been treated by Hungarian law just as Pygmies or Maories, being subject to a foreign policing procedure becoming increasingly stricter.

That has by now led to a huge number of contradictions in the application of law and political debates. Diaspora politics and migration politics will not work if they run counter to each other.<sup>22</sup> For example, there have been no public debates about whether

<sup>15</sup> Act L of 1879, coming into force on January 8, 1880.

<sup>16</sup> For instance, Dr. Iván Nagy suggested that it would be the task of the Hungarian Universal Minority Institute to “take the census of all the Hungarians living in diasporas all over the world. It would be important from the point of view of the protection of the minorities too, especially in the so-called successor states, but also from the point of view of drawing up the picture of the size and strength of the Hungarian nation as such. That, obviously, is but a secondary task from the scientific point of view but its practical realisation is still the primary interest of the Hungarians, the country to be rebuilt, the nation getting in stride with new forces.” (The Significance of National Statistics from the Point of View of the Protection of the Rights of Minorities. Legal Library of Miskolc, No. 28; 1928, p. 26.) For estimation and other related issues, see Mária Parragi: Dilemmas of Citizenship Law – with the Eyes of Law Practitioners. In: Aliens in Hungary. (Eds.: Sik-Tóth) Hungarian Academy of Sciences, Institute of Political Sciences, Budapest, 1998. pp. 79-86.

<sup>17</sup> Although the third act on Hungarian citizenship (Act V of 1957) already tolerated multiple citizenship, it was excluded from the bilateral agreements concluded with the European states most important for us. Following 1990, Hungary revoked these agreements in order to respect multiple identity and citizenship.

<sup>18</sup> Act VI of 1868 and Act XXII of 1886.

<sup>19</sup> In opposition to the institution of *indigenatus solemnis*, granting a citizenship providing full political membership, including nobility, the aliens moving into the country could gain citizenship following ten years of dwelling here, paying taxes, a life style not objectionable on moral bases, having adjusted to the life of the local settlement. (Ferenc Faluhelyi: Hungary’s Public Law I-II. Pécs, 1926).

<sup>20</sup> For example, Acts V and VI of 1903. (For more details, see Ferenc Ferenczy: Hungarian Citizenship Law. Gyoma, 1928., Gejza Ferdinandy: Hungary’s Public Law, Budapest, 1902.)

<sup>21</sup> Act XXXIII of 1921 on the ratification of the Peace Treaty of Trianon, with special regard to its Title VII, and prime ministerial decree of 1921 No. 7200 on the enactment of the Peace Treaty of Trianon.

<sup>22</sup> Pál Tamás: Seven Theses on the Potentials of the Reinterpretation of Our Identity Politics and Citizenship. In: aliens in Hungary. (Eds.: Sik-Tóth). Hungarian Academy of Sciences, Institute of Political

the immigration to Hungary of the Hungarians living outside the borders of Hungary can be hindered – e.g. by foreign policing restrictions (entry, residence, labour) – with the intention of encouraging the stay of the Diaspora on the motherland. Why should the members of the Diaspora not have an independent status in the Hungarian regulations?

### *Legal rules on Diaspora*

The number of the legal regulations and other instruments of state administration<sup>23</sup> adopted since 1989 have grown enormously by now, the norms in force amounting to approximately ten thousand. The first difficulty of the examination was how to conduct a complete survey of the legal material in Hungary, selecting the legal regulations applying to at least one group of the Diaspora.

As a result of the remarkable size of the material,

- concentrating on the narrower subject, we failed to take into account the universal human rights agreements that we had become parties to prior to the period under examination or which are applicable, in general terms, to the persons falling under the jurisdiction of the state (foreign citizens who happen to be staying in Hungary, including certain members of the Diaspora);

- we disregarded the decrees of the local governments since a part of them are available in manual records only;

- we did not consider as separate norms the norms which amended or supplemented the legal regulations within the period under examination;

- certain legal regulations had lost their validity in the meantime, thus their substantial analysis was not carried out in every case since the basis of analysis was the collection of the legal regulations in force as well as the Official Gazette.

Taking all that into consideration, altogether merely 150 legal sources deal – directly or indirectly, partly or wholly – with Diaspora politics and various members of the Diaspora. We considered them altogether – perhaps somewhat boldly – as “Diaspora law”.

The rules of “Diaspora law” analysed contentually may be classified in accordance with several viewpoints.

#### *1. The origin of the legal norm*

*1.1.* Among the sources of international law, emphasis is to be given to:

*1.1.1.* The multilateral human rights and minority political proclamations,<sup>24</sup> agreements, in the quick creation of which in the past years and their joining a

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Sciences, Budapest, 1998. pp. 87-90. Judit Tóth: Mosaics on the Domestic Regulation of Migration. (An Analysis of the Citizenship Law and Alien Law . Magyar Jog, April 1994. pp. 213-222.

<sup>23</sup> Act XI of 1987 determines the types, sources of the legal regulations (constitution, act, Government decree, decree of the members of the Government, local government decree, international agreement) and the other directing instruments of state administration (parliamentary resolution, governmental resolution, ministerial instruction, measure taken by the National Bank, legal guidelines).

<sup>24</sup> Specifically, the C.S.C.E. documents, Recommendation 1201 of the Parliamentary Assembly of the Council of Europe, the Helsinki Final Act, figuring in the preamble of all the basic agreements irrespectively whether there is at least one Hungarian living in the given state.

significant role was played by the effort to establish “exemplary minority politics”.<sup>25</sup> At the same time, special mention is made of the provisions concerning the relationship between the mother country and the minorities since they set the direction of interstate relations beyond the legal relationship between the minority and the territorial state, e.g. call for concluding bilateral agreements “specifically with the neighbouring countries in order to ensure the protection of the persons belonging to the national minority concerned.”<sup>26</sup>

1.1.2. The agreements placing the bilateral interstate relations on new bases of the rule of law and foreign politics, representing a specific genre, since they determine principles in a dozen of topics in the relationship between the two countries at least, and later on the creation of specific agreements as well. Among them special importance is allocated to those countries in which there are significant-sized Hungarian minorities living, with respect to whom enhanced importance was given to the inclusion of provisions in the agreements which protect the minorities. All that is amply proven by the comparison of the so-called “basic agreements” signed with the Ukraine, Romania and Slovakia.<sup>27</sup>

1.1.3. The protocols determining the order of execution of the basic agreements represent an independent group.<sup>28</sup> The organisational framework and the actions to be taken have been defined in respect to the execution of the provisions included in the Romanian and Slovak basic agreements.

1.1.4. Although the number of bilateral agreements serving the protection of the rights of the Diaspora living as a minority and the preservation of its identity is not high,<sup>29</sup> it has an exemplary value from the point of view of organisation and foreign politics. Their significance is enhanced by the fact that the basic agreements concluded with the states concerned also provide for the minorities and not just in general terms but by making separate mention of the Hungarian minorities (e.g. the protection of the identity of the Hungarians living in Slovenia and Croatia, the prohibition of discrimination, the use of their mother tongue).<sup>30</sup> However, the agreements protecting the minorities mentioned above possess further guarantees as well.

1.1.5. Several of the bilateral agreements do not have the direct aim of protecting the minorities but in an indirect manner they still support the maintenance of the relationship

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<sup>25</sup> Specifically, the European Charter of Regional or Minority Languages of the Council of Europe (published in Act XL of 1999, confirmed by Parliamentary resolution No. 35/1995. (IV.7.) as well as the Framework Agreement on the Protection of National Minorities of the Council of Europe (published in Act XXXIV of 1999).

<sup>26</sup> Article 18 of the Framework Agreement on the Protection of National Minorities of the Council of Europe (1995).

<sup>27</sup> They were published in Act XLV of 1995, Act XLIV of 1997 and Act XLIII of 1997.

<sup>28</sup> Official Gazette 1998/10. Publication of an international agreement on the establishment of co-operation and active partnership mixed commission between the Government of the Hungarian Republic and the Government of Romania, by the Minister of Foreign Affairs. Official Gazette 1999/2. Publication of the minister of Foreign Affairs on the establishment of a mechanism serving the promotion of the execution of an agreement on good neighbourly relations and friendly co-operation.

<sup>29</sup> Agreement on the protection of the rights of minorities with Croatia (published in Act XVI of 1997), agreement on granting special rights to the Slovenian national minorities living in the Republic of Hungary and of the Hungarian national minority living in Slovenia (published in Act VI of 1996).

<sup>30</sup> Friendship and co-operation agreement with Slovenia (published in Act XLVI of 1995), Article 18, and with Croatia (published in Act XLVII of 1995), Article 17.

between the mother country and the members of the Diaspora living abroad, the preservation of their identity and the protection of their rights. Their common feature is that perhaps they would not have come into existence, or at least not with such an intensity and by determining a wide co-operation, if there were no Hungarians living in the given state. As to their subject matter, they represent a high degree of diversity (on issues of economic, social, cultural, education, border control, visa-free travel, multiple citizenship, labour, etc.) and their detailed introduction exceeds our present objective.

1.2. The other large group of norms is constituted by the domestic sources of law.

Compared to the international sources of law, the number of Hungarian legal regulations is more than twice of them but their scope is half of them at the most. To put it in another way, the number of international agreements is approximately fifty, and the domestic regulations amount to about one hundred. At the same time, the scope of the volume of rules relating to the Diaspora “hidden” in them hardly amounts to half of the international norms. The division of the domestic sources of law was as follows, amply demonstrating the lawmaking and decision making bodies playing an overwhelming role in the formation of Diaspora policy. (N = 103)

Legal sources	Amount
Acts	29
Parliamentary resolutions	6
<i>Parliamentary total</i>	<i>35</i>
Governmental decrees	28
Governmental resolutions	33
<i>Government total</i>	<i>61</i>
Ministerial decrees	5
Ministerial orders	2

All that comes to light from that extremely rudimentary summary is that two thirds of the norms providing for the Diaspora in the legal order were born at the level of the government and its members, closed from social publicity, while but one third of them came into existence in the process following the debate of the most important organ of representation. From the point of view of the sources of law, there are few stable and high level legal regulations (acts), the number of decrees is higher by an order of magnitude (33), while almost half the norms are constituted by the other legal instruments of state administration (resolutions and orders, totalling 41). That in itself indicates that there are quite a few resolutions dealing with the establishment of organisations, the division of administrative tasks, allocation of money, nomination, protocol issues, while the number of competencies of the members of the Diaspora and those dealing with them directly – since it needs regulation primarily by acts or, perhaps, governmental decrees, – is rather low. To put it briefly, the direct regulation of the legal standing of those concerned does not constitute an integral part of Diaspora politics, but, instead, a major role is played by indirect, paternalist regulation, based upon the judgement of the authorities, having the character of state support.

The classification presented below indicates the groups, organisations the legal regulations refer to, as well as those who apply the legal regulations. Although this may appear to be a formal approach, still it contains a diversity of information.



2. *Who are the persons the government wishes to reach and support from the geographical point of view?*

- 2.1. Persons arriving in Hungary (for instance, to study here);
- 2.2. Persons living in the Carpathian Basin as a minority;
- 2.3. Hungarians living anywhere else.

3. *Who are the subjects to be supported legally? (It may be connected to the geographical subjects referred to above)*

- 3.1. Persons of Hungarian, perhaps multiple citizenship;
- 3.2. It is uncertain whether the subjects possess Hungarian citizenship (the purpose may be to state, clarify that);
- 3.3. Aliens (i.e. possessing no Hungarian citizenship).

4. *Who is the assistance provided by and who are the subjects to be supported?*

4.1. Non-governmental organisations whose activities are partially or wholly centred on assisting the Hungarians beyond the borders.<sup>31</sup> In other words, players of Diaspora politics may become associations, foundations, public foundations, carrying out “activities related to the Hungarians beyond the borders of Hungary” as non-profit organisations.

4.2. Taxpayers which are non-governmental organisations supporting Hungarians outside the borders of Hungary, allocating a certain part of their taxes to supporting organisations finance from the central budget, associations, foundations.<sup>32</sup>

4.3. Public foundations established by the government with the aim of supporting the Hungarians beyond the borders of Hungary.<sup>33</sup>

4.4. Organisations financed from the central budget (universities, hospitals, etc.) providing benefits, support.

4.5. Authorities (consulates, notaries, public administration offices, customs, etc.) applying the rules of the preferences resulting from the legal standing, using their discretion power.

<sup>31</sup> Act CLI of 1997 on non-profit organisations, Appendix Par 2, c.13.

<sup>32</sup> Par 4 of Act CXXXVI of 1996 on personal income tax, Par 29/A of Act LXXXI of 1996 on corporate and dividend tax.

<sup>33</sup> Amended resolution of the Council of Ministers No. 1068/1990. (IX.15.) on the establishment of foundations serving minority politics objectives (Illyés Foundation), Governmental resolution No. 1057/1992. (X.9.) on Hungarian Television Foundation, Governmental resolution No. 1021/1995 (III.8.) amended several times, on Handshake/New Handshake Foundation, on Arany János Public Foundation (Official Gazette No. 1997/104), Governmental resolution No. 1162/1998. (XII.17.) on Apáczai Public Foundation for Hungarian Education beyond the Borders, the founding document of the Illyés Public Foundation (Official Gazette No. 1999/23.), Governmental resolution on the amendment of the founding documents of minority public foundations.

### 5. *The regulated objects of law*

For the man-in-the-street, the most important point of orientation is what the legal regulations are all about. It tells far more about the specificity of Diaspora politics. In accordance with the objects of law, the following differentiation may be made:

5.1. *Issues of national policy.* They are characterised primarily by their program-orientation, their contents setting objectives, therefore they may be considered to be of normative nature to a lesser extent. Examples are the provision of the Constitution quoted above [Par. 6. Sec. (3)] or the parliamentary resolution stipulating the regulatory principles of regulation of the Constitution<sup>34</sup> under preparation. The actual government has made efforts to increase the legal value of the provision included in the basic act since it has included it as a norm in the decrees on the tasks and competencies of the members of the government as well as the founding documents of the public foundations aimed at supporting the Hungarians outside the borders of Hungary. We learn from them that the term in the basic act mentioned above is “public tasks of the state” for the government. The parliamentary debate of the regulatory principles of the new Constitution which has proved to be abortive in the meantime has yielded political lessons too. Although some attention has been allocated to the political issues of the Hungarians outside the borders of Hungary, it was manifested in debates concerning other legal institutions and not in itself. The only consensus was reached in that in the future too the clause of responsibility and co-operation related to the Hungarians outside the borders of the country is to be retained in the Constitution – as the objective of the state in its foreign policy – and, in an unchanged manner, multiple citizenship is to be tolerated.

At this point mention must be made of the parliamentary resolution, also of political and only partially legal significance, passed in 1990, wording principles regarding “the situation of Hungarian national minorities living in the neighbouring countries”,<sup>35</sup> valid for the whole period under examination. Since the situation of minorities is aggravating, their legal claims are refused, and that jeopardises good neighbourly relations, democratisation, negotiations are to be started on bilateral minority agreements, the protection of their rights and the conclusion of regional agreements. Parallel to that, domestic minority politics is to be modernised, their institutional rights are to be granted by the passing and enforcement of the appropriate laws. What are the principles to be followed jointly? The respect of human rights, the mother country should be enabled to conclude agreements to protect the rights of the national minorities, to guard the identity of minorities (wherever they live), to ensure their self-organisation, cultural autonomy and use of language, the undisturbed relationship of the minorities and the mother country via agreements, as well as the satisfaction of the requirements of the minorities living here with the assistance of the Hungarians living in the neighbouring countries and the neighbouring countries themselves. All that, therefore, determines the policy of remaining on the mother land and the application of the law, from which it follows that there is no need to regulate the members of the Diaspora living and faring elsewhere, or only of secondary, supplementary character at the most.

<sup>34</sup> Parliamentary resolution No. 119/1996. (XII.21.) on the principles of regulation of the Constitution, Appendix III/7, V/4.

<sup>35</sup> Parliamentary resolution No. 46/1996. (V.24.).

5.2. Trends in foreign politics are determined by the legal regulations, other legal instruments of state administration, authorising the conclusion of intergovernmental and international agreements as well as providing for their execution. A special significance is attributed to the documents jointly determining causes of European integration, domestic and foreign minority protection and national politics. For they make reciprocity, and minority protection, as the reward of exemplary nationality politics, the basic principles of foreign politics and national policy actions, and at the same time the precondition of political nature of accession to the EU.<sup>36</sup>

5.3. In a lower volume though, but norms regulating economic co-operation, support are also encountered. Without repeating the investment, tax, customs and other preferences figuring in the bilateral agreements, here only references are made to the unilateral measures serving. For instance through encouragement of small businesses, joint ventures as well as the training of entrepreneurs<sup>37</sup> they intend to solve the economic problems of the communities of Hungarians living in the Diaspora outside the borders of Hungary.

5.4. There are several legal regulations providing for the education of Hungarian students (students speaking Hungarian), the in-service training of teachers, the founding of scholarships, participating in higher education in Hungary, moreover training beyond the borders.<sup>38</sup> A part of them provide for higher education training beyond the borders in case the conditions of launching a given subject are granted outside the premises of a domestic university, college too.<sup>39</sup> The overwhelming majority of scattered, also "hidden" rules provide for students belonging to the Diaspora, studying in Hungary. From the point of view of the rules of higher education, the members of the Diaspora are, generally speaking, foreigners, just like all the non-Hungarian citizens. Thus in respect to their admission, legal standing and studies in the domestic higher education institutions, the provisions applicable to everyone as well as the rules created within the framework of institutional autonomy are to be applied, except if an international agreement or legal regulation provides differently. It is the Hungarian Scholarship Council Beyond the Borders that determines the size of the scholarship for Hungarian students coming from outside the borders. The social board of trustees of the Council, whose composition and operation is not discussed elsewhere either, makes recommendations regarding the size of the scholarship. The Hungarians outside the borders of Hungary receive not a scholarship but actually an additional scholarship, paid by the Márton Áron College instead of the given educational institution.<sup>40</sup>

5.5. There are a few provisions regarding cultural co-operation, services, in which those living in the Diaspora and their institutions are also included by the lawmaker. For instance, central services assisting the operation and development of the system of

<sup>36</sup> For instance, Parliamentary resolution No. 94/1998. (XII.29.), 11. on the basic principles of the security and defence politics of the Republic of Hungary.

<sup>37</sup> The New Handshake Public Foundation set as its aim the economic co-operation between the regions along the border populated by Hungarians and Hungary (Governmental resolution No. 1021/1995. (III.8.) Appendix, 4.).

<sup>38</sup> For example, Act LXXX of 1993 on higher education, Para 11/A. on training beyond the borders, moreover Governmental resolution No. 192/1997 (IX.4.), Decree of the Minister of Education No. 30/1998 (VI.25.), Decree of the Minister of Education No. 21/1998 (V.13.).

<sup>39</sup> Act LXXX of 1993 on higher education (Para 11/A.).

<sup>40</sup> Governmental decree No. 192/1997. (XI.14.) Para 2, Para 3, Section (1), Para 11. Decree of the Minister of Education No. 30/1998. (VI.25.) Para 1, Section (1), Para 2, Section (3), Para 8.

public libraries include helping the supply of libraries outside the borders. It is the budget of the ministry of culture which covers participation in this service.<sup>41</sup> The conveyance of cultural values is the objective of the Hungarian Television Foundation since its establishment in 1992.<sup>42</sup> Similar, though less concrete, public service tasks have been defined for the Hungarian Radio and the national news agency<sup>43</sup> too. It is “in harmony with its foreign policy objectives” that the government performs the activities of the Hungarian cultural institutions abroad, fostering the relationship between Hungary and the recipient country.

5.6. The list also contains the inclusion of members of the Diaspora in scientific research, PhD training, as well as enabling senior researchers to perform research in Hungary. The support of those activities is rendered primarily through the higher education institutions mentioned several times (Higher Education and Scientific Council), public foundations (such as Arany János Public Foundation<sup>44</sup>), moreover in accordance with the regulations of the Hungarian Academy of Sciences, and its modest size may be concluded from the expenditures defined in the Budget Act. These efforts intend to reduce the exodus of Hungarian academics.

In respect to the three topics discussed above, we notice that Diaspora politics intends to embrace – at least partially – not only the Hungarians living in the Carpathian Basin. The Hungarian cultural institutions contribute to preserving the cultural identity of Hungarians living in faraway countries. The Kodolány János Institute participates in the education of the children of emigrants who, perhaps, do not speak Hungarian. At the same time, the meeting “Hungary 2000” intends to provide a framework for the government to offer emigrants an opportunity to participate in the building of a modern Hungary, e.g. by making use of their experience.<sup>45</sup>

All that, however, does not mean that Diaspora law and politics are not unequivocally focused on the Carpathian Basin.

The other remark in respect to guarding, disseminating culture in the wide sense as well as conveying values is that some domestic legal regulations reflect the effort of thinking in terms of the whole nation. For example, in the national basic curriculum – obviously, to eliminate the one-sidedness of the public education of the earlier decades – it is mentioned among the requirements of Hungarian literature: “including literature beyond the borders as well”.<sup>46</sup>

5.7. The rules of the support of humanitarian nature are to be found in scattered provisions. They include health care and social security provided on the basis of social policy agreements unilaterally, the assistance rendered to rebuild buildings destroyed in wars as well as exemption from paying charges provided on the basis of equity.

On the one hand, the norms relating to emergency health care apply to all the foreigners staying in Hungary, covered by the central budget. It is apparently independent of the specific legal standing of the Diaspora but since a significant part of

<sup>41</sup> Act CXL of 1997 on the protection of cultural assets, museums, the supply of public libraries and public education (Para 60, Section (1), Para 71.).

<sup>42</sup> Governmental resolution No. 1057/1992. (X.9.) (Statute, 3.).

<sup>43</sup> Act I. of 1996 on radio and television broadcasting (Para 56.), Act CXXXVII of 1996 on national news agencies (Para 2, Section (1)).

<sup>44</sup> Founding Document 3.1. (Official Gazette No. 1997/104).

<sup>45</sup> Governmental resolution No. 2327/1996. (XI.28.).

<sup>46</sup> Governmental decree No. 130/1995. (X.26.) on the publication of the national grammar school's curriculum.

health care offered free of charge in this way is resorted to by the members of the Diaspora via informal relations or public foundation, it may at least partially be qualified as part of Diaspora law.<sup>47</sup> On the other hand, the humanitarian support of the Diaspora appears openly (e.g. for reconstruction of Hungarian settlements in Croatia).<sup>48</sup>

5.8. Finally, separate mention is to be made of the legal regulations concerning migration and related to it.<sup>49</sup> The starting point of the overwhelming majority is that the members of the Diaspora are foreigners, just like any other aliens. However, the lawmaker has provided the members of the Diaspora with a few rather virtual preferences, exemptions as it were from the rules of the period under examination, becoming increasingly more strict. At the same time, it has been revealed by a number of analyses that the majority of administration related to foreigners is made up by the entry to, stay in, immigration to, and naturalisation in, Hungary of the members of the Diaspora. This “preferred mass phenomenon” may, in itself, be the source of tension in the application of the law,<sup>50</sup> which is enhanced by the organisational system not adjusted to the rigour of the law.

## 6. Rules ensuring the execution of Diaspora politics

6.1. Organisational norms, establishing the institutions implementing politics, moreover regulating their internal structure, operation. Here mention must be made of the Office of the Hungarians beyond the Borders, the competent units of the ministries, the public foundations mentioned above, and the legal regulations pertaining to them, moreover the mixed commissions co-ordinating bilateral co-operation or most recently the short resolutions concerning the institutionalisation of the Hungarian-Hungarian summit.<sup>51</sup> The secretariat of the Prime Minister’s Office dealing with the Hungarians outside the borders was replaced by the Office in 1992. Its name is strange too since it has no competence of an authority whatsoever, and it became a body of quasi-national competence in central public administration only to improve its budgetary and organisational situation. Its legal standing (it is controlled by the Government, supervised by the state secretary of the Prime Minister’s Office, its president is appointed by the Prime Minister, it has no independent chapter in the budget, it only is a part of another chapter) reflects its hybrid character. and that greatly hinders its

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<sup>47</sup> In accordance with Governmental decree No. 154/1998. (IX.30.) Para 2, Section (1), the Minister is to carry out the activities relating to the Hungarians beyond the borders as defined in the Constitution Para 6, Section (3) and the government programme, as part of the tasks of the Ministry, in co-operation with the Ministry of Foreign Affairs and the President of the Government Office of Hungarians Living beyond the Borders.

<sup>48</sup> Governmental resolution No. 1027/1999. (III.3.).

<sup>49</sup> Act LXXXVI of 1993 on the entry of aliens, their stay in Hungary and immigration, Governmental decree No. 64/1994. (IV.30.) on the execution of the Act, Decree of the Minister of Interior No. 9/1994. (IV.30.) on the execution of Governmental decree No. 64/1994. (IV.30.), Act LV of 1993 on Hungarian citizenship.

<sup>50</sup> Judit Tóth: Desirable Immigrants? (On the Act on Citizenship and Foreign Policing). In: Are They Coming? Going? Staying? (Eds.: Sik-Tóth) Hungarian Academy of Sciences, Institute of Political Sciences, Budapest, 1994. pp. 98-110. Péter Pál Tóth: Is There But One Homeland? Püski, 1997.

<sup>51</sup> Parliamentary resolution No. 26/1999. (III.26.) on the tasks related to the establishment of the Hungarian Permanent Conference.

operation in public administration, operated in a hierarchic, formalised system, while it has a very wide scope of tasks to perform.<sup>52</sup>

6.2. The norm distributing the tasks, scopes of authority among the existing government bodies is of organisational nature but specific. The rules of scopes of authority help to some extent to find orientation as to which ministries and how participate in the manifestation of the Diaspora policy of the government. At the beginning of the period under examination, that was concentrated exclusively in the hands of the Prime Minister's Office, and the scope of tasks of the central administrative bodies remained untouched at the level of the legal regulations and the other legal instruments of state control. A change in this respect was brought about by the establishment of the Government Office of Hungarians Living beyond the Borders, which has carried out co-ordination among the governmental, interministerial, as well as social and political organisations since 1992. It is the innovation of the actual government that it integrated the Office into the Ministry of Foreign Affairs, thereby imparting it an unequivocal foreign relation and foreign politics emphasis. A further change is that, with the exception of the defence minister, the legal regulations determining the tasks and scope of authority of all the members of the government were supplemented by the responsibility clause of the Constitution which the minister in question is obliged to manifest while carrying out the tasks belonging to his/her competence, together with the provisions of the government programme – frequently, but not in the case of each minister.

6.3. An independent group, although of a changing character similarly to those mentioned above, is constituted by the provisions relating to protocol and personnel issues (e.g. who and when will attend dinners on behalf of the Government with the representatives of the Hungarian communities beyond the borders, foundation of the Prize for the Diaspora<sup>53</sup> which is handed on the 10th of December, on the Day of Human Rights).

6.4. An outstanding role is allocated to financial rules in granting different kinds of support and objective conditions in the execution of Diaspora politics. The debate and the result of the annual budget act and the act passed provide a diversity of political lessons. One of the most important conclusions is that on the basis of surveying the annual budget acts it is impossible to tell unequivocally how much money is spent from the centralised public resources on the direct support of the Diaspora and what is the size of the related (administrative) costs. It has basically two reasons: on the one hand, the destination of the sum earmarked is uncertain, frequently it may only be guessed what are the purposes it really serves. The other reason is that the details of the expenditure items serving multiple purposes are included neither in the budget act nor in the final summary, therefore it is difficult even to estimate the actual proportions of expenditure. Having said that, what we can see is that in the period under examination

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<sup>52</sup> In the sense of Governmental decree No. 90/1992. (V.29.) Par 5: keeping contacts (with the Diaspora, the authorities of the territorial state), co-ordination (with the government bodies to execute the policy of the government), analysis (on the situation of the Hungarian minority, international processes) participation in the formation of foreign politics, presenting opinions (when legal regulations, agreements are prepared), definition of financing and support priorities, assisting the operation of minority mixed commissions.

<sup>53</sup> Governmental decree No. 183/1997. (X.17.) on the foundation of the Award for the Renown of the Hungarians, Governmental decree No. 1109/1997 (X.17.) on the rules related to the Award for the Renown of the Hungarians.

there was a gradual increase in the number of the items of expenditure (purposes), while nominally the total expenditure related to the Diaspora grew.

### 7. *Direct or indirect rules*

7.1. A different kind of classification of the sources of law makes it clear that there is a rather small number of legal regulations whose title, scope of persons and objects clearly inform all the readers whether they contain provisions relating to the whole or certain groups of the Diaspora and administrative matters pertaining to them. That may be referred to as direct Diaspora legal regulations. Almost none of the legal regulations meet that requirement,<sup>54</sup> except in case the different use of words is allowed,<sup>55</sup> or the rather frequently used “secret codes”. Such a method is e.g. the reference to Par 6. Section (3) of the Constitution as a public task of the state in regulating the tasks and competencies of the ministers. It happens rather frequently that the provisions regulating Diaspora politics determine issues of organisation, competence or finance instead of addressing the members of the Diaspora directly.

7.2. The overwhelming majority of the sources of law under examination are indirect rules. Partly because they are not directly addressed to the members of the Diaspora and partly because there is need for strong imagination and a thorough knowledge of the subject to realise that the intention of the lawmaker is to protect, support the rights of the Diaspora. Who would expect to hit upon provisions concerning the Diaspora in acts on corporate taxes or dividend taxes or just in the ministerial decree on the Higher Education Scientific Council? It frequently happens that a given legal regulation encompasses in general terms all foreign students, sick or insured persons or applicants for residence permit, independently of some of them belonging to the Diaspora, at the same time the political intentions behind the application of the law or the legal regulation bring it in contact with the legal standing of the members of the Diaspora, making them into beneficiaries.

### 8. *Subjective rights?*

8.1. The characteristic feature of Diaspora law, mentioned last but having a high degree of importance, is that at times we find in it provisions which would directly give the members of the Diaspora (its organisation, representative) rights for some preferences, support, entry, scholarship. Such are e.g. naturalisation, renaturalisation, re-acquisition of Hungarian citizenship to those who lost it by being dismissed or deprivation, by way of a proclamation of citizenship, which has been granted free of charge since 1993.<sup>56</sup> Another part of the authorising norms grant exemption from paying customs duty to those settling down in Hungary following at least two years of absence

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<sup>54</sup> Except for, e.g. the decree on the Office of Hungarians beyond the Borders, the Governmental decree No. 1162/1998 (XII.17.) on the establishment of the Apáczai Public Foundation for Teaching Hungarian beyond the Borders, Governmental decree No. 2327/1996 (XI.28.) on the possibilities of the participation of Hungarians living abroad in the modernisation of the country, which undertook the objectives of the regulation in their titles and all of their activities.

<sup>55</sup> E.g. Resolution of the Council of Ministers No. 1068/1990 (IV.12.) on the establishment of foundations serving the objectives of minority politics.

<sup>56</sup> The amended Act XCIII of 1990 on charges (Appendix II/4)

as well as immigrants.<sup>57</sup> Again another part of them refer to Hungarian taxpayers, public utility organisations spending their money directly on the Diaspora. Different rights of nomination are to be encountered on the part of Hungarian organisations beyond the borders, e.g. in boards of trustees active in the field of culture.

8.2. The majority of the legal regulations analysed do not regulate subjective rights of the members of Diaspora to act, they only authorise the government bodies, public institutions as well as public administration bodies to do so. It is those provisions included in the statutes of state bodies, institutions and the founding documents of foundations, institutions serving the distribution of money, that we may draw conclusions in respect to some “indirect rights”. E.g. if an organisation decides upon bids, someone may apply for it, request assistance, or the authority may grant the permission without any member of the Diaspora being eligible to the related scholarship, entry, naturalisation, immigration permit or the compulsory copy of a publication.

### *Conclusions*

Constitutional law and – in view of human rights exerting a significant impact on development of domestic law – international law differentiate among a number of legal statuses. Thus they have traditionally applied the pair of citizen and alien, on the other hand, they have gradually established the legal standing relating to national and ethnic minorities as well as that of refugees. They have a specific content (rights and obligations) and a diversity of overlapping, differences compared to each other. A rank order is impossible to set up on the basis of one variable only since rights and obligations cannot be compared to each other, only rights can be related to other rights and obligations can be measured in respect to other obligations at best. Therefore, a rank order among the statuses is frequently set up on the basis of size of rights and stability of the status. The question posed in the introduction, whether there is Diaspora law or not, worded differently, sounds like this: has an independent, specific legal standing, status been created for those belonging to the Diaspora or not?

The study proves that the answer is partially yes. On the one hand, the legal standing of the members of the Diaspora who are not Hungarian citizens is more favourable compared to the other aliens both as individuals (e.g. among students studying here, persons applying for naturalisation, waiting for immigration permits) and as communities too (the support rendered to different targeted groups, public foundations, NGOs assists communities beyond the borders, also by providing benefits via a diversity of international agreements). On the other hand, it was in the interest of the Diaspora that certain rules were set up, applicable in a way, as worded, to “all foreigners” but actually primarily to the members of the Diaspora. As a result of all that, the existence of the Diaspora and the politics related to it, have exerted a strong influence on the lawmakers in the past ten years, however, without forcing them to formulate an individual status for its members. That is manifested most clearly in the legal institution of immigration permit. The overwhelming majority of the persons possessing immigration permits were foreign members of the Diaspora in the period under examination, and mainly in view of that did their status become significantly more favourable compared to all other aliens ( residence permit for an indefinite period of

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<sup>57</sup> Act C of 1995 on customs law and customs procedure law (Para 1, 28., Para 113, a.)



time, an unlimited possibility to leave the country and return, free employment, an active right to vote in the municipal elections, becoming individual entrepreneurs, joining public education, providing the legal standing of immigrant to the children born here, eligibility to social care and child protection services, exemption from customs duties). At the same time, surprisingly many legal relationships provide for the immigrants, therefore, in a somewhat simplified manner, it may be stated that the immigrant status is the central, but not the only element of Diaspora law.

Diaspora status is “semi-finished”, fragmented because a part of their members are not Hungarian citizens. This dividing line of citizenship could not be crossed by the lawmaker in a meaningful manner. While in accordance with the Constitution the recognition of the claims of the national and ethnic minorities for selecting and preserving their specific identity, their being qualified as a factor constituting the state, their specific rights are built upon the status of citizenship, the Diaspora made up of Hungarian citizens, living abroad, also desiring to preserve their identity and culture, possess no specific rights (as individuals and as a group) because it received hardly any attention from the lawmaker. At the same time, as a result of handling “exemplary minority politics” as an axiom, lawmaking rigidly stuck to the precept of only persons possessing Hungarian citizenship being authorised to have minority rights: it excluded everyone living in Hungary as refugees, immigrants or other aliens and those who perhaps, would like to join, as having the same identity, old minorities in Hungary, or have themselves recognised as a new minority.

The majority of legal sources are more of political rather than normative nature from the point of view of the legal standing of the Diaspora, and their enforcement only depends on the Hungarian authorities if the given member of the Diaspora is staying in Hungary. In other cases, it is the authorities in accordance with the citizenship and residence of the given member of the Diaspora who are expected to enforce the provisions included in multilateral agreements, documents counting the undertaking of political obligations, as well as bilateral agreements. Following 1989, Hungarian diplomacy was highly active in the elaboration of such by- and multilateral agreements and since it had an unbroken faith in exemplary minority politics setting good examples to follow, it gave priority to the elaboration of the rules relating to domestic minorities in the face of formulating Diaspora law. In a few cases, the government wished to support the legal situation of the Diaspora by maintaining or terminating old agreements, “without causing any great stir”.

In spite of the fragmentary nature of the regulation, the legal rules could be classified in a number of ways. Most of them were combined by the fact that they belong to the scope of public law (constitutional law, administrative law, financial law, international public law). Rules of private law are to be encountered as exceptions only, e.g. in relation to the establishment, operation of foundations, associations.

In the legal material concerning the Diaspora the majority of the legal sources are decrees, there are few regulations by law appropriate for the question of status. Their further characteristic feature is that an overwhelming weight is represented by other directing instruments of state administration. All that together demonstrates the exaggerated dominance of actual politics over (instead of) the related, stable regulation by law. Thus we can speak about the policy of execution instead of regulation.

It would be difficult to draw dividing lines according to periods in the birth of the legal material. Far fewer legal sources (and other directing instruments of state administration) were passed in the first half of the period under examination. The

lawmaking activity accelerated after 1994, approximately two thirds of the norms analysed came into being following 1994.

Objects of the regulation determining the legal standing of the Diaspora was not homogeneous at all, far greater attention was paid to certain areas. Greater emphasis was laid on joining higher education, cultural life and mass communication as well as support of humanitarian nature, on the other hand, the formation of international legal guarantees also received priority. The selectivity of the topics of regulation was coupled with concentration on that part of the Diaspora which lives in the Carpathian Basin, looking upon their members as a homogeneous mass, unity. All that together distorted the proportions of regulation.

In the legal material we could find hardly any subjective rights for members or communities of the Diaspora because the overwhelming majority of the provisions granted a discretion power to make decisions to the local authorities, the public foundations operating as quasi-authorities, institutions financed from the state budget. Those rules maintain the mechanisms and politics, rather paternalistic, closed, distributing money, building clientele. Strangely enough, the transparency of the state bodies providing assistance was created not by the state organisations but by the NGOs by the adoption of the act on non-profit sector.

While an enormous bulk of work was started with the intention of realising the rule of law and the European integration, the effort aiming at the autonomous, sovereign regulation, independent of international obligations, of the legal standing of the Diaspora turned out to be an extremely partial success. In that a significant role was played by the political debates disregarded so far, the exclusion of social publicity and the lack of international patterns to follow; there are, at best, partial national patterns which may not be followed mechanically. So there is nothing else to do but carry out the debates clarifying the issues, e.g. national solidarity, belonging together, and create, in the manoeuvring room left open by international law, the legal regulations, reducing the disadvantages of the Diaspora, serving the equality of rights, for the different groups of the Diaspora, even though the basis of the political consensus is the principle of faring and staying on the mother land. A part of the task is to recognise that a nation may find the way of the identity, self-organisation of those living in a Diaspora, with the help of the law – but not only with that – in manners which may offer historically. With its partial character today, law would be able to accomplish more in order that we could speak about Diaspora law, built consciously, as a result of real legal development.

In summary, speaking about the legal regulations born between 1989-99, analysed in the study, we cannot say that a comprehensive, full-fledged development of the law has been carried out from the point of view of legal history; however, we may say that experiments have been made in respect to some legal relationships, and the germs of the Diaspora status have been created.

TÓTH JUDIT

## A MAGYAR DIASZPÓRA JOGI SZABÁLYOZÁSA

(Összefoglalás)

A szerző elsőként elemzi az 1989–1999 között született mintegy 150, a nemzetközi és a hazai jogba tartozó jogszabályokat, az állami irányítás egyéb jogi eszközeit, amelyek a világon szétszóródva vagy a határon túl élő, magyar etnikumhoz tartozókkal (diaszpóra) kapcsolatosak. Az elemzés bizonyítja, hogy kialakultak – az Alkotmányban a határon kívül élő nemzettagok és az állam kapcsolatainak ápolását, az érték való felelősséget tartalmazó klauzula nyomán – a diaszpóra támogatására vonatkozó szabályozás elvei, továbbá töredékes, de 1994 óta nagyobb ütemben bővülő intézményei. A szerző rámutat e szabályozás jogforrasi, tartalmi egyenetlenségeire, ellentmondásaira, és felveti, vajon mennyiben beszélhetünk egy új jogállás létrejöttéről.