

# REGIO

Minorities, Politics, Society

**National, Regional and State Security Issues**

◆  
**Visa Policy**

◆  
**Secret Services after the Transition**

◆  
**Ethnicity and Nationalism**

◆  
**Biometrics**

◆  
**'Nation' and 'National Minority'**

◆  
**Multiculturalism**

◆  
**Socialism and Post-socialism**

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## Preface of the editors

**T**he new volume of the REGIO in co-operation with Challenge – The Changing Landscape of European Liberty and Security (An Integrated Project Financed by the Sixth EU Framework Programme) intends to cover certain questions related to security, ethnic relations, neighborhood policy and multiculturalism in the light of the eastern enlargement of the Union. Naturally, these papers cannot be isolated from the Challenge project’s aims and interdisciplinary approach.

The CHALLENGE project responds to widespread concerns about the resort to specific illiberal practices enacted by our contemporary liberal regimes. These practices are linked with the identification of increasing insecurities globally, insecurities that are widely interpreted as obliging sterner policies from the authorities and, consequently, new constraints on principles of liberty under law and presumptions about the innocence of individuals. Specifically, the project examines tensions created by claims that “security is the first freedom” and that a new “balance” has to be established to manage the global scale of contemporary dangers. The project especially focuses on the justification of these policies and constraints on grounds of emergency, necessity and prevention in a radically transformed global environment, and the impact these policies have on civil liberties, political rights and social cohesion. The project has thus far explored the following broad themes:

1. The apparent radicalization of specific forms of transnational political violence and its effects on liberal policies.
2. The threat assessments produced through technologies of risk management and the development of new technologies of surveillance – prevention, profiling, data transfer, biometric identifiers – and the degree to which “security” has been reduced to a need for surveillance and control.
3. The changing forms taken by logics of suspicion and practices of exception and derogation, especially in relation to established understandings

of the rule of law, to the multidimensional and continuous reframing of the enemy, and to the practices enabled by this reframing that are used to exclude or otherwise target specific groups.

4. The impact on the rights and freedoms of citizens and foreigners.
5. The relation between the internal and external impact of illiberal practices, especially in the context of transatlantic relations but also of an increasingly interconnected world order, and the place of the European Union in this world.

In connection with this panorama of concerns, the present volume examines the perspectives of new, fragile democracies with regard to newly obtained sovereignty and nation-building techniques on the one hand, and catches up efforts to bring integrated but illiberal practices to bear on migration and security management on the other, all under the roof of European integration. Post-socialist societies reflect a certain continuity with prior decades in popular attitudes, daily habits or a weak publicity while heroic work has been undertaken to find beneficial ways to face the past in a frustrated present. The export of prosperity, human rights and security control has not kept pace with the trade and exchange of capital. There are further secrets of a wider Europe yet to be uncovered. It is impossible to determine the major color of our enlargement rainbow but constitutionalism and cultural diversity will undoubtedly frame its picture.

*Judit Tóth and Zoltán Kántor*

# NATIONAL, REGIONAL OR STATE SECURITY ISSUES?

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JUDIT TÓTH

## EU Member States Complicity in Extraordinary Renditions

The existence of secret CIA prisons in Europe was first reported by the *New York Times* and *Washington Post* in November 2005.<sup>1</sup> Following media and civil reports,<sup>2</sup> on 7 November 2005 the Parliamentary Assembly appointed Senator Dick Marty, a Swiss former prosecutor, to conduct a parliamentary inquiry into “alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states.” Council of Europe Parliamentary Assembly (PACE) President René van der Linden declared: “This issue goes to the very heart of the Council of Europe’s human rights mandate.”<sup>3</sup>

According to a report of the Legal Affairs Committee of PACE adopted on 8 June 2007,<sup>4</sup> the so-called US “high-value” detainees (HVD) were held in secret CIA detention centres in Poland and Romania between 2002 and 2005. The report was based on the cross-referenced testimonies of over 30 serving and former members of intelligence services in the US and Europe as well as on a new analysis of computer “data strings” from the international flight planning system. It describes in detail the scope of the US’s “high-value detainees”

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<sup>1</sup> <http://jurist.law.pitt.edu/currentawareness/rendition.php>, and Dana Priest: CIA Holds Terror Suspects in Secret Prisons, 02.11.2005.

<sup>2</sup> Amnesty International <http://web.amnesty.org/library/pdf/pol300032006> with reference to HRW, ABC News 05.11.2005.

<sup>3</sup> The investigation into secret detentions in Europe: a chronology, [www.coe.int](http://www.coe.int)

<sup>4</sup> Committee on Legal Affairs and Human Rights: Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report (Rapporteur: Mr. Dick Marty, Switzerland, ALDE) <http://assembly.coe.int>

programme; it indicates that the program was set up by the CIA “with the co-operation of official European partners belonging to Government services” and kept secret for many years thanks to strict observance of the rules of confidentiality stipulated by NATO’s framework. The committee declared that the programme “has given rise to repeated serious breaches of human rights,” including the torture of detainees.

Due to information released in the press, in December 2005 the European Parliament also launched an investigation into the alleged secret prisons. In a report<sup>5</sup> (14 February 2007), the European Parliament comes to similar conclusions to Mr. Marty, saying EU countries “turned a blind eye” to extraordinary renditions across their territory and airspace. The European Parliament adopted a resolution based on the own-initiative report drafted by Giovanni Claudio Fava on the Temporary Committee’s findings on alleged use of European countries by the CIA for the transportation and illegal detention of prisoners. The report – which deplores the passivity of some Member States in the face of illegal CIA operations, as well as the lack of co-operation from the EU Council of Ministers – was approved with 382 votes in favour, 256 against with 74 abstentions. The second report of Fava (17 June 2007)<sup>6</sup> maintains prior suspicions and urges closing the prisoners’ camp in Guantanamo. The plenary session of the European Parliament shall decide, by approval or denial of the report, whether the whole case will be closed or if it will continue to be scrutinized. The EP has not limited by a deadline the work of the Temporary Committee, so it is probable that the case will continue up to February 2008.

A comparison of the EP’s Report with PACE’s reveals that the EP’s report does not designate 14 responsible states; rather, it discusses two concrete cases: a kidnapping in Italy and a rendition and transport of a German citizen that could not have happened without the prior knowledge of territorial authorities. EP’s report considers less probable that “certain governments or secret services” could not be aware of actions going on in their own territories or airspace.

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<sup>5</sup> EP Report on the alleged use of the European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) Temporary Committee on the alleged use of the European countries by the CIA for the transportation and illegal detention of prisoners Rapporteur: G.C.Fava (A6-9999/ 2007) final

<sup>6</sup> <http://origo.hu/nagyvilag/20060612elfogadta.html>

Although the Parliamentary Assembly of the Council of Europe and the European Parliament have strong commitments to the European Convention of Human Rights and democratic control, the transparency of their reporting systems in regards to all relevant information on the mechanisms of secret service, intelligence and anti-terrorist alliance of states that endanger the rule of law, human rights and liberal democracy is questionable. Furthermore, there are numerous ramifications of these secret actions on domestic policy and transatlantic relations, capacity and action potential of COE or the EU towards own members, protection of human rights and legality of combating terrorism. This article intends to describe how states that are directly or indirectly responsible explain their actions instead of facing this human rights crisis.

*What is the most effective weapon against terrorism?*

US Defence Secretary Robert Gates who spoke at the Munich Security Conference about the West's defeat of totalitarianism in the 20<sup>th</sup> century and our opposition to extremist ideologies now. He said: "*Our most effective weapon then and now has been Europe's and North America's shared belief in political and economic freedom, religious toleration, human rights, representative government and the rule of law. Those values kept our side united.*"<sup>7</sup> This unity of values and principles has own legal toolkit as follows:

1. Inviolability of human dignity means as *ius cogens* the prohibition of torture, degrading or inhuman treatment or punishment (for instance, the Convention against Torture and ECHR). For this implementation, the prevention of torture is mandatory for party states of Convention on Prevention of Torture by the COE.
2. Right to life, liberty and security is based on the UN International Covenant on CPR and ECHR.
3. Right to protection against removal, expulsion or extradition taking into account the non-refoulement and right to access to international legal protection also comes from the UN International Covenant on CPR, Geneva Convention (1951) and ECHR.

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<sup>7</sup> Cited by Sarah Ludford (MEP, UK) in the debate about alleged CIA renditions prior to the vote on the final report (REF: 20070208IPR02898, 14/02/2007)

4. Right to the effective remedy and a fair trial including the habeas corpus is inserted into the UN International Covenant on CPR and ECHR.
5. Geneva Conventions on humanitarian law shall be implemented in warfare and armed conflicts. These define the right of an imprisoned war combatant enemy to be visited by humanitarian organisations; thus, their total isolation from the external relations means a violation of IHL.
6. Rules on International Civil Aviation are determined in the Chicago Convention. It establishes the principle that a party state has complete and exclusive sovereignty over the airspace above its territory, including responsibility for any violation of human rights by another state or authority. Moreover, use of civil aviation for any other purpose – such as covered military or police flight – is inconsistent with aims of the Convention. Moreover, it comes from the standard of good faith in the practice of commitments and law.
7. Respect for bilateral agreements regarding mutual assistance in the fight against organised crime and legal aid in criminal matters (including extradition, surrender) as well as on military bases are required. As the Venice Commission (European Commission for democracy through Law) underscored recently, this means that territorial states must be able to exercise sufficient power in order to fulfil their human rights obligations.
8. Right to privacy and protection of personal data as part of respect for human dignity are defined separately in UN International Covenant on CPR and ECHR.
9. Exceptions from human rights obligations shall remain within the legal framework: in case of emergency or severe danger to the nation, the limitations or derogations shall be temporary, determined in mandatory law, necessary and proportional without violation of racial, religious, gender, linguistic or social origin based discrimination. Furthermore, the most fundamental rights are not derogated or suspended (such as, in accordance with Art. 4 of UN International Covenant of CPR and 15 of ECHR, the right to life, religion, respect for human dignity and *nullum crimen et nulla poena sine lege*).
10. In case of violation of human rights the state shall launch an investigation and ascertain liability, including that officials, in judicial proceedings and compensation of victims shall be provided.

11. Civil and political scrutiny cannot operate without publicity, right to free press, and obtaining information in the public interest.
12. Adequate democratic control on executive power including security services is a requirement of constitutionalism and rule of law, which are common values in the EU. Moreover, Art 6–7 of the EU Treaty refers to the respect of fundamental rights and provides sanctions for severe, mass violations committed by a Member State, Art 21 and 39 regulate police and judicial co-operation in criminal matters; there is also a separate mechanism of CFSP.

This non-exhaustive list provides a set of common values and principles that could overcome totalitarian regimes; in spite of it, the extraordinary renditions and secret detentions could have still occurred.

### *Is there an alternative toolkit?*

“*The traditional systems of justice do not work*” – summarised C. Rice, the Secretary of State,<sup>8</sup> when discussing a possible new approach. This system covers how to extract information from (alleged) terrorists at whatsoever cost including torture, incommunicado, kidnapping or covert flights via third countries or “through outsourcing, decentralised Guantanamo” – as referred on Ethiopia J. Shifton, the director of Human Rights Watch.<sup>9</sup> This “franchised illegal practice” means that suspected persons without a criminal charge before the court and without criminal procedural guarantees are in detention, tortured and interrogated in circumstances of extraordinary renditions. It can be labelled as a Cold-War heritage: aggressive, unilateral, militant responses as the best way to avoid catastrophe<sup>10</sup> to incipient threats or used as preventive interrogations. However, these actions prove the expansion of executive power and, in parallel with this, the denigration of court and international law.

Combating terrorism seems to be the axel of contemporary transatlantic relations that causes human rights crises. Speaking about human rights language, does this mean a clandestine implementation of illegal

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<sup>8</sup> Raymond Bonner: The CIA's Secret Torture. *The New York Review*, 11 January, 2007.

<sup>9</sup> *AP News*, 6 April, 2007.

<sup>10</sup> Kim Lane Scheppele: Law in a Time of Emergency. *University of Pennsylvania Law School, Scholarship at Penn Law*, 2004, May, Paper 55, 1–77.

instruments? Or on the basis of “Jesuit approach,” is it an implementation of the exceptional power, in the national interest, to provide effective protection? “Sovereign is who decides on exception” – wrote C. Schmitt in 1922 but exception relates to the existence of a normal, rationale, and coherent legal system. As noted above, exceptions are allowed in the UN International Covenant of CPR and ECHR but this derogation must remain within the *ius cogens*. Five rights can never be the subject to derogation: right to life with the exception of the lawful act of war, the prohibition on torture, inhuman or degrading treatment, the prohibition on slavery or servitude, the prohibition on retrospective criminal laws. The legality of derogation by a Party State under the ECHR is not a decision which is purely internal to the state: it shall be communicated to the Secretariat of the COE and, if challenged by another state or an individual,<sup>11</sup> be subjected to supranational scrutiny by the European Court of Human Rights. Naturally, the legal conclusions shall be based on fact-finding, which is practically impossible due to secrecy, uncontrolled security services and absence of formal criminal proceedings. For this reason also, a political sociology would be better situated to analyze the internal logic of wars on terror in a globalised world, where rejected migrants and transnational diasporas<sup>12</sup> have come to replace interstate wars and military clashes. “Governing terror” does not merely reference the present massive global security effort against terrorist activities. It can also be observed how western security practices are themselves now also governed by a *widespread fear of terror* – so much so that the biopolitical term is also applicable.<sup>13</sup> Kofi Annan expressed his concern regarding this when he stated the following: “War on terror – in its excesses – has produced a serious and *dangerous erosion of human rights and fundamental freedoms.*”<sup>14</sup>

In September 2006, President Bush publicly acknowledged that secret prisons exist.<sup>15</sup> He asserted that since the 1990s the extraordi-

<sup>11</sup> Elspeth Guild: *Security and European Human Rights: protecting individual rights in times of exception and military action*. Wolf Legal Publishers, Challenge for European Law: The Merging of internal and external security, Nijmegen, 2007.

<sup>12</sup> Didier Bigo and Rob Walker: International, Political, Sociology – editorial introduction. *International Political Sociology*, Nr. 1, 2007. 1–5.

<sup>13</sup> Michael Dillon: Governing terror: The state of emergency of biopolitical emergence. *International Political Sociology*, Nr. 1, 2007. 7–28.

<sup>14</sup> *Washington Post Foreign Service*, May 21, 2005.

<sup>15</sup> While the rendition programme was built as one of the central instruments of the American war against terror after 11/09, the CIA set up own detention centres.

nary renditions and secret detention programme that were led by the CIA and pursued outside the US has yielded vital information that has been shared with other countries. In January 2007 the UK admitted its prior knowledge of a CIA prison network. Spain conceded in September 2006 that CIA planes transporting detainees to secret prisons in Europe may have stopped over on its soil; earlier this month, Portuguese officials opened a probe into allegations that CIA planes landed in Portugal en route to Guantanamo Bay, among other destinations. According to public records, after 9/11 implementation of the conditional Art 5 of North Atlantic Treaty was agreed upon (12 September 2001).<sup>16</sup> Despite declared collective measures in a war on terror, secret unilateral actions have been extended in order to secure agreements with certain countries to host “black sites” for HVDs. Reluctance of these governments and leading personalities in co-operation with EP Temporary Committee to provide answers to the questions of the Secretary General of the Council of Europe may, under Art.52 of the European Convention on Human Rights,<sup>17</sup> be organic part of the secret game of the governments. The fact-finding was supported by journalists and NGOs, and the secret actions were released in part. Thus, the “dynamics of truth”<sup>18</sup> requires European States to muster a collective spirit in acknowledging the truth about the past and regrouping to face the considerable challenges of the future.

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(06.09.2006) <http://www.whitehouse.gov/news/releases/2006/09/>

<sup>16</sup> “If it is determined that this attack was directed from abroad against the United States, it shall be regarded as an action covered by Article 5 of the Washington Treaty.” The assessment of NATO Allies on its determination was unanimous. (NATO Press Release, 2 October 2001.)

<sup>17</sup> The question refers to an explanation of the manner in which internal law ensures the effective implementation of any of the provisions of the ECHR: (1) Adequate controls over acts of officials of foreign agencies within the State’s jurisdiction i) Police and judicial cooperation in criminal matters, ii) Security Services, iii) Military personnel, and iv) Flights allegedly used for rendition purposes. (2) Adequate safeguards to prevent unacknowledged deprivation of liberty (3) Adequate provisions to deal with alleged infringements of Convention rights, (4) Have any public officials been involved in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty? Are there any official investigations completed or under way?

<sup>18</sup> Committee on Legal Affairs and Human Rights: Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report (Rapporteur: Mr. Dick Marty, Switzerland, ALDE) <http://assembly.coe.int>

### *How extraordinary renditions are explained*

The passive or active complicity of European states to a US-led war on terror cannot be explained only by regulations, but from territorial states' point of view, such an attempt may be acceptable. Naturally, the enumerated explanations (or rather legalistic evasions) form various combinations, and the cumulative effects of these reasons, as noted below, may appear in statements or policies.

### *No jurisdiction*

Involvement of third countries (flight stopovers, secret detention and places of interrogation) means an *illusion of extraterritorial effect* of officials' activities. This uninnovative research is managed on board a ship or at Guantanamo-like facilities (as Bagram Airfield or Abu Gharib facility), places that remain territorially distinct from the country while remaining effectively within its control. These are areas that numerous of American courts have determined are not US sovereign territory, yet the US has effective and sole control there. The unlawful practice in international transit zones means a "*toolkit of restrictions outside the ordinary structure of migration law.*" Transit zones cannot be considered as an extraterritorial exception from human rights obligations. People residing inside the transit zone are subject to jurisdiction of the territorial state which remains bound by its international obligations to human rights<sup>19</sup>; however, they are treated *in a distinct way when compared to ordinary legal regimes*, at least in four aspects: (1) *detention or limitation of liberty and free movement* intends to prevent their irregular/unlawful entry into the territory, (2) less guarantees are available in *accelerated procedures* concerning the substantial evaluation of non-refoulement and asylum that would exclude feelings of security and stability for migrants in need of protection, (3) *absence of publicity* – for instance access of civil organisations and journalists to the transit zones – is almost excluded, and (4) *physical conditions of accommodation are backward* in transit zones in general avoiding further "pull factor effect" and keeping up their provisional residence.<sup>20</sup> Naturally, people subjected to extraordinary rendition were not rejected migrants, but they were criminalised as

<sup>19</sup> See ECHR, *Amuur v. France*, 19776/92, Reports of Judgement and Decisions, 1996-III, No.11, 25 June, 1996.

<sup>20</sup> On transit zones – European Parliament, Briefing, 2006. (J. Tóth)

refused foreigners without criminal procedures, legal guarantees, or publicity and were kept in unknown conditions on ships or in scheduled sections of airbases. This analogy allows us to suppose that the conditions of kidnapped, carried or tortured persons were if not physically then at least in psychically detrimental. Furthermore, they were not officially entered in the territory of transit and/or destination states. What consequences will the territorial state face for trespassing human rights obligations – for instance for right to request international protection – if there is no sanction for violation of the Geneva Convention? We have to add that refolement and removal of a protection seeker has a chance to be sanctioned, for instance, against Sweden.<sup>21</sup>

In modern bureaucracy persons without official registration do not exist by law. If entry of a CIA flight and persons on board this flight have never been documented, how and against whom can participation in interrogation or torture of apprehended persons be proved?

The legal basis of *missing jurisdiction* can be valid on the basis of international treaties. The USA concluded bilateral agreements with new democracies – referencing NATO membership and security co-operation – excluding by law or in discretionary power the jurisdiction of the territorial state for crimes committed by a US agent or military staff. The personal scope is also absent, developing a special military tribunal with lower level of suspicion and derogated guarantees of protection for detainees.<sup>22</sup> Moreover, CIA agents rejected appearance at proceedings in the Milan Courts when request for their extradition was issued.<sup>23</sup>

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<sup>21</sup> UN Human Rights Committee's and CPT decisions against Sweden for asylum seeker's expulsion would be an example. CCPR underlines, that "at a minimum, a State party is responsible for acts of foreign officials exercising acts of sovereign authority on its territory, if such acts are performed with the consent or acquiescence of the State party [of the Convention]" CCPR Communication No.1416/2005 (6 November, 2006.)

<sup>22</sup> For instance, US military hearings on whether 14 top terror suspects formerly held in CIA secret prisons qualify as "enemy combatants" began 9 March 2007 at Guantanamo Bay (Combatant Status Review Tribunals). <http://www.statewatch.org/rendition/rendition.html>

<sup>23</sup> Italy has asked the Italian Constitutional Court to cancel the indictments of 34 American and Italian intelligence officials in connection with the 2003 kidnapping and rendition of Egyptian cleric and suspected terrorist Osama Moustafa Hassan Nasr from Italy. Lawyers for the state say prosecutors exceeded their authority by using evidence that was protected by the state-secrets privilege. Prosecutor Armando Spataro has alleged that 25 Americans working for

*Double standard*

Although dual value system against aliens or/and actions abroad is not necessary new,<sup>24</sup> exceptionalism and emergency in a war on terror may be used to explain why terrorists are treated in a different manner from ordinary people. First, they are frequently foreigners, third country nationals, and because of this, they tend to have less protection and rights. If they have obtained citizenship, they are naturalised nationals whose nationality and loyalty are questionable; the withdrawal of citizenship is possible (e.g. in case of dual nationality or by formal procedure as a legal consequence of abuse).<sup>25</sup> Moreover, alleged terrorists can be neither nationals nor settled, long-term resident migrants; thus, their legal standings are rather vulnerable. Moreover, it is suggested that fewer human rights guarantees are enough for a terrorist, and a stronger intelligence-collaboration is more necessary than even these few guarantees – as supported by the German Minister of the Interior Mr. Schauble believes that “Civil rights in period of terror” should mean that information extracted through interrogation or torture by foreign services can be implemented in criminal proceedings that seek to combat terrorism. He urges a new, mutual interpretation of security and liberty and, since

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the Central Intelligence Agency, one United States Air Force colonel, and five Italians from Italy’s Military Intelligence and Security Service (SISMI) colluded to kidnap Nasr from Milan. Nasr was then allegedly transferred to Egypt and turned over to Egypt’s State Security Intelligence (SSI), where he was allegedly tortured before being released on February 12. In response to US refusals to extradite the agents, Spataro has vowed to hold a trial in absentia (Lisl Brunner, 16 March, 2007.) <http://jurist.law.pitt.edu/currentawareness/rendition.php>

<sup>24</sup> For example, in 1998 the Wall Street Journal reported on five terror suspects who were arrested by the CIA in Albania and taken to Egypt, where two of them had already been condemned to death by an Egyptian court in absentia. This judgement was carried out after the prisoners were handed over. It is cited by Simon Koschut in “Germany and the USA in the ‘War against Terror’: Is Extraordinary Rendition Putting Transatlantic Cooperation under Strain?” *Internationale Politik und Gesellschaft*, Friedrich Ebert Stiftung, Nr. 3, 2007. 36–52.

<sup>25</sup> For instance, in Poland dual citizenship is not tolerated, even if there is formal withdrawal; while in Hungarian law, nationality may be withdrawn only if a person who has acquired nationality by naturalisation has violated the law on nationality by misleading the authorities by submitting false data or omitting data or facts. Ten years after naturalisation, Hungarian nationality may no longer be withdrawn. (R.Bauböck, B. Perchinig and W.Sievers (eds.): *Citizenship policies in the New Europe*, Amsterdam University Press, 2007.)

results cannot be obtained without it, a stronger co-operation between the American and European security services. “Europe is neither judge nor teacher of the United States.”<sup>26</sup>

Finally, citizens of third country nationals, stateless or protection seekers at the EU external borders enjoy less rights and freedoms. (In parallel, the Military Commission Act (2006) clearly reflects requested “distinctions between United States citizens and non-citizens, strips away the time-honoured right of detainees to challenge the basis for their detention (habeas corpus), and insulates US service personnel from prosecution for violations of Common Art 3 of the four Geneva Conventions. The process that lay ahead for captured terrorist suspects was thereby mapped out, whilst the Administration tried to cover the tracks that led them there”).<sup>27</sup>

While the aforementioned differences in legal status are lawful, equal treatment and strict human rights or diplomatic protection failed in practice in the following cases: German citizens, the Turkish citizen living in Germany, the Spanish citizen, Egyptians residing in Austria and the Turkish citizens detailed in the EP Report. This dual ethic and policy can be observed towards Muslims, if they are alleged terrorists without criminal procedural guarantees, as well as Gypsies in the eastward enlargement process.<sup>28</sup>

### *State incapacity*

State incapacity is a all-encompassing term regarding legalistic evasions and the pretexts for rationalising why state control of air traffic – for instance in Poland and Romania – has favoured American flights at Szymany airport or at Kogalniceau airport. The “creeping co-operation” of the USA with Romania and Poland goes beyond the multilateral NATO framework (for instance in form of supplementary agreement

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<sup>26</sup> Held by the Marshall Foundation and Bertelsman Foundation, Bruxelles (28 April, 2007.) MTI, [www.index.hu](http://www.index.hu)

<sup>27</sup> Committee on Legal Affairs and Human Rights: Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report (Rapporteur: Mr. Dick Marty, Switzerland, ALDE) <http://assembly.coe.int>

<sup>28</sup> Frank Hoffmeister: Monitoring Minority Rights in the European Union. In G. Toggenburg (ed.): *Minority Protection and the Enlarged Union – The Way Forward*. Budapest: Open Society Institute, 2004; Balázs Vizi: The Unintended Legal Backlash of Enlargement? The Inclusion of Rights of Minorities in the EU Constitution *Regio*, Vol. 8, 2005. 95–104.

to NATO SOFA). Why does this happen in these states? The fragile democracy means weak parliamentary and public control, a strong affiliation to bilateralism due to lack of familiarity with multilateral games, and less knowledge about international law.<sup>29</sup> The Polish government, which has not been especially co-operative with the Council of Europe, has gathered fees between 2000 and 4000€<sup>30</sup> for landing these “secret flights.” The other states in securing these agreements – such as Macedonia – do not, in fact, share the common values behind the agreements; for numerous reasons, they agree only at a rhetorical but only at rhetoric level; thus, it is possible to assume that alliances may be based on the desire to break-out of isolation or economic segregation, too. Among European governments, it was only Bosnia-Herzegovina that accepted formal responsibility for illegal actions and participation in the extraordinary rendition of Algerians.

In other words, effective sovereignty covers not only the respect for human rights but also airspace, international airports, air traffic and control on coordination with foreign intelligence services. Legal cases related to ECHR Art 6 and Inter-American Commission contain rich examples on both shores of the Atlantic Ocean.

### *Uncontrolled power*

Due to EP Temporary Committee’s initiative, Parliamentary or other scrutiny systems regarding executive power and the monitoring of lawful operation of security services was set up in many member states. There is no similar system in Austria; parliamentary scrutiny of security services exists in Ireland, while Poland rejected it. In other states, the judicial proceedings on liability was not launched. In Romania, for example, an ad hoc inquiry committee in the Senate operates but manages neither investigation nor initiates judicial procedure.

<sup>29</sup> Mr.Frunda, György said during the PACE Plenary Debate (June 2006): “We did not and do not know who [transported] persons are because, do not forget, the aircraft are under the authority of the countries where they are registered. The countries in which the airports are located do not have legal instruments to see what happens on board.” (27 June, 2006.) PACE Report <http://assembly.coe.int>

<sup>30</sup> EP Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)) Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners Rapporteur: G.C.Fava (A6-9999/ 2007) final

Civil control and public discourses cannot work without respected and developed institutions with the right to obtain data and information of public interest. Although security and intelligence services are not necessarily transparent, the methodology and legal instruments regarding control of foreign agencies and operation of international networks of security services are missing.

### *How to avoid complicity*

The extraordinary renditions can happen with active and passive complicity of European (EU, non-EU) and more distant states under the umbrella of counter-terrorism. This joint goal of public policy remains, but its legality requires avoiding complicity with unlawful, degrading actions on the basis of a dual ethic against alleged or genuine terrorists. Outlined lessons from the Reports of the EP and PACE shall be accompanied with a study on relevant international documents, democratic control and public debates.

At a universal level, only three tracks can be mentioned. The UN International Convention for the Protection of All Persons from Enforced Disappearance adopted on 20 December 2006 provides no exceptional circumstances (war, threat of war, internal instability or public emergency) that may be invoked as a justification for enforced disappearance of an individual regardless of his/her nationality, social status or an incitement. Accordingly enforced disappearance – as actor or as a supporter in silence – constitutes a crime. In certain circumstances in international law, it is a crime against humanity.<sup>31</sup> Latin-American and Stalinist dictators implemented this type of enforced disappearance instead of an ordinary criminal trial. If there is trust among states and the judicial authority in concern, efficiency of traditional justice can be upgraded with numerous lawful instruments. Kidnapping, secret renditions and detentions, clandestine stopovers, and covert flights does not provide the required mutual trust. The PACE also adopted relevant documents on enforced disappearances

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<sup>31</sup> For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of law. (Art.2)

and unlawful detentions in connection with uncontrolled security services.<sup>32</sup> Ratification of this Convention would be important for states with strong commitments to human rights and those whose nationals are victimised.<sup>33</sup> Until its ratification, the COE Resolution on enforced disappearance lays down a number of points pertaining to the definition of enforced disappearance, safeguards against impunity, offers preventive measures, and secures the victims' right to reparation and the monitoring mechanisms which it considers essential.<sup>34</sup> Among the recommendations, it contains (a) the recognition of close relatives as victims in their own right and grants them a "right to the truth"; (b) effective measures against impunity (c) appropriate preventive measures (e.g. appropriate training of law enforcement, for instance the Guidelines on human rights and the fight against terrorism)<sup>35</sup>, (d) a comprehensive right to reparation including restitution, rehabilitation, satisfaction and compensation, and (e) a strong international monitoring mechanism including an urgent intervention procedure.

Other preventive measures are the recognition of the jurisdiction of the international judicial forum and surrender of the persons concerned to this body. The USA is not alone in its reluctance to recognize the International Tribunal, and some of its partners perhaps even follow the US's example. For this reason ratification of the Statute has been strongly supported by the EU in each Member State.

At the EU level, the list of preventive steps and political recommendations is long<sup>36</sup> and includes an upgrade in EU-USA dialogue on secu-

<sup>32</sup> Report on enforced disappearances (2005), Report on the control of internal security services in Council of Europe member states (1999), Report on the lawfulness of detentions by the United States in Guantánamo Bay (2005)

<sup>33</sup> Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance: (a) when the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; (b) when the alleged offender is one of its nationals; (c) when the disappeared person is one of its nationals and the State Party considers it appropriate. [Art.9 (1)]

<sup>34</sup> Doc. 10679 (19 September 2005) Enforced disappearances. The Report of the Committee on Legal Affairs and Human Rights was made by the rapporteur Mr. hristos Pourgourides (Cyprus, Group of the European People's Party)

<sup>35</sup> It was adopted by the Committee of Ministers on 11 July, 2002.

<sup>36</sup> Florian Geyer: Fruit of the poisonous Tree (Member Stets Indirect use of extraordinary rendition and the EU Counter-terrorism strategy. *CEPS Working Document*, Nr.263, April, 2007.

rity matters, follow up procedure to the Resolution or trust and capacity building as a sign of judicial progress in the third pillar. Beyond this resistance, F. Frattini's statement regarding the possible implementation of Art.7 of the EU Treaty looks too futuristic<sup>37</sup> as an optional implementation for a justice-safeguard closure of the Accession Treaty for Romania and Bulgaria, since reluctant combat against corruption is more realistic.<sup>38</sup>

### *The Hungarian case – instead of conclusions*

The concluding report of the Council of Europe rapporteur Dick Marty likewise contains few concrete proofs of the participation of European states in the practice of renditions. Certainly, neither the EP nor the COE was able to force member states to provide information but was strongly dependent on the voluntary co-operation of governments. In this context domestic political discourses and scrutiny procedure would contribute some contours to the depiction of the co-operation among the security and intelligence services at global level as (dis)trustful.

Hungarian public opinion and press has been silent about CIA actions. Discourses are limited only to harsh, domestic political debates on governance while transatlantic relations, security policy or counterterrorism are neither issues of discussions nor targets of investigative reports. This is in spite of constitutional rights and statutory laws that

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<sup>37</sup> April 15, 2007: Wiesenhal Centre Annual Report Notes Rise in Number of Convictions of Nazi War Criminals During Past Year. This contains a classification of states' activities for investigating war crimes. Accordingly Category A: Highly Successful Investigation and Prosecution Program, Category B: Ongoing Investigation and Prosecution Program Which Has Achieved Practical Success, Category C: Minimal Success That Could Have Been Greater, Additional Steps Urgently Required, Category D: Insufficient and/or Unsuccessful Efforts, Category E: No known suspects, Category F-1: Failure in principle, Category F-2: Failure in practice and Category X: Failure to submit pertinent data. On this classification the "rank o states" are as follows: A: United States, B: Italy, C: Denmark, Hungary, Serbia, D: Romania, E: Bosnia, Finland, Slovakia, Uruguay, F-1: Norway, Sweden, Syria, F-2: Australia, Austria, Canada, Croatia, Estonia, Germany, Great Britain, Latvia, Lithuania, Poland, Ukraine, X: Argentina, Belarus, Belgium, Bolivia, Brazil, Chile, Colombia, Costa Rica, Czech Republic, France, Greece, Luxemburg, Netherlands, New Zealand, Paraguay, Russia, Slovenia, Spain, Venezuela.

<sup>38</sup> F. Frattini warned about the possible implementation (30 May, 2007.) due to the slow speed of reform in judicial systems and minimal progress in anti-corruption fights. The progress report is available on 27 June with a possible proposal on introduction of the closure. [www.transindex.ro](http://www.transindex.ro)

provide to access to relevant public information that is supervised by the Ombudsman for Data Protection and Public Information.<sup>39</sup> On the other side, the terms “state secret” or “service secret” and “security interest” mean lawful and almost unchecked legal restraint in the ability to access all relevant data on security services and clandestine operation of the organizations under investigation.<sup>40</sup> The parliamentary control of civil and defence security services has meant a Committee consisting of 11 MPs while the Government (through the Minister of Defence and Minister without portfolio or Prime Minister’s Office) has directed those strongly hierarchical, militant organisations since 1990. Due to their isolation and ability to avoid being genuinely debated, public opinion is minimally interested in the regular operation, efficiency and public finance of these services, unless these offices provide information about a terror threat in the country.

The democratic legitimization is pre-supposed by regulation and direction by the Cabinet; thus, its systematic scrutiny by the 11 MPs of the Parliamentary Committee is rather formal. Only two sessions were held exclusively on information access.<sup>41</sup> Furthermore, only the directors of civil intelligence services are involved in this exchange with the MPs of the parliamentary opponent and the governing power. Numerous stop-overs and use of Hungarian air-space by CIA flights were only confirmed by the Committee, but other actions, involvement, incapacity or ignorance of secret services were neither directly nor indirectly released to the public. We add that legal framework, bilateral agreements or entitlement were not implemented in the MPs’ scrutiny at all.

The CIA actions and EP Report appeared only briefly in the news<sup>42</sup> adding that “there is no authentic evidence” about secret detentions without echo. While security services and investigating authorities (Police, Border Guard, Customs Office, Taxation Office, Public Prosecutors Office) have gradually extended their competence against potential ter-

<sup>39</sup> Art.59 (2) of the Constitution, and Act LXIII of 1992 on personal data protection and accession to public information, Act CII of 2005 on freedom to access electronic information, Act LIX of 1993 on Ombudsman.

<sup>40</sup> Act LXXXVI of 1995 on state and service secrets and Act CXXV of 1995 on National Security

<sup>41</sup> 15 November, 2005. and 27 June, 2006. The latter was public, thus its Protocol is available (Nbb-1236/2006/23)

<sup>42</sup> A CIA-jelentéssel egyetért az EP, de bizonyíték nincs [EP agrees to the report on the CIA, but there is no evidence] *Magyar Hírlap*, 15 February, 2007.

rorists in recent years, democratic and legal control has not been followed nor balanced it.<sup>43</sup> Furthermore, the same entitlements or instruments of law do not form a coherent system to combat serial killers, organised crimes, war crimes or crimes against humanity. These organisations are relatively inactive – at least according to the Wiesenthal Centre<sup>44</sup> – in the investigation of previous war crimes. More over, not only prior events are unavailable to researchers; they are also denied access to the actual operation, rules or structure of security services.

The basic motivation for secrecy is, naturally, immanently given: the enemy must not know what we know. But to this, a procedural secrecy is quickly added: the enemy must not know the illegal procedures undertaken in order to gain information, etc. This becomes in itself a potential cause of conflict. And this problem is, once more, doubled in democratic society: the public must not know (too much) about the methods used because this may delegitimize democracy's own laws and ideals. These constraints have led to a violent growth in the use of the three classic grades of secrecy: confidential, secret and top secret. Too much secrecy not only entails that the organisation may loose its grasp on its own information; it may, furthermore, lead to the widespread misunderstanding that just because something is marked 'Top Secret' it is eo ipso true. In fact, even today, after the fall of the party state, the files and the empirical data archives that are essential to analytical research are only accessible in part because of rules pertaining to state archives, security services' interest and the qualified documents.<sup>45</sup> In other words, gradual development of democratic control follows the limited freedom of science on security services. By the way, accountability of intelligence and security services does not necessarily include accession for academics.<sup>46</sup>

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<sup>43</sup> Szikinger, István and Tóth, Judit: Efforts for building lawful enforcement, security and balance in public law of Hungary. *Working paper*, 2006; and Szikinger, István: The Police Act and the National Security Act in Service of the Fight against Terrorism. *Working paper*, 2006. [www.mtaki/challenge.hu](http://www.mtaki/challenge.hu)

<sup>44</sup> *Népszabadság*, 11 June, 2007.

<sup>45</sup> Révész, Béla: *Secret as politics – Research of Secret Services from the Point of view of Politology. Theses of Dissertation of PhD*, Szeged, 2007.

<sup>46</sup> See F. Frattini speech on the international symposium of *Accountability of the Intelligence and security agencies and human rights* (The Hague, 7 June, 2007.). He said: "In all our work we need to think carefully about how we protect and promote fundamental rights, not just in policy and legislation, but also in daily practice. The intelligence services' activities, as well as their cooperation – a key factor

The security-services minister is not talkative; however, as the threat of terror was referred to three times during the election campaign, street demonstrations and political assembly led by the biggest opponent party in September-October 2006, the security-services minister had to give an answer as to whether it was a “dirty trick of the Government” against political enemies or true. He said that extremists as rightists forming groups of 2–3000 persons had prepared dangerous actions in public places and that the core 200 people were furnished with hand-made weapons. Their arrest, investigation or control stopped them, but severe mistakes were made by the security service staff. For this reason, the director of National Security Service urged a re-organisation and reform before finally resigning in May 2007. The Government proposes a modification on structure, rationalisation and more restrictive internal screening of officers. Although since 1990 it has been raised more times,<sup>47</sup> the amendment requires Parliamentary consent. We can conclude that the major threat is internal and that services have to face the classical task of protecting the constitutional system – as opposed to international threats.

The news on Fava’s Report and its approval (12 June 2007) would inspire public discourses on legality and implications of CIA actions. But accordingly, the internal political party cleavages are deepening through this transatlantic, as well as European, issue. The MEP Magda Kovács (SP) supported the staunchness of the Report that would serve as a proper basis for further decisions and work. She evaluated the motions submitted to the Report as compromises, although there was a basic difference in approach as to whether to accept as facts that CIA actions and involvement of EU member states as violations of human rights inasmuch as these actions cannot be tolerated by law and morale, the existence of secret prisons and to demand their liquidation in accordance with human rights. The opinion of the People’s Party MEP György Schöpf-*lin* reacted to it in a press conference: the harsh tone of the PACE Report strongly influenced the atmosphere in which the motions were made. The conservative side would not have supported a harsh anti-American critic. The Fava’s Report does not appoint guilty, responsible states, and

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in combating terrorism – must be conducted with full respect for fundamental rights and the principle of the rule of law.”

<sup>47</sup> Titkosszolgálati tervek. Szilvász György a botrányokról és a kijátszott terrorkártyáról [Plans on Security services – Interview with the Minister Szilvász on scandals and terror] *Népszabadság*, 2 June, 2007.

he added: “Torture, illegal flights are also condemned by the People’s Party but evidences are still weak.”<sup>48</sup> This short dialogue between the right and left side of the Hungarian EP members may encapsulate at least two aspects of evaluation of the extraordinary renditions: what should be the legal and foreign affairs instruments of lawful, bilateral co-operation with US?

The existing legal instruments providing a fast, regular exchange of information and judicial, investigative co-operation are as follows:

1. International Law Enforcement Academy (Budapest) founded, supported and led by the USA and the Hungarian Ministry of the Interior would provide professional training or analysis of cases.<sup>49</sup>
2. Agreement on mutual legal assistance on criminal matters<sup>50</sup> ensures direct, even oral requests in urgent cases, and inter-ministerial contacts without dual incrimination. It provides confidentiality, personal data exchange not only in criminal proceedings but also “for prevention of severe and direct threat on public security.” Entitlement to set up Joint investigation teams or videoconferences etc. was inserted into the text in accordance with EU-US Treaty (2003)<sup>51</sup> and, thereby, upgrading the speed of co-operation.
3. Agreement on extradition<sup>52</sup> provides extradition of offenders in all types of organised, structured or conspiring groups, even when committed in a third country. Upon inter-ministerial request, transfer

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<sup>48</sup> <http://origo.hu/nagyvilag/20060612elfogadta.html>

<sup>49</sup> 165/1996. (XI. 20.) Korm. rendelet a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között a Nemzetközi Rendészeti Akadémia létesítéséről szóló, Budapesten, 1995. április hó 24. napján aláírt Megállapodás kihirdetéséről [Agreement on ILEA]

<sup>50</sup> 1997. évi LX. Törvény a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között a kölcsönös büntügyi jogsegélyről szóló, Budapesten, az 1994. év december hónap 1. napján aláírt szerződés kihirdetéséről [Agreement on legal aid on criminal matters]

<sup>51</sup> 2006. évi XL. törvény a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között a kiadatásról és a kölcsönös büntügyi jogsegélyről szóló, Budapesten, 1994. december 1-jén aláírt szerződések módosításáról szóló szerződések kihirdetéséről [Modification of extradition and mutual legal aid in criminal matters agreements]

<sup>52</sup> 1997. évi LXI. Törvény a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között a kiadatásról szóló, Budapesten, az 1994. év december hónap 1. napján aláírt szerződés kihirdetéséről [Agreement on extradition]

of offender from third country can be permitted, and transferred offender can be kept in detention. Air transfer without planned landing needs no permit. It was also modified taking into account the EU-US Treaty (2003).

4. Memorandum on prevention and suppression of organised crime<sup>53</sup> ensures exchange of data, co-operation in investigation and trans-border actions.
5. Supplementary agreement to NATO SOFA<sup>54</sup> covers residence in and entry of military forces. Hungary entitles the Government to withdraw at its own discretion the transfer of jurisdiction for criminal proceedings when it is in vital interest of the state. Moreover, the military and civil staff is obliged to respect all American and Hungarian regulations. Exceptions of border, customs or alien policing control is applicable only for military and civil staff. Qualified defence data is also protected.<sup>55</sup>
6. The air traffic agreement<sup>56</sup> allows use of the airport and airspace for designated, registered air companies that are obliged to respect all laws upon entry, regardless the nationality of persons on board.

Finally, the anti-American sentiment can be read from the aforementioned discussion of the EP Report and its follow-up. This internal political game is played by the President of state. His Major functions (Art. 29 of the Constitution) are to represent the unity of the nation and to monitor democratic operations of state organs. He is also the chief com-

<sup>53</sup> 36/2000. (III. 17.) Korm. rendelet a Magyar Köztársaság és az Amerikai Egyesült Államok Kormányai között a szervezett bűnözés megelőzésére és visszaszorítására vonatkozó információk cseréjéről szóló, Budapesten, 2000. január 13-án aláírt Egyetértési Nyilatkozat kihirdetéséről [Memo of Understanding on organised crime]

<sup>54</sup> 1997. évi XLIX. Törvény a Magyar Köztársaság Kormánya és az Egyesült Államok Kormánya közötti, az Egyesült Államok Fegyveres Erőinek a Magyar Köztársaság területén történő tevékenységéről szóló Megállapodás, valamint az annak mellékletét képező Végrehajtási Megállapodások megerősítéséről és kihirdetéséről

<sup>55</sup> 1996. évi XXXIV. törvény a Magyar Köztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között a minősített katonai információk védelme tárgyában Washingtonban, 1995. május 16-án aláírt Biztonsági Egyezmény megerősítéséről és kihirdetéséről [Agreement on qualified defence information]

<sup>56</sup> 1973. évi 16. törvényerejű rendelet a Magyar Népköztársaság Kormánya és az Amerikai Egyesült Államok Kormánya között Washingtonban, az 1972. évi május hó 30. napján aláírt légügyi egyezmény kihirdetéséről

mander of defence, which is part of a shared defence competence.<sup>57</sup> The ruling president was elected in August 2005.<sup>58</sup> His self-definitions reference becoming a symbolic and merit-based power: “The President shall be in possession of a moralistic power, and s/he can accomplish [his/her] own goals through symbolic gestures and different measures that may carry [their]own message.” He represents the actual government’s foreign policy, which stresses wide manoeuvring room “where I may stress [my] own points, for instance, in case of my disagreement I reject a visit or participation.” Moreover, “I stand for human rights and constitutional values as a civil rights fighter.” “Freedoms are guaranteed by the Constitution. Respect for human rights is our common treasure that shall be guarded. We must not make a concession for a moment.” “I am a friend of Europe – supporting deeper integration in the EU although decision making in the EU is not democratic enough thus we have to exploit democracy in a greater extent at home in order to express our opinion in Brussels. The parliamentary scrutiny must be more effective and civil organisations and pressure groups should express [their] own views on European issues stronger.”

Because of his firm stand on human rights and democratic control, he had to confront biometrical identification in theory (because as a VIP he did not have to imply it). “I do not travel to the USA – as an academic I have neither done – until I must give fingerprints” This rejection would express the opinion of broad circle of society. “I have chosen this method of protest not for myself. The Hungarian Government has made efforts for longer time[s] [for] visa free entry. The security needs mean no adequate reasons for visa requirements just for Hungarians. Perhaps my harsh and provocative statement would draw attention to this issue ... I am looking forward to reactions. In case of visa facilitation or fingerprint giving, I can give also concession.” Finally, he travelled to the UN General Assembly in possession of a UN visa to NY (13 September 2005), and he met with G. W. Bush not in US but in Budapest (22 June 2006). He raised: “experiences of democratic changes and the most effective instruments of liberty, democracy and protection of human rights. He underlined the necessity of respect for human

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<sup>57</sup> S/he is nominated by MPs and elected by the Parliament for 5 years, and his/her competences are implemented upon countersignature of the Government/minister with exceptions related to the operation of the Parliament.

<sup>58</sup> Citations from interviews made with the President, see: [www.keh.hu](http://www.keh.hu)

rights even in combating terrorism and in circumstances of upgraded security threats. He emphasized that visa requirement for Hungarian citizens were not reasonable yet due to contacts of alliance.”

Also coming from the civil rights fighter’s attitude, he rejected the PNR Act. The Parliament passed the Bill on the promulgation of an Agreement between the EU and the USA on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the US Dept. of Homeland Security (20 November 2006). He rejected its signature, and he returned the Act to the Parliament for reconsideration (Art 26 of the Constitution): “In my view the Act does not include all the necessary and possible guarantees related to its subject” coming from the fundamental rights for personal data protection and the Act pertaining to the protection of personal data (1992). Sensitive personal data (such as religion or health of the concerned person) required further guarantees (direct written consent of the concerned person and an adequate level of data protection in the third country). He proposed that the promulgating act would provide a balance in favour of a constitutionally high level of personal data protection: “data transfer on the basis of the Agreement on the condition that the person concerned has explicitly consented to such transfer abroad.” Due to rejection and reconsideration, the promulgating act modified the Act on Air Transport (1995) and entitled the Ombudsman of personal data protection and public information to control the implementation of the Agreement.

As lessons from the secret actions, a strong commitment for human rights and constitutional principles by state leaders and the implementation of lawful tools for co-operation with similar foreign services assist us in avoiding similar human rights crises. “Each state shall protect against terrorism that would limit liberty. But each limitation and restriction shall be inevitable, necessary and really appropriate in protection against terrorism. Human dignity must not be limited, derogated or suspended in emergency, and – for instance as a recently appear[ing] conception saying that foreign terrorists or alleged terrorists could be tortured on a constitutional base – it shall be rejected. There is a *need for a new balance* between self-protection of state and respect for fundamental rights. And if public opinion prefers security versus liberty – there are values and principles that shall be represented even against public opinion.”

NORBERT PAP – PÉTER REMÉNYI

## Security Issues in the West Balkans

### *1. What is the Problem?*

**O**ur interpretation of security is very complex. It includes issues of military defence, civilian life, environment, population, culture, economy, and accommodation as well.

As for the Balkan region, we must repeatedly observe military conflicts of varying intensity; they have become the most significant and unique element of the region's security affairs. On the one hand, they are interstate conflicts that are caught in a system of causes and purposes in which games – and occasionally direct military actions of the Great Powers – have played a central role. On the other hand, they are conflicts, insurrections or less intense actions of terror that were derived from the social or national dissatisfaction in local Balkan societies; more rarely, they were initiated from outside. The present work attempts to demonstrate a numerous instances of this phenomenon.

It is possible to observe how the ignorance or incompetent treatment of local (though, not yet military) social conflicts sometimes played a very important role in the evolution of military conflicts. The arrangement of settlements and the system of institutions, the difficult and often overlapping systems of different ethnic areas, and the self-concept, neighbourhood-concept and future-concept of the society often contributed to the evolution and sometimes even to the escalation of conflicts (to the ideal of Great Bulgaria, Great Serbia, Great Croatia, Great Romania, Great Albania, etc.).

During the history of peninsula, extreme forms of wealth and poverty could be concurrently observed, virtually in the same neighbourhood.

The issues of wealth and liveability as well as military conflict have been crucial factors in interior and international migration even up to now (labour migration, etc.).

Migration is not an issue of security only because of the country of origin; it is also because of the target and transit areas. With alteration in the coverage of accommodation areas and with the break-up of local – and frequently sensitive – political balances, security often arises as a social issue as well (e. g., Serbian migration towards the North from the Osmans or present-day conflict areas in the Vajdaság region). Greek-Turkish population exchange, the vicissitudes of the Turkish and Pomanian populations in Bulgaria, the “selling” of the Saxons in Eastern Transylvania, etc. are the extreme solutions to social conflicts in certain regions. The extension of accommodation areas for Albanians towards the South (into West Macedonia and Serbia) and the Bosnian-Serbian and Croatian-Serbian refugee affairs are recent result of the aforementioned series of events. Therefore, we have reason to conjecture that the series of these „final solutions” has not ended yet. Research about the system of settlements and populations can reveal the stages of this ever renewing process.

As a gate between West Asia and Europe, the Balkans repeatedly mediates medical risks as well. These epidemics (cholera, bird flu, plague, etc.) sometimes appear in the region, and because of migration, they can be understood as a risk factor for European societies. The evolution of dangerous epidemics is one of the most critical potential consequences of illegal migration.

Many authors describe the Balkan societies as are archaic compared to modern Europe. The strength of kin relationships and the role of clans and village communities seem anachronistic. At the same time, these are the effective forms of social self-defence in the Balkans. Their importance can be observed in the organisation of the legal and illegal economies (30–70% ratio of “black” and “grey”), arrangements of armed conflicts, and the efficiency of international criminal gangs. Familial and national bonds supposedly play a dominant role inasmuch as scientific researchers, practical security experts and economic advisors all must address when considering security issues, namely information exchange’s lack of security.

Regarding its natural circumstances, the Balkan Peninsula belongs to one of the less stable European regions. The consistent earthquakes

have serious consequences (Skopje, Banja Luka, Kotor, etc.), drought (and problems of irrigation), the extensive degradation of the soil, and river flooding all pose serious issues to environmental security. The 20<sup>th</sup> century's modernization experiments (industrialisation and urbanisation) have left considerable environmental damage. War did not only cause extensive destruction but also created an enduring risk for environmental security (for example, minefields in Bosnia-Herzegovina).

In summary, it is possible to state that complex social conflicts as well as environmental sources of danger are permanently present in the Balkan's region. Researchers who study the region might have the impression that social and environmental stability are only temporary phenomena or that, to a greater degree than in any other region in Europe, a complex system of social conflicts forms the base of its social structure.

## *2. The question of the borders and the geographic environment of the region*

We begin with the assumption that the extension of the region's borders is not evident. Many impoundments exist since many scientific disciplines deal with the Balkans. The natural, socio-historical, and political approaches are three larger groups. Nearly all approaches have minimum and maximum versions that depend upon which areas are considered as belonging to the Balkans and which are not. This not only determines the approach of spectators and/or researchers or the extension of the research subject of the research; it also establishes the attitude of the states that are connected with this region. Since inclusion in the Balkans implies belonging to a negative category, those who have the opportunity to do so try to escape from the region.

Within the present text, we have created our Balkans-concept based on the latter point of view. We consider Croatia, Bosnia-Herzegovina, Montenegro, Serbia and Macedonia to belong to the Balkans. We consider Slovenia, Bulgaria, Greece and Turkey as transit areas, or so-called contact zones. Members of the contact zone can easily be argued into or out of belonging to the Balkans. This, first and foremost, can be explained by the fact that they were either evidently Balkan states (or parts of them) for an extensive period or that historical inclusion among the Balkan states (via territorial expansion, like Romania; for political and economical reasons, like Greece, etc.) could somehow preserve their 'Balkanness.'

The peninsula was named after the Balkan Mountains, which means 'woody mountain.' Beyond this, the Rodope and the Dinaric Mountains as well as the Pindos and the Carpathians constitute the peninsula's most important areas. No basin or plateau has evolved that would make it desirable for the system of settlements to become a united state that encompassed the entire peninsula. Little half-basins, basins, hollows, and closed mountain ranges resulted in the evolution of a fragmented state structure. The main roads lead from the South-East to the North-West; therefore, it was not a serious problem to cross the mountains. Athwart roads appeared as subsidiary ones. The region usually served as an area of conquest of local great-powers.



*Illustration 1 – the West Balkans*

### 3. The Concept of the West Balkans

As a regional category, the West Balkans is separated from the Balkan Peninsula and evidently has a political origin. On the one hand, Yugoslavia designated this as an area where there were (and continue to be) civil war type conflicts after the demise of the bipolar world-order; on the other hand, Albania designated the West Balkans as the highest, most arid, and isolated post-socialist part in Europe and was deeply concerned with the Yugoslavian crisis (i.e. the Albanian population in Kosovo). From among the ex-Yugoslav member republics, Slovenia gained its independence from Yugoslavia under fairly peaceful circumstances; therefore, it is one of the most successful states that joined the EU in 2004, and it has managed to leave the conflicts in the West Balkans behind. In the beginning of the



Illustration 2 – the West Balkans

Source: [www.ec.europa.hu](http://www.ec.europa.hu)

21<sup>st</sup> century, the category of West Balkans include Croatia, Bosnia-Herzegovina, Serbia, Montenegro, Macedonia and Albania.

The main reason for the division of the Balkans into Southern and Western parts is politics. The concept was first used by EU bureaucrats in order to distinguish countries with socio-economic problems but pose little security risk and have a commitment towards Euro-Atlantic integration, like Bulgaria and Romania (both of which are currently EU and NATO member states); that is, the East Balkans and the aforementioned states known as the West Balkans. The main feature of West Balkans' countries is that they not only must go through social and economic difficulties, but even an anti-federal state – where the interests of the member republics were totally different and problems were complicated even by ethnic and religious crises as well as historical affronts – had to be abolished.

Today, it can usually be said about the West Balkans that all of its countries pose a risk to security politics to differing extents. Unsolved ethnic and demographic problems as well as their resultant potentiality for nationalization and changes to the borders concern all of these countries. During discussion of threats and risks, we must be circumspect because every step can potentially affect the entire region.

Today, the concept lives an independent life; today, it is not as bad to be Balkan as it is West Balkan. At the moment, the concept of the West Balkans is equivalent to a non-EU member state – since, if the European part of Turkey is ignored, only the West Balkans countries are not members of the European Union. According to current opinions, this may remain the situation for a while.

#### *4. Border Demarcations and Border Problems<sup>1</sup>*

The issue of borders is one of the West Balkans most considerable security problems. The region's external borders (mainly in the ex-Yugoslav state frontier) must be distinguished from the internal borders (they are very similar to the ex-Yugoslav internal administrative frontiers). Apart from a few exceptions, the question about external borders seems to be in order (e. g., the Slovenian-Croatian land border and

<sup>1</sup> Reményi, P. – Végh, A.: Az ezredforduló határkérdései, határváltozásai a Nyugat-Balkánon. *Földrajzi Értesítő*, Vol. LV, Nr. 1–2, 2006. 195–211.

the Slovenian-Croatian-Italian borderlines should be treated as exceptions). The most considerable security risk is connected with illegal border transport (smuggling, international organised crime, refugee smuggling, etc.) and the conflicts that are evolving because of the development of the Schengen system.

The region's new, internal state borders represent another type of risk. This risk derives from several factors. These include: the continual questioning of the legitimacy of new state border, the discrepancies between political and ethnic borders, and recent military conflicts whose real reasons have yet to be solved but that are, nevertheless, temporarily suspended.

The conflict's consequences are diverse. Interstate relationships are burdened by unsolved ethnic crises, isolation that is due to ethnicity and makes states inoperable, and schismatic efforts that destabilise the region. Evidently, the unstable situation does not favour the economy; therefore, social conflicts continue to accumulate and contribute to the growth of illegal activities and the creation of new security risks.

### *5.1. Emergence of the Problem*

The most remarkable stage in Central Europe's regime change after the demise of the bipolar world order was the transformation of Yugoslavia, which was the earliest proponent of the West among socialist countries. As opposed to other countries experiencing regime change, a series of civil wars broke-out in the former Yugoslavia. The civil wars came in waves, and the opponents were continuously changing. Only international cooperation could result in the suspension of conflicts. After the wars, there was no chance to reunite the Yugoslav state, and sovereign states evolved in the region; however, the main problem that led to civil war (ethnically non-homogenous states) has remained until today. The region's economy and security as well as harmonic regional development remains unstable. These uncertainties concern not only regional states but also their neighbours (including Hungary) and, because of the expansion of the Euro-Atlantic integration system, Europe's entire system of security politics.

After the break-up of Yugoslavia, certain states were founded that had not historically existed in the same form. Borders that had been internal-administration borders for seventy years suddenly became

interstate, and although national accommodation areas and state areas often overlap, they were drawn in such a way that they were rarely ethnic borders as well.

Within the areas of the former Yugoslavia, state and ethnic borders are aligned only in the case of Slovenia and Croatia; the Montenegro's state borders are similar to its ethnic borders only in the West. The Muslim-Bosnian-inhabited areas called the Sanjak are in the North.

Within Yugoslavia, Macedonia was only bordered by Serbia, but even this is contentious. On the one hand, it was bordered by the western part of the Kosovo autonomous province; on the other hand, it was bordered by the areas belonging to Old Serbia but inhabited by Albanians (Bujanovac, Presevo) and Bulgarians (Bosilegrad).

Apart from the not very ideal shape of the country, the Croatian ethnic-corpus penetrated the southern areas of Bosnia-Herzegovina, particularly in the eastern areas of Middle Dalmatia. At the same time, there are ethnic islands of Serbs in these economically unattractive yet strategically important areas, e.g., in South Slavonia and Krajina.

Along no border do Serbia's political and ethnic areas align. This statement pertains to the former Yugoslavian republic in two ways. If we consider the state as a whole (including its two autonomous provinces), then it is spectacular that there are considerable Albanian and Hungarian accommodation areas within Serbia's borders. If we only consider the Serbian nuclear area (Old Serbia), then it is spectacular that without even addressing the autonomous provinces the national accommodation area penetrates into each of the other Yugoslavian member republics.

We deliberately discuss Bosnia-Herzegovina as the last example. It is the most populous nation in the republic, yet there was only a small, relative majority; from among the former Yugoslav member states, it was the last to gain nationhood (according to the declarations of the Yugoslav Communist Party, in 1968; according to a census and practically only during the Bosnian war, in 1971). Furthermore, the Muslim Bosnian majority lived in homogenous ethnic blocks only in very few (and mainly urban) areas. The Bosnian population, therefore, lived in a more territorially-concentrated way and within a much smaller geographic area than the Croatian or the Serbian populations who primarily lived in rural, town-like settlements. Moreover, considerable Croatian and Serbian ethnic-communities were accumulating along the borders and, thus, weakening the ethnic-character of Bosnia-Herzegovina's state borders.

When Yugoslavia broke-up, questions centring on the newly evolving states were highly controversial. According to Serbian party's point-of-view (which was permanently being emphasised during the conflicts, mainly in regards to those in Croatia and Bosnia-Herzegovina), the borders between member republics were only administrative and not international borders; therefore, after the civil war, the principle of ethnic-borders – and not the principle of inviolability of state borders – needed to be validated. Nevertheless, the Croatian and Bosnian points-of-view emphasised the internationality of the borders of former Yugoslavian republic, referred to the Yugoslav Constitution, and imagined their independence exclusively within the former member republic's borders. The international community adopted the latter point of view during the settlement process.<sup>2</sup>

Nearly all of the new, independent successor states believed that not only had the ceasing (transforming) Yugoslavia had a multi-ethnic and multicultural character but that a solution to the crisis that had resulted in the break-up of Yugoslavia had to be found; therefore, the problems of the misalignment of state and ethnic borders was transferred to a lower administrative rung – from federal state to the newly independent states of the former republic.

## *5.2. Internal and External Border Changes after the Nationalisation*

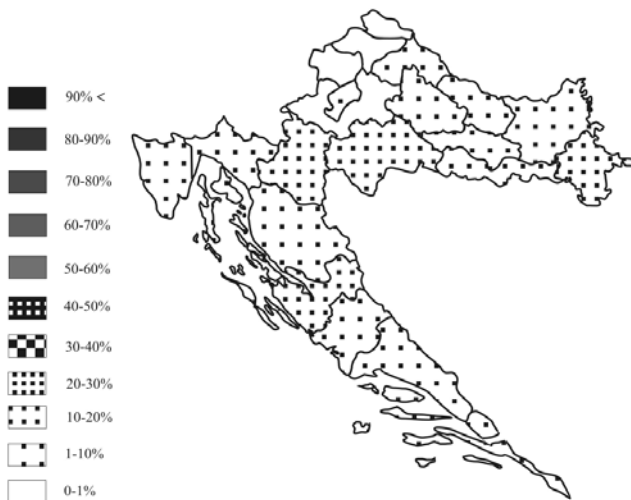
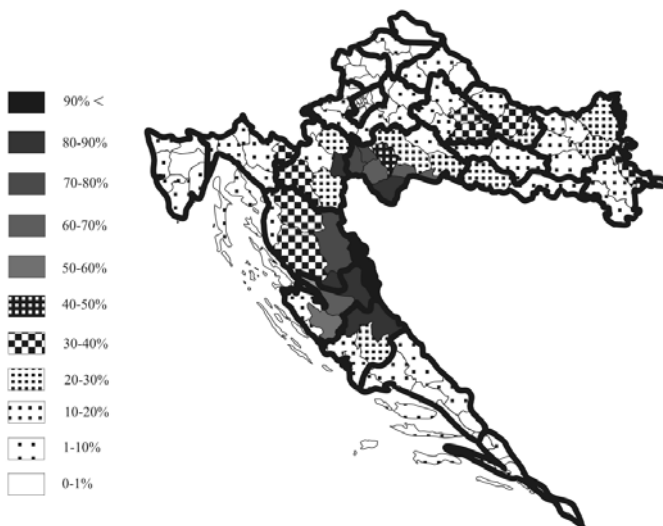
In June 1991, Yugoslavia was dismantled first by the nationalisation of Slovenia and Croatia and later by the separation of Macedonia and Bosnia (November 1991, March 1992). Military conflicts evolved in the newly independent states, and the main reasons for these events were ethnic (except in Slovenia where, since there was nearly no ethnic conflict, the war was no more than a federal Yugoslav military law enforcement action).

### *5.2.1. Croatia*

By 1991, the areas inhabited by Serbian majorities had already begun to mobilize with Serbian support, and Karjina's 'shadow state' had already been created. Although before the war Croatian political leaders

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<sup>2</sup> Mešić, S.: *Jugoslávía nincs többé*. Budapest, 2003. 405.



*Illustrations 3 and 4 – The Ratio of the Serbian Population in Croatia in 1991 (at opcina level) and in 2001 (in the county system)*

*Source: Reményi P. – Végli A. 2006*

promised to grant territorial autonomy to Serbians, the conflict could not be resolved in this manner. Written in 1991, the Croatian Constitution considered international norms; ethnic and minority rights were provided by law, but political and territorial autonomy were only revisited in 1992 with an amendment, after the war had already been taking place. The Yugoslav/Serbian army invaded nearly one-third of Croatia and was supported by Croatia's 12% Serbian population. On 20 December 1992, the President of Croatia proposed a new administrative system that concerned the whole country, and on 29 December 1992, the Croatian Parliament implemented the county system. Since the autonomy demands of the Croatian-Serbian population were based on the *opcina* (town / district) system that was inherited from Yugoslavia, this new type of administration abolished the older system. At the level of *opcinas*, Serbians had had a relative majority in 2 and absolute majority in 11 areas.

When the counties' borders were established, the interests of the Serbian ethnic-community were not considered (the war was still in progress at that time); therefore, from an administrative point-of-view, their more or less homogenous ethnic-blocks were fragmented; this does not even address the demographic effects of later military actions. The 'Lightning' (Bljesak) and the 'Storm' (Oluja) operations caused nearly two-thirds of the Serbian population to emigrate from Croatia; their ratio dropped to 5%, and the regions reoccupied in these operations were integrated into the county administrative system.

According to the 2001 census, the ratio of Serbian population currently reaches 10% in only three counties, and nowhere is it larger than the Vukovar-Szerémség county's 15.41%. Comparing illustrations 3 and 4, a realignment of the centres of the Serbian population's 'classic' (pre-war) territorial locations in Croatia can be observed. This can be attributed to the fact that Krajina's Serbian population was under Croatian sovereignty during the abovementioned military operations while the areas along the Danube (Eszék-Baranya and Vukovár-Szerémség counties) were regained by "peaceful" reintegration. Although the ratio of the Serbian population decreased even here, there was not such a considerable mass emigration along the Danube because of this reintegration. With the drastic reduction in Croatia's Serbian population, the country's largest minority was effectively integrated.

### 5.2.2. *Macedonia*

At the moment of independence in the republic that had the shortest border within the former Yugoslavia, the Albanian populations' ratio was 21.73%. This population is concentrated in the north-western border region of the country and is in an almost completely homogenous Albanian block that is dangerously close to the centre of the country and is an offshoot of independence-seeking Kosovo province.

As the Kosovo conflicts became more and more serious and bloody in the latter half of the 1990s, greater numbers of Albanians immigrated to Macedonia. Consequently, the Albanian population in Macedonia increased to 25.17%. By that time, the territorial concentration of the Albanian population had become greater in the South-East (South of the Kicevo-Struga line). In addition to the refugees from Kosovo, the chance of a military solution was also imported to Macedonia.

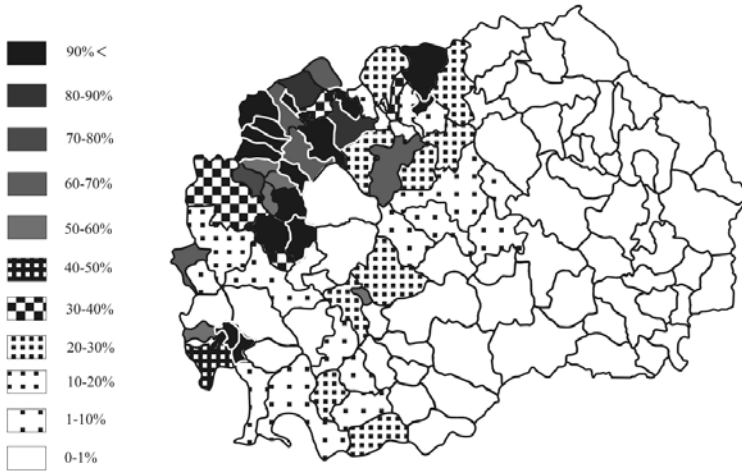
The Albanians continued to demand more rights as well as territorial and cultural autonomy; this resulted in a military conflict between Albanian separatist groups and Macedonian defence forces. The Ohrid Agreement did not adequately satisfy either of the extreme parties' demands yet embodied the peacemaking process inasmuch as it is the only document to date that has contributed to the peaceful co-existence of these two ethnic groups. This agreement modified and decentralized internal borders and, based on the 2002 census data,<sup>3</sup> reconceived administrative units as ethnic units. Accordingly, 84 opcinas (provided that Skopje, the capital, is not further divided into the smaller opcinas units that compose it, only 75), 33 so-called opcina groups, and 8 regions were constructed from the original administrative units. In conjunction with their creation, the new administrative units were granted important rights and self-governing abilities (for example, in the fields of public service, improvement of the countryside, local economic development, financial affairs, education, health care service and social services).<sup>4</sup>

Behind the scenes, the more extreme Macedonian political opinions – Svetski Makedonski Kongres (Macedonian World Congress) and the VMRO-DPMNE (Inner Macedonian Revolutionary Democratic Party

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<sup>3</sup> Ramkoven Dogovor. 13. 08. 2001. Ohrid.

<sup>4</sup> Idem



*Illustration 5* – The Ratio of the Albanian Ethnic Group in Macedonia, 2002

Source: Reményi P. – Végh A. 2006

for Macedonian National Unity) – managed to prevail in posing a public referendum that would have prevented a territorial division reform, but this resulted in failure; therefore, the Ohrid Agreement's intentions are being realized. The majority of Macedonians treat the new internal border as a 'state within the state,' even if it has very limited political potential. The new administrative unit would be centred in Tetovo and would have considerable regional autonomy; it would include about one-fifth of Macedonia, and autonomy would not be constitutionally declared. Although the agreement does not mention Skopje as a common capital, its division on an ethnic basis (just like the example of Kosovska Mitrovica) is a foreseeable prospect since the city seems to be spontaneously separating along ethnic lines.

In contrast to Croatia, the administrative modification was not based on ethnic and minority interests, and when the borders are taken into consideration, it even seems to oppose the interests of a Macedonian nation-state. (This can be seen, for example, in the Struga region, where Macedonian areas have been integrated into the administrative units of an Albanian majority).

### 5.2.3. Serbia

Even today, the alteration of the federation's internal borders is a very complex process that is saturated with unanswered questions. The future fate of Kosovo is being negotiated even at present. The province has become a nearly homogenous, ethnically Albanian area, although there is a slight Serbian population that lives primarily in rural areas. This homogenisation can be divided into two periods. (*Illustration 6*)

The first is the demographic period or the 'peacetime.' During Tito's Yugoslavia, this is when Kosovo became an area of Albanian majority because of a natural increase of Albanians living there and the high emigration rates of the Serbian population (except for a few opcinas). At the end of the 1980s, the Serbian Government did its best to legally prevent further mass emigration of the Serbian population from this area, but these measures proved to be too late.<sup>5</sup>

The second homogenisation period began in 1991 with the break-up of Yugoslavia and has continued until present. There is no statistical data about this 15 year period (The 1991 census cannot be accepted as official data because only the Serbian party supports it); there are only estimates, but even based on these, it can be determined that emigration and the Serbian population's purchase has been increasing; even the most optimistic estimates only claim that they comprise about 5–6% of the region's population.<sup>6</sup> These small Serbian populations only live in a unified ethnic blocks that are situated North of the Ibar river, North of the divided Kosovska Mitrovica opcina, in Zvečan, Zubin Potok and Leposavic opcinas.

During the Milosevic Era, the need to find a solution to the situation in Kosovo became increasingly urgent, but Serbia was internationally isolated, burdened by its military conflicts with Bosnia and Croatia, and did not see a reason to open one more front, so it allowed the foundations of an Albanian shadow state to evolve (no tax was introduced in Kosovo, and there was no obligatory military service). In addition to this political change, the UCK (Republic Army of Kosovo) had ceased passively resisting. By the second half of the 1990s, plans for political solutions had been developed; however, these did not consider the reasons behind the Albanian population's actions.

<sup>5</sup> Službeni List SRS 30/89, 42/89, 22/91

<sup>6</sup> Kosovo i njeno stanovništvo Anкета Statističkog Društva Kosova 2003

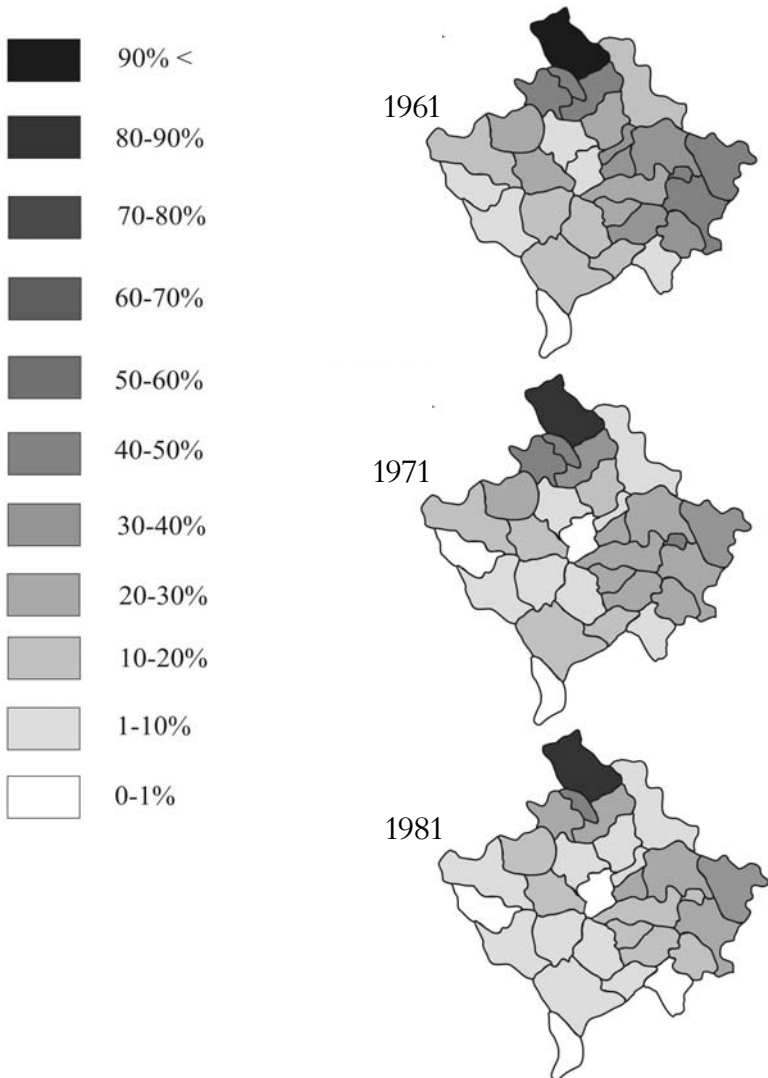
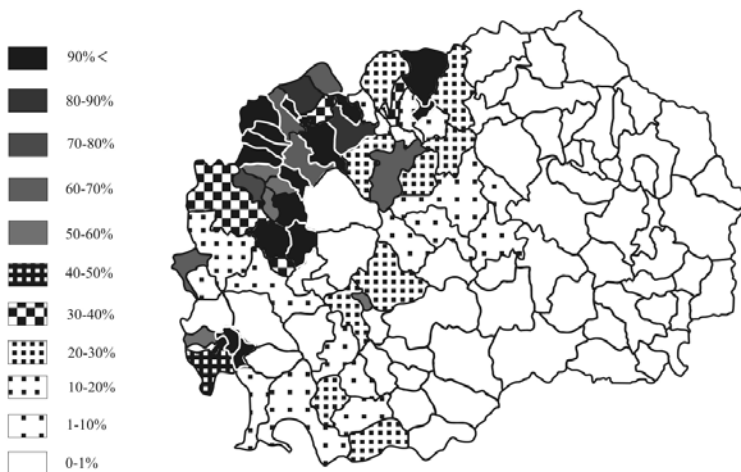


Illustration 6 – The Ratio of the Serbian Population in Kosovo according to the Official Census Data

Source: Reményi P. – Végli A. 2006



*Illustration 7* – The Cantonisation Plan of Kosovo

(1 – Serbian cantons, 2 – Albanian cantons, 3 – towns important to Serbian cultural values, 4 – capital)

Source: Reményi P. – Végli A. 2006

The first so-called decentralisation theory was published in 1994 by Dobrica Cosic; the next was offered by Dusan Batakovic's in 1998. Batakovic's suppositions were later modified by several people, including Zoran Dindic, the assassinated Serbian Prime Minister, and Nebojsa Covic in 2001, who was Assistant Prime Minister and the leader of the Serbian Coordination Centre of Kosovo.<sup>7</sup>

According to the aforementioned plan, Kosovo would regain the autonomy it had lost at the end of the 1980s, but as 'autonomy within the autonomy,' the Serbian areas would not be subject to the authority of the (Albanian) Parliament nor to the administration of Kosovo; rather, as in areas of Old Serbia, they would be directly linked to the authority of the Parliament of the Republic of Serbia. It should be noted that this area is much larger than the entire ethnic-Serbian area, and its Southern offshoot would completely separate an Alba-

<sup>7</sup> ICG International Crisis Group (2002): Report N 124. Putokazi za budućnost Kosova I. Rešavanje konačnog statusa Priština/Brisel 2002. mart.

nian-inhabited zone from Kosovo. This division is based on culture rather than ethnicity, as is evidenced by the fact that Serbia's medieval religious centres are situated within this area, which is at the moment inhabited by an Albanian majority. Success on any level of the aforementioned solution will result in a process of state-formation that is similar to the developments in Bosnia-Herzegovina, but it would not resolve the current conflicts.

Ibrahim Rugova posited a plan for the division of Kosovo in which, for the sake of an independent (and purely Albanian) Kosovo, Bujanovac and Presevo opcinas that currently belong to Old Serbia would be attached to Kosovo in exchange for the Serbian opcinas (Leposavic, Zubin Potok, Zvecan and Northern Mitrovica).

From an ethnic point-of-view, both Albanian and Serbian concepts partially ignore the division of Kosovo's Serbian population; they only consider one-third of the Serbian population and ignore the Serbian majority that lives in the province's rural areas. This Serbian majority has never been in a privileged position but has, rather, always lived on the periphery.<sup>8</sup> According to the solutions offered above, evacuation and population exchange would remain a hovering threat to this group.

There is a very small chance that Serbians will reintegrate Kosovo. Although the UN Declaration 1244/1999 treats Kosovo as the part of Serbia, the Albanian population and political parties consider it unimaginable. The Ahitsaar Report was not a great success. Limited independence in Kosovo would translate to a loss for Serbians and further dependence for Albanians. This does not even address the high costs to EU to retain a permanent military and police presence there.

At the moment, the internal ethnic borders have disappeared, much as they did in Croatia. Homogenisation was achieved at the cost of serious war conflicts and ethnic-cleansing. The evolution of future borders depends on how and when 'peace' will take shape and evolve in Kosovo.

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<sup>8</sup> ESI, European Stability Initiative: Princip Lozane, Multietničnost, teritorij i budućnost kosovskih Srba. Priština/Berlin 2004.

#### 5.2.4. *Montenegro*

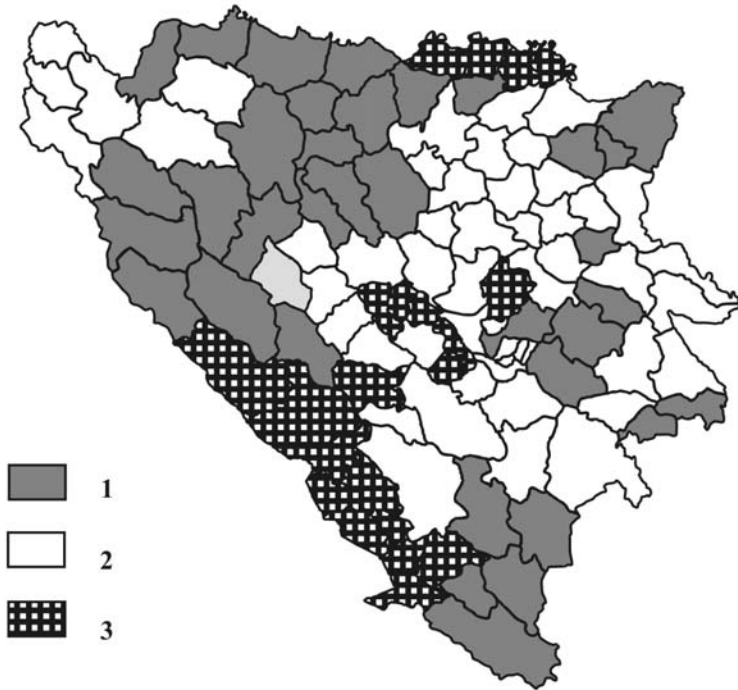
The prospects for the Balkans' youngest state are difficult to predict. No doubt, the country has excellent natural resources for tourism; however, at the same time, there are considerable differences among interior territories. Tourism as well as the development and enrichment of the coast are probable prospects, but the interior's elevations and arid regions will profit little from it; thus, this development may become a source of interior-conflicts. The relationship between Serbia and Montenegro is also very problematic. A considerable portion of the population is Serbian, and their apparent demand is to remain in contact with the mother country.

Apart from Serbians, the Albanian population in the country's Southern region (Ulcinj) cannot separate itself from the Albanian question that dominates the area either. The situation of Sanjak's Muslim population and its future political intentions are difficult to predict at the moment but will surely be treated as a security risk in the future.

#### 5.2.5. *Bosnia-Herzegovina*

From among the ex-Yugoslav member republics, the concept of multi-ethnicity was most widespread in Bosnia-Herzegovina, but this resulted in a terrible civil war. There were no real ethnic borders in Bosnia before 1991 (illustration 9). Ethnic homogeneity was not tangible, even at the lowest level, the level of *opcinas*. Although there were certain ethnic islands where one of the three major nations was in majority, these territorial locations were not by any means suitable for determining borders according to ethnicity.

Although the aforementioned ethnic border/state border relationship was intensified by the civil war's homogenizing effect, it was weakened in particular cases. The conflicts along the borders that divide an accommodation area into two parts have slackened. This is especially around the North-Western borders of Bosnia-Herzegovina from where a large number of Serbians escaped from Croatia's *Krajina*. Because of this, the ethnic character along the state border became stronger. Nevertheless, the crises in West Herzegovian and along the river Drine – where earlier mixed populations had homogenised due Bosnian influence – have

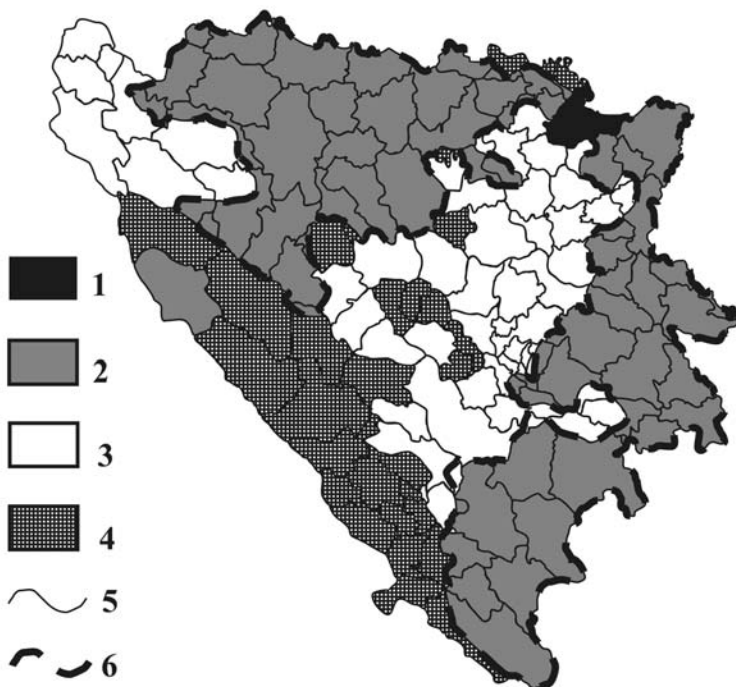


*Illustrations 8:* The Ethnic Division of Bosnia-Herzegovina in 1991 (absolute or relative majority)  
(1 – Serbians, 2 – Bosnians, 3 – Croats)

*Source:* Reményi P. – Végli A. 2006

escalated. It is generally true that the Bosnian nation is concentrated in the central areas of the independent Bosnia-Herzegovina (except for the neighbourhood of Bihac) while Serbians and Croats live in a wide and long zone that borders their mother countries and inhibits this central Bosnian area. This is evidently unfavourable for long-term stability in the state.

The Contract of Dayton that ended military conflicts established an inter-entity border (IEBL) that separated areas belonging to the two combating states (Republica Srpska – RS and Federacija Bosna i Hercegovina – FBiH) and, thus, created the two entities known today as



*Illustration 9: The Ethnic Division of Bosnia-Herzegovina in 2002*  
(absolute or relative majority)

(1 – Brcko District, 2 – Serbians, 3 – Bosnians,  
4 – Croats, 5 – *opcina* borderline, 6 – RS borderline)

Source: Reményi P. – Végh A. 2006

Bosnia-Herzegovina. The ethnic principle overruled nearly all other factors – except for in a few cases (Corridor of Posavina, Corridor of Gorazde) – in determining the borders.<sup>9</sup> The purpose was not to re-create ethnic balance – since it was impossible in 1995 and is impossible even today – but to terminate military conflicts. Crystallizing the boundaries of these front lines and creating new, permanent ethnic borders was the peace treaty's most critical point, and it has remained so

<sup>9</sup> Aganović, M. – Jovanović, Z.: *Bosnia and Herzegovina spatial structures and regional policies*. Trieste: Vision Planet Project Interreg II.C International Adriatic Conference, 1999.

since then. Although minority re-immigration began in 2000 (Serbians to the FBiH, Bosnians and Croats to the RS), it has only slightly modified the ethnically homogenous character of the areas.

In order to satisfy the demands of the Croatian population, whose state was still at war, a canton structure with significant autonomy was created within FBiH. However, it was not granted its own entity during the settlement process. The cantons have their own legislative, executive, judiciary and – perhaps the most important of all – armed law enforcement bodies. When the canton borders were created, the establishment of pure Croatian cantons (based on ethnicity) was taken into consideration; therefore, the areas (cantons) of West Herzegovina that are primarily inhabited by Croats function as a state. The Bosnian population's return to the region has been slow, and in 2001, only an international military intervention could prevent the one-sided realization of Croatian autonomy and self-government.<sup>10</sup>

It seems evident that greater decentralisation of the Bosnian-Croatian half of the otherwise extremely decentralised state and the creation of new borders within the state (that separate areas that occasionally differ in regards to their state and public administration) is resulting in an increasingly fragmented state.

Beside the original administrative border of IEBL, the ethnic border is the most significantly discrepant. In the case of the IEBL, the state and ethnic borders overlap in a majority of cases, but in several areas, it is possible to see a different ethnic border. At the općina level very few mixed-population areas can be mentioned; therefore, except for in a few cases, ethnic borders are very sharp.

This is important because the three ethnicities are organised around and control their communities based upon on diverse interests. These interests are not always distinguished by IEBL or canton borders but, in certain case, by općina borders. Therefore, the area is further fragmented by the interests that are mainly ethnic and are often independent of administrative borders (e. g., the sharp ethnic-borders within the cantons inhabited by Bosnian-Croatian mixed population).

Another serious criticism of the entity's borders is its unfavourable effects on territorial development. The ethnic principle overruled

<sup>10</sup> Juhász, J. – Márkus, L. – Tálás, P. – Valki, L.: *Kinek a békéje? Háború és béke a volt Jugoszláviában*. Budapest, 2003. 328.

territorial divisions' of labour, going even as far as cutting certain opcinas into two pieces (Sarajevo, Mostar, Doboj).

The experiences of the last decade prove that military conflicts have ceased, yet flat, organic territorial development and the stability of the state are not necessarily served by the current administrative system. The function of the IEBL barrier is much larger than lawmakers earlier envisioned. Ethnic-borders remain at several levels, and rarely did they lose their importance. Nevertheless, without the IEBL, the transformation of the currently fragmented structure is unimaginable.

Since several administrative levels can be observed within the state of Bosnia-Herzegovina, the relationship between the ethnic and administrative borders can arise in several respects. The state's external border and the ethnic border are problematic because the two out of the three state-constituting ethnicities live along the borders of their mother nations and because the centrifugal powers within the country are considerable. The (forced) modification of the state administration on ethnic grounds resulted in more importance being attached to the inner ethnic-borders. Borders of this type can be observed at each administrative level; the IEBL and the majority of canton borders also belong to this type, but several opcina borders are, at the same time, ethnic borders.

The member republic with the most complicated ethnic structures had to face the most complex questions of administration. The country could remain united only via extreme decentralisation and the autonomy of particular ethnic groups. The state administration is organised on an ethnic basis; it is a balanced between the three state-constituting ethnicities, and as known from the conflicts in the last two decades, the country's development does not appear likely. The complexity of ethnic relations can be observed in the fact that questions concerning the territorial structure are still agenda items as well as in the fact that the modifications of Bosnia-Herzegovina's constitutional reform and public administration of are still current and urgent issues.

### *5.3. Conclusions Regarding the Questions of Borders*

It can be said that everywhere within the former Yugoslavia ethnic-homogenisation can be observed. The most important differences derive from the fact whether within the new state borders new ethnic-borders and enclaves evolved (Bosnia-Herzegovina, Macedonia) or a given

area (country, province) simply got rid of its ethnic minority in order to become ethnically homogenous (Kosovo, Croatia, entities of Bosnia). Within each of the examples, this change gave birth to new border types and the transformation of existent structures.

It is believed that considerable alterations will occur in the near future in the region and that these will derive from the still incomplete processes of nationalisation (Montenegro, Bosnia-Herzegovina or the Albanian population of the region) or through the quick expansion of Euro-Atlantic organisations in the region.

The first factor will lead to more fragmentation, namely the evolution of new borders and, in conjunction with this, new ethnic-conflicts. Euro-Atlantic integration will, alternatively, result in integration of unpredictable velocity and with unforeseeable features.

The relationship between these two powers is quite questionable at the moment. Will quick social and economic development become more important than the realisation of national programs? Which principle will win: the most complete national independence? Or the integrative system?

## 6. *Changing Roles of Towns in the West Balkans*<sup>11</sup>

Since they suddenly became capitals of new states or entities, small towns apparently have achieved a more important status in the hierarchy of settlements. Occasionally, the importance of very small towns has grown drastically. Banja Luka, the capital of the Bosnian Serbian Republic (according to local sources, there were 140,000 inhabitants prior to the war; due to refugee waves, the number of the population reaches 200,000 today) or Pristina (150,000, capital of Kosovo) have not yet reached more than 200,000 inhabitants, but Sarajevo (400,000 inhabitants), Podgorica (120,000), Tirana (450,000) and Skopje (450,000) are also only mid-sized towns. The new borders also separated towns that had cooperated earlier. Examples include: Slavonski Brod and Bosanski Brod on the two banks of the river Szava, which runs along the border between Croatia and Bosnia-Herzegovina, or the strategically

<sup>11</sup> Hardi, Tamás – Pap, Norbert: Az államhatár megvonások hatása a Kárpát-medence és a Nyugat-Balkán városhálózatára – példák. In Pap, N. (ed.): *A Balatontól az Adriáig*. Pécs: Lomart Kiadó – PTE Kelet-Mediterrán és Balkán Tanulmányok Központja, 2006. 241–252.

important city Brčko.<sup>12</sup> In addition to the increased importance of small towns, more developed cities are losing their attractiveness as the new state areas become increasingly smaller. If Kosovo secedes, for example, Beograd will become a capital of 1,5-million in a country of 7 million inhabitants, and a kind of primate city – similar to that of Hungary's capital Budapest – will evolve. The new states do not have a well-developed system of urban settlement. Currently, 20–40% of their urban population lives in the capital.

South-Eastern Europe's system of settlements differs from the systems of Middle and Western Europe. A network of towns is much rarer, and the population density is usually lower than anywhere else in the Western part of the continent. Considerable centres evolved only at the peripheries, first and foremost Istanbul; Athens (with a current population of 3 million inhabitants) was in the 19<sup>th</sup> century only a small town with 50,000 inhabitants. The capitals of those countries that evolved in the 19<sup>th</sup> and 20<sup>th</sup> centuries were small, countryside towns. The main reason for this was the Balkans' natural-geographic features. The mountainous region did not favour the development of highly concentrated populations, but it should also be remembered that much of this region belonged to the Turkish Empire and was its periphery for centuries. This is why except for a few administrative and commercial centres (e.g., Skopje) no considerable cities evolved.

The states that developed after the withdrawal of the Turkish Empire did their best to cultivate the cities they had inherited. The modernizing capital became a symbol of national pride, and cities that had been previously less noteworthy became capitals instead of the earlier centres (e.g., Bukarest or Sophia). During this period, the degree of urbanization in this region's states was extremely low; at most, 20% of the population lived in urban areas. The growth of the urban population in these countries occurred during the period of state socialism. Quick urbanisation was supported by two ideologies: on the one hand, the dominant ideology emphasised the leading role of the working class within society; on the other hand, it was possible and even necessary because of the crystallisation of the young nation-states' borders. The process could only be accomplished in the 20<sup>th</sup> century in certain countries. At this time,

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<sup>12</sup> Reményi, P. – Végh, A.: A Brčkoi Körzet: megoldás vagy zsákutca? *Balkán Füzetek* (Pécs), Nr. 2, 2005. 62–79.

not only the capitals were modernised but regional centres, the capitals of the member republics in the federal Yugoslavia, also became stronger. The number of cities and so-called 'socialistic cities' (industrial centres based on a particular industrial field) grew. The number of cities in the region grew 150% in the second half of the century. In the middle of the 1950s, there were 402 cities registered in the region; today, there are 1098.<sup>13</sup> Also, the populations in the cities have drastically increased. There are three cities in the region with populations reaching 1 million inhabitants, and at the end of the 1980s, there were over 2 million inhabitants in Bukarest. The construction of blocks of flats and housing estates became a dominant tendency, sometimes even in small towns.

During the socialist decades, urbanisation in the Balkans was basically altered. The ratio of the urban population and the number of cities grew to a significant degree, and with the exception of a few areas, they started to approach the European average. This process contributed to the growth and extension of urbanisation in the region; that is, territorial differences decreased in this respect.

## *7. The Effect of New State Borders on Different Aspects of the System of Settlements*

### *7.1. The Capitals*

Regional capital cities can be divided according to their problems into the following groups:

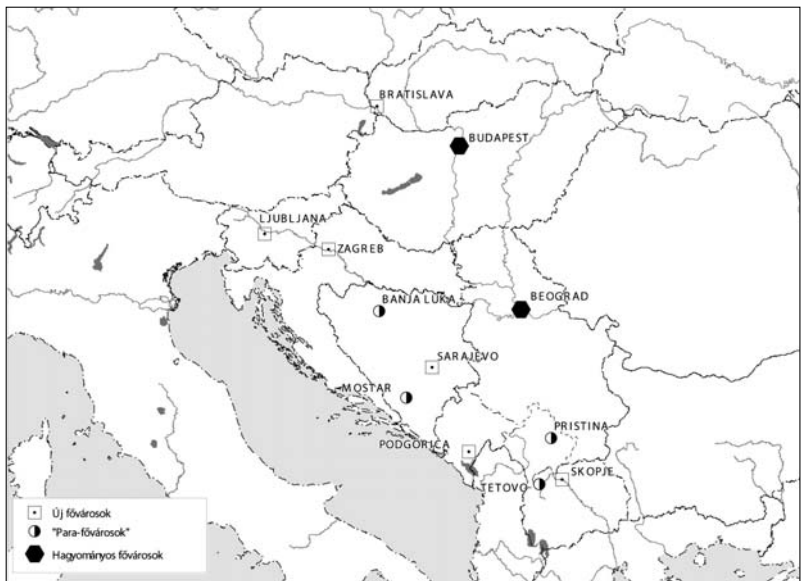
2. Traditional capitals (Tirana, Beograd)
3. New capitals (Zagreb, Ljubljana, Sarajevo, Podgorica, Skopje)
4. 'Para-capitals' (Pristina, Banja Luka)

Since they are capitals in the traditional sense, Tirana and Beograd must be singled out from other regional capitals.

The Albania capital is situated on the Southern edge of the lowland coast. In the last decade, the population has reached half a million. There are large discrepancies between incomes. Newly-built villas, excellent restaurants and luxurious cars contrast starkly with the majority's standard of life. The role of the service-industry is gradually becoming as

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<sup>13</sup> Kocsis, K. (ed.): *Délkelet-Európa térképeiben*. Budapest: MTA Földrajztudományi Kutatóintézet, 2005.



*Illustration 10* – The capitals described

*Source: Hardi – Pap 2006*

important as the mechanical industry. The country's gate to the sea is Durres (earlier Durazzo). In the socialist period, Durres became a considerable industrial centre. Two-thirds of the country's commercial trade is done via this settlement. Mainly Kosovo's Albanian inhabitants and those from the capital spend their holidays on the city's coast. The country's Northern regional centre is Skodra, a political counterpoint to the capital's agglomeration. In the country's Western lowland, the effectiveness of the state's presence and its authorities is questionable.

Before the fall of Yugoslavia (1991), Beograd was the capital of a federal state that consisted of 255,804 km<sup>2</sup> and had 20.3 million inhabitants. In those years, the Beograd's population constituted 7.6% of the state's entire population. If Kosovo were to achieve its aim of secession and the current federative state is broken-up, the capital's population a – which in 2002 was 1.58 million – would constitute 21% of the Serbian population.

As can be observed, the traditional capitals create a weight within the countries if their populations are reduced in size, and the so-called veg situation can evolve this way.

The category of new capitals is a recently advanced one; cities belonging to this category are the mid-sized, town-like capitals that suddenly grew to the rank of capital in the newly independent federative states. The majority of these cities (Ljubljana, Zagreb, Sarajevo, Podgorica, Skopje) were originally regional centres; only Zagreb and Bratislava are historical capital cities. The others were mainly provincial seats or regional administrative centres. Therefore, these cities had to face three developmental challenges after the countries attained statehood.

1. Administrative and other institutions must be established so that the settlements are able to become the real political and administrative centres of a given country. Therefore, Parliament, departments, airports, etc. need to be established, and the existent institutions should be further improved.
2. On the other hand, these cities have become symbols of their respective nation-states. Since many countries did not exist in earlier periods as sovereign entities, national monuments, gigantic streets, etc. had to be built in order to emphasise nationhood (e. g. Clinton avenue).
3. The settlements mentioned were previously within a federative state's system of settlements, but their new rank of capital demands their integration into the European system. From among the three necessary improvements, this is perhaps the most difficult since the contacts between them and other important capitals have yet to be developed.

It is evident that each capital must face these challenges to a different extent. So-called 'para-capitals' also must be mentioned. This concept covers regional centres that are being nationalized. Pristina in Kosovo and Banja Luka in the Bosnian Serbian Republic belong to this group. These centres are in an interesting transitory situation. Because they are at a higher level in the international hierarchy of settlements, they are regional or federal centres that are directly connected to great powers. At the same time, their character as capitals and their institutional systems are weaker than ones of the so-called new capitals (see above). Banja Luka or the former quasi-centre of the Pale region cannot even be called regional centres. Mostar, the Croatian centre of the



*Illustration 11* – Some examples of ‘loser’ capital cities

Source: Hardi – Pap 2006

Bosnian-Croatian Federation, also belongs to this category. Although its para-capital status is more uncertain because it is not officially an independent entity, it is a visible centre of organisation.

The reconfiguration of borders also resulted in considerable migration. Masses usually emigrated to the regional capitals of the countries for ethnic reasons during the 20<sup>th</sup> century, and this tendency can even be observed today. This is a considerable problem in several Balkan cities because the majority of new inhabitants do not officially migrate or change their address. That is, the population data for particular cities is uncertain. This kind of disorder also poses a serious challenge for public services. Furthermore, the expanding use of motor vehicle creates chaotic transport conditions.

### *7.2. The ‘loser’ cities in border reconfiguration*

The creation of new borders meant that several cities lost their earlier attractiveness and contacts. From the point of view of a settlement system, the losses can be summarised as follows:



Illustration 12 – Some examples of ‘winning’ capitals

Source: Hardi – Pap 2006

1. The loss of a part of the sphere of influence
2. Evolution of new peripheries
3. Relegation within the administrative hierarchy of settlements
4. The decrease of the importance of geographic position
5. Decrease in population

The most spectacular phenomenon is the partial loss of a city’s sphere of influence (illustration 12). At the same time, new peripheries are evolving from the separate sphere of influence on the other side of the borders. This is a serious obstacle for parties on both sides of the borders. The population in separated areas of the sphere of influence lose their available urban services; because of this, the region becomes peripheral, and its society and economy begin to show signs of decline. This can be seen, for example, in of Croatia’s narrow coastal zone Dalmatia where border areas were separated.<sup>14</sup>

<sup>14</sup> Illés, I.: *Közép- és Dél-Kelet Európa az ezredfordulón*. Budapest–Pécs: Dialóg Campus Kiadó, 2003.

### 7.3. The 'Winning' cities in the New Borders

As was natural, the changing settlement system and state structures not only declined but also included the certain settlements' facilities.

The evolving peripheries needed a new central settlement; therefore, settlements in the lower levels of hierarchy became centres. Because of this, there are certain towns in the West Balkans that win (e.g., Serbia's Novi Pazar became a border town with the de facto separation of Kosovo. It has remained the centre for Serbia's Muslim population).

It was not only the central power's will that caused certain settlements to begin developing; rather, their geographic position became more important within the new state structure. The best example of this is the case of Novi Sad (Újvidék), which – with its 217,000 inhabitants – is Serbia's second most important settlement after Beograd. In Macedonia, the case of Bitola or Tetovo (the centre for Albanians) is very similar. As an effect of transition, the town of Skodra is also becoming more significant.



*Illustration 13* – Some examples of cities with special geopolitical situations

Source: *Hardi – Pap 2006*

#### *7.4. Towns with serious geopolitical and ethnic problems*

As previously mentioned in the introduction, the region was divided into nation states by the break-up of multinational empires and federal states; thus, the political borders that evolved were not always identical to ethnic borders. In the case of the ethnically diverse towns, religious and ethnic groups are highly segregated. Kosovska Mitrovica and Sarajevo are good examples of this. Kosovska Mitrovica in the Northern part of Kosovo is divided into a Serbian-inhabited area and an Albanian-inhabited area that is by the river Ibar; likewise, Sarajevo has almost become a purely Bosnian city. The Sarajevo's Serbian-inhabited area, Sprski Sarajevo, morphologically belongs to the town, but from an administrative point of view, it belongs to another entity. The international community should make serious efforts so that those in city are able to properly work and live.

In other cases, the geographic or strategic importance of particular cities was so large that international powers could not allow certain cities to lose the advantages deriving from their geographic positions. Trieste, the former sea gate of the Austrian-Hungarian Monarchy, is a good example of this. In 1954, Trieste was a 'free city' and the Southern end-point of the iron curtain. Later, it was divided into parts in such a way that the narrow coast zone of the city was given to Italy and the inner, Istrian areas to Yugoslavia.

Brcko is a port town similar to Trieste, but it is located on the bank of the Szava River. It is an important town because the Bosnian Serbians' state begins here with the so-called Brcko Corridor. If this settlement belonged to Croatia or Bosnia, then the Bosnian Serbians' state would be threatened by fragmentation. This is why the great powers separated the town from the national framework and created it as a separate entity.

#### *8. The So-called Exceptions*

The West Balkans' region has several potential crisis areas with problems that either cannot be integrated into the problems discussed above or are definitely local issues; however, these troubles can have a far-reaching effect because of the sensitive political balance within the Balkans. Local political crisis areas that might pose a serious security

risk under certain circumstances include but are by no means limited to the following:

- Discussed sea border in the Gulf of Piran
- The special area of Brcko
- The Exit of Ploce
- The Corridor of Neum
- The Exit of Bar
- Stateless ethnicities within the region
- The problem of the Sanjak area
- Minefields and other remnants of the war

### *9. Summary*

Even today, the West Balkans is one of Europe's largest unstable regions. This instability resulted in civil wars not very long ago, and the issues igniting of these wars have still not still been completely settled. The region's basic problem may be found in the West Balkan's system of border, where borders do not only mean border demarcations but also means lines that separate divergent social and economic phenomena (ethnicity, language, dialect, poverty and wealth). Complex and often fragmented, these artificially modified structures continuously recreate security risks that repeatedly reach a critical mass and explode.

If a region exists in which European integration should (independent of economic interest) play a pacifying and stabilising role, the West Balkans is that area. The extremely fragmented structures do not allow problems to be addressed at the nation-state level, and international law enforcement is necessary in several places. It seems that the easiest way to solve these problems would be within the frameworks of a common European integration, if a Europe of states could replace the Europe of regions. Despite our awareness of the developmental differences between the West Balkans and the European Union, we believe that the problems stem centuries' old differences, even when approaching the issue with a good-will. But it seems evident that for the sake of the region's stability, the European Union should make sacrifices.

JÁNOS SALLAI

## Moldova, Enclave of Eastern Europe: A Political Safety Risk of the EU

**B**oth the dissolution of the Soviet Union and the enlargement of the European Union have essentially rearranged the political map of Eastern Europe. As a result of this process, Moldova has become an independent state and, with Romania's EU membership, one of the countries neighboring the European Union. Prior to conducting my research, I would have described the country as one of the poorest European states, but my personal experience has led me to believe that the state is more controversial than it is poor. Here is a state in which a configuration that is not acknowledged by anyone operates (Transnistria). The river Dniester is controlled by Moldovan and Russian peacekeeping forces; transit traffic is checked by customs and police. Moldovan citizens drive western cars with Transnistrian number plates because of high registration fees, yet the 100–200 Euro per month is the lowest average European income compared with those in Europe. (Moldovan statistical data is usually far from reliable. More than one million citizens live and work abroad.) Unlike in the Soviet era, motor vehicles are mainly of western make and most of them are expensive Jeeps. This contradicts the country's great poverty – one cannot fail to notice the marked difference. (During my 150-kilometer-long journey from the border to the capital, there was public lighting only every once in a while.) The same discrepancy is underscored again when the traditional modest country houses with their nice flowery gates, the blue walls and the ornamental wells are juxtaposed with the houses, cottages that are being built around Kishinev. Another thing also leads one

to stop and reflect: the shops in the big cities and those in the capital. There are a wide selection of goods and a large number of costumers; The Metro department store is highly popular, and it seems that every other building on the main road exchanges currency. It is easy to assume that the money sent home by the numerous Moldovan citizens living in foreign countries must eminently account for these scenes.

In order to apply for a job, Moldovan nationals must enter and stay in the European Union and the CIS legally, but quite frequently, they attempt to enter these states illegally. Moldovans were caught along the Hungarian border several times.

The aforementioned things motivated me to examine Moldova as a migration-issuing country, to analyze her border-connections and relationships as well as experiences of illegal migration. In order to do so, it is essential to present both the conditions that led to this situation and – due to the fact that the country is less well-known – a geographical analysis of Moldovan society.<sup>1</sup>

The events in Moldovan political life are diverse and rapidly changing. As a country that has recently gained its independence, Moldova has to face the problems of young nation-states. Most notably, it has to deal with the economic difficulties of Soviet succession states and with the “spying” attention of its Russian and Romanian “Big Brothers.” Based on population and area, Moldova can be called a small state, but because of the Transnistrian problems, it is of outstanding geopolitical importance. At the beginning of the third millennium, Moldovan political leaders have been thinking about political transformation, and they seem to be oriented toward the EU and the USA. At the same time, Moldova knows its dependence on Russia determines its political position.

Because of economic decline and the low standard of living, the majority of Moldovan citizens search for and find jobs in foreign countries. This process accounts for the significant differences found in statistical surveys’ data. According to a population census, there are over 4 million inhabitants; a household survey examining town-village inhabitants showed only 3.5 million people.

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<sup>1</sup> See: APPENDIX

### Natural conditions

Moldova is situated on the south-western edge of the Eastern European plain. Its main border-rivers are the Dniester and the Prut. The republic can be divided into three main natural zones: forests, a wooded steppe, and a steppe. Three quarters of its surface is hilly; the hill-country is strongly broken up by rivers and streams. Its highest peak is 429 meters. Moldova's weather is influenced by the Carpathians. Due to this, winters are cold; summers are warm and dry, so plants that require large amounts of sunshine and heat can grow here with great success. The river water is used for irrigation. Grape cultivation and wine production are significant for Moldova.



Figure 1. Moldova's Socio-Geography<sup>2</sup>

Table 1

Total area		Agriculture		Forest		Nature reserve		Others	
km <sup>2</sup>		km <sup>2</sup>	%	km <sup>2</sup>	%	km <sup>2</sup>	%	km <sup>2</sup>	%
33,851		25,557	75.5	4,229	12.5	664.5	2.0	3,450	10.0

### Industrial conditions

Owing to the weather and favorable soil, Moldova is an agricultural country. Currently GDP per person is 2,100 USD while GNI is 2.6 billion.

<sup>2</sup> Rúdli József: *A Szovjetunió utódállamainak földrajza*. Budapest-Pécs: Dialóg Campus, 1999. 189–196.

23.4% of the GDP is produced by the agrarian sector, 21.4% by industry, and 55.2% by the service sector. Annual economic growth is approximately 6% of the GDP.<sup>3</sup> Agricultural fields can be found between the rivers Dniester and Prut while industrial units are mostly situated east of the Dniester. Industrial units aim to satisfy agricultural demands, and their dual-heat power stations operate on Ukrainian coal and Russian gas.

The Moldovan economy is influenced by the fact that the country used to produce for Soviet markets (more specifically, for Russian markets) and was, therefore, provided energy by these markets. It is difficult for the country to sell their tobacco, grape and wine in EU markets.

### *Population*

Moldova is a multi-ethnic state. Within Moldova, there are 30 nationalities; the most significant ones are: Moldovans, Russians, Gagauzs, and Jews. The present population is about 4.45 million. Since the dissolution of the Soviet Union, important changes have taken place in the populations' ethnic structure.

*Table 2*

<i>Nationality</i>	<i>1989<sup>4</sup></i>	<i>2004<sup>5</sup></i>
Moldovan(Romanian)	64.5%	78.2%
Ukrainian	13.8%	8.4%
Russian	13.0%	5.8%
Gagauz	3.5%	4.4%
Other (Turkish, Bulgarian, Jewish...)	3.8%	3.2%
Total population	4,335,360	4,455,421

Unlike European trends, this chart demonstrates that the Moldovan population continues to grow and, at the same time, that its ethnic structure continues to change. The reasons for this are: the civil war along the

<sup>3</sup> Rácz András: Végtelen történet – a Moldova-Transznyisztria konfliktus. In Marton Péter (ed.): *Államok és államkudarcok a globalizálódó világban*. Budapest: TLI-KTK, 2006. 148.

<sup>4</sup> The last Soviet census statistics

<sup>5</sup> Since the competence of the first Moldovan census in 2004 could not be validated on Transnistrian territories, this is estimated data.

territories on the Dniester and its consequences, deportations and emigrations. Another reason is that people have changed nationalities according to their interests. It has become “fashionable” to be a Moldovan.

### *Conditions of environment and soil*

Environmental protection conditions in Moldova are similar to those in other post-Soviet countries. More problematic areas and situations arise every day. Polluted institutions are not recorded. Seed protectives are often used. With official permits, the country exports 10 thousand tons of seed protective and inorganic artificial fertilizer. Another 6 thousand tons of seed protective are imported illegally. The usage of seed protective has been reduced over the past few years. Every year, stock-breeders produce about 8.5 tons of waste, and their influence on the surrounding environment is not yet clear.

In 1994, Moldova’s communal waste was 1.6 million m<sup>3</sup>; Kishinev on its own produced 862 thousand m<sup>3</sup>. The amount of liquid communal waste can be estimated at 500,000 m<sup>3</sup>. Using the average volume weight to calculate, 800,000 tons of solid communal waste (SDR) is produced in the country, and in Kishinev, this number is 300,000 tons – which means 400kg per person.

Moldova’s main natural resources are represented by the soil. 80% of Moldovan land is covered with chernozem, 11.4% by brown and grey forest soil, and 8.6% by meadow soil. Because of the deterioration of the soil between 1960 and 1980, its agricultural area was reduced from 70% to 65% in the northern part of the country and from 65–70% to 50% in the middle. Eroded territories increased from 30% to 35% in the north and from 30–35% to 35–50% in the middle and the south. Soil productivity is primarily reduced by erosion. The size of eroded territories is 1,205 thousand hectares (i.e. 80%) of arable lands while 780,000 hectares are covered with moderately and strongly eroded soil.

### *The borders of Moldova and her border protection*

During the Soviet era, border protection was carried out by the Soviet Union Border Guard that was subordinate to the KGB. Attention was focused on the Soviet Union’s external borders while the borders between Soviet Union member states were neglected – these borders were not even

marked. (This does not highly problematic even today, as is evidenced by Ukrainian-Russian relations.) After the dissolution of the Soviet Union, young states that had just gained their independence paid outstanding attention to the designation and protection of their ex-common borders as well as to the arrangement of their border traffic control.

Moldova borders Romania in the west and the Ukraine to the north-east. The Romanian border is 68 kilometers long; the Ukrainian is 1,222 kilometers – half being a land border, the other half being a water border. The inviolability of the borders is protected every day by 500–600 Moldovan border guards while its air-space is defended by the anti-aircraft of the Ministry of Defense. The Moldovan peculiarity, the Transnistrian Moldovan interest-zone is 453.4 kilometers long and is mainly located on the Dniester river. From Moldova, we first come across a Moldovan customs and police check; at the river's bridges, we encounter first a Moldovan and then a Russian peace-keeping patrol. On the other side of the river, another peace-keeping patrol is on duty. Cars heading for Transnistria can enter freely while those traveling to Moldova must undergo a customs check. Moldova takes care not to have any border guards in this area since it would mean that this interest-zone is understood as a state border.

The Chief Administration of the Border Guard led by Brigadier General Igor Kolenov,<sup>6</sup> an ex-KGB officer, is directly subordinate to the government. It is responsible for state border protection as well as for observance of the laws and international treaties involving borders. The Border Guard consists of approximately 5,000 troops – two-thirds of which are conscripts and one-third that is contractual professional soldiers. This proportion is due to the following: after the collapse of the Soviet Union, KGB border-guard troops that had been stationed in external territory were withdrawn from the newly independent states, including Moldova. The armament, the buildings, the equipment and other service objects left behind were taken over by the states concerned. Every fifth professional border guard of the ex-Soviet Union agreed to work in some stations and border crossings regulated by the Moldovan Border Guards, which had been established in 1992. At several border crossings, all service tasks and all responsibility of border defense is undertaken by one or two ensigns. In 1993, illegal goods totaling more than 20 million Rubles were found.

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<sup>6</sup> <http://www.granicer.moldova.md/>

Since there were no laws determining the exact rights and duties of the Border Guard, border protection was even more difficult. A Moldovan law about state borders was passed in 1994, and the following year, the president presented a regimental standard to the Border Guard. In 1995 more than 5,000 border-violations were prevented. The Moldovan Border Guard was reorganized into the Chief Administration of the Border Guard, and a year later, it was seceded from the Ministry of National Security and became an independent organization. The protection of the Moldovan-Ukrainian border<sup>7</sup> started in 2001. Although agreed upon in theory, the Ukrainian-Moldovan border was unable to be designated because of financial difficulties.

After the Ukrainian “Orange” revolution, Moldova also reviewed its relationship with Moscow and sought ties with the European Union. As a result, EU-assisted training projects that aimed at border defense were launched. Hungarian experts<sup>8</sup> also have a role in these projects, and under the supervision of Iurie Renita – the manager of the “Development of the Moldovan Border Check System” program – some Moldovan border guards and customs officers were able to participate in study-tours of Hungary, Latvia, Lithuania and Slovenia.<sup>9</sup>

A characteristic feature of the Moldovan maintenance of order is that illegal trespassers, refugees and alien smugglers are dealt with not only by Border Guards but also by the police, the Office of Migration and the Centre of Trafficking in Human Beings – all of which is directly subordinate to the government.

## Moldovan-Ukrainian, Moldovan-Romanian and Moldovan-Russian relations

### *Moldovan-Ukrainian relations*

Ukraine borders Moldova in a semicircular arch along Moldova’s northern and eastern borders. Both historic and more recent events have left their marks on this relationship. The fact that they used to belong

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<sup>7</sup> Dr. József Deák’s kind communication.

<sup>8</sup> Today: Otto Ritter – the Hungarian border guard colonel, member of the Euro-Atlantic Advisory Council, and a consultant of the GUAM program – contributes to the modernization of Georgia’s, Ukraine’s, Azebaidzhan’s and Moldova’s border protection programs.

<sup>9</sup> The program means the development of the border control system.

to one community and that their independence is a consequence of the Soviet Union's dissolution has determined the scope of both countries' foreign policies and internal affairs. After the example of the Baltic States, the Ukrainian "Orange" revolution provided Moldova a model for loosening Russia's influence. At the same time, both parties could experience Russian retaliation through its weapon of choice, energy. Additionally, the border defense of both countries is being re-organized with EU funds. All of these developments place Moldova and Ukraine in comparable (and compatible) situations.

Since there are many Ukrainians living there, the issue of Transnistria plays a dominant role in relationship between Moldova and Ukraine. Many people in Transnistria trade illegally<sup>10</sup> for a living, and a focal point in the fight against organized crime and corruption<sup>11</sup> is the common border and the area surrounding Odessa.

Not only does Ukraine have a direct economic and political relationship with Moldova, but along with Georgia, Uzbekistan and Azerbaidzhan it is also attempting to revive GUAM.<sup>12</sup>

The Ukrainian-Moldovan border connections are determined by the 2005 customs co-operation agreement, which came into force on 1<sup>st</sup>

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<sup>10</sup> The Border Guard of Moldova, a country situated in the south-eastern part of Europe. The EU and the Development Program of the United Nations assist this program by providing 2.5 million dollars in funds. The deputy leader of the EU mission in Odessa said the following about illegal trade: *"weapon and ammunition business showing good returns in the mid-nineties has come to an end. It is well-known that weapons and component parts are still produced in the Dniester region, but their delivery would be especially hazardous with the border European Union monitoring service being present in the area. Illegal chicken trade may bring an enormous profit and criminals consider fruit and vegetable smuggling remunerative. Local authorities are also involved. Frozen poultry is imported legally by people along the Dniester region, mainly from the USA and Brazil. One ton of frozen meat costs 150 Euros. Then it is smuggled into Ukraine, where one tons costs 900 Euros. According to mission calculations, smuggling this huge meat surplus imported into Transnistria brings a profit of 5 million Euros thus causing Ukraine a damage of more than 40 million Euros. With the aid of the mission, Ukrainian authorities were able to confiscate more than 200 tons of chicken meat in the border lane."*

<sup>11</sup> According to a 2005 International survey, only Byelorussia, Macedonia, Russia, Serbia-Montenegro and Ukraine are ahead of Moldova in Europe in terms of corruption.

<sup>12</sup> GUAM stands for Georgia, Ukraine, Azerbaidzan, and Moldova. In 2002, the leaders of GUAM states signed the first official document that determined the two main trends of formal co-operation. One is the development of trade and transport; the other is the fight against cross-border organized crime.

January 2006 and became effective in practice two or three months later. The essence of this agreement is that goods transported by rail or by road from Transnistria to Ukraine can leave Moldova only in the case of Moldovan control and with a customs stamp. In order to enforce the agreement, Transnistrian firms have – if a bit reluctantly – begun to register in Kishinev.

### *Romanian-Moldovan relations*

Since the dissolution of the Soviet Union, Romania has expressed its intention to unite with Moldova several times. This, however, has been rejected by a Moldovan referendum. During the war in Transnistria, Romanians actively assisted<sup>13</sup> Moldovans; they then withdrew because of Russian- Moldovan differences. Moldovan politicians did not view these Romanian efforts as unification but rather as annexation. At the same time, many Moldovans (approximately 4,000–6,000 people)<sup>14</sup> have dual citizenship.<sup>15</sup> The exact number with dual citizenship is next to impossible to determine because those who are able to do so (e.g. the Romanian Ministry of the Interior) remain silent.<sup>16</sup> Therefore, only rough estimates based on indirect publications can be made. During my research in Romanian and Moldovan areas, I was not able to acquire either clear or definite data nor was I able to obtain information about issuance of dual citizenship – which ultimately gave rise to doubt.<sup>17</sup>

There is a series of events that definitely illustrate how the present situation arose. The question is the following: when Romania ascends to the EU and then to Schengen, what future do these two states imagine for themselves? Romania would like to participate in the area's political

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<sup>13</sup> Orvos Jenő: Kis ország nagy geopolitikai jelentőséggel: Moldova. *Hallgatói Közlemények*, Vol. IX, Nr. 1–2. 2006.18.

<sup>14</sup> Orvos, 18.

<sup>15</sup> During border traffic control, the Border Guard of Romania checks both the Romanian and the Moldovan passports of the Moldovan citizens, but it stamps only the Romanian passport so people having a dual citizenship can save the EU visa.

<sup>16</sup> Exact data would make it more difficult for Romania to end the discussion.

<sup>17</sup> To address its internal and justice affairs during the EU accession respectively, Moldovans were allowed to apply for a Romanian passport in Bucharest since a Romanian passport allows them to enter the EU without a visa; they can be employed within Romania, and afterwards, they simply forget to return home. (The author's own source and experience)

rearrangement, as proved by its intention to be present at the resolution of Transnistrian conflict.

The identification of Moldovan-Romanian dual citizenship is simplified by a person's birth place and, in case of motor vehicle travel, by the registration document's data. In the latter case, a Transnistrian plate can be very disturbing. (Moldovans especially like to use Transnistrian plates because of the area's reduced registration fees.)

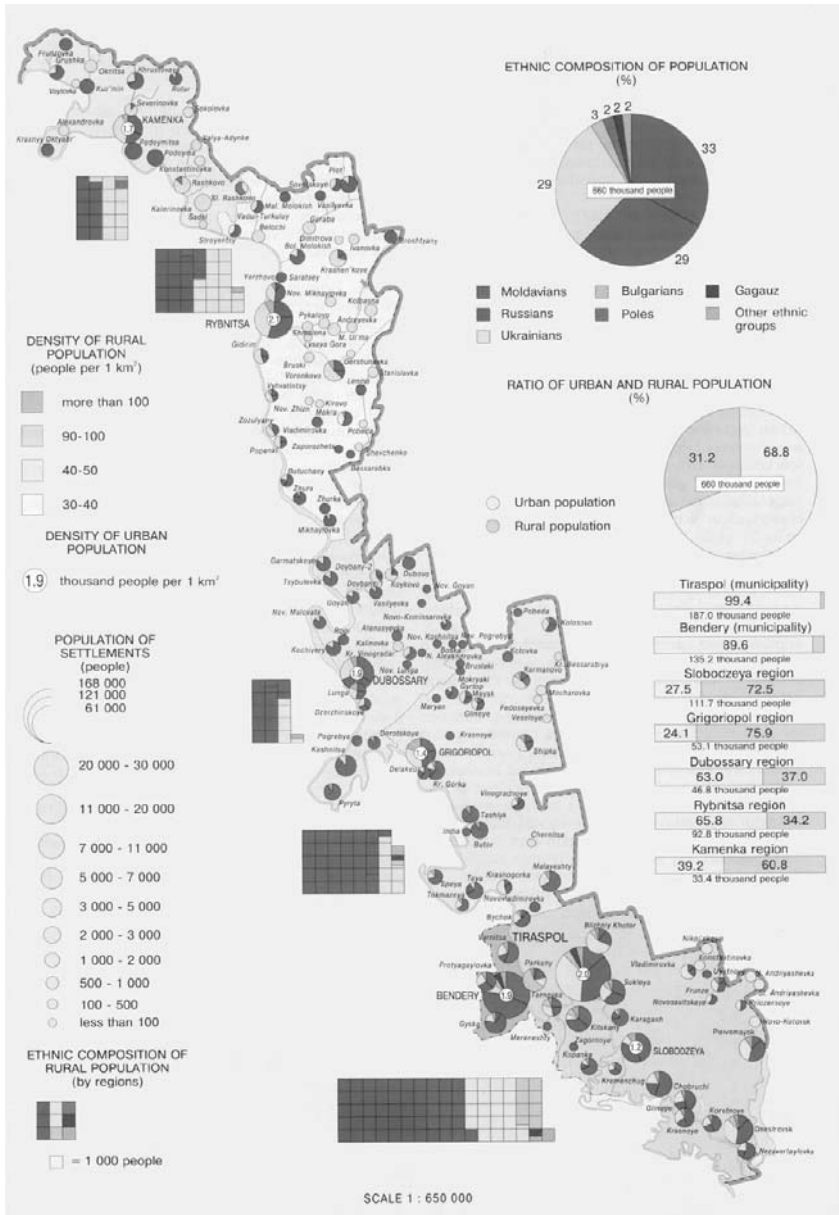
### *Moldovan-Russian relations*



Since 1990, the Transnistrian conflicts have played a dominant political role. Russians had promised to withdraw from the Dniester area, but they have stayed on and have, thus, clarified their intentions for all. Their response to Moldova's steps towards the EU and the USA (i.e. playing the energy card) might also be expected. Now that Transnistria lies under the Customs stamp blockade, I believe that sooner or

later the two countries will resolve their conflict. At the same time, one should not have any illusions about Russian foreign policy relinquishing one of its most westerly bastions so easily.

Brigadier Ferenc Bánfi, leader of the EU mission, said the following about the region: "It is undoubtedly true that one of the most important weapons and ammunition magazines of the 14<sup>th</sup> Soviet Army was left in the Dniester region with about 40 thousand tons of ammunition and weaponry, 19–20,000 tons of which is still there. It would be difficult to



say what has happened to those 20,000 tons disappearing meanwhile – and I do not feel like speculating. But one cannot help noticing that during 16 years organized crime became stronger; made a profit of immeasurable quantity and this profit keeps looking for its way.

Organized crime is similar to that all over the world, i.e. one part of the acquired profit is re-invested into illegal activity, another part is tried to be made legal. Let me tell you some examples reinforcing this: privatization; formation of legal business and socialized organized crime, which, because of the EU mission present in the area, means that being involved in the illegal weapons trade is the same as suicide considering the existing customs system. I am absolutely sure about one thing: if the illegal weapons trade was going on in bulk, we would track it down, so this kind of activity simply does not exist at the moment. At the same time, criminals' hunger for profit obviously has not changed, so they keep looking for new, less risky chances that have the same profit rate. Nowadays this field seems to be represented mostly by food and some industrial product smuggling activities. Drug trade also works, of course.”

### *Moldovans and illegal trade*

In the preceding pages, I introduced the geographical, historical, social, economic and political relations of Moldova and its surroundings. All this demonstrated that in the hope of a better life – in order to solve their bread and butter worries – Moldovans look to both the west and the east to exploit their opportunities or illegally cross the borders to achieve their aims.

Today, Moldova does not directly border the EU, so Moldovans arrive in our country from Ukraine and Romania. Data from the recent past demonstrates that statistics can be made to speak in multiple directions. Official reports distinguish a difference between Moldovan and Romanian citizens, but at the same time, it is uncertain whether or not a Romanian perpetrator is a Romanian citizen living in Romania. This is why I do think it would be a good practice to ask Romanian citizens their place of residence. (Table 3)

The Romanian-Moldovan dominance can be well understood from the above chart, which is thought-provoking in both cases. It is more than a simple concern that several thousand Romanian citizens have been sent back from the border in the two years following the introduction of a visa

exemption. Statistics demonstrate an increase in the number of Moldovan citizens, with whom one must also reckon later. (Table 4.)

*Table 3.* The primary citizenship categories of those sent back from the border<sup>18</sup>

<i>Citizen ship</i>	<i>01.01. 2004 – 30.10. 2004</i>	<i>If total = 100%</i>	<i>01.01.2005 – 31.10.2005</i>	<i>If total = 100%</i>	<i>Change</i>	<i>Change in percentage</i>
Romanian	6,646	31%	6,067	36%	-579	-9%
Ukrainian	4,145	19%	4,084	24%	-61	-1%
Serbia- Montenegrin	3,889	18%	1,787	11%	-2,102	-54%
Moldovan	616	3%	758	5%	142	23%
Bosnian	813	4%	560	3%	-253	-31%
Turkish	586	3%	476	3%	-110	-19%
Stateless	567	3%	432	3%	-135	-24%
Bulgarian	462	2%	340	2%	-122	-26%
Russian	455	2%	336	2%	-119	-26%
Unknown	183	1%	280	2%	97	53%
Other	3,327	15%	1,671	10%	-1,656	-50%
Total	21,689		16,791		-4,898	-23%

When compared to the same period in the previous year, it is possible to see that migration activities have increased by 90% on the EU external Hungarian borders whereas it has decreased by 8% on its internal borders. Due to the efficient growth of depth-migration, the net number of activities revealed in the depth of the country, mainly in Budapest, has remarkably increased (by 39%). The majority of these cases were alien-policing, petty offences. Cases on the external-borders have already remarkably and permanently exceeded those on the internal-borders.

<sup>18</sup> Data base of the Border Guard

Table 4. The citizenship categories of those committing illegal migration<sup>19</sup>

<i>Citizen ship</i>	<i>01.01. 2004 – 30.10. 2004</i>	<i>If total = 100%</i>	<i>01.01.2005 – 31.10.2005</i>	<i>If total = 100%</i>	<i>Change</i>	<i>Change in percentage</i>
Romanian	3,892	36%	6,841	47	2,949	76%
Ukrainian	1,769	16%	4,228	29	2.459	139%
Serbia- Montenegrin	762	7%	840	6	78	10%
Moldovan	1,608	15%	650	4	-958	-60%
Hungarian	311	3%	368	3	57	18%
Turkish	262	2%	220	2	-42	-16%
Bulgarian	122	1%	110	1	-12	-10%
Bangladeshi	13	0%	105	1	92	708%
Unknown	99	1%	102	1%	3	3%
Georgian	314	3%	97	1%	-217	-69%
Other	1,599	15%	925	6%	-674	-42%
Total	10,751		14,486		3,735	35%

Examining the nationality of those involved in illegal activities and primarily referring to illegal migration, one must take notice of the dominance of Moldovan and Romanian citizens; this reinforces the experience described above. (Table 5)

As far as smuggling is concerned, Moldovan citizens have an even greater number. The region's situation is well-demonstrated by the fact that Ukrainians, who are in a similarly difficult position, are the first listed in the tableau. It would be worth an overall study to examine why those small buses leaving periodically on Thursday afternoons cross the Ukrainian-Hungarian border at Záhony, at Beregsurány and at the other western-eastern border crossing points.

<sup>19</sup> Data base of the Border Guard

Table 5. Smuggled people's main citizenship categories<sup>20</sup>

<i>Citizen- ship</i>	<i>01.01.2004 – 30.10.2004</i>	<i>If total = 100%</i>	<i>01.01.2005 – 31.10.2005</i>	<i>If total = 100%</i>	<i>Change</i>	<i>Change in percentage</i>
Ukrainian	209	26%	267	36%	58	28%
Moldovan	286	35%	183	24%	-103	-36%
Serbia- Montenegrin	94	11%	145	19%	51	54%
Turkish	114	14%	50	7%	-64	-56%
Indian	12	1.5%	26	3%	14	117%
Other	103	13%	79	11%	-24	-23%
Total	818		750		-68	-8%

According to the experience of the Border Guard of Hungary, Moldovan citizens<sup>21</sup> usually want to go to Portugal, Spain, Italy and

<sup>20</sup> Data base of the Border Guard

<sup>21</sup> The Moldovan situation can be illustrated by the following example: "At home I don't have a job so I decided to go to my friend living in Ferrara, Italy. I'll try to look for a job there. One cannot travel there legally with a visa – it is impossible to get an Italian visa. I knew the only way to get there is to go illegally. My friend helped me become acquainted with a man whose job it is to arrange getting to Italy illegally. He lives in Kishinev. There, at the Moscow motion picture theatre, I met one of his men. I could speak to the organizer only on the phone. He told me he would have me taken to Italy illegally by car; I had to pay 1,500 Euros for this. With his help and directions I met one of his men at Moscow cinema at the beginning of January. I was to give the money to this man. The man took the money and told me he would inform me when and from where I would leave on the telephone number given by me. I was fed with promises several times. They phoned me asking to travel to Kishinev as we were to leave, but departure was cancelled twice. On 25<sup>th</sup> January it was the third time I had gone to the capital. The man told me to take a bus there and travel to Romania. I was told I would be met at the bus station of Bucharest by people who will help me on. He asked me to be patient and do everything I was told or else I wouldn't get to Italy. At the bus station in Bucharest, no one was waiting for me. There were 9 of us travelling together from Kishinev. We were waiting there at the bus station for his men to come. On 28<sup>th</sup> January a man did come for us. He took us to a parking lot for juggernaut lorries at the edge of the town. We went on foot. In the parking lot all 9 of us got into the storage space of a lorry. It was dark at night when we got in. There were bricks with

Germany illegally; they travel mostly with the intention to find work. Their ability to find their way into the EU is made easier by the fact that, for example, in Italy it is easy to get a work permit.

The situation's rapid changes are illustrated by the fact that Italian diplomats have written about transit visas in connection with work permits in August while since 1 September 2006 Hungary has been acting on the decisions listed below on the basis of decisions made by the Government of the Hungarian Republic:<sup>22</sup>

1. 895/2006/EK European Parliament and Council decision of 14 June 2006. It addresses the introduction of a simplified system of document checks and is based on the idea that at external-borders certain documents should be unilaterally recognized as equal to the national

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a horizontal, long window of wire glass. Because of the wire glass we could not even look out. In the house there was one door painted yellowish. The house consisted of one room; there was neither a toilet nor a kitchen in it. We had no drinking water – it was brought to us every day by the man who took us there. We could only light with the aid of a candle. There were no beds in the building – we had to lie on the carpets and blankets on the cushion. We were allowed to go out in to the court toilet. It was about 10 metres from the house, and the lorry was parked in an unlit place next to the forest. I did not see what kind of lorry it was. I do not know what goods it was transporting either. We were travelling by the lorry about one night and one day. When we got out of the storage space, it was dark at night again. We stopped at a wooded part, on a gravelled road, if I remember well. All of us got out there. A man was already waiting for us. He was our guide in the forest. He took us to an empty, I would call uninhabited house. It could be found about 20 metres off the road. The area belonging to the house seemed to be taken good care of – the grass was mowed. The house was a rectangular building made of brick. We were told by the man that we could only leave the house to go to the toilet and not to go out in the street. He came to us every other day or three days and brought us some food and some drink. There was a phone in the house. We were told that the phone was there so that we could be contacted and told the orders. 9 of us lived in the house – those who are now here. Last night a man fetched us. He was young but I cannot say anything else about him since it was very dark. We were going on foot. We were going for about an hour, were going through a forest and across a road. Then we were waiting along a busy road in the forest. We were waiting for a juggernaut lorry to arrive. An hour later it did arrive. It drew aside. It was farther away from us. During the journey, I think, we stopped twice for a longer time. Before getting on the lorry, the man who had taken us there asked us to be quiet in the lorry. He also said he would take us to Italy. We had been travelling by the lorry from last night to the time we were caught.

<sup>22</sup> Government Decree No. 178 of 23 August 2006, on the modification of the Decree on entry and residence of foreigners in Hungary.

visas of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia that are issued for transit journeys across their territories.

2. 896/2006/EK European Parliament and council decision of 14 June 2006. It is about the introduction of a simplified document check based on the fact that at external-borders certain residence permits and those issued by Switzerland and Lichtenstein for the purpose of transit journeys across their territories should be unilaterally recognized by the member states.

Due to the aforementioned decision, visa-free travel across the new EU member states – therefore, across Hungary as well – must also be made possible for Moldovan citizens who have a valid Schengen visa or a residence permit that is valid for the Schengen area, provided their transit journey is 5 days or less.

Those having a visa valid for a single entry must be permitted a visa-free transit journey, even when returning through new member state. News of this decision must have spread very quickly in Moldova since in a letter dated 6 September a Romanian police chief said that a large number of people not having transit visas want to cross the Romanian-Moldovan border continue to reference the above decision.

Possessing a residence permit allows one to enter at an external border-crossing. By the time a work or residence permit's validity is discovered, a Moldovan citizen can already on EU territory.

The Moldovan migration route characteristically enters Hungary from Romania, then crosses Budapest, moves towards the western border, and usually wants to exit the country at Hegyeshalom or in the general vicinity. In most cases, people entering Hungary legally possess a valid entry visa and travel by small buses or motor vehicles.

Illegal border crossings are arranged, technically speaking, in a peculiar way:

- Moldovan citizens enter Hungary with a valid visa. When leaving the country the driver, who generally has Hungarian citizenship, places the original passport of Moldovan migrants under his own passport and in the EU lane on the border presents the passports like this. If passports are checked, the Hungarian driver can go

- on and Moldovans who do not have a Schengen visa are simply turned back. Forerunners check the border control, and then in the second and third cars following them, there are 1–2 migrants.
- Foreigners are supplied with false passports valid for the Schengen territory of the EU. A known method of transporting is that legally arriving migrants are given false Spanish passports; they then cross the border on a ship that runs from Budapest at regular intervals. They travel as far as Vienna. From here, a Romanian citizen living in Vienna drives them towards Italy.
  - In Moldova, people wanting to travel to Schengen countries illegally are “gathered.” They are taken to Hungary through legal, organized, travel agency journeys and receive accommodation in Budapest or in its neighborhood. After a period, they are given false passports; alternatively, they must provide a photo and are then supplied with false passports with a substitution photo. These fake documents are usually Hungarian, Romanian, Ukrainian, Spanish or Polish. In official document forgery committed by Moldovan citizens, impostures and documents containing a substitute photo prevail.
  - Moldovan citizens can rest in workers’ hostels in Budapest; illegal border-crossing takes place on both green borders and at official border-crossings near Austria. In the latter case, they are hidden in the boots/trunks of motor vehicles, (sometimes in minibuses and lorries) or in a train’s buffet-car bunks.
  - The most recent method is that Moldovan citizens come to Hungary illegally. First, they travel legally through Romania; then in groups of 15–20, they are taken in minibuses from the Hungarian-Romanian border towards the Hungarian-Austrian border. In this type of transportation, Roma groups from Zala County also took part. According to their statements,<sup>23</sup> the Hungarian border is usually crossed on foot, sweeps round the border crossing points, and is primarily done on their own.
  - Moldovan citizens wishing to enter the EU illegally are quite often deceived by human-traffickers. Several interrogation reports can also prove this. The statement below illustrates this point:

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<sup>23</sup> An internal publication of the Border Guard, 2005

*“I found an advert in a newspaper, in which a man advertised himself as someone who can get visas for Moldovan citizens. I called the number. A person introducing himself as Ion told me to travel to Cluj since he could get me a visa in that city. When we got to Tirgu Mures, Ion phoned me once more telling me we were to go back to Cluj as the plan had been changed, adding that we could still go back to Cluj and meet so both of us went back. Then, as we could find no accommodation in a hotel, a taxi driver helped us to find a place to sleep. We spent two or three days there, and afterwards, because of Ion’s call we went to the bus station. Soon a white microbus arrived and we got in. When getting off a big man, who must have been the driver of the juggernaut, was waiting for us. On the way we stopped once to fill up our tank, but I do not know what happened at the petrol station. The sum was to have been paid in Italy by my elder sister.”*

Illegal migrants leave Moldova through the following routes:

1. The most well-known is the Romanian route; this route is chosen when a person has a Moldovan or, because of a dual citizenship, a Romanian passport and can continue from Romania, either legally or illegally, in the direction of the EU.
2. The second most popular route is through Ukraine, Slovakia and Poland. They enter legally with Moldovan documents, and then with false documents made here, they turn towards the EU and attempt to enter.
3. The third route is directed towards the Baltic States. Here, they receive easily forgeable documents, and with the aid of these false documents, they try to obtain a job and stay in the EU.
4. The fourth route leads to Finland or across Russia to the Kareline Peninsula, from where they can go to an EU country.
5. The fifth route “specializes” in white-slave trafficking. It goes through Odessa to Turkey or the United Arab Emirates.

In Moldova, the Centre of Human Traffick<sup>24</sup> deals with human-smuggling cases. It was created with the assistance from the USA. The task of this centre is to investigate those who are involved in human trafficking as well as to discover their methods and document the cases. The modification of the Moldovan Penal Code ratified on 30 March qualifies

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<sup>24</sup> 30 cases were revealed over the course of nine months.

human trafficking and illegal migration as crime and threatens imprisonment to those involved with them.

The Moldovan State has developed a national plan to reduce human trafficking and illegal migration. It involved police, customs, national security, border guard and attorney co-operators and other experts fighting against organized crime. The organization's efficiency is hindered by a lack of infrastructure.<sup>25</sup>

It seems to be a Moldovan specialty that the Migration Center created in May 2006 deals not only with human trafficking but with migration, refugee<sup>26</sup> and expulsion cases as well.

### *Forces, devices on the banks of the Dniester*

In the final days of the Soviet Union, Moldovan independence efforts increased as centralized power became weaker. In June 1990, the Moldovan Soviet Republic declared its sovereignty; this move relied on a majority of the population (then 64.5%) whose mother tongue was Romanian. Though Moscow denied the decision, elections were held. This step prompted an adverse reaction among Ukrainian and Russian ethnic groups, which at the time comprised 26% of Moldova's inhabitants and represented the majority of the urban population. They were afraid that an independent Moldova might wish to join Romania. By the middle of 1989 in the areas to the east of the Dniester, the first political and self-defense organizations for people of Russian origin had already been formed. The Moldovan Soviet Socialist Republic declared its sovereignty in June 1990, and on 2 September 1990, the regions to the east of the Dniester established the Soviet Socialist Republic over the Dni-

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<sup>25</sup> When visiting the Centre of Trafficking with Human Beings and the Police Academy, I could not help but notice the lack of heating and internet. It must be very difficult to keep up with criminals, to fight against organized crime and trafficking groups that possess the most modern amenities. It seems impossible to effectively combat these groups while sitting in cold offices, wearing thick coats, and being unable to use the internet.

<sup>26</sup> During nine months, 4,800 proceedings were opened because of the violation of the rules of residence. 899 people were expelled. In addition to this, 244 refugees were registered, and 77 procedures are currently being conducted. The most descriptive case was that of nine Chinese men who entered Transnistria illegally; they remained there, and their stay was paid for by the Chinese Embassy. Later, they were able to travel to Moldova with the aid of the Red Cross.

ester. This was followed by a civil war. The most important peace keeping stage was established on 23 March 1992. In a Helsinki meeting of Russian, Moldovan, Romanian and Ukrainian foreign ministers agreed on the establishment of a quadrilateral consultation mechanism; however, this failed due to the continuing conflicts, which ended because of the 14<sup>th</sup> Russian army's intervention. The conflicts have been suspended since that time. Russians promised to withdraw their troops but as of yet have failed to honor the agreement.

*Table 6. According to some 2004 information, power relations are the following:*<sup>27</sup>

<i>Armed forces</i>	<i>PMR</i> <sup>28</sup>	<i>OGRF</i> <sup>29</sup>	<i>PMR +OGRF</i>	<i>Moldovan</i>
number	7,200	3,100	10,300	6,800/15,200
Tank (T-64)	18	117	135	0
BMP				
BTR 60, 70, 80				
BRDM	84	207	256	209/227
TAB71				
100mm artillery device	38	96	134	79
mortar	75	32	107	115
anti-tank gun	17	0	16	36
armor-piercing rocket	30	at least 105	at least 135	131
anti-aircraft artillery gun	45	na.	49	23/29
anti-aircraft rocket	42	na.	42	69
MIG 29	0	0	0	6
JAK 50, 52	12	–	12	0
helicopter	8	na.	8	12
air-carrier	5	0	5	–
patrol ship	0	0	0	0/2

The maintenance of the abovementioned weaponry represents a serious challenge for Moldova as it is a country with a poor economic standing. This is why there are hardly any resources for training and renewal; the burden is only increased by the costs of border control that have been caused by the existence of Transnistria.

<sup>27</sup> Rácz, 151.

The table above shows that Moldovan Republic over the Dniester maintains armed forces disproportionate to its size and strength, thus demanding the support of the Russian troops stationed in the region.

All this indicates that the region is not yet peaceful. An armed conflict might erupt at any moment and might result in larger collisions that would threaten Europe's eastern peace.

### *Conclusions*

Due to its geo-political and economic situation, Moldova will be one of Europe's poorest states, and in order to make both ends meet and live in safety, its inhabitants will continue to seek jobs and residency in EU member states.

Based on previous experience, Moldova's political leaders have oriented their foreign policy towards the EU, but Moldova's accession to the EU is far from being a reality.

Due to its geological features, Moldova is an agricultural country, and this represents its primary problems for the future. Because Moldova has difficulty selling its goods to the EU, it remains at the mercy of the ex-Soviet states. Currently, it is unable to satisfy the environment protection expectations of the EU because of industrial-development policy and environmental pollution of the Soviet era. Moldova must create an independent foreign policy in the shadow of two great, neighboring powers – one of which significantly influences Moldova's territory, even as it seeks to cooperate more and more with the EU.

Owing to demographical as well as protection-political and bread-and-butter problems of the region, people will continue to illegally migrate from Moldova towards the EU. One must deal with Moldovan citizens entering Hungary or the EU legally with a Romanian passport but working or settling there illegally. Moldovans' movements towards the EU usually occur in high concentration on the Romanian border, but occasionally, Ukrainian borders are also involved. They wish to leave Hungary by crossing the Austrian and Slovenian borders.

Human trafficking exploits people's naivety and their dire life-circumstance. Equipped with the most modern technological equipment,

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<sup>28</sup> Transnistrian Armed Forces

<sup>29</sup> Russian "peacekeeping" forces

traffickers do everything they can to produce higher profits; this often entails attempting to smuggle more and more Moldovan citizens into EU territory.

According to current theories, the EU would like to have an office that issues Schengen visas in Moldova. Since of Moldovan citizens tend to have ambitions to migrate, it is also deemed a good idea to reinforce this office with Hungarian border police experts. The Moldovan-Transnistrian conflict represents a *serious safety challenge on several fields for both the Eastern European region (Hungary among others) and for the whole of Europe*. The split-republic – with its own structure, with violent organizations and political leadership intertwined, with a complete lack of international control – seems to be an ideal place for organized crime to flourish at the state level.

As a result of EU enlargement, Romania may soon become an EU member possessing full authority. This means Hungary will be bordered by another EU member that has provided several thousand dual citizenship certificates to Moldovan citizens so they may easily enter the EU by crossing the Romanian-Moldovan border (while even using a Romanian passport). Thus, these Moldovan citizens who possess Romanian citizenship will be able to travel as far as the Atlantic Ocean.

The risk of illegal migration from Moldova is increased by the fact that those crossing the Ukrainian border (traveling from the Ukrainian-Transnistrian border) can also enter Moldova without border traffic control.

### *Epilogue*

In June 2007, the next expedition brought new dangers and conclusions. Just beyond the Romanian-Moldovan border station, a horse carriage without a driver blocked the road; the horse was peacefully meandering along the road. Going back at night, this happened again, only this time there was no carriage; nor were there road signs, traffic lights or the dividing lines on the asphalt. Along the Ukrainian-Moldovan border, painted trees replaced signs as a means to demarcate the border along the Moldovan bank of the Dniester river. As crossed the river Dniester by boat, I realized that security along the Ukrainian-Moldovan borders is only partially solved. This is why illegal migrants who have reached Ukraine and wish to continue to Romania via Moldova are not

detained. I sensed the same on the roads from Transnistria to Moldova. For political reasons, the presence of border guards is undesirable, and borders are controlled only by the policemen and customs officers. The border station and the road that leads to Odessa are much stranger as it is combined with pelage transit as well. as for outward bound the border transport, Moldovan border guards control people by holding them up while, at the same border station, there is a road open to Ukrainian citizens, since some Ukrainian areas and settlements can only be reached via this route.

In Odessa, which is inhabited by more than one million people, the smuggling of goods and refugees from East to West is significant. The training of younger Ukrainian passport officers needs to be improved because they do not have enough experience to differentiate between real documents and those that have been professionally forged. The employees of EUBAM who are within the region make great efforts to discover false Schengen visas. Furthermore, customs authorities must face serious difficulties every day because of these smugglers. Since smugglers attempt to transport many goods to Ukraine via the sea, it mainly is false customs papers cross into Ukraine via the road.

Transnistria, where industrial companies are still active, is the most remarkable settlement within this region. Energy suppliers and weapon factories are the most important industries here, and I was unable to discover two things about them. First, how are these continuously productive factories provided with raw material? Second, how are (il)legally finished products exiting the Russian puppet state? Russian, Ukrainian and Moldovan co-operation is possible. There is no other way that vehicles could transport cargo to its destination. The other regional problems are illegal migration and human (prostitution) trade. The size of Ukrainian and Russian territories and the fact that their Eastern borders remain the traditional, unguarded channels of human trade still plays a decisive role in providing new "supplies" for the East-West migration routes. It is not accidental that there are direct flights from Odessa to the EU, via Budapest and Warsaw. The Black Sea makes human trade in the direction of Turkey and other Arabic areas also possible. Every hour of every day, local TV-networks are luring new victims into the prostitution trade.

The situation of Moldovan provincial settlements is practically hopeless; therefore, more than one million Moldovan citizens work in the EU, Russia and Ukraine, and they send home their remittances.

The Hungarian Consulate in Moldova is a novelty. Since April 2007, it has been possible to apply for visas to Denmark, Austria, Slovenia and Switzerland there; this consulate is responsible for the information, administration and communication pertaining to visas to other EU-member states. In a majority of cases, Moldovan citizens exploit this opportunity in the majority of the cases. This has been proven by the large number of applicants with whom I was usually able to personally consult. Moldovan citizens are pleased with the initiative, and as a first step, they solicit the Hungarian Consulate for visas so that they may be employed in the EU. Perhaps it would be better if Hungarian citizens visiting the Consulate with their problems were also appropriately aided. One of the obstacles is that Hungarian citizens turning to the Consulate are admitted by Moldovan or Russian-speaking officials.

It is our experience that the Hungarian official who runs the Consulate (probably having lived in Khisinev for several months) could not even inform me which police force of Khisinev is responsible for a lost driver's license or where it might be located. Fortunately, a driver of a typical Moldovan transport vehicle – a so-called direction taxi – was able to tell me for a small fee.

As a matter of fact, the Moldovan policeman was “Eastern in a friendly way,” so to speak: I spent four hours in a broken-down police station in order to receive a document necessary for travel. The official's work was hampered by the fact that he had no internet access and had to clarify some information. As I was waiting for a signature for another, it is fair to say that the document cost one hour per line.

I visited the Romanian Embassy. The Embassy's building is easy to find because of a long queue of Moldovan citizens, most of which had been waiting since the previous night hour. Because of Romanian-Moldovan dual citizenship, it is well-known that Moldovan citizens can usually obtain a Romanian identity card and passport as well. Since 1<sup>st</sup> January 2007, these documents have allowed Moldovan citizens to freely travel within the EU, and while they are there, many look for employment opportunities. As indicated by Romanian publications, their current number is estimated to be 600–900,000. Moreover, a large number of these people are stopped and/or arrested in Hungary for having entered the EU illegally.

To balance the facts presented above, this situation was also evaluated by the FRONTEX organization; between January and March 2007,

17 Moldovan citizens were arrested along the EU's external borderlines for having attempted to cross the border with false Romanian documents. The FRONTEX report indicated the following itinerary for illegal migration: *Schuleni-Nadlak-Ártánd-Hegyeshalom*.

In conclusion, Moldova, as a new neighbor to the EU, is involved in a very specific situation. It has traditional economic and political contacts with ex-Soviet states; however, its relationship with Romania has become very controversial. Because of their homeland's hopeless economic situation, Moldovan citizens are searching for employment and existence opportunities. Because of its earlier criminal-geographical situation, Moldova produces illegal migration and, at the same time, is one of its transit channels. In the near future, it will be necessary to prepare for more Moldovan citizens to attempt to illegally cross EU-borders. The Moldovan prostitution trade is especially remarkable within the area, since it provides a market for some EU-member States, Turkey and Little-Asia.

## APPENDIX

### *Chronological History of Moldova*

The history of Moldova seems insignificant when compared to its neighbors Russia, Ukraine, and to Romania (with which it also shares a common history). It is mainly concentrated in the 20<sup>th</sup> century. Primary developmental stages for the present situation are listed below:

- 1436 Foundation of the city of Kishinev
- 1478 The Moldovan Principality becomes a Turkish satellite
- 1708 Beginning of Moldovan writing
- 1712 In alliance with the Moldovan Prince, Peter the Great expels the Turks from the area between the rivers Dniester and Prut (today Moldova).
- 1918 Moldovan Democratic Republic
- 1919 Moldova becomes an area under the jurisdiction of Romania.
- 1924 Moscow creates Moldovan autonomy on the Dniester River's left bank. In 1940, this provides a basis for the annexation of Bessarabia.

- 1940 The Soviet occupation of Moldova and Bessarabia.<sup>30</sup> As a result, the Moldovan Soviet Republic is formed (33.7 thousand square kilometers, 2.468.0 thousand inhabitants). Cyrillic writing is introduced, and approximately 390 thousand Romanian residents (14.6% of the population) are deported, mostly to Kazakhstan.
- 1986 “Four strokes on Moldova”<sup>31</sup>: dryness, an earthquake, a ban on alcohol by Gorbachev, forgery of plans.
- 1989
- The new language law makes Moldovan the state language.
  - Gagauz minority declare their autonomy<sup>32</sup>
- 1990
- Referendum along the Dniester, which results in the population’s backing of an independent state over the Dniester (with 96% approval).
  - A Romanian consulate in Kishinev and a Moldovan general consulate in Iași are established; a simplified border-crossing is introduced.<sup>33</sup>
  - “Limba Noastră” i.e. language day is first celebrated.
  - Ștefan cel Mare Police Academy is opened.
- 1991
- 27<sup>th</sup> August Moldova becomes independent<sup>34</sup>.
  - Referendum along the Dniester, secession from Moldova.
  - Armed confrontations
- 1992
- Armed confrontations on the Eastern bank of the Dniester are followed by an armistice agreement, but the peace process

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<sup>30</sup> A consequence of the Molotov-Ribbentrop Pact.

<sup>31</sup> Pálfi András: *Egyre távolabb Moszkvától*. Budapest: Belvárosi Könyvkiadó, 1996. 395–369.

<sup>32</sup> Approximately 150,000 people

<sup>33</sup> When they could first go freely from Moldova into Romania, people became disenchanted in no time. Their Romanian experiences made them lose their faith in the unification of the two states.

<sup>34</sup> In the same year in the Eastern (over-the-Dniester) parts of Moldova, the Transnistrian Republic (4.1 thousand square kilometres, 546.4 thousand inhabitants) and the Gagauz Republic were founded. (The centres of these two republics are Tiraspol and Komrat.) In the former, Russian troops also intervened in the armed conflicts under the pretext of making order.

- has been stuck since. (Even at present, Russian and Moldovan peace keeping forces are stationed along the Dniester)<sup>35</sup>
- Russian-Moldovan negotiations
  - Hungarian Moldovan diplomatic relations
  - Moldova is admitted to the UNO.
- 1993 Leu is introduced.
- 1994
- A new constitution. Independence and reinforcement of the Moldovan language; autonomy of Gagauz<sup>36</sup> and Transnistrian areas.
  - CIS membership
  - Russia promises to withdraw troops.
- 1995
- Compulsory knowledge of Moldovan (Romanian) language is expected of Moldovan leaders.<sup>37</sup>
  - The death penalty is abolished.
- 1997 Russian-Moldovan agreement regarding free trade in Transnistria.
- 1999 Istanbul treaty. As a result, Russia promises to withdraw their troops – an obligation that has yet to be fulfilled.<sup>38</sup>
- 2001
- The Moldovan Communist Party<sup>39</sup> comes to power again and has retained a governing position since.
  - Commencement of marking the Moldovan-Ukrainian border.
- 2003 The Moldovan political leadership's first steps towards loosening their subordination to Russia and opening towards the EU and the USA.

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<sup>35</sup> Villages that rebelled in 1992 now belong to Moldova. Cocieri, Molovata, Cosnita, Pirita, Pohrebea, Dorotcaia, Roghi, Vasilieuca. Corjova is of interest as the present president of republic, Vorogyin, was born here. This village belongs is split equally between Moldova and Transnistria.

<sup>36</sup> In the territory of Gagauz, autonomy was achieved through a local referendum in 1995.

<sup>37</sup> According to my experience, Russian is still the determinant language in office work and in private communication between individuals. On street signs and billboards, both Cyrillic and Latin letters are present. The fact that the officers' staff was educated in Moscow in the Soviet era determines the law enforcement experts' training

<sup>38</sup> As a part of this agreement, Russia reduced her troops from 9,000 to 2,600 on territories over the Dniester and also withdrew many armaments.

<sup>39</sup> The Communist Party was banned between 1991 and 1994.

2004 Population census

2005

- Elections in the in the presence of foreign observers. The Transnistrian citizens who cross the virtual border also vote in the elections
- A political turn: from Russia towards the EU
- The Ukrainian-Moldovan customs<sup>40</sup> agreement; blockading Transnistria.
- Transnistrian forces occupy Vasilievca along a strategic road; within a few days, they withdraw.

2006 3<sup>rd</sup> March the Ukrainian-Moldovan customs agreement comes into force.

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<sup>40</sup> According to this agreement, from 1 January 2006 only those Transnistrian trains and trucks that have a Moldovan exit clearance stamp can leave Moldova. Thus, Moldova began to control (i.e. blockade) the economy of the split territory, and as a reaction to this, Russia increased the price of gas.

ANGELINA TCHORBADJIYSKA

# Bulgarian Experiences with Visa Policy in the Accession Process: A Story of Visa Lists, Citizenship and Limitations on Citizens' Rights

**B**ulgaria's accession to the EU required substantial changes to various aspects of its legislation, including its visa policy. The changes were not adopted as a result of political debate but as a requirement coming from Brussels. The main steps that provoked discussions in Bulgaria were the introduction of visas for countries that had previously benefited from a visa free regime.

This paper attempts to evaluate some consequences of the changes in Bulgaria's visa policy. It begins by considering the factors that motivated the changes and placing them in the context of the accession process. It will then demonstrate how the recently adopted legal measures have affected the movement of persons across borders and will examine some unintended consequences of Bulgaria's visa regime changes. Finally, it will offer some conclusions and recommendations regarding the final stages of Bulgarian and EU visa policy alignment.

## *1. The Evolution of the Bulgarian visa policy*

The present Bulgarian visa policy resulted from two interrelated factors. The process of EU accession, which involved the adoption of the Schengen acquis as well as political and legislative programmes, aimed at removing Bulgaria from the EU visa black list.

### 1.1. The Schengen Acquis and the Accession Process

As with all other acceding countries, a system of consecutive steps and their accompanying legislative and administrative changes shaped Bulgaria's accession.

The Europe Agreement<sup>1</sup> between Bulgaria and the EC was signed on 8 March 1993 and entered into force on 1 February 1995. Bulgaria applied for EU membership in December 1995. In December 1999, the Helsinki European Council decided to start accession negotiations with Bulgaria in 2000. During these negotiations process, Bulgaria submitted Negotiation Position on Chapter 24 "Co-operation in the fields of Justice and Home Affairs"<sup>2</sup> on 20 February 2001, and negotiations began on 1 July 2001. Bulgaria accepted in full the *acquis* under Chapter 24 and did not deem it necessary to request any derogations and transitional periods in the field of JHA. Bulgaria presented its Schengen Action Plan<sup>3</sup> to the European Union in November 2001 and has provided an annual update ever since.

The reason for such a position during negotiations was not a lack of areas in which Bulgaria has vested interests to protect; rather, it was due to the requirement of unconditional acceptance of the Schengen *acquis*. After the Amsterdam Treaty, any state acceding to the European Union must accept upon accession the totality of Chapter IV of the EC Treaty. According to article 8 of the Protocol for integrating the Schengen *acquis* into the Framework of the European Union, no 'opt outs' are permitted for new EU Member States. It states: "*For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all State candidates for admission.*"

Schengen accession is divided in three distinct parts.

The first period starts when membership negotiations commence and ends on the accession date. In this period, the candidate country

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<sup>1</sup> Europe Agreement establishing an association between the European Communities and their Member States, on the one hand, and the Republic of Bulgaria, on the other, OJ L 358 (31/12/1994)

<sup>2</sup> Negotiation Position of the Government of the Republic of Bulgaria on Chapter 24 "Justice and Home Affairs", CONF-BG 9/01, dated 20.02.2001.

<sup>3</sup> Action Plan for the Adoption of the Schengen *Acquis*, CONF-BG 73/01, 21.11.2001. The Plan is updated annually, and the latest version is available on the Ministry of Interior's website ([www.mvr.bg](http://www.mvr.bg))

adopts and partially implements the Schengen acquis; thus, the maintenance of special rules for certain countries (in particular, visa free travel with regard to third states) is unproblematic.

The second period starts on the date of EU accession and ends on the date of Schengen accession. This period is characterized by the full application of the Schengen acquis; however, during this period, the border controls between old and new Member States are maintained. Since the new Member States are not part of the Schengen group, they are unable to issue Schengen visas or access the Schengen Information System. In this second period, however, the state is able to issue national visas. Although the state's border becomes an external Schengen border, its authorities can continue to issue national visas and possess some degree of flexibility in the application of visa regulations. As from the accession date countries are no longer permitted to make exceptions to the visa "black list" for citizens of countries where they have special interests but the new member states still have the ability to facilitate the flow by regulating the procedures and requirements for obtaining a national visa. This, however, is a possibility only until the state becomes a full member of the Schengen group.

On the date of Schengen accession the third period begins. This period is characterized by the full application of Schengen rules, the ability to issue Schengen visas, the removal of border controls between old and new Member States, and the inclusion of new states in Schengen Information System.

With its accession to the EU on 1 January 2007, Bulgaria entered the second phase of the Schengen accession. Article 4 and Annex II of the Act of Accession<sup>4</sup> legally define the parts of the acquis that are binding and applicable in Bulgaria from the date of accession and those that will become effective at a later stage, after a Council decision. Among the acts that are binding upon accession is Council Regulation 539/2001. This Regulation lists third countries whose nationals must possess a visa when crossing external borders and those whose nationals are exempt from this requirement.

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<sup>4</sup> Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, OJ L 157, 21.6.2005, p. 203.

Thus, on 1 January 2007 Bulgaria had to fully accept the common “visa black list.” Apart from a few exceptions (Macedonia and Serbia and Montenegro),<sup>5</sup> Bulgaria’s visa policy was almost fully aligned with that of the Schengen group with regard to the negative visa list by the end of 2001.<sup>6</sup> The reason for this can be found in a second factor that shaped Bulgaria’s visa policy after the transition process began.

### 1.2. Bulgaria and the EU visa black list

Following a decision by the EU Justice and Home Affairs Ministers, Bulgaria (together with Romania) was subjected to mandatory visa requirements in 1995. Because these were the only candidate countries to be placed on the EU’s visa black list, a concerted political effort was made to change this situation. Removal of the visa black list required substantial concessions on a wide variety of issues relating to borders and the movement of persons.<sup>7</sup> In this period, the Bulgarian government and society as a whole began formulating a comprehensive strategy aimed at exempting Bulgarian citizens from the visa requirement. Ultimately, a new Regulation determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States was adopted by the Council in March 2001. Bulgaria had been removed from the black list.<sup>8</sup>

This decision was based on a Commission Report<sup>9</sup> that reviewed the legal framework and administrative practices at the borders. It included

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<sup>5</sup> As the independence of Montenegro was formally announced on 4 June 2006 and most of the statistics used as a basis for this paper were collected in or prior to 2006, the term Serbia and Montenegro is used to refer to the single state having this name prior to 4 June 2006. Whenever the text refers to the two independent states of Serbia and Montenegro, it is explicitly noted.

<sup>6</sup> The process of visa policy alignment is not only limited to the positive and negative visa lists. It also includes: measures for the adoption of uniform visa formats and document security; visa classification; procedures for issuing visas and the visa information system. However, the visa lists – and the negative visa list in particular – are the most discussed elements of visa policy, and they effectively determine which countries’ nationals cannot travel sans visa to Bulgaria.

<sup>7</sup> See E. Guild: *Moving the Borders of Europe*. Inaugural lecture, University of Nijmegen, 2001.

<sup>8</sup> See OJ 2001 L 81/1.

<sup>9</sup> See the Report from the Commission to the Council regarding Bulgaria in the perspective of the adoption of the regulation determining the list of third coun-

an overview of Bulgaria's visa policy and, in particular, the correspondence between Bulgaria's and the EU's visa lists.

This explains why the alignment of the visa lists was a priority before Bulgaria's actual start of the negotiations for EU membership began. In order to meet the visa list requirement, Bulgaria gradually made changes to its legislation and adjusted its negative and positive visa lists. In 1999, Bulgaria introduced visas for most of the former Soviet republics, and as of October 2001, visas were also required for citizens of Russia and Ukraine. In effect, Bulgarian negative visa list was almost fully in line with that of the EU by the end of 2001;<sup>10</sup> This was only six months after beginning negotiations on Chapter 24 "Co-operation in the fields of Justice and Home Affairs"<sup>11</sup> and only two months after the presentation of its Schengen Action Plan.<sup>12</sup>

As the timing of the changes in the Bulgarian visa lists clearly shows, the decisive factor promoting change was not the obligation to adopt the Schengen *acquis* as such but the need to gain enough trust in the EU partners for the removal of Bulgaria from the EU visa list.

## *2. Aligning the visa policy*

While the alignment process was occurring, several assumptions were made about the effects of the new visa rules. This was especially true regarding states with special links to Bulgaria. There were mainly two expected effects. The first expectation was that the imposition of visas would entail administrative and financial burdens that would cause a decrease in the number of visitors from countries with visa requirements. There were also worries that this might negatively impact tourism and the economy of the border regions.

The second concern was the effect that these new rules would have on the Bulgarian minorities abroad. As it became progressively more dif-

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tries whose nationals must be in a possession of visas when crossing the external borders and those whose nationals are exempt of that requirement COM(2001) 61 final, 02 February 2001, Brussels.

<sup>10</sup> With the exception of Macedonia and Serbia and Montenegro

<sup>11</sup> The Negotiation position on Chapter 24 "Co-operation in the field of Justice and Home Affairs" was submitted on 20 February 2001, and negotiations began on 1 July 2001.

<sup>12</sup> The Schengen Action Plan was presented to the European Union in November 2001.

difficult to access Bulgaria, many people who met the criteria would apply for citizenship; this not only guaranteed them unlimited access to Bulgaria but also, once Bulgaria became member, to the entire EU.

The third impact of the changes, which was not discussed at the time but ultimately became an interesting legal development and side effect of visa policy alignment, was the introduction of some limitations to Bulgarian nationals' rights to travel.

These expectations are further tested or discussed below.

### *2.1. Legal framework*

The general framework of visa regulation in Bulgaria had three waves of changes. The first followed the Law for the foreigners in the Republic of Bulgaria,<sup>13</sup> which replaced the previous regulations for foreigners that dated back to the 1970s; the second wave followed the removal of Bulgaria from the “visa black list” in 2001, and the third and most significant amendments to visa provisions were completed after Bulgaria's accession to the EU in 2007.

Thus, at present, the terms and procedures for issuing visas are regulated by the Law for the Foreigners, the Regulation for its implementation<sup>14</sup> and the Ordinance for the conditions and order of issuing visas.<sup>15</sup>

The general visa rules are as follows: the authorities responsible for issuing the visas are the diplomatic and consular representations of the Republic of Bulgaria; the applicant must apply in person and sign his/her application in front of the responsible consular official.<sup>16</sup> The potential visitors submit their applications to the competent Consulate, which then forwards it to the central Consular Directorate within the Ministry of the Foreign Affairs. Granting a visa is a central level decision, but the visa itself is issued by the Consulate where the application is made.

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<sup>13</sup> Law for foreigners in the Republic of Bulgaria of 23 December 1998 (*Държавен вестник* (State Gazette) No 153/1998, last amendment SG. 63/6 August 2007)

<sup>14</sup> Regulation for the implementation of the Law for foreigners in the Republic of Bulgaria of 26 May 2000 (*Държавен вестник* (State Gazette) No 43/2000, last amendment SG. 49/19 June 2007).

<sup>15</sup> Ordinance for the conditions and order of issuing visas of 17 May 2002 (*Държавен вестник* (State Gazette) No 49/2002, last amendment SG.96/30 Nov 2005).

<sup>16</sup> In the cases of short-term visas, it is possible for the visa application to be submitted by a tourist operator or another authorised person

All actors involved are connected to a database so that applications can be followed up. The visa application for long term visa (type “D”) must be coordinated with the Ministry of the Interior.

Unless he or she holds the nationality of a country exempted from this requirement, a foreigner needs a visa to enter the country. The positive and the negative visa lists form part of the Ordinance on the conditions and procedures for issuing of visas (Ordinance on Visas) and can be amended by a decision of the Council of Ministers. The Ordinance on Visas defines several types of visas: for airport transfer (visa type A), for transit (visa type B), for short stay (visa type C) and for long stay (visa type D).

Short stay visas are issued to a foreigner who enters the county once or several times for a total period of no more than 90 days within six months from the date of first entry (Ordinance on Visas, Art. (9).

A foreigner who enters the country shall hold: sufficient resources for providing his/her maintenance according to the duration and the conditions of the stay in Bulgaria as well as for returning to the state of their permanent residence; health and other types of insurance; an invitation in a form where such is required; and other documents that prove the purpose of travel.<sup>17</sup>

The refusal rates for both short-stay and long-stay visas are very low, 1.67% and 10% respectively. Neither the Law for Foreigners nor the Ordinance on Visas foresees an appeal’s procedure for the refusal of a visa application. The decision is within the discretionary power of the consular official. There is no obligation of the respective authorities to motivate their decision, nor is there an obligation to inform the applicant in writing of the decision.

## 2.2. *The process in figures*

The changes in the visa policy in general and in visa lists in particular did not provoke much debate. The objective of visa free travel of the Bulgarian citizens to Europe justified all actions. The only excep-

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<sup>17</sup> As an exception to the general rules, according to Article 25a of the Law on Foreigners it is possible to admit foreigners without the presence of any of the requirements of the Law for Foreigners if the foreigners have contributed to Republic of Bulgaria in the public and economic spheres or in the sphere of national security, science, technology, culture or sport.

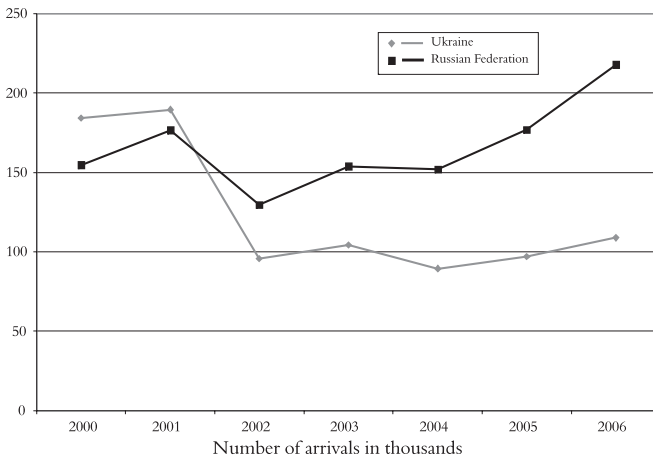
tions that provoked debate were Russia, Ukraine, Serbia and Montenegro, and Macedonia.

### 2.2.1. Russia and Ukraine

Russia and Ukraine are countries with which Bulgaria has a tradition of economic and cultural links. There are large numbers of tourists who come from these two countries. Additionally, there are significant numbers of Russian nationals who permanently reside in Bulgaria.<sup>18</sup> There is also a sizable Bulgarian minority in Ukraine.<sup>19</sup> For all these reasons, the introduction of visas for Russian and Ukrainian citizens provoked heated debate.

Nevertheless, the visas were introduced and the decision entered into force in November 2001. Previously, Russia and Ukraine both benefited from visa free travel. The number of visitors from Ukraine had been stable, while those from Russia had been increasing in 2000 and 2001.

Figure 1. Visitors to Bulgaria: impact of visa requirements



<sup>18</sup> The number of citizens of the CIS permanently residing in Bulgaria is 26,700 and temporary residents number 8,900 (data for 2002). OECD, *Trends in International Migration*, SOPEMI 2004 Edition.

<sup>19</sup> According to the State Agency for Bulgarians Abroad, the Bulgarian minority in Ukraine amounts to 300,000.

However, in the year following the introduction of visa requirements for Russian and Ukrainian citizens, there was a significant decrease in the number of visitors (50% in the case of Ukraine and 20 % in the case of Russia). After this, the effects on the number of visitors from these two countries began to diverge. Following the sharp decrease in 2002, the number of Russian visitors slowly bounced back and reached the “pre-visa” levels by 2005, and they continued to rise in 2006. Contrariwise, following the sharp decreases in 2002 the number of Ukrainian visitors stabilized, but despite the presence of significant Bulgarian minority, they continued to be less than the “pre-visa” numbers.

What can explain this phenomenon? The price of visas is comparable for both countries, but the consular infrastructure is not. In the Russian Federation there are four Bulgarian general consulates, an excellently functioning web-site, and in the cases of organized tourism, the possibility for application through a tourist agent. In Ukraine, which is also a considerably large country, there was previously only one consulate in the capital Kiev (the number has since increased to four) and almost no internet support. The dissimilar effects observed in the cases of Russia and Ukraine shows how the introduction of visas can seriously impeded contact between two nations when consular facilities and organization are not upgraded simultaneously.

*Table 1. Arrivals of Visitors to Bulgaria from Abroad by Country of Origin (Thousands)*

<i>Country of Origin</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Ukraine	184	189	96	104	89	97	109
Russian Federation	155	177	130	154	152	177	218
Republic of Macedonia	880	859	849	887	858	755	713
Serbia and Montenegro	512	591	841	887	853	775	827

*Source: National Statistics Institute*

### *2.2.2. Macedonia and Serbia and Montenegro*

The two other countries for which the introduction of visas provoked a heated debate are Macedonia and Serbia and Montenegro. These are the only two countries for which the introduction of visas has been postponed to the date of accession.

As can be seen from the data, the number of Macedonians visiting Bulgaria is relatively stable, approximately 850,000 a year with minor fluctuations. There is anecdotal evidence that some of these visits are for small scale trading across the border. It is important to compare this figure with the total population of Macedonia: 2 million. This data could mean that every second Macedonian visits Bulgaria at some point during the year. Since such a move could significantly decrease the flow and might negatively affect the local economies of Macedonia and Bulgarian border regions, the data also explains the Bulgarian government's reluctance to introduce visas.

The case of Serbia and Montenegro is less dramatic. Although the numbers of visitors are growing and have increased over the last five years from 512,000 to 853,000, the total population of 10 million makes the overall percentages less significant. However, there were worries that the introduction of visas could have the same negative effects as it would have in Macedonia.

From the aforementioned data, it is possible to conclude that the introduction of visas for countries that had previously benefited from visa free travel in conjunction with a lack of change in the consular infrastructure resulted in a significant decrease in the number of visitors from the countries concerned (Ukraine). Also, in those countries where efforts for facilitating the visa process were made, the numbers of visitors returned to their pre-visa levels after a temporary decrease following the introduction of the visa requirements.

Prior to Bulgaria's accession to the EU and the respective introduction of visas, the considerable number of visitors from the western neighbors (Serbia and Montenegro and especially Macedonia) led people to believe that unless additional measures were taken the introduction of visas would cause a sharp decrease of visitors and create problems in local and regional economies.<sup>20</sup> Since Macedonia's capital Skopje is easily accessible, geographical constraints are unable to hinder access to the consulate. There is, however, a human resource problem. While, the Bulgarian consulate in Skopje did issue visas for Macedonia nationals until 1 January 2007, it is now required to issue almost a million visas per year. With only one additional consulate opened, it will be necessary

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<sup>20</sup> V. Shopov: *Implementation of Schengen – Direct Influence to Socio-economic Reality*. European Institute, Sofia, 2001.

to increase the number of consulate employees in order to maintain the pre-visa levels of contact. Alternatively, an extensive list of exceptions to the visa requirements that would be applicable between the periods of EU and Schengen accession, as well as a multi-entry visa for the business travelers could be introduced.

Attempting to avoid possible difficulties, Bulgaria initiated a two-fold plan of action prior to its EU accession. On the intergovernmental level, the Bulgarian government proposed and concluded agreements with Macedonia and Serbia regarding the mutual travel of their citizens, and on administrative level, two more consulates were opened in Bitola (Macedonia) and Nis (Serbia) respectively.

Both intergovernmental agreements have similar structures and content. They provide for certain rules that can facilitate the issuing of short-stay visas as well as the travel of citizens of Macedonia and Serbia to Bulgaria respectively. The agreement's main elements include:

1. Visa free travel for holders of diplomatic and service passports.
2. Visas are issued for free, without the usual collection of the visa application and visa issuing fees.
3. Certain categories of citizens are released from the visa requirements due to their professional duties (airplane or ship crew members, rescue teams).
4. Possibility for issuing multiple-entry visas for a period of one year (mainly in the context of international transport agreements).
5. Possibility for a fast track procedure for certain categories of applicants (in the context of official visits and administrative cooperation, or in cases of family emergencies).

Both agreements became effective on 1 January 2007, so it is still too soon to judge the effectiveness of these agreements. Meanwhile, two developments at the European level might influence the future existence of these bilateral agreements. On the one hand, the Regulation on local border traffic<sup>21</sup> has entered into force, and the Bulgarian government has expressed its intention to negotiate bilateral agreements with Macedonia

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<sup>21</sup> Regulation (EC) Nr. 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention [*Official Journal*, L 405 of 31.12.2006].

and Serbia on this issue.<sup>22</sup> On the other hand, visa facilitation agreements have already been signed with Macedonia and Serbia under normal circumstances; these will enter into force on 1 January 2008 and will override some of the provisions of the bilateral agreements. Whether these activities at intergovernmental and EU level will result in better odds for Macedonians and Serbians to easily travel to Bulgaria remains to be seen.

For the moment, the data on movement of persons after the introduction of visas does not look encouraging. The data from the National Statistics Office shows that the number of visitors from Macedonia in the first six months of 2007 represents only 29.96% of the visitors for the same period in 2006. The figure for Serbia is similar – 28.75%. Therefore, despite Bulgaria's efforts, the introductions of visas have led to a dramatic decrease in travel. Whether this decrease is only temporary or is a more permanent phenomenon remains to be seen.

### *3. Other effects of the alignment process*

#### *3.1. Citizenship applications*

As mentioned earlier, one of the expected effects of the accession process was an increased interest in the acquisition of Bulgarian citizenship. Bulgarian legislation on citizenship is relatively simple, and in contrast to that of other acceding states (e.g. Poland, Hungary), it contains less stringent conditions and faster procedures for candidates of Bulgarian ethnic origin.

It is estimated that around one million persons of Bulgarian origin live outside of the country. This number includes both emigrants who possess Bulgarian passports and minorities who are of Bulgarian ethnic-origin and possess passports from their country of residence. Of the latter, the highest concentrations are to be found in Ukraine – 300,000, Moldova – 150,000, Serbia and Montenegro – 20,000.<sup>23</sup>

The Law on the Bulgarian Citizenship<sup>24</sup> provides six conditions for the acquisition of Bulgarian citizenship. These include:

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<sup>22</sup> Such a possibility is explicitly mentioned in Article 16 of both the Agreement between Bulgaria and Macedonia regarding the mutual travel of citizens and the Agreement between Bulgaria and Serbia on the mutual travel of citizens.

<sup>23</sup> Source: State Agency for the Bulgarians Abroad.

<sup>24</sup> Law on the Bulgarian Citizenship of 18 November 1998, (*Държавен вестник* (State Gazette) No 136/1998, last amendment SG. 52/29 June 2007).

1. Minimum age – 18 years;
2. Permanent resident status for at least 5 years;
3. Clear criminal record;
4. Having income or activity in Bulgaria;
5. Fluency in Bulgarian language;
6. Being released or to be released from its present citizenship.<sup>25</sup>

Applicants of Bulgarian origin are exempted from all but two requirements: minimum age and a clear criminal record.<sup>26</sup>

As far as the application process is concerned, the decision is generally made in one year; however, those of Bulgarian ethnic-origin will receive a decision within three months.<sup>27</sup> The Vice President has the authority to grant citizenship, and s/he is supported by a special directorate in the Ministry of Justice.

With this background knowledge, the below figures are not surprising.

*Table 2. Number of applications for Bulgarian citizenship and number of granted citizenships*

	2001		2002		2003		2004		2005		2006	
	<i>Applications</i>	<i>Granted</i>	<i>Applications</i>	<i>Granted</i>	<i>Applications</i>	<i>Granted</i>	<i>Applications</i>	<i>Granted</i>	<i>Applications</i>	<i>Granted</i>	<i>Applications</i>	<i>Granted</i>
Total	5495	1214	7438	3371	14306	4266	29493	5660	23200	5847	14498	6628
Bulgarian origin		940		3210		4179		5559		5722		6511

*Source: Annex 5 of the Report for the migration situation in Republic of Bulgaria in 2006*

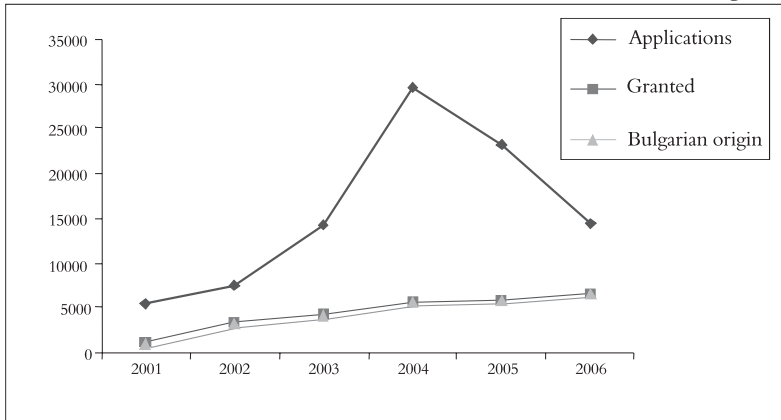
Between 2001 and 2005, the number of petitions for citizenship has increased by a factor of four, from 5,495 applicants in 2001 to 29,493 in 2004 (approximately 0.3 % of the population). There was a slight decrease in 2005 and 2006, but the sizable difference between applications and granted citizenships does not mean that those applications

<sup>25</sup> *supra*, Art. 12

<sup>26</sup> *supra*, Art. 15

<sup>27</sup> *supra*, Art. 35

Figure 2



were refused. As there around 58,600 files still pending decision, it might simply imply an administrative deadlock.<sup>28</sup>

The number of approved applications for citizenship also increased by a factor of five, from 1,214 in 2001 to 6,628 in 2005<sup>29</sup> (approximately 0.1% of the population). However, almost all who acquired citizenship were of Bulgarian ethnic-origin. While the total number of people who were granted citizenship status increased four fold, the number who received citizenship through the general procedure has remained stable at around 100 to 200 per year.

Table 3. Top 5 countries of origin of the applicants

	2001	2002	2003	2004	2005	2006
Macedonia	169	1360	1685	2281	2425	2930
Moldova	157	583	1172	2210	2455	2610
Russia	300	447	346	281	160	217
Ukraine	65	243	222	209	245	249
Serbia and Montenegro	61	219	285	161	128	235

Source: Annex 5 of the Report for the migration situation in Republic of Bulgaria in 2006

<sup>28</sup> Report for the migration situation in Republic of Bulgaria in 2006.

<sup>29</sup> However, the refusal rate is relatively high but stable, and on average, one of every four applications is approved.

One of the factors influencing the increase might be a change in the Law on Bulgarian citizenship from 2001. Until then, applicants of Bulgarian ethnic-origin needed to demonstrate proficiency in the Bulgarian language and, most importantly, had to either renounce their present nationality or commit themselves to doing so. After 2001, these two conditions were exempted. Thus, those of the Bulgarian minority abroad who might not have applied earlier because they did not want to lose their present nationality had a possibility to both acquire Bulgarian nationality while retaining their former one.

Apart from the change in legal conditions, the increase in citizenship applications can possibly be explained by the changes in the visa regime. As most of the Bulgarian minorities abroad are citizens of countries which are either on the Bulgarian visa black list or were included in it upon Bulgaria's entry in the EU, their possibilities to travel are seriously impaired. In this situation, the acquisition of Bulgarian citizenship, especially under simplified procedures, becomes an obvious solution.

### *3.2. Appearance of new legal forms*

The efforts made to remove Bulgaria from the EU's visa black list were not solely limited to visa policy alignment. Two important elements mentioned in the Commission report that recommends the removal of Bulgaria from the visa black list were the introduction of (1) new, more modern identity documents and (2) sanctions on illegal immigration to the member states.

The 1998 Law for Bulgarian Identification Documents<sup>30</sup> not only created a new system for individual identification – which differed philosophically from the one applied before 1989 – but it also introduced new legal measures to enforce these changes.

Initially, the Law on the Bulgarian identity documents<sup>31</sup> Article 76 foresaw the possibility for administrative punishment of persons who had

<sup>30</sup> Law for the Bulgarian Identification Documents of 11 August 1998, (*Държавен вестник* (State Gazette) No 93/1998, last amended SG. 52/29 June 2007).

<sup>31</sup> Article 76. It may not be permitted to leave the country, passports and substituting documents to be issued and the issued to be withdrawn of. 5. (amend. SG 29/03) persons who, during their stay in another country, have committed offences of its legislation – two years from the receipt of an official letter from the Ministry of Foreign Affairs or the documents for compulsory taking out or expelling, pointing out the committed offence, by the competent

been removed or expelled from another country for infringing on its passport and visa regulations. The punishment was defined as: refusal to leave the country; refusal to issue passports or replacing those documents and confiscation of the documents already issued. The administrative measure was initially to be enforced for a period of one year from the day the Ministry of Foreign Affairs received notification of the committed acts.

It is interesting to note that Article 76(6) is a special case of application of Article 76(5), which addresses persons who have committed offences while abroad. The legislator considered the infringements of other countries' immigration regulations significant enough to include a separate paragraph dedicated to them.

Over time, the text was further amended, and all the elements were more concretely defined: the actions that can trigger the procedure, the types of documents that can be used as proofs, the punishment and the procedure for judicial review.

Still, when considering all the amendments, the punishment foreseen in Article 76(6) remained a possibility rather than a certainty; it is a measure that authorities "may" impose.

In all cases, the action that can trigger the procedure is the removal or expulsion from another country; however, the reasons for this are derived from "infringement of the passport and visa rules" (1998) to "violation of the entering regime" (2003).

The period during which rights are to be limited was modified from one year in the 1998 version to two years in 2003 version. Additionally, the moment from which the period begins was also changed. Initially, it was the "reception in the Ministry of Foreign Affairs of an official letter for the committed offence" (1998); in 2003, another possibility was added to this: "receiving from the competent bodies of the documents for compulsory taking out or expelling, pointing out the committed offence."

The authority that can decide on the application of this measure and is, thus, able to enforce the possibility enshrined in the act is the Minister

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bodies of the respective country; 6. (amend. SG 29/03) persons who are taken out or expelled from another country for violation of the entering regime – for a period of two years from the receipt of an official letter from the Ministry of Foreign Affairs for the committed offence or from the date of receiving from the competent bodies of the documents for compulsory taking out or expelling, pointing out the committed offence; (Official translation of the Ministry of Interior of Republic of Bulgaria)

of the Interior or persons authorized by him. It is usually the head of the respective Regional Directorate of the Ministry of Interior responsible for issuing identity documents. Initially, the issuing of the act proceeded according to general rules of the Law on Administrative Procedure, and judicial control was performed by the High Administrative Court. As of 2003, judicial control is performed by the district court in the district where the authority that issued the administrative act is based.

The official figures for the total number of cases in which this administrative measure has been applied have grown from 186 in 2000 to 1,404 in 2005,<sup>32</sup> and more than 50 judgments have been made by the High Administrative Court.

### *Conclusions*

Although the process of aligning Bulgaria's visa policy with the EU's occurred during the accession process, it was mainly influenced by the activities undertaken by the Bulgarian government, and its aim was the removal of Bulgaria from the EU visa black list. As a result, Bulgaria's visa policy was aligned to that of the Union much earlier than would have been expected from its position in the accession process.

Experience shows that the introduction of visa requirements does not necessarily have to result in immense obstacles to international travel. Consideration of two countries for which Bulgaria introduced visa requirements (Russia and Ukraine) indicates that the effect on travel is negative only in the cases of inappropriate consular infrastructure. Although visas were introduced for both countries at the same time, the number of visitors dropped permanently only in the case of Ukraine where the consular infrastructure was much weaker.

However, an increase in the number of consulates and improvement in their infrastructure did not prove to be sufficient for maintaining the level of Macedonian and Serbian visitors after the introduction of visas. Despite the special bilateral agreements that were negotiated on the eve of the change in the visa regime, it seems that the measures offered by Bulgaria (free visas and facilitation for limited categories of travellers) did not exploit enough the possibilities for flexible application within

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<sup>32</sup> The number for 2006 is 3329, but this also includes measures based on Article 76(5).

the *acquis*. Six months after the introduction of the new visa regime, the number of visitors from both Macedonia and Serbia dropped by 75%.

The introduction – or the potential introduction – of visas led to a significant increase of citizenship applications in Bulgaria. Thanks to the favourable legal regulation and the special conditions for ethnic Bulgarians, the number of applications and effectively granted citizenships (especially for persons coming from countries with Bulgarian minorities) has increased.

Once again, the powerful influence of the visa lists can be demonstrated through the special legislative measures introduced that were intended to tackle illegal migration of Bulgarian citizens to the EU. However, the possibility for revoking the passports of those who have infringed on other states' entry and residence rules might be challenged as a limitation to their freedom to move.

BÉLA RÉVÉSZ

## How to Consolidate Secret Services in East-Europe after Transition

The collapse of communist regimes, from 1989 on, meant the end of an historical epoch for secret services as well. For these earlier Eastern European regimes, law enforcement agencies, including secret services, were one of the most significant elements of their political structures. The survival and reformation of secret services was suspiciously observed by the public. The main reason for the distrust was their permanent mysteriousness. Certainly, these secret services of socialist Hungary cannot be clearly delineated from the current national security agency of a democratically governed Hungary. These signs of continuity between the two secret service agencies question the reality of the reformation of these agencies. For example, in Hungary, two-thirds of civilian secret service leaders had worked for the secret services prior to the change of the regime.<sup>1</sup> The fact that these services have remained close to centres of political power creates similarities between the roles and attitudes of both pre- and post-transition secret service agencies. Furthermore, *the survival of inner regulation and the structures* shows that this continuation is much larger than simply a continuation of the personnel.

The aforementioned characteristics of Hungarian secret services are generally valid; however, they are more readily apparent dur-

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<sup>1</sup> Declaration of András Tóth, Undersecretary of The Prime Minister's Office. Record about the session of the National Security Commission of the Parliament held on Tuesday, 15<sup>th</sup> February 2005, in the Historical Archives of State Security Services. Archives of the Parliament, Nbb-286/1/2005-1. (Nbb-57/2002-2006.)

ing the changes from the dictatorship to democracy. The continuous “secret” consists of phenomena that have several interconnected layers that strengthen this assertion. The “internal secret” of these services is mainly in their aims, structure, personnel, operations and methodology. Furthermore, the basic element of their existence is an “external secret,” the acquirement or the prevention of acquirement of information, which justifies their activity.

From this point of view, a certain secret service is:

1. an institution or informal group within or outside the structure of the state that owns real – overt or hidden – power
2. that works in order to achieve its secret – or much more rarely, public – goals and, in the majority of the cases, keeps its legal or illegal activities secret
3. acts in accordance with the demands of real individuals possessing power.

In the new democracies that evolved under much publicity, it was often believed that only in dictatorships could secret services such as those described above exist.

Around the time of Hungary’s change of the regime, it became widespread public opinion – mainly after the Dunagate case<sup>2</sup> – that state security services (and the police itself!) are characteristic only of one-party systems of power, and since a democracy should not keep secrets from its citizens, any kind of secret service is unnecessary. This point of

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<sup>2</sup> During the American presidential elections, the headquarters of the Democratic Party located in the Watergate buildings was broken into and was later intercepted. The Watergate Scandal gained a further meaning over the course of US political history. It became the metaphor of government politics applying secret methods for the sake of obtaining power throughout the world. It is not by accident that when in the beginning of 1990s the largest secret service scandal of the Hungarian change of the regime broke out, the press quickly found the appropriate term: the Hungarian Watergate Scandal; that is, the Dunagate Scandal. As for the case, it turned out that while the leaders of the state party were negotiating about peaceful reforms with the leaders of the opposition, the secret services of the communist regime collected a wide range of data about the activities of the opposition and continued their operative “games;” that is, their actions of influence. After the scandal the Minister of Interior Affairs was forced to resign, and a revision was initiated within the then one-party Parliament. See also: György Kolláth: Postscript of the Dunagate Case from the point of view of a civilian. *Beltügyi Szemle*, Nr. 5, 1994.

view was strengthened by the populist interpretation “secret = bad” and “publicity = good.” It was hard to accept that state security could also mean democratic security and did not have entail a monolithic production of power.

Since the change of the regime, the debates have evolved in Hungary, and in other transitioning Eastern-European countries, there have also been discussions about the validity, system of conditions, operations and controllability of secret services. The expression “*compensation of information*” evinces the demand that the whole of society – not only the victims – must be allowed to familiarize itself with the methodology of the previous distatorship’s secret services, how these agencies controlled the fate of people and influenced their lives.<sup>3</sup>

It is an unresolved question how to treat the agents and files from the old regime’s state security services. There were and are continual debates about these questions in all of the countries that were liberated from the Soviet Union’s influence. During the change of regime, it became apparent that, in a majority of cases, the leaders of the old regime clung to power more than the previous social conditions, and within the frameworks of market economy and parliamentary democracy, they did their best to obtain a more legitimate political influence. In the majority of cases – even if such types of conversions of power were not possible to a large extent – they succeeded. Their economic, bureaucratic and political experience as well as the organic basis from the old era, the transformation of fortune and their personal relationships played an important role in their abilities to legitimate their political influence.<sup>4</sup> The sur-

<sup>3</sup> The aim of the discovery of these documents – according to the preamble of the Act III, 2003, about The Historical Archive of State Security Services – is compensation of information and to provide right to information and self-determination for those who are concerned. The expression and the concept of compensation of information were originally outlined during the interpretation of the Constitutional Court Decision No. 34/1994, 24 June and No. 60/1994, December 24.

<sup>4</sup> Remarkable empirical studies that show the reality of “conversion of power” have been written. In the beginning of the post-socialistic transition, a radical hypothesis evolved nearly everywhere in Middle-Europe. According to this, the used-to-be elite nearly completely saves itself; its members hardly change because a kind of “nomenclature-bourgeoisie” evolves and “political capitalism” comes to life. This point of view, which is believed by many, was not proven even in the early periods of transition. The truth is that only a small part of the present political and economic elite were in power in the old the regime. Many of the others reached higher ranks from among lower-ranking officials of the old regime while

vival of clandestine relationships within the secret-service world might also have played a valuable role in the development of “social capital”: “Across the years these structures fitted in the informal web of power and became consolidated.”<sup>5</sup> During the time elapsed since then, these people managed to legalize their political positions under the rule of law. One of the prerequisites in the fight against these politicians is that their actions in the past become known; ironically, this type of transparency is in the interest of these public figures. Though the scandals sometimes break-out in an incalculable manner, they urge a rational and legal solution to the question. The cases below, which occurred in some countries of the region, reflect this kind of lack very well.

1. In the beginning of 2005, Lithuanian Prime Minister Algirdas Brazauskas initiated a revision because it had turned out that his Minister of Foreign Affairs and the leader of the Internal Security Service had been the reservist officers of the Soviet secret service in the 1980s. Antanas Valionis and Arvydas Pocius deny that they played an active role within the used-to-be KGB. As it was reported by Reuters, Valionis admitted that the list published by a Lithuanian newspaper is credible and that he really worked for the KGB; however, he also added that he had informed his superiors after Lithuania gained independence.<sup>6</sup>

In 2006, there was a large revolt in Lithuania when former President Rolandas Paksas’ close relationship with Russian entrepreneur Jurij Boriszov, who had also worked for the Russian secret service, was discovered; Paksas was forced to resign. The leader of the Opposition was pleased with this revision. Referring to the Czech Republic, Adris Kubilius considered it necessary for the Soviet-era archives to become public.

According to politicians, the revision commission will establish the innocence of people registered as reservist members of the former Soviet secret service; it will demonstrate that they were not involved in any kind of illegal activity. That is, their role in public life will have no legal

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others derive from social groups that have nothing to do with the old regime. See also: What does “change of the regime” mean – And experiment, *Közgazdasági Szemle*, Nr. 4, 2007.

5 This phenomenon – except the German transformation – seems to be valid for all regime-changing countries in Eastern Europe. Marius Oprea: *The Fifth Branch of Power: The Afterlife of the Securitate*. In *Flashbacks from the Past. The Afterlife of Communism in Eastern Europe*. Budapest: Hamvas Institute, 2004. 195.

6 Dar vienas buvęs KGB darbuotojas iš valstybės reikalauja pusės milijono. <<http://www.balsas.lt/naujienos/lietuva/straipsnis47923>>

consequence. This commission has a chance, as indicated by the success of two former employees of the Lithuanian Office of the Attorney General and the County Investigative Office of Tax Affairs in a lawsuit, the International Court of Human Right against the Lithuanian State, in Strasbourg. According to the Court, Vilnius discriminated against Jouzas Sidabras and Kestutis Dziautas by dismissing them in 1999 from their positions because of their prior histories; that is, the European conception about defense of human rights was violated in several manners. After the Court's decision, Lithuania paid 7,000 euros respectively to the two men for moral and financial compensation.<sup>7</sup>

2. As of November 2006, approximately 800 employees of the previous Czech-Slovakian state security agency still worked for the Czech police. This was the first time the Ministry of the Interior had published this data, and the numbers were much higher than those that had been previously acknowledged. Up to this time, it had been claimed that only a few dozen former employees of the socialist-state security apparatus had been reemployed by the police force of the democratic system. "Almost 800 people are presently employed by the Police of the Czech Republic who were formerly the members of the State Security Agency," declared the spokesman of the Ministry of the Interior. He affirmed that presently there is no legal opportunity to reveal who exactly these individuals are.

When entering office last September, Ivan Langer, the rightist Minister of the Interior, indicated that he considers it very embarrassing that ex-state security officers are still employed by the police force and that he finds their dismissal desirable. The Minister proposed to solve this problem by introducing a new service regulation that would exclude individuals with such a past. The social-democratic ex-Minister of the Interior considers Langer's conception a mistake; according to him, ex-state security officers should not be dismissed from the police force. "Based on certain criteria, we gave the chance to these people to work for the new police force. And if since then they have been working honestly, I do not know why it would be necessary to simply make them redundant" – declared Bublan, who was a well-known opposition activist during the times of the socialist regime.

<sup>7</sup> See also: European Court of Human Rights (ECHR): Sidabras and Dziautas v. Lithuania, Applications Nos. 55480/00 and 59330/00 (July 27, 2004)

3. In Bulgaria, an archive director's suicide with his own pistol in the capital at end of 2006 caused public shock. Bozsidar Dojcsevre, who was assigned to handle the files of the previous state's security service (DSZ), had formerly been socialist Bulgaria's chief secret policeman. Two days after his death,<sup>8</sup> an online journal brought the case to the attention of the Bulgarian and the international publics. When the case became public knowledge, the authorities in Sophia urgently declared it a private affair. It was also treated as one of the "unimportant cases" by the socialist Prime Minister of the country Szergej Sztanisev. Nevertheless, the political opposition – and even the socialist's liberal coalition-partners – demanded a revision. They found it suspicious that the news was not revealed by the authorities for two days. According to the right-side DSZB party (Alliance for a Strong Bulgaria), the European Union is also interested in Bulgaria's secret service archives. Because of the archive director's possible knowledge about many sensitive secrets, the case had an unusually large international echo.

After the regime changes, secret service archives were partially or completely opened up in nearly all of the ex-socialist countries. Nevertheless, the Bulgarian secret service defended their secrets excellently and selectively leaked out compromising documents. Nothing was made public about people who played key roles in political life. The majority of Bulgarian political parties finally decided on opening the archives and screening state leaders. The secrets are defended most strongly by the leaders of the successor party that is presently leading the coalition, and those personalities who can be compromised are defended much more arduously. Now that the possibility of opening these archives is a legitimate threat, many people would like to annihilate a heap of files. According to one of the predecessors of Dojcsev, the archive director chose suicide rather than the tremendous pressure of protecting the dangerous documents. Others have doubt about the suicide and suspect murder instead.

It is characteristic of the Bulgarian secret service to allow foreign analyzers and native researchers to publish a (very) few cases for exploration. One such case would be the attack against Pope John Paul II in 1979 by Ali Agca, which was allegedly organized by Bulgaria and

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<sup>8</sup> The <[www.kafene.net](http://www.kafene.net)> online portal that touched off the case is edited by the employees of the dissolved Bulgarian section of BBC.

assigned by Moscow. Another such case is the mysterious murder of Bulgarian maverick-activist Gregori Markov in London. Markov was poisoned by an umbrella prick. According to several sources, the murder was executed by the Soviets and assigned by Bulgaria. Sensational events usually have an inner-political meaning about which the international public does not know very much – not even today.

4. “I have never heard so much [...] nonsense told within such a short period of time,” reacted Emil Boc, President of the Romanian Democratic Party (PD) to the reform proposal of Mircea Geoană, a member of the opposition Social-democratic Party (PSD), in spring 2007. Geoană declared that his party wanted to dissolve the Highest Commission of Defense (CSAT) in its present form. It would be replaced by a new body, the National Security Commission, which would be organized according to western patterns. The explanation given by PSD president’s for the Commission of Defense is the following: the CSAT is unable to decide at the moment; decrees should be accepted with one voice, on the basis of consensus. According to the social-democratic interpretation, the Head of the State is responsible for the situation. Nevertheless, according to the reform proposal, a qualified majority would also be enough to make the decision.

It is really spectacular that the national security bills, with which President Bănescu aligned himself so strongly, seem to get lost in the bureaucratic maze. Truth be told, the bills were prepared by secret service employees, and only after experts from the President’s Office examined them did the President admit the plan publicly. After all, the package of bills was considerably modified by the government. According to experts, the version of Tăriceanu’s cabinet would somewhat democratize and create a system in which decisions made about national security are more transparent by mainly restricting the authority possessed by the secret services.

After considerable debate – in which the democrat Ministers had to be put under pressure to accept the fact that the package worked out by their ex-party president needed modification – the plan was finally accepted by the cabinet. At this point, the Highest Commission of Defense should have included the proposal in its agenda; however, this has yet to happen. The president of the body is Traian Bănescu, who is concurrently the Army’s Commander in Chief. The CSAT forwarded the package to the Parliament without commentary. And, because with no presumption the

principles of the decision-making process are violated, the process stopped here. In other words, Parliament will most likely send the text back to the CSAT and all will start from the beginning.

The aim of this reform is to overshadow the secret services to some extent. This is primarily because the secret services tend to place their own functional and efficacy interests ahead of others and because they do not really consider that national security can only be a reality when the personal security of citizens and the security of state institutions are treated equally. Citizens cannot be expected to unconditionally trust state security institutions. The mental heritage of the dictatorship as well as the continuity between the institutions founded after 1989 and their legal predecessors gives no reason for unconditional confidence in state institutions, even in Romania. Therefore, it should not be enough to only reform institutions; outlining exactly defined structures and spheres of authority and the complete renewal of the personnel of these services is also necessary. As it can be read in an expert's proposal, guaranties must be integrated into the package of bills against abuses, transparency must be ensured, the practice of superfluous secrecy must be restricted, and the parliamentary and civilian control over secret services is necessary.<sup>9</sup>

5. During the debate about the new Polish screening act in the summer of 2007, both parties accused the other of allowing the communist secret services to live on. The lustration act that came into force in March obliges the public figures who were born before 1972 to declare whether or not they had any relationship with the communist regime's secret services. If they are reluctant to do so or deny the truth, they are banned from the public sphere and publicity for ten years – politicians, journalists and lawyers. Earlier the members of the Parliament were regulated by a similar act, and several questioned the results. The European Court of Human Rights made its first sentence in such a case in Poland on 24<sup>th</sup> April: the Polish State was condemned. Namely, the proceedings prescribed by the law did not give any chance to the representative to prove his innocence.

The best-known democratic representatives of the previous anticommunist democratic opposition do not subject themselves to the act and so risk being banned from their profession. The leftist press sees them as

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<sup>9</sup> National Security Reform – less paranoia – <<http://politika.transindex.ro/?cikk=5156>>

heroes, and today's rightist government as the legal successors of one-time pursuers. Alexandr Viatteau, as representative one of the old democrat opposition, reminds these individuals that many of them are the children of elite communist families.<sup>10</sup> It was they who negotiated through the peaceful transition with the communist government, and it was they who agreed that the past does not have to be addressed. At the same time, they developed relationships that helped ex-communists win elections in the 1990s. There was the suggestion that there may be files on both sides, but Viatteau does not consider it condemnable in itself. He believes that judgment depends upon the examination of the particulars of each case of co-operation.

The author has developed seven categories of co-operators. As he knows, Poland's resistance placed people into the secret service itself. Others tried to defy the authorities while, again, others did not even know about their files; for example, certain priests pursued agreeable conversations with police officers whom they considered to be errant sheep. In the majority of the cases, both parties thought that they controlled the events. Without even addressing the false lists that were also made, real materials were to a large extent annihilated. Viatteau thinks that he recognizes the ex-secret services' methods in a serial of exposures. He assumes that certain people would like clergymen's files to remain in the spotlight, but the role of leftists should be avoided. Naturally, the purpose of the new act is the contrary, but it is still girded by political purposes. Both parties would screen first and foremost themselves. The political situation regarding the secret services contributed to the self-dissolution of the Sejm in 2007 so that premature elections can be announced as soon as possible. It's results: the poland's liberal opposition Civic Platform party has won a massive victory in October 2007.

It is very hard to find a general explanation as to why secret services in Eastern Europe operate in an inappropriate manner. Due to constitutional decrees, national security services cannot directly or indirectly interfere in political-party fights on the grounds of pluralism. In principle, legal regulation and democratic norms both emphasize that secret services should remain separate from the political sphere. Nevertheless, even if the details usually remain secret, a "political nearness" – albeit

<sup>10</sup> Alexandra Viatteau: La Pologne et le communisme: "collaboration" et confusion de concepts. Géopolitique de l'Europe. <<http://www.diploweb.com/forum/viatteau07044.htm>>

of a different kind and intensity – is generally characteristic of their real operating style.

The secret services can obtain two types of “political nearness” while they are accomplishing their mission:

1. *The procurers of demands of news*, who determine the directions of their operation – *politicians*;
2. After all, the information obtained does not only consist of passive data for the procurers of demands of news or for the secret services themselves; it is the starting point of concrete preventive measures and operative actions. Via these measures they intend to have clandestine effects on determined parts of social and political reality. Whether legal or illegal, the question is what normative background is provided by legal regulation.

National security services do *operational activities* in order to accomplish their mission. During these activities they apply methods of collecting internal and external information, regulated by internal and external permissions. Considering danger factors arising within the frameworks of operational work and objects to be defended, human sources are established, and other methods of information collection are applied. Beside exploration, they also prevent actions and aspirations that endanger constitutional order or sovereignty. All of this clearly illustrates that that the role of secret services is much broader than a simple collection of information or the transmission of obtained data.

It is probable that – as is proven by the aforementioned examples – no kind of regulation automatically excludes the operation of secret services in the political sphere, perchance influencing it. This is why more value must be given to the formation of a democratic political culture that restricts political power beyond constitutional guaranties and legal regulation.

For the majority of people, secret services mean a mystic and inevitably suppressing apparatus that had previously disrespected basic human rights on the basis of political decisions, kept people under control, and primarily applied existential sanctions against them. Historically rooted political distrust has caused uncertainty for a long time and continues to do so in the present.

Generally, democratic control over secret service organizations is a delicate issue. Control commissions must keep silent, even regarding

the participants' own political parties; on the other hand, how can a commission make sure that it has received access to all relevant information from the services? This tension has a principal a priori character, inasmuch as total public control of such organizations would severely limit or even reduce their possibilities to act – it is a given that such organizations must, for the sake of efficiency, be given a certain margin in which to operate, both as regards secrecy and violation of law for the sake of security – even if this fact makes the organizations constantly vulnerable to potential public scandals. In a secret organization, the very secrecy principle has an ambiguous character which adds to its mystification. The basic motivation for secrecy is immanently given: the enemy must not know what we know. But to this, a procedural secrecy is quickly added: the enemy must not know the illegal procedures undertaken in order to gain information, etc. – this becomes a potential cause of conflict in itself. Furthermore, this problem doubles once more internally in democratic societies: the public must not know (too much) about the types of methods used because this may illegitimate democracy's own laws and ideals. These constraints have led to a violent growth in the use of the three classic grades of secrecy: confidential, secret, and top secret. Too much secrecy does not only entail that the organization may lose a grasp on its own information, but furthermore, it also may lead to the widespread misunderstanding that just because something is marked Top Secret it is *eo ipso* true.

# ETHNICITY AND NATIONALISM

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ANDRÁS L. PAP

## Police Ethnic Profiling in Hungary – Lessons from an International Research\*

In Europe, there are long-standing allegations against the police about the harassment of Roma and other visible minorities in ordinary crime prevention, and according to new reports, law enforcement officials are targeting Muslims in name of the fight against terrorism. In Hungary, anti-Romany prejudices are particularly strong. According to a 2006 survey, almost two-thirds (62 per cent) of the adult Hungarian population agreed fully or to some degree with the claim: “the tendency to commit crime is in the nature of the Romany.”<sup>1</sup> A 1997 survey by the Ministry of Interior showed that 54 per cent of police perceived criminality as a central element of Roma identity,<sup>2</sup> and from 2002 to 2003, the Hungarian Helsinki Committee carried out research on discrimination against Roma in the criminal justice system. By scrutinizing court files to discover how authorities initially detect perpetrators, this study found that police heavily employ racial profiling when working in Roma communities. The researchers found that Roma offenders and suspects were significantly more likely to have been identified via random police stops and searches while other investigatory methods – particularly being caught in the act – were the dominant causes for the capture of non-minority

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<sup>1</sup> See <http://www.tarki.hu/kozvelemeny/kitekint/20060201.html> (02.10.2006)

<sup>2</sup> Gy. Csepeli, A. Örkény, M. Székelyi: Szeretelen módszerek [Insubstantial methods]. In Csányi (ed.): *Szöveggyűjtemény a kisebbségi ügyek rendőrségi kezelésének tanulmányozásához*. Budapest: OSI-COLPI, 1997. 130–173.

suspects.<sup>3</sup> The findings of the survey appeared to be fully in accordance with similar Anglo-American studies that analyze discrimination against visible minorities in criminal justice procedures.

In its 2005 report, Amnesty International emphasized that discrimination against the Romany continue to exist in all spheres of everyday life and criticized the police for not exploring the everyday discrimination that are behind criminal acts.<sup>4</sup> Since the mid 1990's, ill-treatment of the Romany in Hungary has been widely documented by human rights NGOs such as the Legal Defense Bureau for National and Ethnic Minorities (NEKI),<sup>5</sup> the Hungarian Helsinki Committee (HHC),<sup>6</sup> the Romani Civil Rights Foundation (RPA)<sup>7</sup> as well as the Parliamentary Commissioner for National and Ethnic Minorities.<sup>8</sup> Even the European Commission against Racism and Intolerance (ECRI) has expressed concern "at evidence that severe problems in the administration of justice exist as regards discrimination against members of the Roma/Gypsy community [...]"<sup>9</sup>

Circumstantial evidence from other stages of the criminal justice system also indicates the likeliness of racial profiling. According to the 2001 EUMAP report,<sup>10</sup> "research indicates that Roma are more likely than non-Roma to be remanded in pre-trial detention or ill-treated by the police<sup>11</sup>, and tend not to have legal representation during investigation.<sup>12</sup>" ECRI has expressed concern "at evidence that severe problems

<sup>3</sup> See Lilla Farkas, Gábor Kézdi, Sándor Loss and Zsolt Zádori: A rendőrség etnikai profilalkotásának mai gyakorlata [The Current Police Practice of Ethnic Profiling]. *Bellügyi Szemle* [Interior Affairs Review] Nr. 2–3, 2004.

<sup>4</sup> Amnesty International (2006): *Magyarország 2005-ben*, available at <http://www.amnesty.hu/content.php?oldal1=8&oldal2=150> (27.09.2006)

<sup>5</sup> See [www.neki.hu](http://www.neki.hu)

<sup>6</sup> See [www.helsinki.hu](http://www.helsinki.hu)

<sup>7</sup> See [www.romapage.hu](http://www.romapage.hu)

<sup>8</sup> See [www.obh.hu](http://www.obh.hu)

<sup>9</sup> ECRI (2000)5, para.14

<sup>10</sup> EUMAP *Monitoring the EU Accession Process: Minority Protection*. OSI EU Accession Monitoring Program 2001. 241.

<sup>11</sup> Hungarian Helsinki Committee and OSI-COLPI: *Punished Before Sentenced*, Budapest, 1997. See also UN Committee Against Torture, *Conclusions and recommendations concerning Hungary's third periodic report*. November 1998: "The Committee is also concerned about the persistent reports that [...] a disproportionate number of detainees and/or prisoners serving their sentences are Roma."

<sup>12</sup> A kirendelt védővel rendelkező fogvatartott személyek védelemhez való jogának érvényesülése a büntetőeljárás nyomozási szakaszában ["Realizing the right to

in the administration of justice exist as regards discrimination against members of the Roma/Gypsy community [...]. There are authoritative reports that Roma/Gypsies are kept in pre-trial detention for longer periods and more frequently than non-Roma, although the prohibition of . . . recording . . . ethnic origin of suspects makes it difficult to evaluate the extent of such discrimination.”<sup>13</sup> According to the 2001 EUMAP report,<sup>14</sup> “NGOs estimate that only five percent of Roma complaints of police abuse lead to convictions.<sup>15</sup> The conclusion that a disproportionate number of cases brought by Roma are either ‘terminated’ after investigation or do not lead to convictions is supported in data from the town of Hajdúhadház, where fifteen cases brought by Roma in recent years against police officers remain either unresolved or ended in acquittal.”<sup>16</sup>

Even though racial profiling alone cannot explain it,<sup>17</sup> the high proportion of Roma in prisons can also be understood as an indicator of racial profiling. In the mid-1990’s, research was published that estimated the percentage of Roma inmates.<sup>18</sup> It revealed that, according to inmates’ definitions of self, 40 percent of the prison population is Roma; prison directors had much higher estimates (on average, 60 percent).<sup>19</sup> Crime structure in the case of the Roma is very different from the majority population. Most often the motive behind Roma crimes is subsistence, which can be directly linked to their precarious social condition. This means that Roma primarily commit crimes against property (such as theft and burglary) and very rarely violent crimes (such as rape or homicide).<sup>20</sup>

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defense of detained persons with appointed defense counsels in the investigative phase of the criminal procedure”], Office of the Ombudsmen, 1996.

<sup>13</sup> ECRI (2000)5, para.14.

<sup>14</sup> EUMAP 2001. 245.

<sup>15</sup> Legal Defense Bureau for National and Ethnic Minorities (NEKI) *White Booklet 1999*.

<sup>16</sup> HRW *World Report 2000*, Human Rights Watch New York, 2000. 272. Half of the town’s police force was under investigation for abusive conduct at the time.

<sup>17</sup> Along with other determinants, such as precarious social status or inadequate legal defense. See Huszár, László: Roma fogvatartottak a büntetés-végrehajtásban. *Belügyi Szemle*, Nr. 7–8, 1999. 124–133.

<sup>18</sup> Huszár László: Romák, börtönök, statisztikák. *Amaro Drom*, 1997, August, 9–11.

<sup>19</sup> Women Integration and Prison Project (MIP). Hungarian report “Data on Crime, Judicial and Prison data” 2004. <http://mip.surt.org/> (Unpublished)

<sup>20</sup> Huszár L., op.cit.; Póczik Szilveszter: Életviszonyok, közbiztonság, bűnelkövetők és sértettek roma kisebbségiek körében. Roma bűnelkövetők a börtönökben.”

This article highlights the discoveries of international research that seeks to document the existence of ethnic profiling in Hungary, Bulgaria and Spain. According to a standard definition: “Racial or ethnic profiling, as the term has evolved in the United States, encompasses the use by police of racial or ethnic characteristics as one set of clues among others to decide whom to stop, question, search, or otherwise investigate for as-yet unknown criminal offences. In this definition, profiling involves the use of racial or ethnic characteristics to *predict* which persons among some group might be involved in criminal behavior, even where there is no evidence yet of any particular crime, and no unique suspect.”<sup>21</sup>

Based on our respondents’ reports, ethnic profiling – a well-documented phenomenon in international (mostly English-language) literature – exists in Hungary as well as in the other surveyed countries. Ethnic profiling – a procedure that is discriminatory in its content – is characterized by an important feature: not only is it based on the racist prejudices of the officer conducting stops, but it is also based upon seemingly rational presuppositions (each of which has been refuted by empirical studies in the Anglo-American context) that posit a link between ethnicity and the likelihood of criminal behavior. Our study shows that such presuppositions are widespread among the police as well as within the general population – and to a significant degree, even among the Roma. There is strong societal support for ethnic profiling inasmuch as the majority of people, being fully aware of the arbitrariness of stop-and-search procedures, would not consider police presence – with the police enjoying an essentially unlimited range of competences – as harassment and are in favor of the current and a possible increase in the control of “suspicious” individuals and groups (including the Roma and migrants).

Part I of this essay delineates ethnic profiling’s general practices as well as describes the Hungarian legal framework pertaining to the relevant police operations. Part II then discusses the results of a study sponsored by the Open Society Justice Initiative as part of a comparative research program. This study explores experiences of police stops

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Office for National Development. Hungary. 2004. <http://www.nfh.hu/index2.htm?p=2&t=2&i=2967#Biztonsag>

<sup>21</sup> Harris, D.A.: *Confronting ethnic profiling in the United States*. New York: Open Society Justice Initiative, 2005. 67.

and ID checks in Bulgaria, Hungary and Spain and relates these experiences to ethnicity.

*I. Ethnic Data Processing and Ethnic Profiling*  
*– General Observations and the Hungarian Legal Framework*

*1. Ethnicity and Policing*<sup>22</sup>

Before we examine constitutional standards regarding police use of ethnic profiling, two preliminary issues must be addressed. One concerns racial and ethnic classifications by law enforcement authorities; the other centers on constitutional standards pertaining to law enforcement's justifications (standards of suspicion or probable cause) for initiating action. I will discuss these in turn.

Because dozens of circuit and Supreme Court decisions address the issue, American case law and jurisprudence provide a good illustration of the legal framework used by police to process ethnic data. A crucial difference between the continental conception and the Anglo-American one should be noted at the outset: unlike the continental tradition, the U.S. and the UK have a generally accepted the practice of processing ethno-racial data.<sup>23</sup> Thus, in the latter countries, ethno-racial data processing does not constitute a sensitive issue from the perspective of data protection. As spelled out in a set of detailed court decisions, the law distinguishes four ways in which police action may rely upon ethnicity or race and applies different constitutional measures for each of these measures.

The first and unproblematic scenario is when a victim or witness to a crime provides a description of a specific suspect which includes ethno-racial characteristics. In these situations, courts have invariably found that it was legal to use such information – in search warrants, for example.

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<sup>22</sup> For a more detailed elaboration of the first four sections, see *Ethnic discrimination and the war against terrorism – The case of Hungary*. In Gábor Halmai (ed.): *Hungary: Human Rights in the Face of Terrorism*. Special English Edition of *Fundamentum, Human Rights Quarterly*, Vandeplass Publishing: Human Rights Series 1, USA, 2006. 31–46.

<sup>23</sup> A note about terminology: besides obvious differences, I will treat racial, ethnic and nationality-based terminology as synonymous.

A second, somewhat different scenario is one in which the description provided by the victim or witness contains very little concrete detail about the suspect beyond her race or ethnicity. In several such cases, the court's stance was that race and ethnicity can be operative in negative descriptions only; for example, if the informant identified the perpetrator as black, then that information can serve as basis for the police not to stop whites and Asians, but it would be discriminatory for them to start stopping blacks without any further reason for doing so beside their skin color.<sup>24</sup>

The third case is racial profiling, which will be discussed at length below. This practice relies on the tenet that ethnicity in itself makes criminal involvement more likely, and this assumption is not based on any specific or general information about a given, concrete individual.

The fourth and final case, which is a prominent feature of the war against terror, involves preventive measures that rely on official, written directives about certain racial, ethnic, national or citizenship-based considerations. In these cases, the application of ethno-racial profiles is no longer left to the discretion of the police, border guards and airport security personnel. Instead, ethnic profiling becomes an officially formulated prescription.

## *2. Suspicion, Probable Cause and Authorization to Act*

Under what conditions might the police (or other law enforcement agencies) initiate action? Of course, the standards change according to how concretely specified the perpetrator is, what the degree of suspicion is, and in what capacity the law enforcement agent is acting. The procedure can have various legal foundations: random, voluntary encounter; consensual questioning that does not involve coercion – where, in theory, the citizen may disregard the question; stopping and questioning during an investigation; vehicle control; border control, etc. We may well ask: is it justifiable to institute a road block obstructing everyone's

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<sup>24</sup> In this manner, if we know only that the perpetrator is black, then the law enforcement syllogism assumes the following meaning: the perpetrator is black and the suspect is white. From these it follows that the perpetrator cannot be identical with the suspect, but it does not follow from the pair of claims that the perpetrator is black as is the suspect (or the pedestrian or driver) so that the suspect is the perpetrator. See Sharon Davies: Reflections on the Criminal Justice System after September 11, 2001. *Ohio State Journal of Criminal Law*, Fall, 2003. 66.

– and not just a specific ethnic group’s – way? What kind of suspicion, if any, is necessary for such a measure? Are random checks acceptable?<sup>25</sup>

The world over, courts have attempted to clarify the issue, but the task has not been an easy one because of the notorious difficulty in classifying scenarios in which a member of a minority group is stopped. Is it a case of crime prevention based on ethnic-profiling? Or is it an investigation with a specific suspect? A stop in which a minor violation is a pretext for stopping an individual? Or outright racist harassment?

The situation is complicated because proof of unwarranted ethnic-motivation would require that the court (or legislator) state that police action can be initiated exclusively on the basis of *individual* behavior or suspect description. But none has ever done so. The US Supreme Court has even upheld many other types of *general* control, albeit ones that were not tainted by ethnic classification. Examples include but are not limited to alcohol tests ordered for railroad workers involved in an accident,<sup>26</sup> sobriety tests around nightclubs,<sup>27</sup> and alcohol tests prior to after-hours extra-curricular school events.<sup>28</sup>

### *3. Policing, Discrimination, and Ethnic Profiling*

American studies on (mostly) highway patrols have shown that blacks, comprising 12.3 percent of the American population, are significantly

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<sup>25</sup> For example, in the 1979 *Delaware v. Prouse* case (440 US 648, (1979)) the Supreme Court found random stops and checks to be unconstitutional. (See for example Anthony Thompson: *Stopping the Usual Suspects: Race and the Fourth Amendment*. *New York University Law Review*, October, 1999. 973–974.) In the 2000 *City of Indianapolis v. Edmund* case (531 US 32 (2000)), the Court still found it unacceptable to have a road check following a roadblock, with the involvement of drug-searching dogs. But the Court upheld a roadblock in the context of a 2004 investigation concerning a hit-and-run accident, when during the time when the crime was committed, the road was blocked, and without using further coercive measures the, police politely asked motorists about the case and showing them photographs. (*Illinois v. Lidster*, (000 U.S. 02–1060 (2004)), see also Thompson, *op. cit.* p. 920. The question is, of course, whether the Court’s position would be similar if the roadblock were put in front of a mosque or a Middle-Eastern grocery store...

<sup>26</sup> *Skinner v. Railway Labour Executives Assn*, 489 US 602, (1989)

<sup>27</sup> *Police v. Sitz*, 496 US 444, (1990)

<sup>28</sup> For example, *Veronia Sch. Dist. 47J v. Acton*, 515 US 646 (1995), *Bd. of Educ. v. Earls* 536 US 822 (2002)

overrepresented among those stopped and checked by the police.<sup>29</sup> In New Jersey, between 1994 and 1999, 53 percent of those stopped by the police were black; 24.1 percent were Hispanic, and only 21 percent were white.<sup>30</sup>

This phenomenon sheds light on the fact that direct or indirect discrimination against members of a minority group need not be the result of intentional and/or flagrantly illegal behavior; instead, discrimination may be due to the questionable application of apparently legal measures.

The institution known as ethnic profiling was first developed in the U.S. for detecting drug couriers. It was later implemented in traffic control and, more recently, in anti-terror procedures. At the heart of these procedures is the idea that the perpetrator's race or ethnicity serves as a useful tool for criminal detection; thus, stops are not induced by suspicious or illegal behavior or by a piece of information that would specifically concern the defendant. Instead, a prediction provides grounds for police action: based on the high rate of criminality within a particular ethnic group or its dominant (exclusive) involvement in committing acts of terror, it seems like a rational assumption to stop someone on ethnic grounds. Measures are, therefore, not applied so much on the basis of an individual's (suspicious) behavior but are rather based on aggregate reasoning. The goal is to make an efficient allocation (based on rational interconnections) of a limited amount of police and security resources. After all, the majority of the prison population is Roma (black, etc.), and almost all of the terrorists are Islamic fundamentalists (mostly from Arab countries). Accordingly, appropriate restriction of the circle of suspects seems easily justifiable.

Originally, the procedure attempted to create a descriptive suspect-profile in order to facilitate the authorities filter out potential perpetrators through certain (legal) behavior and circumstances. In the case of drug couriers, such a characterization might include short stops between significant drug sources and distribution locations, cash-paid airline tickets, and – based on criminal statistics – ethnicity, sex and age. The ethnic-profiling's case is further strengthened by the fact that gangs that play key roles in organized crime tend to be almost exclusively ethnically homogenous.

<sup>29</sup> <http://quickfacts.census.gov/qfd/states/00000.html>

<sup>30</sup> See Michael Buerger – Amy Farrell: The evidence of racial profiling: interpreting documented and unofficial sources. *Police Quarterly*, Vol. 5. Nr. 3, September, 2002. 290; David A. Harris: The Stories, the Statistics, and the Law: Why “Driving While Black” Matters. *Minnesota Law Review*, December 1999. 267.

The irony of the situation is that it was right around the time of the World Trade Center attacks that racial profiling was decisively rejected within professional as well as political circles. In the fall of 1999, 81 percent of those asked opposed stops and vehicle control based on ethnic profiling. By contrast, in a poll conducted a few weeks after September 11, 2001, 58 percent approved of the idea that Arabs (including American citizens) be subject to stricter security checks before a flight.<sup>31</sup>

In connection with anti-terror measures, there was a renewed debate over security measures based on ethno-racial profiling. Some commentators emphasize that ethnic profiling is unacceptable in principle. According to these critics, the result is the harassment of the innocent minority middle class, which is subjected to a kind of “racial tax” that affects all aspects of their lives. A further, undesirable result is the strengthening of racial/ethnic essentialism, reductionism to black and white (Roma and Hungarian; Arab and non-Arab, etc.).

Another, pragmatic criticism calls attention to the practical ineffectiveness of racial profiling: inherent in the *prima facie*, statistically-based plausible-reasoning is a profound (and verifiable) error. Studies conducted in New Jersey and elsewhere have targeted stops based on racial profiling that involve vehicle checks and body searches. The aim was to discern how effective these measures are in detecting drug possession and illegal possession of weapons. The studies have clearly demonstrated that there was no significant, tangible difference between the proportional hit rate within the white population and the non-white population. Not only did the study find that the authorities habitually stopped a disproportionate number of non-white drivers, it also confirmed that the hit rate does not justify ethnic profiling. Racial profiling relies on the assumption that ethnicity and a high rate of criminality are connected. This assumption, therefore, implies that the hit rate must be higher among, say, African Americans. For a long time, no one asked for verification of the effectiveness of this seemingly sensible connection; after all, a sufficient number of criminals were found among the disproportionately high number of minority members stopped. But, researchers have argued that this is not a cost effective method because the number of

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<sup>31</sup> Samuel R Gross – Debra Livingston: Racial Profiling Under Attack. *Columbia Law Review*, June 2002. 1413.

false negatives and false positives is bound to be extraordinarily large.<sup>32</sup> In other words, the measures have a disproportionately negative impact on the law-abiding black (Roma, Arab) population while concurrently reducing the possibility of finding perpetrators from the majority population.<sup>33</sup> We might sum up the results thus: the retrospectively judged effectiveness (which was always assumed, rather than checked and confirmed) turns out to be illusory and does not provide an appropriate policing, prevention and security policy.

A third argument indicates the risks for law enforcement (policing and prevention) in alienating crucial minority communities. Apart from the problem of false positives and negatives, ethnic-profiling raises further, severe misgivings. The danger in alienating crucial populations is already familiar in the model of community policing. This model maintains that local policing is most effectively done with the community's active participation. Thus, law enforcement should not be an antagonistic, unjust, oppressive power but should rather help protect the peaceful, law-abiding people from the criminals whom it has pitted as the enemy. With respect to terrorism, we should not overlook the importance of community cooperation. It is no coincidence that the Bush government identifies truck drivers, cab drivers and parking meter attendants as high-priority potential informants (i.e. helpful in identifying bombers or suicide bombers) and, above all, the Muslim community, which can detect suspicious behavior.<sup>34</sup> Indeed, most of the American terrorists

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<sup>32</sup> See for example Mariano-Florentino Cuéllar: Choosing Anti-Terror Targets by National Origin and Race. *Harvard Latino Law Review*, Spring 2003; Leonard Baynes: Racial Profiling, September 11th and the Media. A Critical Race Theory Analysis. *Virginia Sports and Entertainment Law Journal*, Winter 2002. 12–13, and Deborah Ramirez – Jennifer Hoopes – Tara Lai Quinlan: Defining Racial Profiling in a Post-September 11 World. *American Criminal Law Review*, Summer, 2003. 1213.

<sup>33</sup> Consider the fact that the name of Yigal Amir, Yizchak Rabin's assassin would not have appeared in any kind of assassin profile; nor would the person who first blew up a commercial aircraft – she was a woman who wanted her husband dead in 1949. Gregory Nojeim: Aviation Security Profiling and Passengers' Civil Liberties. *Air and Space Lawyer*, Summer, 1998. 5.

<sup>34</sup> See for example Steven Brandl: Back to the future: The implications of September 11, 2001 on law enforcement practice and policy. *Ohio State Journal of Criminal Law*, Fall, 2003; Mark Osler: Capone and Bin Laden: The failure of government at the cusp of war and crime. *Baylor Law Review*, Spring 2003.

identified up until recently were caught based on information provided by community reports.

Having briefly highlighted some general questions relating to the ethnically discriminatory elements of “ordinary” and anti-terrorist policing and law enforcement practices, let us turn our attention to the case of Hungary.

#### *4. The Hungarian legal framework*

According to the Hungarian legal framework, the police have an extremely wide – almost indefinite – breadth for high-discretion stops; they have full discretion to perform routine control-checks on motorists and pedestrians. The police may stop anyone at any time and ask the questions it deems necessary.<sup>35</sup> The vacuous language of Article 29 of the Act on Police<sup>36</sup> gives full authorization to the police to stop and ask for the identification “anyone, whose identity needs to be established.” If the need arises – for example, because the individual is not willing to cooperate or her identity cannot be sufficiently established – she may be searched<sup>37</sup> and can be arrested<sup>38</sup> and held for eight hours; if the process has not been successful, the chief of the local police unit can prolong this period for an additional four hours. Should this (maximum 12 hour) arrest not be sufficient, another type of detention<sup>39</sup> (“public order detention”) may be ordered. Including the time spent under arrest, this may take as long as twenty-four hours. For these stop-and-search procedures, no suspicion is needed; no probable cause standards are set forth, and as demonstrated above, unsuccessful identification itself may result in a maximum of 24 hours in detention. Apart from arrests or detentions, the police are under no obligation to provide an explanation – the only exception being when the individual herself requests such information.<sup>40</sup> The Constitutional Court ruled on several challenges to these provisions<sup>41</sup> and has consistently dismissed petitioners’ claims, despite

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<sup>35</sup> Article 32. of the Police Act

<sup>36</sup> Act 34 of 1994.

<sup>37</sup> Article 29.

<sup>38</sup> Article 33.

<sup>39</sup> Article 38.

<sup>40</sup> Articles 29 and 33.

<sup>41</sup> Decisions No. 9/2004. and 65/2003

dissent that emphasizes the disproportionate length of the detention and the lack of motivation for speedy police procedures when detainees who are being held without having committed illegal offences are involved.

Another form of stop and search competences arises in the context of vehicle control. According to Article 44 of the Police Act, the police may at any time check the legality of vehicle operation and possession. The police may, therefore, randomly stop and check vehicle ownership documents, certificates for appropriate carbon-dioxide emission, motorway passes, etc. They may check the first-aid kit (a required accessory for all vehicles), the insurance contract leaflet of the vehicle, or the condition of the windshield wiper. Critics<sup>42</sup> have argued that these stops raise constitutional concerns because a significant part of this type of control is administrative and should not be performed by police forces. For instance, in the case of a company car, checking the authorization from the manager is not a matter of policing per se but rather serves social security, tax, and administrative purposes.

Police competence raises another problematic point: the issue of reasonable suspicion and standards of probable cause. According to the Act on Criminal Procedure,<sup>43</sup> probable cause is needed for the initiation of a criminal procedure; an arrest or the above mentioned “public order detention” does not qualify as such. As a result – apart from failure to possess proper identification – a “simple” suspicion (the probability of criminal offence not exceeding 50 percent) also suffices for these coercive measures.<sup>44</sup> Although legislators have never cared to explain the intended meaning of these standards, the Constitutional Court upheld the law<sup>45</sup> precisely because these measures do not amount to a criminal procedure and the detained, whose cooperation is crucial in these procedures, does not qualify as a defendant under criminal procedure regulations.

Another law enforcement agency worth considering is border control. In enumerating competences and coercive measures, the Act on Border Control Forces<sup>46</sup> gives almost identical authorization as that

<sup>42</sup> See for example, András L. Pap: “Street Police Corruption – A Post-communist State of the Art”, Kokkalis Program on Southeastern and East-Central Europe, Kennedy School of Government, Harvard University, [http://www.ksg.harvard.edu/kokkalis/GSW3/Andras\\_Laszo.pdf](http://www.ksg.harvard.edu/kokkalis/GSW3/Andras_Laszo.pdf)

<sup>43</sup> Act 19 of 1998.

<sup>44</sup> Article 33.

<sup>45</sup> Decision no. 65/2003

<sup>46</sup> Act 32 of 1997

given to the police forces. What makes this peculiar is that besides classical border guard competences, Articles 22 and 61 of the Act give a wide authorization to both the police and border control to supervise regulations set forth in the Act on Immigration and Alien Control.<sup>47</sup> Among other things, the latter law obliges aliens to carry at all times and upon request present their immigration and identification documents. Should an alien be unable to provide these, she can be arrested and held for 12 hours.<sup>48</sup> In order to check this and other provisions of alien law, police and border guard officers are authorized to enter private premises.<sup>49</sup>

Thus, these provisions establish a legal environment that enables, even requires law enforcement agents to stop and control persons with alien accents, appearance, etc.

## *II. – The Open Society Justice Initiative Racial Profiling Project in Bulgaria, Hungary and Spain*

This section discusses the results of an Open Society Justice Initiative study that, as part of a comparative research programme, explores the difference between minorities' and the majority's experiences with police stops and ID checks in Bulgaria, Hungary and Spain.<sup>50</sup> The research focused on the experiences of Roma minorities in all three countries, comparing their experiences with those of the majority populations. It asked the following questions: What social, demographic and

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<sup>47</sup> Act 39 of 2001

<sup>48</sup> Article 61 of the Act on Border Control and Border Guards.

<sup>49</sup> *Id.*

<sup>50</sup> All three of the countries participating in the study have transitioned from totalitarian governments to democracies in recent decades. The Roma population is probably greatest, proportionally, in Bulgaria where it amounts to between five and 10% of the population, followed by Hungary (6%) and Spain (about 1.5%). Available evidence indicates that Roma are among the most disadvantaged minority group across a wide variety of sectors within all three countries. For example, in Bulgaria 60–80% aged are permanently unemployed. In Hungary, unemployment rates at around 50–55%, with 22% dependent on social assistance. Of the three countries, Spain has had the greatest influx of new immigrants in recent years. In December, 2005 there were approximately 2.7 million foreign migrants with residency papers in Spain. See, "I Can Stop and Search Whoever I Want" – Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain, April 2007, OSI, 63.

policing characteristics underpin the practice of police stops in these countries? Are there differences in the experiences of stops across ethnic groups within studied countries? How can we explain differences in stop experience between ethnic groups? Is there evidence of ethnic profiling? Are police stop tactics effective? Is there evidence of ethnic/racial profiling in police stops? Is there evidence of disproportionality in police stops? Does this indicate patterns of institutional police racism? Is there evidence for other types of institutional racism in police stops? Overall, how helpful are British and US concepts to describe racialized patterns of police stops within the studied countries?

The study used a primarily qualitative approach including in-depth interviews with officers and focus groups with minority and majority communities. It was carried out in Bulgaria, Hungary and Spain during the second semester of 2005 and highlighted the perceptions of ethnicity, crime and policing that inform police practices, including the use of stops<sup>51</sup> and ID checks, legal standards, how police define “suspicion” and their perceptions of minorities and crime. While this approach did not generate quantitative evidence of profiling, it did provide crucial information on the perceptions and practices that underlie and permit police discrimination in street encounters, and it reinforces other regional work that strongly suggests that profiling is a prevalent practice by police across Europe. The aforementioned research tools were complemented by quantitative survey data in Bulgaria and Hungary that indicates disproportionate treatment of Roma by police in those countries.

The research involved local national research partners in each of the countries and focused on the experiences of Roma minorities in all three countries and new immigrant populations in Spain. The national partner in Bulgaria was the Center for the Study of Democracy, an interdisciplinary public policy institute; in Spain, the principle partner was Dani Wagman, a researcher and analyst with the Gea21 group; whereas in Hungary, the empirical data collection was done by TÁRKI and the research was led by Bori Simonovits and myself.<sup>52</sup>

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<sup>51</sup> Police stops were taken to include any police-initiated encounter in a public place. At its most basic, this involves being called to account by the police, but it may also involve requests to see personal identification or a search of the person stopped or their vehicle.

<sup>52</sup> The Open Society Justice Initiative has already sponsored racial profiling studies. One examined 15 randomly-selected metro stations in Moscow. The research

*a) Research Methodology*

Across the countries a number of methodological strategies were used, though not all countries used all strategies, and there were methodological differences between sites in the implementation of the same core strategies.

*aa) Qualitative interviews with police officers*

In all three of the study countries, interviews were carried out with police officers selected from a range of police settings, and probing questions were asked about operational practices and decision-making in relation to police stops.

In Bulgaria, these included 55 interviews spread across police patrol officers, heads of departments, criminal investigation officers, and “district” or neighbourhood police officers. In turn, they were drawn from eight different police districts spanning different types of geographic areas. In Hungary, 80 officers were interviewed, with deliberate effort made to vary characteristics including: age, length of service, educational level, and geographic area (across three different sites). The interviews encompassed various positions including both sergeants and patrol officers. In Spain, 61 interviews were conducted in a variety of police agencies: 18 National Police officers, 19 Civil Guards, 10 Catalan Police and 14 municipal police. Officers were selected according to different operational roles and included patrol officers, traffic police, customs officers, judicial police, detectives, sergeants and police chiefs.

*ab) Focus groups with members of the public*

Focus groups were also carried out in all study countries with members of the public in which questions were asked about perceptions of and experiences with police. In Bulgaria, three focus groups were conducted that focused exclusively on the Roma population – one in each

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used a variation of the standard benchmark methodology for such studies. They created a benchmark of minority (non-Slavic) individuals passing through each of the stations and compared it to the ethnic breakdown of actual police stops carried out at the same 15 stations at similar times of day. The results showed that ethnic minorities were on average 22 times more likely to be stopped than Slavs – a clear indication of ethnic profiling, and apparently, the most extreme measure of ethnic profiling ever recorded. See *Ethnic Profiling in the Moscow Metro*, OSI, 2006, [http://www.justiceinitiative.org/db/resource2?res\\_id=103244](http://www.justiceinitiative.org/db/resource2?res_id=103244)

of three geographic settings. In Hungary, six focus groups were carried out, with a Roma and non-Roma group in each of three geographic areas. In Spain, ten groups were conducted and were designed to capture significant variation according to ethnicity, age, gender, status (undocumented vs. resident permit) and location. There were two non-Roma Spanish groups, three Roma groups, one sub-Saharan African, one Latin-American, two Moroccan, and one mixed group of immigrants.

*ac) Qualitative interviews with people who have experienced stops*

To gain insight into the experiences and perceptions of people who have experienced police stops, in Hungary and Spain (though not Bulgaria) a series of interviews were carried out with samples of people who had had direct experiences. In Hungary, these included 10 Roma and 10 non-Roma and were spread across three research sites. In Spain, there were 13 interviews across the country, two of which were with Roma and nine of which were distributed across a range of immigrant groups.

*ad) National surveys*

In Bulgaria and Hungary (though not Spain), national door-to-door public surveys were carried out in which members of the public were asked about any experiences with police stops they may have had; they also were asked other attitude questions and important socioeconomic and lifestyle characteristics.

*b) Findings of the Project*

The research led to the following conclusions:

- There is evidence of ethnic profiling in each of the three study countries, though we cannot measure its extent.
- Evidence for institutional racism is most evident in the poorer treatment of migrant and ethnic minority populations during stops.
- Across all countries, reasons for suspicion described by police officers relied to some extent on instinctive and under-articulated notions of what makes a person suspicious. This further raises the possibility that ethnic stereotypes might come into play in the formation of suspicion.

- In each of the three countries, many Roma community members had little doubt that the police were carrying out ethnic-profiling. This was also true for new immigrants in Spain.
- Irrespective of other factors, Roma are substantially more likely to be stopped than non-Roma.
- Bulgarian and Hungarian data indicates that ethnic profiling is more a feature of pedestrian stops rather than in the far more numerous vehicle stops.
- Police stops, notably of vehicles, are often focused on routine identity checks rather than current crime problems.
- The number of police stops of drivers are higher in Bulgaria and Hungary than, for example, in England & Wales and the U.S. In fact, traffic stops are twice more common than in the US and notably higher than in England & Wales.<sup>53</sup>
- Another type of racialized policing we have identified is the concept of “underpolicing.” In Bulgaria, the only country where data is available, there is clear evidence of “under-stopping” in Roma-only neighborhoods
- Immigrants in Spain are probably subject to the most systematic form of ethnic-profiling.
- Roma, and new immigrants in Spain, are treated less respectfully during stops than majority populations.

Due to spatial constraints, I will limit my assessment to the findings of the Hungarian case-study.

### *c) Findings of the Hungarian research*

The Hungarian field research was conducted between September and November 2005. The study was comprised of four parts:

- A Questionnaire-based public opinion poll that targeted a representative group within the Hungarian population. The questions inquired about people’s experiences of stop-and-search methods and their attitudes towards the police.

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<sup>53</sup> See, “I Can Stop and Search Whoever I Want” – Police Stops of Ethnic Minorities in Bulgaria, Hungary and Spain, April 2007, OSI, 53.

- Six focus group discussions in Budapest, Miskolc and Pécs, with Roma and non-Roma regarding their perceptions and experiences of stop-and-search.
- 20 in-depth interviews in Budapest, Miskolc and Pécs, with Roma and non-Roma, who have experienced stop-and-search.
- 80 in-depth interviews in Budapest, Miskolc and Pécs, with police officers who have conducted stop-and-search.

The results of our research indicate that in Hungary the Roma are discriminated against in the context of stops and searches by the police, especially in the practice of stopping pedestrians.

*ca) The National Survey*

Based on a series of surveys conducted during September, 2005 in which 1000 participants were selected to represent the adult population in terms of age, sex, place of residence and level of education, the research results show that over the past year 23% of the Hungarian adult population was stopped by the police. Men are almost three times as likely as women to be stopped by officers. The overwhelming majority of those who have experienced stop-and-search over the past year were stopped as drivers during a vehicle check, 11 percent as pedestrians, only 2 percent at an entertainment venue, 1 percent at a sporting event, and 8 percent elsewhere. Those surveyed had a decidedly positive opinion about the stop-and-search practices of the police. 86 percent of those who experienced stop-and-search thought that the officers behaved politely; 90 percent thought that the officers' conduct was proper and professional.

Looking at the subgroups among those who were stopped, we see that ethnicity explains a great deal. Among those Roma respondents who were stopped over the past year, 57 percent were stopped in the street as pedestrians, at entertainment venues or some sort of event (a concert, for example). By contrast, among non-Roma respondents stopped over the past year, only 22 percent were stopped at such locations.

Our research shows that a decisive majority of the Hungarian adult population agrees that there should be more stops-and-searches at public places and would even support an increase in police control at such locations. 85–90 percent of those asked agree (somewhat or strongly) that there should be more frequent stops-and-searches by the police in public

places. These high proportions suggest that, for the most part, Hungarians do not consider police stop-and-search to be burdensome and that they are hoping that increases in stops would lead to improved public safety.

Almost half of those asked would support more stops-and-searches among the general population (45%). A somewhat higher proportion of participants agree that “suspicious” groups should be stopped and searched more frequently: 60 percent agree that those who look Roma should be stopped and searched more, 57 percent that those who look Arab should be stopped more, and 55 percent that young people be stopped and searched more often. Because the data are not significantly different for the two selected ethnic groups (Roma and Arab) and the neutral group (youth), we may infer that the Hungarian public does not support ethnic discrimination in stop-and-search practices, but it generally favours increased police control for various “suspicious” groups.

Six percent of respondents were Roma, and a vast majority of them disagreed with Roma individuals being stopped and searched more often. Among Roma respondents, 70 percent rejected the proposal to stop Roma more often while only 33 percent of the demographic majority did.

#### *cb) Focus group discussions*

Personal experiences reported by participants at the focus group discussions confirmed the finding that the majority of Roma are stopped as pedestrians in the street while non-Roma are characteristically stopped during vehicle checks. In all three Roma focus group discussions, there was unanimous agreement that officers select whom to stop and search based on ethnicity and that officers stop men more than women. Roma participants complained about the officers’ impolite behavior during these stops and objected to the indiscreet nature of them. They thought that excesses in officers’ behavior, even acts of physical violence, were not uncommon; however, they also saw little point in filing reports about the officers because their veracity would be doubted in the absence of evidence.

The results from Roma participants concur with our findings from the community survey: much like non-Roma participants, Roma respondents are generally dissatisfied with police presence and consider corruption a great problem. Even among the Roma, some voiced the

opinion that the Roma are partially responsible for the present situation because there are so many criminals among them.

Non-Roma participants – with a less personal involvement in stop-and-search – would address these issues much more calmly: they did not even mention the issue of police discrimination or excesses. Instead, they dealt more with the issue of corruption, the slow and ineffective administrative processes, the officers' lack of intelligence (which among Hungarians is a popular theme in police-jokes) and their unprofessional physical appearance. Among the three group sessions of non-Roma participants, there was unanimous agreement that stops by the police are mostly arbitrary and the main goal is “making money” to supplement the officers' incomes.

The Roma openly stated that the police liked to stop and search the Roma. By contrast, in non-Roma groups, the same tendency was worded much more cautiously and with a broader perspective. According to some of the non-Roma participants, the Roma are stopped more often while others thought that it was not expressly the Roma that were targeted for stops but rather people of lower socio-economic levels. They would express these points as follows: “those who drive worse, Eastern-manufactured, beat-up cars”; “suspicious/shady characters.”

The opinions and experiences of the Roma gave a clear indication that police stop-and-search practices are ethnically discriminative. In many respects, the non-Roma participants' opinions concurred. Apart from differences in perception and wording, the emotional charge detectable in the responses also showed differences among the Roma and non-Roma discussion groups.

In Roma participants' personal experiences with ID checks, the majority were involved in ID checks targeting pedestrians. By contrast, non-Roma were rarely stopped as pedestrians; “general traffic control checks” were much more prevalent. Despite the fact that those who were stopped while driving a car often reported excesses and being entangled in corruption, participants considered routine vehicle checks to be justifiable as a means of screening bad cars and drunk drivers.

### *cc) Qualitative interviews with police officers*

Interviews with police officers indicated that 83 percent of respondents thought that stop-and-search helped them in their work; the overwhelming majority approved stop-and-search (80 percent), thought it

was effective (63 percent) and justified (89 percent). Those who disagree somewhat or entirely with the existing regulations on stop-and-search procedures would like to widen the competences of the officer conducting the stop.

We included several questions in order to measure whether officers stopped some groups more than others. The first question inquired about respondents' assessment of their colleagues. According to the replies, 47 percent of the 80 respondents thought that some colleagues have a tendency to stop people belonging to certain groups more than others. Far fewer respondents had this opinion about themselves: 23 percent admitted to having such a tendency. In addition, only half of those who provided an answer to the previous question replied to this question.

Close to half of the respondents identified the groups specifically targeted by their colleagues. Out of the 37 participants who provided an answer, 26 mentioned the Roma; most of them cited reasons they considered to be objective (for example criminal lifestyle) and provided rational reasoning in favor of the practice.

When asked if the police stopped a disproportionate number of Roma, 92 percent gave a negative answer. When the same question was posed with respect to other ethnic groups that make up a smaller percentage of the Hungarian population (Arab, Chinese or black/African) as well as immigrants, the answers were even more extreme: in some cases, 100 percent of respondents thought that the number of stops involving individuals belonging to non-Roma minority groups was not at all disproportionate.

According to officers' estimates, 177 out of 1000 ID checks results in an arrest and charge. If the person checked is Roma, then – according to the officers' estimates – the likelihood of an arrest is 1.5 times higher: on average, 260 cases out of 1000. These numbers are even more astounding if we break them down by police division: in the public order division, every third Roma person checked is arrested and/or charged, and the chances of an arrest is still 1.5 times higher than in the case of someone with non-Roma origin. With respect to the traffic control division, someone of Roma origin stands an equal chance of being arrested and/or charged compared to others. With respect to other minority groups, officers estimated the ratio of arrests and ID checks to be strikingly lower; the majority of officers did not think that people from these groups committed more crime than Hungarians did.

Linking criminal behavior and ethnicity is more prevalent in the Roma case than in the case of any other ethnic group: 79 percent of officers asked thought that Roma commit more crime than non-Roma Hungarians do. According to 73 percent, the ratio of offenders within the Roma population is significantly higher than among others from the same socio-economic level.

The questionnaire included only a handful of the assessment methods to measure prejudice that are commonly implemented and frequently referenced in the literature. For example, we asked what the police in present-day Hungary believed the ratio of the Roma and various immigrant ethnic groups within the population to be. Estimates about the Roma population proffered stunning results: on average, officers estimate Roma, the largest ethnic group within Hungary, to comprise 21 percent of the Hungarian population; Roma actually comprise a mere 6%. Most respondents marked 10, 15 or 20 percent, but 30 percent of them guessed the Roma population to be 30 percent or higher.

The ratio of immigrants in Hungary was likewise overestimated: half of the officers asked thought that the Arab population was over one percent, and they believed the same about the black/African population. On average, officers estimated the Chinese population at five percent and with two-thirds of respondents marked their estimates at five percent or higher. In fact, immigrants are only about 1.5 percent of the Hungarian population, and approximately two-thirds are ethnic Hungarians coming from neighboring states. One-fifth of respondents were of the opinion that Roma have a negative attitude towards the police because they are more frequent targets of police procedures.

*cd) Qualitative interviews with people who have experienced stops*

Interviews conducted with twenty participants who have personally experienced stop-and-search (seven Roma, seventeen non-Roma) confirmed that, in general, the population is in favor of “law and order” and police presence. Moreover, this opinion remains intact even if the ethnic origin (or some other characteristic) of the individual makes him/her a likely subject of discrimination. The dominant opinion about the motive behind stop-and-search is that stops are mostly based on random, arbitrary principles of selection. Some respondents suspect an expressly ethnic motivation or the potential for a successful bribe behind the

selection. Based on participants' responses about the aim of stop-and-search, we found that respondents did not perceive a difference among procedures related to general control, prevention or criminal investigation. When respondents were asked if they thought there was a difference between vehicle checks and stopping and searching pedestrians in the street, the majority thought that "suspicious" individuals are mostly stopped in the latter case. Several respondents thought that officers are more polite during vehicle checks.

With respect to the question "Are some people stopped more often than others?" all but one of the Roma respondents maintained that the Roma are stopped more often. In general, the majority of respondents – regardless of their ethnicity – were of the opinion that the Roma are a highly affected group when it comes to stop-and-search. The vast majority of respondents thought that selection is based on some characteristic or personality trait (which could be Roma origin or some other, ethnically neutral circumstance) that the police presuppose to be linked with the likelihood of criminal involvement. Twenty percent of these respondents considered this presumed link between Roma origin and criminal behavior to be prejudicial, but a significant proportion of respondents expressly approved this procedure for selecting whom to stop (based primarily on ethnicity). This is because they perceived a rational link between the basis for selection and the actual likelihood of criminal behavior. Among non-Roma respondents who were on the whole satisfied with how the police perform their duties (and would even broaden police presence), they believed that loss of time for stops is the greatest problem. By contrast, several Roma respondents objected to the discriminatory motivation – be it ethnic or other – behind stop-and-search practices.

In the light of the above, it is not at all surprising that when asked about how respondents would alter the present practice for conducting stops and searches, the majority did not reply or expressly approved of the present practice. The overwhelming majority of respondents considers the current legislation (or what they believe to be the current legislation) satisfactory, and only among Roma participants did we find some that rejected the present practice because of its discrimination against them.

Based on the replies to our question pertaining to the legal conditions for an officer to perform a stop, we found that only about one-fifth of the respondents had substantive knowledge about the applicable law.

*Closing remarks*

When talking about ethnic bias and discrimination in the criminal justice system, our scrutiny should ideally address all of the following: stops and searches, detainment, arrest, criminal procedure, charging, sentencing, disparity in police brutality, access to counsel, law enforcement, public employment, ineffective legal remedies, expulsion and immigrant treatment, and the designation of terrorist organizations. In Hungary, even discussions of ethnic-profiling are a rare and novel phenomena. Without a doubt, there is need for both a constitutional scrutiny of the legal framework as well as an empirical analysis of law enforcement practices. Even on the basis of our rather limited research, we can identify a range of improvements that could have a number of benefits that affect all sections of the population and the police. For example, police stop-and-search powers should be reviewed in order to limit the high-discretion stops and clarify the threshold of suspicion. Also, guidelines that explicitly prohibit the use of ethnicity as a factor in deciding who to stop should be adopted. Furthermore, police supervisors should be required (and provided training to) routinely review officers' use of stops, and as a prerequisite, mechanisms need to be developed to monitor stops. In addition, it would be advisable to develop a system to address complaints arising from stop-and-search and other police activities. This should involve representatives who are external to police and government. Also, an information campaign should be undertaken to develop public awareness of legal regulations and citizen's rights related to stop-and-search procedures. During stops people could also be given (either orally or in written form) information about their rights and how to address a complaint if they feel that those rights have been violated. But most of all, information should be disseminated on the fact that, despite its superficial appeal, ethnic-profiling is not an efficient policy. Discrimination is not a recipe for safety and security.

TIBOR TORÓ

## Defining the Concepts “Nation” and “National Minority”

### *Concurrent Debates and Perceptions*

**T**he “nation” is a much debated concept on several levels. Although the priorities of the political, legal and academic debates are different, the outcome of each of them is almost identical: there is no clear and universally accepted definition of the “nation.” Correspondingly, the definition of “national minorities” has a similar fate; concurrent definitions and perceptions circulate in the political and academic arenas without any consensus or compromise from the actors involved.

In my paper, I analyze two documents adopted by the Parliamentary Assembly of the Council of Europe (PACE) – Resolution 1335(2003) *Preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighboring Countries (“Magyars”) of 19 June 2001* and Recommendation 1735(2006) *The concept of “nation.”*

Beyond the documents’ implications for the political and legal definitions of the “nation” and “national minority”, an analysis of the two documents can provide the reader partial insight on how European institutions approach controversial topics such as this one.

My analysis is structured in the following way. First, I focus on the texts themselves and the parliamentary debates that they generated, emphasizing the most important differences between the two. Second, I contextualize the texts and disputes by connecting them to the existing political debate between those who favor the promotion of generic

minority right and those who prefer targeted ones. Finally, I show a few important implications of Recommendation 1735 and argue that in a specific context the documents and the principles that they serve can, despite their obvious divergence, mutually enforce each other.

### *Resolution 1335(2003)*<sup>1</sup>

Resolution 1335 was one of the documents that were adopted by the different European institutions as a response to the Hungarian Status Law, which was issued in 2001 and amended in 2003. The Status Law's main aim was to

ensure that Hungarians living in neighboring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country.<sup>2</sup>

The intervention of the Venice Commission and Council of Europe was possible after Romania and Slovakia, two countries neighboring Hungary that have large Hungarian minorities, criticized the law.

The resolution focuses on the Hungarian Status Law and the role of kin-states in the protection of their kin-minorities in neighboring states. It mostly reiterates the Venice Commission's decisions that 1) minority protection is the home-state's responsibility, 2) kin-state intervention is welcomed, but it should not act unilaterally and should occur only within the boundaries set by international norms, 3) it should focus on cultural, educational fields and 4) it must respect the territorial sovereignty of other states.<sup>3</sup> However, beyond these decisions, the resolution provides important arguments for defining "nation" and "national minority" as well. Most importantly it states that "*up until now there is no common European legal definition of the concept of 'nation'*" (Article 10). Con-

<sup>1</sup> Resolution 1335(2003): <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta03/ERES1335.htm>.

<sup>2</sup> The quote can be found in the Preamble of the Act LXII of 2001 on Hungarians Living in Neighboring States (Hungarian Status Law). However, this part was removed from the amended version of the law. [http://src-h.slav.hokudai.ac.jp/coe21/publish/no4\\_ses/documents497\\_528.pdf](http://src-h.slav.hokudai.ac.jp/coe21/publish/no4_ses/documents497_528.pdf)

<sup>3</sup> The Report of the Venice Commission: [http://www.kbdesign.sk/cla/projects/comparative\\_statuslaw/related/velencei\\_bizottsag.htm](http://www.kbdesign.sk/cla/projects/comparative_statuslaw/related/velencei_bizottsag.htm).

trariwise, the Explanatory Memorandum<sup>4</sup> that was submitted to the Parliamentary Assembly demonstrates that the rapporteur clearly favored the civic as opposed to the ethnic understanding of “nation.” He labeled the ethnic/cultural meaning of the term as “old,” and indicated that

Historically the word was used to denote groups of which the members identify themselves as culturally, ethnically or linguistically as belonging to that group. (Article 5)

On the other hand, Mr. Jürgens denoted the civic understanding of nation as a new meaning in which nation coincides with the state. Moreover, in his explanation of the “nation” (Articles 19–29), he argued that

The Council of Europe, and public international law in general, is based on the concept of “state” and “citizenship”. This leaves no room for the concept of “nation”. (Article 22)

Thus, in his reading, the legal use of the “national” concept as such is erroneous. Following these ideas, the rapporteur made an arbitrary distinction between the Hungarians – as citizens of Hungary – and Magyars – Hungarians from the neighboring states.<sup>5</sup> As Zoltán Kántor cleverly points out, this distinction does not exist in the Hungarian language; thus, the distinction is only possible when someone is exclusively employing the political understanding of the concept.<sup>6</sup> Consequently, Jürgens questions the terminology related to national minorities as well. He argues that by utilizing the “cultural/ethnic” nation,

claims are made on the citizens of other states by virtually “enrolling” them as members of that “nation” which the kin-state seeks to bring together and to represent, this nation-concept which is too strong could endanger the traditions of the Council of Europe (Article 22)

Moreover, he states that it challenges the “‘modern’ principles of both territoriality and citizenship.”<sup>7</sup> Therefore, there is a clear discrepancy

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<sup>4</sup> The Explanatory Memorandum of Resolution 1335: <http://assembly.coe.int/Documents/WorkingDocs/doc03/EDOC9744.htm>.

<sup>5</sup> Resolution 1335(2003) Explanatory Memorandum (Article 1)

<sup>6</sup> Kántor Zoltán: The Recommendation on the Concept “Nation” of the PACE. *Regio*, Vol. 9, 2006. 91.

<sup>7</sup> Resolution 1335(2003) Explanatory Memorandum (Article 25)

between the adopted resolution and the explanatory memorandum. By stating that there is no clear definition of the concept, the former takes a neutral stance in regards to the question of definition; the latter reinforces the bad ethnic/cultural nationalism vs. good civic/political nationalism dichotomy.<sup>8</sup> This was highlighted by Mr. Jürgens in his speech to PACE<sup>9</sup> as well. He argued that the concept of nation, and nationality “*as they are used in constitutions and legal documents in Europe [in] western Europe especially... [a] nation is the same as a state.*”

In conclusion, in Resolution 1335 the “nation” is used strictly in the political/civic sense and does not apply any other definition. Moreover, the rapporteur criticized the use of the concept – both the political and ethnic – in legal documents and in reference to minorities as well.

#### *Recommendation 1735(2006)*<sup>10</sup>

In order to clarify the ambiguity surrounding the concept of the “nation” as it was introduced by Resolution 1335(2003), a new document with two declared aims was created. Its goals were 1) to clarify the terminology utilized in the concept of nation and 2) “whether, and how, this concept “can help to address the question of national minorities and their rights in 21st-century Europe.”<sup>11</sup> However, a third personal aim could be suspected: an attempt to enforce a new definition instead of the one promoted by Mr. Jürgens and Resolution 1335(2003). Two arguments point toward this possibility: first, Recommendation 1735 refers to the abovementioned resolution and its definition of the concept

<sup>8</sup> In the academic arena, several scholars pointed out that the use of the dichotomy is erroneous. In several places, Rogers Brubaker demonstrates the fallacy of such an argument Rogers Brubaker: *Myths and Misconceptions in the Study of Nationalism*. In Hall, John A. (ed.) *The State of the Nation: Ernest Gellner and the Theory of Nationalism*. Cambridge University Press, 272–305. and Rogers Brubaker: *The Manichean Myth: Rethinking the Distinction Between Civic and Ethnic Nationalism*. In Hanspeter Kriesi and others (eds): *Nation and National Identity. The European Experience in Perspective*. Zürich: Rüegger, 1999. 55–71.

<sup>9</sup> The minutes of the PACE Ordinary Session 20<sup>th</sup> sitting on 2003 June 25<sup>th</sup> <http://assembly.coe.int/Main.asp?link=/Documents/Records/2003/E/0306251000E.htm>.

<sup>10</sup> Recommendation 1735(2006): <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/EREC1735.htm>.

<sup>11</sup> See Explanatory Memorandum of Recommendation 1735(2006) on the Concept of “nation”: <http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10762.htm>.

“nation” several times; second, the political power of this recommendation is greater than that of a resolution.<sup>12</sup> This third aim is underscored by the rapporteur’s status, György Frunda. According to this, he can be considered the political delegate of both the Hungarian minority from Romania and the Romanian state. This is important because the civic definition promoted by Mr. Jürgens in the Resolution 1335(2003) would make this kind of duality impossible.

The documents’ authors used the following method: the committee led by rapporteur György Frunda, conducted an inquiry in 35 states pertaining to each state’s constitutional treatment of the concept of “nation”, the relation that they foster with their kin-minorities living abroad, the existence and status of national minorities, and the situation (ratification, signing) of several European minority protection norms.

Having said this, one can identify several important issues upon which the recommendation touches. First and foremost, it states that both conceptions of “nation” – the civic/political and the ethnic/cultural one – coexist and have historically existed simultaneously in the European political realm.

The Assembly has acknowledged that in *some Council of Europe member states*, the concept of nation is *used to indicate citizenship*, which is a legal link (relation) between a state and an individual, irrespective of the latter’s ethno-cultural origin, while *in some other member states* the same term is used in order to *indicate an organic community speaking a certain language and characterized by a set of similar cultural and historic traditions*, by similar perceptions of its past, similar aspirations for its present and similar visions of its future. *In some member states both understandings are used simultaneously* to indicate citizenship and national (ethno-cultural) origin respectively. To this end, the term “nation” is sometimes used with a double meaning and at other times two different words are used to express each of those meanings. (Article 5; *with italics my emphasis*)

The rapporteur argues that there is no single common definition of the concept. Rather, and there are five different legal uses of the term

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<sup>12</sup> According to the Resolution 1202(1999) on the Rules of Procedure of the Assembly, a recommendation is adopted with a majority of two-thirds, whereas a resolution has a simple majority. [http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/RulesofProcedure/2006/APCERules\\_I.pdf](http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/RulesofProcedure/2006/APCERules_I.pdf).

that range from the pure civic to the pure ethnic one in European constitutions.<sup>13</sup>

A second important outcome refers to the relationship between the two conceptions. The recommendation states that

The Assembly also notes that because of the way in which the nation-states were formed during the 19<sup>th</sup> century and the first part of the 20<sup>th</sup> century, as well as because of nation-states' border changes at the end of the Second World War and of the Cold War, on the territories of *almost all the Council of Europe member states there live various groups of people who are at the same time citizens of the same state or civic nation, but who belong to and are part of different cultural nations*. As compared with the biggest group of citizens having the same ethno-cultural background, those groups, who are relatively smaller, constitute and are called national minorities. (Article 8; *with italics my emphasizes*)

Thus, the borders of civic nations and ethnic nations do not always coincide. As affirmed in the report presented to PACE, moreover, these facts indicate that there is no need for a new all-comprehensive definition but that “the transversality of the nation across boundaries” should be acknowledged.<sup>14</sup> However, this article has two important conclusions. On one hand, it legitimizes states' pursuits of different kin-state policies that are in accordance with existent European norms regarding cooperation between states.<sup>15</sup> On the other hand, it defines the concept of “national minority” as groups who are members of one civic nation but belong to another cultural nation and who are smaller in number than “the biggest group of citizens having the same ethno-cultural background.”

A third result of the recommendation is pertains to national minority protection. The document points out several practices that are beneficial for states to follow, such as granting territorial autonomy and special status to national minorities (Article 14). Moreover, it invites states

<sup>13</sup> For more on the five legal uses, see in the Explanatory Memorandum of Recommendation 1735(2006), article 28–52

<sup>14</sup> Explanatory Memorandum of Recommendation 1735(2006), Article 103

<sup>15</sup> These are the same as laid down in Resolution 1335 and the conclusions of the Venice Commission. However, Recommendation 1735 goes further than the other two documents by recommending to the Committee of Ministers of the Council of Europe to develop further norms in the question of kin-state – kin-minority cooperation.

to sign and ratify several European documents on minority protection, such as the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the European Charter of Local Self-government (Article 16/1).

In conclusion, Recommendation 1735 not only defines the concept of "nation" differently, but it also provides a definition for "national minorities" as well. Furthermore, it proposed some welcomed practices for states' when dealing with these groups.

### *A broader context*

Comparing both of the aforementioned documents' definitions, there are clear differences in principles between the chosen conceptions on "nation." On one hand, Mr. Jürgens argued that there is no need for the concept as such in international law and that it can be substituted with "citizenship" and "state." On the other hand, Mr. Frunda stated that the value of the concept lies in its ability to describe the two different understandings of "nation" that are used by states in their constitutive documents. Similarly, while Resolution 1335(2003) argued against the differentiation between national minorities and other minorities, Recommendation 1735(2006) defined the term and made a clear distinction between national and other minorities.<sup>16</sup>

Considering the documents from this perspective, the two can clearly be framed by a larger debate: the discussion about minority protection between those who favor generic minority protection norms and those who militate for targeted minority norms. As Will Kymlicka argues, when international organizations formulated minimal standards, they first adopted generic minority protection norms; then, in the 1990s, these organizations attempted to formulate different standards for every minority category.<sup>17</sup> The idea behind this distinction was that the former would ensure protection for a broad category of people; the latter

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<sup>16</sup> One of the main arguments for this distinction is delivered by Mr. Frunda in a parliamentary debate on the question. He argued that there is a clear difference not only in the formation but the needs of national minorities from other minority groups, such as immigrants. (PACE, 26<sup>th</sup> January 2006, Ordinary Session, 7<sup>th</sup> sitting – <http://assembly.coe.int/Main.asp?link=/Documents/Records/2006/E/0601261500E.htm>).

<sup>17</sup> Will Kymlicka: *The Global Diffusion of Multiculturalism and Minority Rights*. Forthcoming at Oxford University Press, 179–182.

assesses more personalized rights for their needs and would restrict the groups that could benefit from the protection. The best example of the first set of norms is Article 27 of the *International Covenant on Civil and Political Rights* that pronounces the “right to enjoy one’s culture.”<sup>18</sup> There are several examples of second set of norms as well: the International Labour Organization *Convention Indigenous and Tribal Peoples* (1989), the United Nations’ *Draft Declaration on the Rights of Indigenous Peoples* (1993) or the *European Framework Convention for the Protection of National Minorities*. This last document is crucial in framing the two aforementioned documents within a larger debate.

Despite the fact that is created as a targeted norm for the national minorities, María Estébanez and Kinga Gál importantly note in an ECMI Report on the implementation of the Framework Convention that the document does not clearly define a target group.<sup>19</sup> Thus, the target group may be continuously debated. Some voices argue that the Framework convention should be broadened to include other minority groups;<sup>20</sup> others emphasize the need for a clear definition or, at least, for a list of eligible groups that is constantly revised and updated.<sup>21</sup> Another important aspect of the Framework Convention is that it makes no reference to territorial autonomy or internal self-determination of minority groups. Thus, as Kymlicka argues, the convention does not go much further than the aforementioned Article 27, yet it is still formulated in a targeted way.<sup>22</sup> Additionally, the Advisory Committee that monitors the implementation of the Framework Convention commanded a shift toward a broader definition of “national minority.” For example, the first opinion adopted in Albania clearly demonstrates this shift:

The Advisory Committee encourages the Government, [...] to re-examine the question of the designation of the Roma and Aromanians / Vlachs as linguistic minorities, as opposed to national minorities, ensuring at the

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<sup>18</sup> Kymlicka, 179.

<sup>19</sup> María Amor Estébanez and Gál Kinga: *Implementing the Framework Convention for the Protection of National Minorities*. European Centre for Minority Issues, Report 3/1999. 18.

<sup>20</sup> Carmen Thiele: Citizenship as a Requirement for Minorities. *European Human Rights Law Review*, Nr. 3, 2005. 281.

<sup>21</sup> Estébanez and Gál, 20–22.

<sup>22</sup> Kymlicka, 145–146.

same time that this distinction has no impact on the application of the Framework Convention to these communities.<sup>23</sup>

As Thiele observes, the Committee argues in other cases that the parties should “consider the inclusion of additional persons belonging to minorities, in particular non-citizens.”<sup>24</sup> The term “non-citizens” clearly refers to the inclusion of large immigrant groups that are present in many Western European countries.

However, this discursive shift can be measured not only by the Advisory Committee’s opinions but within the Council of Europe and the Organization for Security and Cooperation in Europe as well. As Kymlicka puts it, “[t]he main strategy for broadening the class of eligible groups is to simply redefine the term ‘national minorities’ so that it becomes essentially an umbrella term for all ethno-cultural groups.”<sup>25</sup>

Having said this, it is clear that the difference between the two documents is embedded within a broader debate. On one hand, the rulings of Resolution 1335(2003) is in accordance with the dominant pro-generic rights discourse and supports broadening the eligible categories included in the Framework Convention in Europe. On the other hand, Recommendation 1735(2006) defines and reinforces the traditional understanding of national minorities. Furthermore, it attempts to redirect attention to the importance of differentiating between categories of minorities.

The clash between the two different perceptions can be clearly traced in the parliamentary debate on the adoption of Recommendation 1735(2006). Two of the speakers argued that although the definition of the concept of “nation” is important – being the “renovating concept of modern Europe”<sup>26</sup> – differentiating between minority groups is dangerous. In their reading,

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<sup>23</sup> See the Opinion of the Advisory Committee: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/4\\_opinions\\_of\\_the\\_advisory\\_committee/1\\_country\\_specific\\_opinions/1\\_first\\_cycle/PDF\\_1st\\_OP\\_Albania.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/1_first_cycle/PDF_1st_OP_Albania.pdf)

<sup>24</sup> CEAC Opinion on Estonia, in Thiele, 282.

<sup>25</sup> Kymlicka, 149.

<sup>26</sup> PACE 26<sup>th</sup> January 2006, Ordinary Session, 7<sup>th</sup> sitting

[The] Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages [...] formed a social contract between all member nations to respect different cultures as equal [...] It would not be acceptable to grant rights to one ethnic minority and not another. (PACE 26<sup>th</sup> January 2006, Ordinary Session, 7<sup>th</sup> sitting)

These voices clearly represent the dominant idea that the categories included in the Framework Convention should be broadened. On the other hand, Mr. Frunda clearly separates traditional minorities from immigrants on two accounts: first, the historical injustices and changes, which also represent the core of the definition adopted by the recommendation; second, the different motifs and aims of these groups. As he puts it, immigrants “come to our country because they are poor and hope to have a better life and a better standard of living,” while national minorities should “have the right to speak their own language, [and] that is the tolerant approach that we should take.”<sup>27</sup>

#### *Implications of Recommendation 1735(2006)*<sup>28</sup>

Before analyzing the main implications and effects of the two documents issued by PACE, an important observation should be made. To many, the adoption of two seemingly contradictory documents opens questions pertaining to how European institutions function. However, when the apparent currents with minority protection debates are taken into consideration, the adoption of the two documents as a part of this struggle becomes apparent. And, as evidenced by the previous chapter, the appointed rapporteurs possess a high degree of autonomy when preparing these documents for adoption. Therefore, despite the current power relations between the two abovementioned sides, both voices – militating for generic or targeted rights – could push through resolutions and recommendations in the name of PACE.

As for the two documents’ implications, the aims of Resolution 1335(2003) were to issue an opinion on the Hungarian Status Law, and

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<sup>27</sup> idem

<sup>28</sup> I do not measure the impact of Resolution 1335(2003) because, first and foremost, the main purpose of its adoption was to release an opinion on the Hungarian Status Law. Moreover, Mr. Jürgens conception of the “nation” and “national minority” is an outcome of general trends in European organizations.

in the question of the concept “nation,” the chosen voice represents a shift among European organizations in regards to minority protection and the definition of target groups in the Framework Convention. Following this logic, then, Recommendation 1735(2006) is positioned against the current notions.

In order to measure Recommendation 1735's impact, two important factors must be taken into consideration: time and reference. Regarding the issue of time, I believe that the past two years has not generated enough distance to measure the one single document's possible impact.<sup>29</sup> The other factor, the number of references to this recommendation at the level of PACE, can highlight different actors' dissimulation or real support of Mr. Frunda's ideas.

On the level of PACE, there are three references to Recommendation 1735(2006). A first reference is issued by the Committee of Ministers. Under the internal regulations of the Council of Europe, the Committee of Ministers must take action on every Parliamentary recommendation.<sup>30</sup> Thus, the recommendation was forwarded to each and every government and to several international bodies such as the following: the *Advisory Committee on the Framework Convention for the Protection of National Minorities*, the *Committee of Experts on Issues relating to the Protection of the National Minorities*, the *Committee of Experts for the European Charter for Regional or Minority Languages*, the *European Committee on Legal Co-operation* and the *Venice Commission*. Moreover, they scheduled the preparation of a draft reply for adoption.<sup>31</sup>

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<sup>29</sup> This argument can be supported by the empirical observation of the time elapsed between issued documents and the response to them. Two important examples are mentioned in this paper as well: 1) Resolution 1335(2003), the PACE response to the Hungarian Status Law is adopted after two years, and 2) Recommendation 1735(2006), a clarification to Resolution 1335(2003) is finalized and presented to PACE after two and a half years.

<sup>30</sup> See the decisions of the Committee of Ministers: <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc11090.htm>.

<sup>31</sup> At this point, I could not find any opinions issued by the international bodies mentioned above in this question. The only reference to the document can be found in a report issued by the European Committee on Legal Co-operation, which “took note of Parliamentary Assembly Recommendation 1735 (2006) on the concept of “nation”” (Report of the 75<sup>th</sup> Bureau Meeting – [http://www.coe.int/t/e/legal\\_affairs/legal\\_co%2Doperation/steering\\_committees/cdcj/documents/2006/CDCJ\\_BU\\_2006\\_12e.pdf](http://www.coe.int/t/e/legal_affairs/legal_co%2Doperation/steering_committees/cdcj/documents/2006/CDCJ_BU_2006_12e.pdf))

A second reference can be found in the Explanatory Memorandum of Recommendation 1770(2006) pertaining to the promotion of local self-government along Council of Europe borders.<sup>32</sup> The recommendation emphasizes the importance of local self-governments as institutions that can more adequately ensure the principles of democracy for those living on their respective territories. In this context, the findings of Recommendation 1735(2006) represent the basis for the legitimization of the claim of “any people to regard itself as a nation and consequently wish to manage its own affairs.”<sup>33</sup>

The last reference is linked to the situation of the Russian minority in Latvia. In the Explanatory Memorandum of Recommendation 1772(2006) on the rights of national minorities in Latvia,<sup>34</sup> the recommendation for the concept of “nation” is the basis for the recognition of the Russian minority in Latvia as a “national minority”. Furthermore, it references Russia as a possible kin-state that has “no more right than any other state to support the effort dedicated to the preservation and consolidation of the cultural identity of the Russian community in Latvia.”<sup>35</sup>

### *Conclusions*

The main implication of Recommendation 1735(2006) is that it introduced both the ethnic and civic conceptions of “nation” into legal circulation. Moreover, it clearly defined “national minorities” as groups who are member of one civic nation yet belong to another cultural nation and are smaller in number than “the biggest group of citizens having the same ethno-cultural background.” This represents a huge difference to the definitions promoted by Resolution 1335(2003), which are critical of the use of “nation” and “national minority” in international legal documents as such.

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<sup>32</sup> The recommendation can be found on <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/erec1770.htm>, while its Explanatory Memorandum is at <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc11009.htm>.

<sup>33</sup> Explanatory Memorandum of Recommendation 1770

<sup>34</sup> See the recommendation: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/erec1772.htm>, the Explanatory Memorandum: <http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc06/edoc11094.htm>.

<sup>35</sup> Explanatory Memorandum of Recommendation 1772

As a second step in this paper, I tried to contextualize the primary differences in a broader debate. Namely, I attempted to situate the debate on minority rights between those who try to promote the formulation of generic right, which are “right to enjoy one’s culture” style rights, and those who militate for targeted rights, which are personalized to the needs of the concerned groups. In this debate, those voices that argue against the concepts of “nation” and “national minority” are arguing – directly or indirectly – for generic rights, while those who take a traditional approach to national minorities belong to the latter group. An important aspect of the “generic vs. targeted rights” debate is the focus on the interpretation of the usage of the term “national minority” in the European Framework Convention for the Protection of National Minorities. The document was intended for the protection of traditional minorities but did not provide a clear definition of the concept. Additionally, its spirit is similar to the spirit of Article 27 of the *International Covenant on Civil and Political Rights*, which stipulates a generic right. Therefore, the generic vs. targeted debate is developed around the interpretation of the concept “national minorities.” In this concept, the aim of Recommendation 1735(2006) is to reinforce the traditional definition of national minorities while concurrently diminishing the possibilities for the new inclusive interpretation.

As I shown above, many scholars have argued that there is a clear and observable shift toward the inclusive understanding of national minorities. Thus, Recommendation 1735(2006) was adopted as a means to protect against the obvious current. Neither the logic, nor the outcome of this decision can be measured at this point; the past year and a half is too short a period to do so. However, one implication can be stated. There are situations where the two apparently contradictory views reinforce each other. The most important being the question of Russian minorities in post-Soviet states. In this case, both the definition provided by Recommendation 1735(2006) and the more inclusive understanding of “national minorities” demonstrate that these Russian groups can and must be included in the national minority category.

As can be concluded, there have not yet been many important changes generated by Recommendation 1735 (2006). However, this recommendation it could be an important cornerstone for minority protection, even though its adoption can be considered somewhat surprising. Moreover, it is too early to pronounce its exact implications. The only viable conclusion

that can be drawn at this moment is that the recommendation is most beneficial when its usage is in accordance with the “inclusionist” aim.

### List of legal documents

- Advisory Committee on The Framework Convention for the Protection of National Minorities, *Opinion on Albania*, ACFC/INF/OP/I(2003)004
- Committee of Ministers of the Council of Europe, Review of action taken by the Committee of Ministers on Parliamentary Assembly Recommendations, CM(2006)149, 2006, 12<sup>th</sup> of October
- Explanatory Memorandum of PACE Resolution 1335(2003) on the *Preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighboring Countries (“Magyars”) of 19 June 2001*
- Explanatory Memorandum of PACE Recommendation 1735(2006) on *The concept of “nation”*
- Explanatory Memorandum of PACE Recommendation 1772(2006) on *The rights of national minorities in Latvia*
- Explanatory Memorandum of PACE Recommendation 1770(2006) on *The promotion of local self-government along Council of Europe borders*
- Hungarian Act LXII of 2001 on Hungarians Living in Neighboring States (Hungarian Status Law)
- Minutes of PACE Ordinary Session, 20<sup>th</sup> sitting, 2003, 25<sup>th</sup> of June
- Minutes of PACE Ordinary Session, 7<sup>th</sup> sitting, 2006, 26<sup>th</sup> of January
- PACE Recommendation 1735(2006) on *The concept of “nation”*
- PACE Recommendation 1772(2006) on *The rights of national minorities in Latvia*
- PACE Recommendation 1770(2006) on *The promotion of local self-government along Council of Europe borders*
- PACE Resolution 1202(1999) on the *Rules of Procedure of the Assembly*
- PACE Resolution 1335(2003) on the *Preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighboring Countries (“Magyars”) of 19 June 2001*.
- European Committee on Legal Co-operation, Report of the 75<sup>th</sup> Bureau Meeting, 2006, 10<sup>th</sup> of February
- Venice Commission, REPORT on the *Preferential Treatment of National Minorities by their Kin-State*, 2001, 19–20 October

R. CHRIS DAVIS

## Restocking the Ethnic Homeland: Ideological and Strategic Motives behind Hungary’s “Hazatelepítés” Schemes during WWII (and the Unintended Consequences)\*

**B**y the early 1940s in Hungary and Transilvania, some influential members within the Hungarian government, the Catholic and Reform Churches, and secular institutions began advocating for the “*hazatelepítés*” – the resettlement “home” – of the Székelys of Bukovina and the Moldavian Csángós into the territory of Hungary. This was not merely the issuance of repatriation papers. Rather, it was a systematic attempt to relocate thousands of Hungarian-speaking Catholic and Protestant villagers from Greater Romania, induced by promises of reallocated property within southern Hungary and financial assistance from the Hungarian government. In addition, an appeal was made to their sense of Hungarian national consciousness – and where this national consciousness did not already exist, especially in the case of the Moldavian Csángós, an attempt was made to cultivate it.

Both Romanian and Hungarian historians have dealt with this issue of population resettlements. Detailed work in the Hungarian archives

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and publications on the subject have previously been made by Gábor Vincze and Enikő Sajti.<sup>1</sup> On the Romanian side, Viorel Achim has done a great deal of work on the population-transfer schemes proposed by Sabin Manuilă.<sup>2</sup> In addition, Meinolf Arens and Daniel Bein have made valuable contributions to the topic, outlining German involvement in relocating the Moldavian Csángós and more broadly discussing the Csángós in the context of nationalizing and modernizing processes in twentieth-century Europe.<sup>3</sup> This paper will build upon the work of Vincze, Sajti, Arens and Bein, et al.<sup>4</sup> and make new assertions in light of other, unpublished archival material from both Hungary and Romania. Moreover, I will take a more in-depth look at the political and ideological origins of these resettlement schemes within Hungary, and then gauge the impact they had on the Catholic Church in Moldavia in the 1940s – an impact which spurred a clerical counter-reaction aimed at thwarting the expatriation of the Hungarian-speaking Catholics *en masse* from the region.<sup>5</sup>

- 1 See Vincze's introduction, as well as documents 35–51, in *Asszimiláció vagy kivándorlás?* (Budapest, 2004); "A bukovinai székelyek és kisebb moldvai Csángó-magyar csoportok áttelepedése Magyarországra (1940–1944)" in *Pro Minoritate*, nr. 3 (2001), pp. 141–87; and in English, "An Overview of the Modern History of the Moldavian Csángó-Hungarians" in László Diószegi (ed.), *Hungarian Csángós in Moldavia* (Budapest, 2002), pp. 51–82. See also Sajti's chapter 2 in *Hungarians in the Voivodina 1918–1948* (New York, 2003), pp. 250–97, and her *Székely telepítés és nemzetiségpolitika a Bácskában* (Budapest, 1984).
- 2 See "Romanian–German Collaboration in Ethnopolitics: The Case of Sabin Manuilă" in *German Scholars and Ethnic Cleansing 1919–1945*, Ingo Haar and Michael Fahlbusch (eds.), (New York, 2005), pp. 139–54; "Schimbul de Populație în Viziunea lui Sabin Manuilă" in *Revista Istorică*, vol. 13, nr. 5–6, Sept.–Dec., pp. 133–49; and "The Romanian Population Exchange Project Elaborated by Sabin Manuilă in October 1941" in *Annali/Jahrbuch*, nr. 27 (2001), pp. 593–617.
- 3 Meinolf Arens and Daniel Bein, "Die Moldauer Ungarn (Tschangos) im Rahmen der rumänisch-ungarisch-deutschen Beziehungen zwischen 1940 und 1944" in Mariana Hausleitner, Harald Roth (eds.), *Der Einfluss von Faschismus und Nationalsozialismus auf Minderheiten in Ostmittel- und Südosteuropa* (Munich, 2006), pp. 265–315.
- 4 See articles by Ágoston Olti, Ignác Romsics, and Béni L. Balogh, among others, in the March 2007 edition of *Századok* as well as in the Hungarian history magazine *Rubicon*, nr. 1–2 (2007); and Zoltán Szász, "Tévtutak keresése: Áttelepítési tervek a Magyar–román konfliktus feloldására 1940 táján," in *História*, nr. 8 (1999), pp. 17–19.
- 5 Credit should be given to Marius Diaconescu, who first placed the perspective and motives of the Romanian clergy in a clearer social-historical context, and whose work utilized new, unpublished sources from the confessional archive in

Specifically, I would like to explore what I call the “ambient history” surrounding the Hungarian-speaking communities east of the Carpathian Basin, as well as the audacious resettlement schemes devised in wartime Hungary. By “ambient” I mean to draw attention to the individuals, ideologies, and policies immediately surrounding and interacting with a given subject – in this case the politicians, priests, and intellectuals and their national-ideological agendas that impacted the Catholic communities in Moldavia. In both Hungary and Romania, the prevailing race-based conceptions of the nation – and the desire to construct a unitary ethnic state – made problematic the efforts to situate (literally and figuratively) their minority enclaves. Such conceptions informed policy prescriptions in *both* Hungary and Romania.<sup>6</sup> These resettlement schemes gave rise to another phenomenon, that of clericalism at a very localized level. In such cases the clergy began to assume roles traditionally reserved for the secular intelligentsia: we witness priests as partisans, as historians, as instruments of national policy, and as arbiters of a collective national-consciousness.

Furthermore, this article will examine some of the more radical manifestations of nationalism and biopolitics that occurred in Hungary in the early 1940s – such as the racialized discourse and categorization of the dislocated Magyars<sup>7</sup> around the Carpathian Basin, the strategy for repopulating with “good Hungarian stock” the territories re-annexed from Yugoslavia in the spring of 1941, and the clandestine use of partisan clergy and historians to serve these ends. In doing so, however, I do not assert that the radicalism of Hungarian biopolitics was the primary factor in nationalizing the debate on Csángó identity or their historical

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Iași. See his “A moldvai katolikusok identitáskrizise a politika és a historiográfiai mítoszok között,” in István Kinda and Ferenc Pozsony (eds.), *Adaptáció és modernizáció a moldvai csángó falvakban* (Cluj, 2005), pp. 9–20.

<sup>6</sup> On race and biopolitics in interwar and wartime Romania, see Marius Turda, “The Nation as Object: Race, Blood, and Biopolitics in Interwar Romania” in *Slavic Review*, Fall 2007, pp. 413–41; and Maria Bucur, *Eugenics and Modernization in Interwar Romania* (Pittsburg, 2002).

<sup>7</sup> In the Hungarian language, *Magyar* is the equivalent of the English “Hungarian.” With some exceptions, I use the term *Magyars* when referring to those peoples within the broader ethno-linguistic Hungarian nation, whether they resided inside or outside the recognized borders of the Hungarian Kingdom or later the Hungarian national state. My use of the term “Hungarians” typically refers to those citizen-nationals within Hungary’s recognized borders, which shifted several times between 1919 and 1945.

narrative. It did, however, contribute to the blowback from Romania and bifurcate both the nationality and ethnicity of Moldavian Catholics: either the Csángós were Hungarian or they were Romanian. With regards to radicalizing the discourse on biopolitics and national belonging, Romania was no exception. Both countries were transformed by their own, nationalized variants of irredentism, revisionism, and fascism, locked in a contest over perceived historical rights and finite national spaces. That said, this article focuses primarily on the more controversial aspects of Hungarian foreign and internal policy, particularly during the prime ministership of László Bárdossy (April 1941–March 1942), and examines what impact biopolitics and race had on policy aims regarding the Magyars from Bukovina and Moldavia. In this respect, the much-discussed Csángó topic has been given a new mission, namely, to be used as a vantage point from which to re-examine attitudes about race and national belonging, as well as the nationalizing processes in Hungary and Romania – processes that converged in Moldavia and gave rise to a new brand of clericalism, which continued through the Communist period.

### *Historical Context*

After the signing of the Trianon Peace Treaty in 1920, Hungary lost over seventy percent of its territory, including large Magyar-inhabited territories, and over sixty percent of its pre-war population. As a result, there were few Romanians left in a truncated Hungary yet very large numbers of Hungarians in the newly formed Greater Romania (despite the fact that almost 200,000 Hungarian teachers, bureaucrats, and members of the old elite emigrated to Hungary). At this time, the population of Transylvanian towns was still predominately Magyar, while the Székelys of Bukovina and Székelys of eastern Transylvania comprised compact blocks of Magyars far from the Romanian-Hungarian border. Many of these Hungarian-speaking communities in Greater Romania became, therefore, socially and politically dislocated (though not physically *displaced*) as a consequence of the territorial reconfigurations confirmed by the Trianon Treaty. Though Bukovina was under Austrian rule from 1775–1918, the Székelys there nevertheless had well-established Hungarian schools and clerical institutions and were, during this period, connected in many other ways to the Hungarians in the Car-

pathian Basin.<sup>8</sup> By June 1940, however, the Soviet Union was demanding the territory of northern Bukovina. As the Red Army advanced, the Romanian government was forced to evacuate much of its population from the region. The Soviet Union occupied northern Bukovina until the Romanian Army pushed them out during the summer of 1941. By that time, the Soviet Union had deported or repatriated tens of thousands of Germans, Romanians, Hungarians, Poles, and Jews. These scenes would be replayed after the Red Army finally regained control of northern Bukovina in 1944. Consequently, the broader policy of resettling into Hungarian territory the *displaced* Magyars from northern Bukovina can be seen as a just cause. But once inside Hungary, exactly how these communities were used to “restock” parts of the Vojvodina, which Hungary and Germany had taken after invading Yugoslavia in April 1941, is another matter.

Other ethno-linguistic and religious minorities, by contrast, became socially and politically dislocated despite the fact that their homeland and citizenship had long been Romanian; rather, their ethnic, religious, or linguistic differences excluded them from the new, ideologically-informed conceptions of the Romanian national body and its national essence. One such example is the Moldavian Csángós, whose Moldavian homeland (sometimes referred to in Hungarian as the *Csángóföld* – in the east Carpathian space, along the Siret River Valley and in north Moldova, around the town of Roman) was neither appropriated nor seriously contested, but whose national identity in wartime Romania was contested as never before. Unlike the Székelys of Bukovina, the Csángós constituted a *pre-national*<sup>9</sup> ethno-linguistic and religious community that had long resided in Romania’s national space. Even the Hungarian-ness of the

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<sup>8</sup> The settling of Székelys into Bukovina occurred after 1764. The province was officially recognized as Romanian territory by the Treaty of St. German, signed in 1919. For a detailed history of the Székely of Bukovina, see Ádám Sebestyén, *A bukovinai székelység tegnap és ma* (Szekszárd, 1989).

<sup>9</sup> That the Csángós constitute “pre-national” ethno-linguistic collectivities is subject to much debate and interpretation. Arens and Bein endorse this view, p. 270. See also Vilmos Tánzos’s discussion on the self-perceptions of Csángó communities vis-à-vis the national developments of Hungary and Romania in “About the Demography of the Moldavian Csángós” in László Diószegi (ed.), p. 137; and for a contemporary perspective on the politics of Csángó research, see his “Szappan a kredenc sarkán, avagy a csángókérdés tudománya és politikája” in *Kisebbségkutatás*, vol. 10 (2001), nr. 1, pp. 53–63.

Csángós is, generally, limited to their use of the Hungarian language, for they have played no part in the great historical movements that from the first half of the nineteenth century created the modern Hungarian nation and society.<sup>10</sup> Today, the Hungarian-speaking Csángós are at once dislocated from their ethnic and linguistic “homeland” (Hungary) and entrenched in a nation that, frankly, has no place for them as non-Romanians, despite their genuine but peripheral participation in the history and national development of Romania.

*Resettlement schemes and ethno-national mobilization in Hungary*

Ethnic heterogeneity in the Carpathian Basin had often posed dilemmas for the Hungarian Kingdom. Moreover, since the late nineteenth century, birthrates amongst the ailing Hungarian peasantry had fallen, especially across southern Hungary. During the interwar period, this was presented in Hungary as a demographic crisis.<sup>11</sup> One cause of this was the self-imposed “one child” (*egyke*) policy amongst small landholders, by which Hungarian peasant families from one generation to the next retained as much property as possible by handing down undivided shares to fewer heirs.<sup>12</sup> The sheer misery of life and the state of health in rural Hungary contributed to the falling birthrate amongst the predominantly agrarian Hungarian families.<sup>13</sup> At the very least, this translated into a fear of being outbred by others – by enemies. Moreover, large contingents of Catholic Germans had settled into southern Hungary (they had been encouraged first by Austrian empress, Maria Theresa, in the latter half of the eighteenth century). Following the collapse of Austria-Hungary in October 1918, the southern Hungarian territories known as the Bácska and Baranya (which formed parts of the area commonly known as the Vojvodina) were relinquished to the newly-formed Kingdom of Serbs, Croats, and Slovenes (Kingdom of Yugoslavia after 1929). Over the fol-

<sup>10</sup> Táncoz, “About the Demography of the Moldavian Csángós,” *ibid.*; and “Hungarians in Moldavia” in *Hungarian Heritage*, vol. 3 (Budapest, 2002), pp. 23–4.

<sup>11</sup> For an in-depth discussion of the demographic crisis and the ethnic and confessional heterogeneity that had formed in southern Hungary by the interwar period, see Paul Hanebrink, *Defending Christian Hungary* (New York, 2006), pp. 128–34.

<sup>12</sup> Hanebrink, p. 131.

<sup>13</sup> Nicholas Nagy-Talavera, *The Green Shirts and the Others: A History of Fascism in Hungary and Romania* (Stanford, 1970), p. 60.

lowing two decades, policies aimed at de-Magyarizing these territories (which already had a clear South Slav majority) were implemented. These events and pressures combined to decrease the percentage of ethnic Hungarians, who had been an absolute minority prior to WWI in the Vojvodina. Moreover, the demographic shifts resulting from in-migration and the above-mentioned socio-economic problems continued to alter the ethnic composition inside southern rump Hungary.

By the 1930s, a new generation of Hungarian social scientists and some politicians began in earnest to examine the socio-economic problems that beleaguered rural Hungary. But solutions to such problems necessitated the kinds of reforms that the ruling conservative elite in Budapest was unwilling to consider. In this atmosphere, the notion of *faj* or “race” emerged as a more powerful instrument in mobilizing Hungary’s national elite and policy makers. The term crept into discourses within leading intellectual circles, and with great utility it refashioned social, political, and economic concerns into new and more salient biopolitical ones. Race was thereby instrumentalized so as to transcend social, religious, and even territorial divisions, so that national problems became problems for the entire ethnic nation rather than a particular class or rank.

The racial argument indeed mobilized sentiment – not least within the Churches – and prompted the idea that Magyars from abroad should be resettled into territorial Hungary for the sake of national-biological rejuvenation. As a result, a growing number of nationalist intellectuals and social scientists began to construct a new view of the Hungarian peasantry, which was reconceived as “authentic” Magyars, deriving from purer racial stock. This included those Magyar peasants outside territorial Hungary.

Both the Catholic and Reformed Churches – as well as the Unitarian, Hungarian Lutheran, and Hungarian Greek Catholic – promoted the *hazatelepítés* agenda. The Bishop Prohászka Society [*Prohászka Ottokár Társaság*] and a number of other Catholic organizations in Hungary and Transylvania wrote letters to the Hungarian Prime Ministry and Foreign Ministry, encouraging a policy of population resettlements. However, it was the Reformed Church in the southern Hungary and in Transylvania that began agitating most ardently for the need to import “authentic” Magyars into the region, especially Calvinist ones capable of working the land. Resettling Calvinists into ethnically and confessionally heterogeneous areas along the southern border was, moreover,

viewed in terms of national defense.<sup>14</sup> One Calvinist priest from the village of Börvely, located in northwest Transylvanian, on the Romanian side of the border, wrote to then-Prime Minister Pál Teleki on 3 March 1941 that, “our bodies are degenerating.”<sup>15</sup> This because of the villagers’ practice of endogamy; they were surrounded by Romanians and refused to mix with their only other neighbors, the Swabians (Germans) of western Transylvania. The priest thus appealed to Teleki to relocate ethnic Magyars from the Transylvanian villages in order “to strengthen the nation and ennoble the race.”<sup>16</sup>

In April of 1941, Hungary permitted its territory to be used as a staging ground for the German *blitzkrieg* on Yugoslavia. Following the German onslaught, Hungarian troops re-occupied the Bácska and Baranya. The most pressing need for the Hungarian government was to reinforce its multi-ethnic, sensitive border areas by repopulating them with Magyars.<sup>17</sup> But where to find such authentic Magyars? Uprooting and restructuring Hungary’s own population to rejuvenate these re-annexed lands was an impossibility, and legislating its way to ethnic homogeneity would require time the country did not have. However, engineering the transfer *en masse* of Transylvanian and other foreign Magyars was one possible solution, especially given their treatment as undesirables in surrounding nations.

Despite the logistical and political obstacles of relocating these populations, by the spring of 1941 – with Bárdossy now Prime Minister – these resettlement schemes had been planned with great detail, attempted, and in some cases realized. The Bárdossy government – under the considerable influence of then-State Secretary in the Ministry of Interior, Miklós Bonczos – sought to reconstruct the Hungarian national state along ethnic principles, first by means of expatriating its own undesirables and expropriating foreign-owned land and property,

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<sup>14</sup> Hanebrink, p. 133.

<sup>15</sup> Magyar Országos Levéltár (MOL) K28, 163 csomó, 271 tétel, Bukovinai magyarok támogatása-Magyarországra történő áttelepítésének ügyei, 1941–44 (Bundle 1), pp. 5–6.

<sup>16</sup> *Ibid.*

<sup>17</sup> Hanebrink, p. 133; Vincze (citing the memoirs of General Henrik Werth, Chief of the General Staff of Hungary’s pro-German officer corps), “A bukovinai székelek és kisebb moldvai Csángó-magyar csoportok áttelepedése Magyarországra (1940–1944),” pp. 152–3; for more on the input of Henrik Werth, see Sajti, *Hungarians in the Voivodina 1918–1948*, pp. 258–60. See also Arens and Bein, p. 278.

and then by restocking those areas with repatriated (and presumably loyal) Magyars. This was modeled on – and justified in Hungary by – similar undertakings in Nazi Germany.<sup>18</sup>

A Bárdossy cabinet meeting on 9 May 1941 made concrete plans for the undertaking of such a scheme, and included a discussion on the creation of the Foreign Magyars Repatriation Committee [*Külföldi Magyarokat Hazatelepítő Kormánybiztosság*].<sup>19</sup> This classified planning session was led by Miklós Bonczos and included, among others, the Ministers of Justice, Finance, and Agriculture. The minutes from the session reveal discussions on how best to move the Székelys from Bukovina into the Bácska and southern Baranya, into those areas that were empty or were “being emptied.”<sup>20</sup> It should be noted here that Bárdossy was in fact not yet Prime Minister at the time the decision was made to occupy these areas with Hungarian troops. But whether Bárdossy privately endorsed Hungary’s participation in the invasion or rather shared the disapproval of Teleki (who committed suicide over the matter),<sup>21</sup> he nevertheless had – within a month of becoming Prime Minister – a clear set of plans to repopulate and to homogenize these contested areas.

The Bárdossy government had to move quickly. It was noted that because 80–90% of the crops in the area had already been planted, and because people were stealing without compunction, it was imperative they begin the resettlements immediately.<sup>22</sup> Bonczos put forth a plan to resettle tens of thousand of foreign Magyars in up to 62 localities: first, the Székelys of Bukovina (from which 5000 were already in Hungary); then the Magyars from the Burgenland, approximately 18,000 strong; next the Magyars from Croatia, another 10,000; and later those from Moldova.<sup>23</sup> Bonczos suggested settling the first waves of immigrants into

<sup>18</sup> See anonymous report in MOL K28, 163 csomó, 271 tétel, Bukovinai magyarok támogatása-Magyarországra történő áttelepítésének ügyei, 1941–44 (Bundle 2, folder 1), p. 230. See also Sajti, *ibid.*, pp. 252, 257–8.

<sup>19</sup> MOL K28, 163 csomó, 271 tétel, Bukovinai magyarok támogatása-Magyarországra történő áttelepítésének ügyei, 1941–44 (Bundle 2, folder 1), pp. 149–57. Sajti cites other official planning sessions as early as November of 1940 and February 1941. See *ibid.*, p. 256 and footnote 125.

<sup>20</sup> MOL K28, 163 *ibid.*, p. 149.

<sup>21</sup> See Nándor Dreisziger, “Was Bárdossy a War Criminal?” in *Hungary in the Age of Total War (1938–1948)*, Nándor Dreisziger (ed.), (New York, 1998), pp. 312–13; and Pál Pritz, “Bárdossy before the People’s Tribunal” in *ibid.*, pp. 294–5.

<sup>22</sup> MOL K28, 163 *ibid.*, p. 150.

<sup>23</sup> *Ibid.*

the southernmost territories – the most sensitive areas – and thereafter resettling northwards. Furthermore, Bonczos insisted that the Székelys be allocated larger plots of land, so as “to strengthen the Hungarians” since the remaining Serbs were “already strong.”<sup>24</sup> In order to buttress these newly-relocated foreign Magyars, especially the Moldavians, Bár dossy suggested settling amongst them Hungarian refugees, as well as the *vitézek* and the families of those men who had died or been injured in the war.<sup>25</sup> (The *Vitézi Rend* or “Order of Heroes” was established by Horthy and open to those (non-Jews) who served with distinction in World War I.) Finally, it was determined that these resettled populations should not be placed next to any German settlements (left untouched, in deference to Germany) lest these Hungarian populations become assimilated.<sup>26</sup> Under mutual agreement between Bucharest and Budapest, the Székelys of Bukovina left for Hungary in the second half of 1941 and were officially granted land and houses in the Bácska.<sup>27</sup>

### *Institutional and Ideological Support from Hungary*

During the early 1940s several government and private organizations did their part to promote not only the restitution of Hungary’s pre-Trianon borders, but also the reincorporation of all Magyars into the territorial and biological nation. The Hungarian National-Biological Institute [*Magyar Nemzetbiológiai Intézet*] was established under the aegis of the Society of Public Health [*Egészségpolitikai Társaság*] in 1940 in order to research the means by which a biologically unitary and expansive Hungariandom, 20 million strong, might be created.<sup>28</sup> It had sections devoted to researching biology and Hungarian history, national nutrition, hereditary biology, racial biology, and eugenics.<sup>29</sup>

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 153.

<sup>26</sup> Ibid.

<sup>27</sup> Vincze, “An Overview of the Modern History of the Moldavian Csángó-Hungarians,” in László Diószegi (ed.), *Hungarian Csángós in Moldavia* (Budapest, 2002), p. 60.

<sup>28</sup> MOL K 148, Egészségpolitikai Társaság–Magyar Nemzetbiológiai Intézet 1940–17, 3689 (1075), p. 3. See also Gyula Juhász, *Uralkodó eszmék Magyarországon 1939–1944*, pp. 173–74, qtd. in Hanebrink, p. 168.

<sup>29</sup> MOL K 148, Egészségpolitikai Társaság–Magyar Nemzetbiológiai Intézet 1940–17, 3689 (1075), p. 3.

Other institutes and affiliations, such as the Hungarian National Alliance of Race Protectors [*Magyar Fajvédők Országos Szövetségének*], also influenced the discourse on resettlements. This was an official subsection of one of the most significant national-conservative organizations, the Association of Hungarian National Defense [*Magyar Országos Véderő Egyesület*]. Groups such as these had their origins in the counter-revolution against the Hungarian Soviet from 1919, and many were led or else nurtured by Gyula Gömbös, who up to his death in 1936 led the radical right and the conservative fascist movement in Hungary.

In a letter dated 2 October 1940, this Hungarian National Alliance of Race Protectors, alongside twenty or so secular, governmental, and religious institutions (including the Arrow-Cross-affiliated National Work Center, the Prohászka Ottokár Society, the Organization of Catholic Students of Budapest, and the National Organization of Catholic Young Workers and Industry, to name but a few) addressed a letter to then-Prime Minister Teleki. These groups asserted that the Hungarian nation “can survive only in quantity and quality if they can be strengthened.”<sup>30</sup> The letter continues: “[O]utside the sensitive borders of the empire, many Hungarian brothers are waiting for our calling voice... the question of resettling is not unsolvable. [...] For those brothers living outside the historical homeland, there is a chance to settle them back home, maybe through population exchanges... When we think about the wasted possibility, our heart breaks for those living in southern Bukovina and on the Russian and Romanian borders. [...] We believe that your highness and the Hungarian government will feel and see that we need to do something right now.”<sup>31</sup>

Meanwhile the Institute for Minorities Publications [*Kisebbségi Intézetének Kiadványai*] in Pécs published some highly-charged, nationalist monographs, appealing to the ethnic and national consciousness (as *Hungarians*) of the Csángós. One such book was *The History of the Ancient Settlement of Moldavian Hungarians and their Situation Today* [*A moldvai magyarok őstelepülése, története és mai helyzete*], written under the pseudonym Siculus, in 1942. Siculus was in fact Alexander Baumgartner, known after 1940 as Sándor Besenyő.<sup>32</sup> Earlier in 1940, Baumgartner

<sup>30</sup> MOL K28, 163 csomó, 271 tétel (Bundle 1), p. 31.

<sup>31</sup> *Ibid.*, pp. 31–2.

<sup>32</sup> Sándor Illyés, Ferenc Pozsony, and Vilmos Tánzos (eds.), *A moldvai Csángók bibliográfiája* (Cluj, 2006), p. 327.

penned a monograph entitled *Moldavia, the Great Cemetery of Hungarianness* [*Moldva, a magyarság nagy temetője*], which was also published in German and Italian. As the title suggests, Baumgartner's historicism was couched in violent and impetuous language, directed at Romania.<sup>33</sup> At the time, he played a major role in shaping the discourse on the Csángós. According to Vincze, Baumgartner was professor of theology in the seminary in Iași in the 1930s, and later the information officer in the Hungarian Consulate in Brașov.<sup>34</sup> It appears that he also worked as a journalist and had ties with Germany.<sup>35</sup> In any case, Baumgartner was instrumental in relaying information about the status of Csángó communities and their readiness to relocate to Hungary in the wake of the Székelys from Bukovina.<sup>36</sup>

Another key player is the afore-mentioned Miklós Bonczos, who led Bárdossy's cabinet meeting that planned the repatriation of the Székelys of Bukovina. In that same meeting Bonczos was given the task of setting up and running the government's *hazatelepítés* schemes. Bonczos was an ever-present figure in Hungarian government from the start to the end of WWII. In December of 1938 Bonczos became State Secretary in the Interior Ministry, where he stayed through the summer of 1942. He served in the Kállay government and thereafter Döme Sztójay made him Minister of Interior, a position he stayed in until October 1944.<sup>37</sup> Thus he was involved in the deportation of Hungarian Jews to concentration camps, which started in May 1944. Bonczos escaped to Argentina after the war.

But what were the political-ideological affiliations of the man who orchestrated the *hazatelepítés* schemes throughout the first half of the 1940s? Bonczos got his start in politics in 1926 as a member of the Race Protector Party [*Fajvédő Párt* – aligned with the afore-mentioned *Magyar Fajvédők Országos Szövetségének*], and from 1928 was a sympathizer and trustee of Gyula Gömbös.<sup>38</sup> He was, furthermore, a founder of the

<sup>33</sup> Diaconescu, p. 18.

<sup>34</sup> Vincze, "An Overview of the Modern History of the Moldavian Csángo-Hungarians," pp. 60–1. See also Arens and Bein, p. 289.

<sup>35</sup> Arens and Bein, *ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> László Markó (ed.), *Új Magyar Életrajzi Lexikon I, A–Cs* (Budapest, 2001), p. 838. Thanks to my colleagues Eric Beckett Weaver and Christian Clujeanu for clarifying much of this.

<sup>38</sup> *Új Magyar Életrajzi Lexikon I, A–Cs, ibid.*

National Foundation for the Protection of the Family [*Országos Nemzeti Családvédelmi Alap*]. In 1943 Bonczos edited and wrote the introduction to a book entitled *Hungarian Land, Hungarian Nation* [*Magyar föld, magyar nép: a megnagyobbodott Magyarország községeinek adattára*],<sup>39</sup> which detailed at length the racial anthropology of the Hungarian nation and its connection to the Hungarian homeland. The volume included contributions from a number of government ministers and academics, such as Lajos Bartucz, the most important Hungarian anthropologist of the interwar period, as well as prominent ethnologists and ethnographers, such as Ferenc Erdei. In the introduction, Bonczos fused the nation and the national homeland: “We are the nation of the land, unbreakable and unchangeable...the ancient Hungarian land, which was watered by blood and sweat...the land which is the symbol of our ever-budding racial strength.”<sup>40</sup> Bonczos put forth the nation’s “great objective: to get the land, the country, the nation for the Magyar race.”<sup>41</sup> Central to the works of Bonczos and others were the poor conditions of Hungarian villages and the plight of the peasantry, who were seen as the essence of the nation or the authentic national body, “the only true expression of Hungary’s ancient beauty, art, and customs.”<sup>42</sup> Hence his brand racialism and nationalism – as seen in the context of interwar and wartime Hungary – did have a dimension of social justice behind it, however inapplicable to Jews, Slavs, Roma, and Romanians. One of Bonczos’s most important works was entitled *Social Problems in Hungary’s Lowlands* [*Az Alföld szociális problémái*].<sup>43</sup> He and his ilk saw the degeneration of Hungarian villages and the Magyar race, especially in the south, and wanted restitution – if also for the sake of creating a unitary ethnic homeland, whether on the framework of the Kingdom of St. Stephen or the modern nation state. While many of these advocates eschewed the radical right, Bonczos embraced it.

<sup>39</sup> Zoltán Csuka and János Özlvedi (eds.), (Budapest, 1942). Not to be confused with István Györfly’s *Magyar nép, magyar föld* (Budapest, 1942), though the title and dates are peculiarly similar and both include discussions on the link between race and the ethnic homeland. Györfly’s tome contains a large section, with several chapters, devoted to the Csángós (pp. 441–72).

<sup>40</sup> *Magyar föld, magyar nép*, Introduction, p. 7.

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

<sup>42</sup> *Ibid.*

<sup>43</sup> (Budapest, 1939).

Yet another important figure is the priest József Bálint, who held a number of positions, among them Hungarian Member of Parliament for the Transylvanian Party, Advisor to the Holy See, and Director of the Catholic Folk Association. In a report to the Foreign Ministry, dated 17 July 1941, Bálint insisted that after the repatriation of the Székelys of Bukovina, whom he described as “loyal to their ancient religion and race,” Hungary next needed to repatriate the Magyars from Croatia and Moldavia: “we could still save them for our own homeland because they are of outstanding material. If the Romanian government doesn’t want to agree to this then we should demand the territory as territory that Hungarians are living on. We should send twice as many Romanians from Transylvania to take the place of the Moldavian Magyars.”<sup>44</sup>

This type of racialized discourse, cultivated in Hungarian circles, penetrated other areas. An anonymous report connected with the Hungarian Nineteenth and Twenty-second Army Administrative Commands on the eastern front, asserted that “the lives of the Moldavian Magyars, as the documents show, began before Moldavia was established. In this way we have historical rights over Moldavia. To claim back Moldavia, or even take it back with the power of the army, this is the Hungarian challenge” because the Csángós were “still worth much more than that of the most educated population from the country of St. Stephen.”<sup>45</sup>

### *Instruments of Policy and the Rise of Clericalism*

Much of this literature and discourse found its way into Catholic Moldavia. A report from the Romanian secret service out of Bacău, dated 18 November 1942 and entitled “Hungarian irredentist propaganda regarding the problem of the Csángós from Moldova,” noted that over the previous year many institutes, associations, journals, and newspapers in Hungary had become preoccupied with the Csángó question.<sup>46</sup> The report also noted that the above-mentioned institute in Pécs

<sup>44</sup> MOL K28, 163 csomó, 271.tétel (Bundle 2, folder 1), p. 227.

<sup>45</sup> *Ibid.*, p. 232.

<sup>46</sup> Arhivele Statului București, Președinția Consiliului de Miniștri, Serviciul Special de Informații (PCM, SSI) f. 63/1942, p. 26. This report is grouped amongst others that were produced within the Centrul Contrainformații, the precursor of the DGSP (Securitate) that was established in 1948.

had published several books on the Csángós, and that “leading Hungarian circles” planned a propaganda system that was being carried out “on the spot,” i.e. within Csángó communities. Before it was halted by the Romanian authorities, this propaganda effort was – according to this report – carried out by local Transylvanian villagers loyal to the cause, traveling from one Csángó village to the next.<sup>47</sup>

Another Romanian report later that December noted that two priests, Antal László and Dénes Elekes from the recently-resettled Székely communities from Bukovina, were reappointed as vicars to the parishes in Văleni and in Valea-Seacă, in Catholic Moldavia. According to this report, László “proved to be in the service of Hungary” and was spreading Hungarian propaganda throughout the Csángó villages where he served.<sup>48</sup> Furthermore – based on information relayed to the Episcopate in Iași by the parish priest, Albert Weber – the report claimed that László was “looking to win people over to his side, giving them money and saying that the Csángós are Hungarian and that their country is Hungarian.”<sup>49</sup> Elsewhere the report mentioned Hungarian actions “led by Budapest agents” – again Hungarian priests – to distribute Hungarian-language, nationalist prayer books, which contained the following language: “Where are the Hungarians?” “Over which people reigned St. Stephen?” “Our ancient fatherland...with eyes crying I look toward the disappeared fatherland.”<sup>50</sup>

But what to make of such reports? Were these priests actually agents of the Hungarian government, instruments of national policy? Or was this merely paranoid inference by Romanian authorities, fueled by an anxious Catholic-Church hierarchy in a hotbed of Legionary rhetoric and activity? Bear in mind that the Catholic Episcopate and seminary in Moldavia were (and are to date) seated in Iași. The hierarchy there would have witnessed first-hand the xenophobia, chauvinism, murders, and pogrom inspired by Romania’s fascist movement, the Iron Guard, and its many sympathizers. Of course, reports within the Romanian government do not necessarily corroborate the aims of Hungarian policy vis-à-vis the minority populations, though these reports are suggestive. They show that Romanian authorities and Catholic clergy at least

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47 Ibid.

48 Ibid., p. 35.

49 Ibid.

50 Ibid.

*perceived* these incursions as threats to Romania's internal affairs and security, threats that ought to be countered. Regardless of the sources of the nationalist publications that made their way into Moldavia – and role of the Hungarian government in spreading them – they had an immediate impact, heightening Romanian suspicion and defensiveness.

Documents from Hungarian Prime Ministry and Foreign Ministry do suggest that some of these partisan Hungarian priests may indeed have been in the service of the Hungarian government. A letter from the mother of one of these priests – and the commentary it elicited in a prime-ministry report – is one example. The mother, who was amongst those Székelys of Bukovina being resettled to the Bácska, wrote plaintively to Prime Minister Bárdossy, asking that her son, the same Dénes Elekes (see above), be allowed to rejoin his family in the Bácska. She noted that her son had permission and repatriation papers to go to Hungary, “which in a moment he had to give back at the Hungarian embassy in Bucharest” because, she writes, of “an order from above” – a connotation that was political and not religious.<sup>51</sup> Instead of relocating to Hungary, her son was instructed to return to Moldavia to “fulfill a mission.”<sup>52</sup> The mother writes furthermore that another the priest, the same Antal László (above), was “also entrusted with the same mission,” but that he and still another priest (both of whom were promoting the relocation efforts) had already been permitted to return to the “home country” (i.e. Hungary).<sup>53</sup> A report from the Office of the Prime Ministry pertaining to the mother's letter, acknowledged that her son was indeed ordered back to Moldavia. After investigating the situation, the author of the report surmised that, “from the previous documents it can be determined that the further staying of [these priests] who are living amongst the Moldavian Csángós is needed”; moreover, the author concluded that those priests who had in fact left Moldavia for Hungary, did so only “because of the attitude of the Romanian authorities.”<sup>54</sup>

<sup>51</sup> MOL K28, 162 csomó, 270 tétel, Moldvai Csángók ügyei 1940–41, 1943–44, p. 43. The letter itself is not dated, however it is in a Foreign Ministry folder dated 13 Dec. 1941. The mother was Mrs. Lőrincz Elekes from the village of Fogadjisten.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid., p. 44. The report is a *nota bene* dated 26 March 1942. The “previous documents” mentioned in the report were not located in this MOL K28 file. The priests who remained in Moldavia up to this point were Dénes Elekes and Jakab

The implication here is that these priests were also needed in Moldavia, but were only repatriated to Hungary after their expulsion by the Romanians.

We also have the details of another priest, Dr. Kálmán Németh, who had a parish in Bukovina and, later, helped spread the *hazatelepítés* propaganda within Csángó communities in Moldavia. Németh, like Bálint, was an early and persistent supporter of population resettlements, raising the idea with Teleki and others shortly after the retrocession of northern Transylvania to Hungary. According to Vincze, this “fanatical priest” Németh met with Teleki in Transylvania in the summer of 1940. Németh was given a verbal commitment from Teleki, but was told to wait until a more propitious moment to begin the resettlements.<sup>55</sup> Nevertheless, Németh returned to these villages in order to report that the decision was official, and that the villagers should make preparations to pack what belongings they could take and to sell what they could not.<sup>56</sup> No doubt to the dismay of some of these villagers, their resettlement into Hungary was not arranged as promised by Németh. The Romanian authorities put Németh on trial Cernăuți for some of his activities.<sup>57</sup> Németh played a key role in relaying information to Bonczos and others, and in persuading the Hungarian government – as well as those who were to be resettled – of the efficacy of the operation.<sup>58</sup> It was Németh, moreover, who suggested that the Hungarian government commission the ethnographer (and *hazatelepítés* advocate) Pál Péter Domokos to conduct a study in Moldavia to determine the feasibility of resettling the Csángós into Hungary.<sup>59</sup>

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Ferenc, while Antal László and Péter Demsa had already been expelled from Romania for spreading Hungarian propaganda within the Csángó communities and agitating for their relocation to Hungary.

<sup>55</sup> Vincze, “A bukovinai székelyek és kisebb moldvai Csángó-magyar áttelepedése Magyarországra (1940–1944),” p. 147. For additional insight into the role of Németh, see Sajti, *ibid.*, pp. 253–8, and 267, and footnote 118.

<sup>56</sup> Vincze, *Ibid.*

<sup>57</sup> *Ibid.*, p. 163.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, p. 164.

*The Unintended Consequences: The Romanian Reaction*

These foreign, discursive intrusions into Moldavia were a source of consternation for the hierarchy of the Catholic Church there. The clerical elite perceived this, as well as the talks on resettlements, as existential threats that had to be repelled. Soon the diocese in Iași would counter these Hungarian efforts with their own set of historicist claims. Enter the priests-cum-historians Iosif Petru Pal and Ioan Mărtinaș.<sup>60</sup> In the case of Pal, we have a Csángó intellectual (Pal also held a doctorate) who ventured into the realm of professional history writing and biopolitics – citing the latest scientific studies on eugenics and serology – purporting to represent the Catholic communities of Moldavia. As head of the Franciscan Order in Romania he was one of the most influential members in the Moldavian hierarchy.

In an appeal to Andrea Cassulo, the Apostolic Nuncio in Bucharest, Pal states indubitably: “We are Romanian, not only of citizenship but also of origin and blood.”<sup>61</sup> Moreover, Pal attacks the Hungarian historical narrative of the Csángós – as he had done in his earlier monographs and articles – asserting that the “truth” about the Romanian origins of the Csángós “has been denied by the Hungarian writers and some Romanian writers or put in doubt, simply, without solid arguments.”<sup>62</sup> He invokes his own research as well as Vatican archives to support this claim. In 1942, Pal published a monograph entitled *Origins of the Catholics from Moldova and their Franciscan priests over the centuries* [*Originea Catholicilor din Moldova și Franciscanii păstorii lor de veacuri*] as well as a widely circulated essay, “The Voice of Blood” [*Glasul sângeului*]. In this article, written in March of 1943, he employed the work of Romanian biologist and eugenicist, Petru Râmneanțu, a committed nationalist who worked for the Institute of Eugenics and Hygiene in Cluj (which moved to Sibiu after Hungary regained northern Transylvania in August 1940). In an effort to determine the ethnic and racial origins of the Csángós (on behalf of the Antonescu government it seems), Râmneanțu sought

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<sup>60</sup> Ioan Mărtinaș wrote a monograph entitled, *Cine sunt catolicii moldoveni?* (Iași, 1942). For a brief discussion of Mărtinaș, see Marius Diaconescu, pp. 16, 18.

<sup>61</sup> PCM, SSI f. 63/1942, p. 72.

<sup>62</sup> *Ibid.*

to establish a definitive Romanian racial identity of the Csángós based on blood type.<sup>63</sup>

In the only two such works on the Csángós, Râmneanțu transferred the highly specialist and authoritative language of the burgeoning new sciences of eugenics and serology into the Csángó narrative.<sup>64</sup> Râmneanțu also proposed a scientific method to discuss the origin of the Csángós. He states, “(a) *priori* I reject the equality between the notion of Csángós and that of Catholics.”<sup>65</sup> Considering the history of the Csángós and the recent demographic evolution reflected in the census taken in Moldavia in 1941 – the data of which purported the vast majority of Csángós chose “Romanian” as their ethnicity – Râmneanțu claimed that the tendency of their *ethnic consciousness* was to declare themselves Romanian rather than Hungarian. The ethnic consciousness of the Csángós was, therefore, a natural consequence and manifestation of their biological reality.

In response to Hungarian incursions into Moldavia – and to both the real and perceived anti-Catholicism within Moldavia – the likes of Pal, Mărtinaș, and Râmneanțu began to construct a Romanian national-historical narrative of the Csángós in lieu of the established Hungarian one. This counter-narrative attempted to secure a place for the Csángós within the Romanian nation by asserting that the historical experience and identity of the Csángós were quintessentially Romanian rather than Hungarian. In doing so, it challenged over a century of Romanian and Hungarian historiography that described the Csángós as, in essence, an isolated contingent of Magyars, long-detached from the modern Hungarian nation.

### Conclusion

That a number of Catholic priests loyal to Hungary were active in persuading the Magyars in Bukovina and Moldavia to relocate to Hungary is not in dispute.<sup>66</sup> Perhaps this is stating the obvious. If, however,

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<sup>63</sup> See Turda, “The Nation as Object: Race, Blood, and Biopolitics in Interwar Romania,” pp. 432–6.

<sup>64</sup> “Grupele de sânge la Ciangăii din Moldova,” in *Buletin eugenic și biopolitic* 14, nrs. 1–2 (1943), pp. 51–65; and *Die Abstammung der Tschangos* (Sibiu, 1944).

<sup>65</sup> “Grupele de sânge la Ciangăii din Moldova,” p. 54.

<sup>66</sup> See Vincze, “An Overview of the Modern History of the Moldavian Csángó-Hungarians,” pp. 59–60; “A bukovinai székelyek és kisebb moldvai

partisan priests were used as agents of national policy to relocate foreign Magyars with the aim of restocking the Hungarian homeland, then we have a more complex historical picture of the events and personalities in Bukovina and Moldavia during this period. While the documentary evidence remains incomplete – and much of it circumstantial – it does dispel any lingering notions that, based on some timely awakening of their Hungarian national consciousness and a desire to reconnect with a Hungarian homeland, these Csángó villagers themselves initiated or pushed for the resettlement schemes. Rather, the “desire to go home” had to be engineered and projected from the outside-in – *and then projected back out* – using partisan clergy and secular Hungarian nationals to speak on behalf of the community.

Without doubt there are some very real and tragic instances of displaced ethnic Hungarians in Romanian and Soviet territory, entire communities that were forced from their homes and sought earnestly to repatriate to Hungary. But the mobilization for emigration *en masse* to Hungary was not primarily a local initiative, springing from the desire to “heed the calling voice” to “return home” on the part of would-be emigrants, in fortuitous accord with the policy aims in Hungary. Rather, the *hazatelepítés* schemes and the ethnic mobilization were effected primarily by a number nationalist ideologues and institutional agendas, prompted less by humanitarian concerns for the ethnic brethren across the Carpathians than by the overriding pursuit to reconstitute the Hungarian nation within a clearly defined ethnic state. To acknowledge this is not to pass judgment on the individuals or institutions who sought simply to solve the dilemmas of national belonging based on new understandings of race, ethnicity, and homeland. All of this took place against the background of modernization and nationalization – and in the foreground of irredentism, revisionism, and war in East Central Europe. Exploring the “*hazatelepítés*” schemes and the affected communities in this context offers a fresh look at the period. More important, it offers new insights into our understanding of the impact of ideologically-informed policy prescriptions on the ethnic and national identities within dislocated minority communities.

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Csángó-magyar áttelepedése Magyarországra (1940–1944)” pp. 149–64; and in *Asszimiláció vagy kivándorlás?*, e.g. document 42, pp. 253–4.

ADRIENN LILLA JUHÁSZ

## Emerging Social Realities in Bosnia and Herzegovina and the Limits of Institutionalizing Ethnicity\*

**A**lmost 12 years have passed since the end of armed conflicts in Bosnia and Herzegovina (BiH), and the conflict has gone non-overtly violent and exists in a phase that is somewhere between war and peace. Now rivaling symbols, inflammatory rhetorics, memories and commemorations, conflicting political agendas, school-curriculas, war- and historical-narratives, representations, visibilities and audibilities of religious institutions mark public spaces throughout Bosnia. Post-war settings thus are rather recreating war-time ethnocentric reflexes and stereotypes than diminishing them. The political developments in Republika Srpska coupled with those of the Koštunica-government in Belgrade (i.e., secessionist rhetorics from Banja Luka systematically linked to the status of Kosovo and the implicit territorial claims of Serbia on Republika Srpska) can be considered a radicalization of territorialized and institutionalized ethnic divisions. The Belgrade office of the Helsinki Committee assess those developments most worrisome for both

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\* *Interviews and field-research made with Edgár Dobos. December 2006-July 2007, Bosnia and Herzegovina, Institute of Sociology and Social Policy, Corvinus University of Budapest, project-title: "Comparative local development – cooperative institutions in divided societies". October 2007, Serbia, Hungarian Institute of International Affairs, Department of Slavic Philology, ELTE.*

Serbia and Bosnia-Herzegovina,<sup>1</sup> while the International Crisis Group (ICG) have foreseen 2007 a dangerous year.<sup>2</sup> Together with the tension between growing domestic powers, the euro-atlantic integration process, and the all-time dirtiest election-rethorics in 2006 (Alija Izetbegović's tomb blown-up in August 2006), the present period must be regarded as crucial, and shows no improvement. Moreover, the country can be found at present without fully functioning administration, the Council of Ministers (CoM)<sup>3</sup> operating only in technical mandate.<sup>4</sup>

The present study aims to highlight how ethnicity remains disproportionate and how it is exacerbated by political choices. It also evaluates today's socio-political developments that can result in new realities for inhabitant communities. In other words, it explores how the actual political regime reshapes both community-forging dynamics and perceptions of the 'Others'. The ethnic categories that the country's constitutions affirm (as constituent peoples – "kao konstitutivni narodi") – that is, Bosniaks, Serbs and Croats – have their limits and have no practical value in many social settings. Therefore, trying to understand the country on the basis of ethnicity will unavoidably lead to simplicism and a captured logic. Now, all identity cards read "Nationality = BiH." This move merely aims to lift ethnic and territorial boundaries similarly to the creation of the unified currency, unified military, unified immatriculation signs on cars, etc, and would introduce a category based on citizenship. But it fails to do so. No one can identify with such a functional, denaturalized "identity," and no loyalty towards central Bosnian authorities can be forged on that basis. None of the people interviewed in Bosnia and Herzegovina referred to themselves as Bosnians or citizens of BiH, but hold multiple and transitional identities. Directly following the 'Nationality' category on IDs the place of birth appears in bold face. When coupled with the birthplace, the given name and surname reveal an evident ethnicity. Such an indirect marker of ethnic identity can also be instrumental in the recreation of

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- <sup>1</sup> *Human Rights: Hostage to the State's regression*. Helsinki Committee for Human Rights in Serbia – Annual Report: Serbia 2006. Belgrade, 2007.
  - <sup>2</sup> ICG Report Nr. 180 – *Ensuring Bosnia's Future: A new international engagement strategy*, 15 February 2007.
  - <sup>3</sup> The state level executive power, responsible for the functioning of the administration. Its Chair is nominated by the collective Presidency. The position has been held by Nikola Špirić (SNSD) up to his recent resignation following the 19th October reforms. See also 182.
  - <sup>4</sup> The manuscript was closed on the 5<sup>th</sup> November, 2007.

ethnic logic. It is a sensitive subject that 'sets the table' for discrimination. Constitutional categories as well as the mixed, socially developed, and narrative-driven categories (the chetnik, ustasha, Turks/Turci, wahhabit, etc. rhetoric) intersect and are complicated by religion's penetration into politics and political pressure on religious institutions. As a consequence, religious affiliation is susceptible to reaffirming ethno-territorial boundaries. Also, because of the lack of loyalty to the center, local elites, often engaged in transnational networks, deliberately play the role of national, ethnic, or ethno-religious 'sovereigns' and present issues and set political agendas in transnational ethnic terms, as collective consciousness. Ritually and violently affirmed ethnic and religious boundaries lead to an unavoidable ethnicization of the political space, a top-down separationist-segregationist logic, and an erosion of central legitimacy. Ritualization of exclusion and ethnic discrimination can be demonstrated in everyday practices of public administration and legislative measures, the banalization of violent nationalism and the reproduction of stereotypes through 'street symbolism.'

For Bosnian Muslims, ethnicity imposes additional obstacles in default of documented identity, since the nation-building is a still ongoing process for them. This is why Muslims in Bosnia-Herzegovina tend to perceive themselves, and tend to be perceived as, a transitional and potentially dangerous people who are either being captured in a 'reservation' with diminishing territories – though adding up to a majority – or are being target of the same stereotypes as framed in connection with non-constituent minorities, most often the Roma.<sup>5</sup>

Scientific, 'pseudo-scientific' and political critics of the Dayton arrangements concentrate mostly on the institutional level. The ICG<sup>6</sup> and the European Centre for Minority Issues<sup>7</sup> emphasize the disfunction in the current ethnicity-based institutions and the failure of state-builders. Some other sources emphasize that the *status quo* of war-time genocidal territorial creations reinforce ethno-nationalism and are the

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<sup>5</sup> On the basis of interviews made between December 2006 and October 2007. See also Damir Nikšić: 'If I wasn't Muslim' video (2004) at <http://www.damirniksic.com/videoworks.html>

<sup>6</sup> ICG Report Nr. 180 – *Ensuring Bosnia's Future: A new international engagement strategy*, 15 February 2007.

<sup>7</sup> Bieber, Florian: *Institutionalizing Ethnicity in the Western Balkans – Managing change in deeply divided societies*. European Centre for Minority Issues – Working Paper, 2004.

grounds for separatism at the expense of integration. All this highlighting the enormous contradiction of the Dayton-logic: legitimized results of ethnic cleansing at the institutional level vs. efforts to eliminate those results from societal point of view.<sup>8</sup> It is evident that the present political arrangements bear different starting points for all three peoples: for Bosnian-Serb nationalist political forces and their voters, Republika Srpska's autonomy is a step – at least rhetorically – toward a separate state; for Bosnian-Croat nationalists constitutes a trap and an obstacle against the possibility of having their own autonomous entity, and for Bosniak (Muslim) political and religious elites who cannot switch on disintegrationist options, it is the only possible frame for their bounded existence. This situation dooms all institutional reforms to be contested by either of the communities.

### *Informal discrimination in formal parity*

The Bosnian state, as an international protectorate is a *de jure* forced union of the not less forced Bosniak-Croat Federation and the territorially delimited-detached Republika Srpska (RS) which has multilayered and stronger relations with Serbia than with the Federation itself. Then there is the self-governing, neutralized, multiethnic Brčko – with its strategic position (as a 'plug' separating RS and Serbia) and an eventual special status for Srebrenica<sup>9</sup> (claimed on the basis of security reasons, but if agreed, serving as a 'certificate' for Muslim victimhood). The Bosnian state-building complex is topped with and pervaded by a quasi-sovereign and extremely complicated international authority that can be abstracted to the UN-mandated High Representative and its shadow equivalent, the EU-mandated Special Representative, which possesses parallel competences, that is the supervision of the Dayton-principles. The High Representative Office was due to close doors in June 2007, but that step was postponed to the end of June 2008 on decision of the Peace Implementation Council's Steering Board as „the time has not yet come

<sup>8</sup> Presentation of Xavier Bougarel entitled 'Sorties de guerre et injustices du quotidien'/ 'Nepravda svakodnevice u posleratnom dobu', held on 17th October 2007 at the Faculty of Political Science, Belgrade.

<sup>9</sup> For more details see Szilágyi, Imre: Bosznia – Identitások, entitások, lemaradások. *Hírlevél*, Magyar Külügyi Intézet, Vol. I. Nr. 3, 2007.

to leave Bosnians govern themselves on their own.”<sup>10</sup> Miroslav Lajčak, the present High Representative and EU Special Representative in one person places police reform (as the key for the EU integration process), ‘facing the past’<sup>11</sup> (as the key for reconciliation) and state institutional reforms (as the key for cooperation) at the top of his priorities.

The constitutions prescribe the strict parity of the three nations. This was conceived as a mechanism to ensure equal representation of all main groups, but in practice, it does not translate to their equality in status. Inherited from the pre-1990 constitution, the parity-concept aimed to motivate people of different ethnicities to cooperate through a tripartit sharing of power and proportional-representation electoral system, but it resulted in extreme institutionalization of parallels and the strategies of non-acting, obstructing and withdrawals instead. As it would take hundreds of pages, the present study will not provide a thorough description of Bosnia and Herzegovina’s institutional system;<sup>12</sup> rather, it seeks to emphasize that almost all the government institutions are founded upon the idea of ethnic power-sharing, and serve as a tool for exclusion, except for the upper chamber of the state parliament, but this latter has been losing power. Also, most government-sectors are constructed according to that logic, even the economy is ‘nationalized’ and constructed in parallel. This latter results in each community having parallel transnational economic relations with neighbouring countries, Islamic states, and countries where diasporas are important. The ethnic-key is ignored only in the centralized Constitutional Court, which has managed to impose some homogenizing measures. However, in 2000, it passed a most controversial decision on constituent peoples’ veto rights:<sup>13</sup>

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<sup>10</sup> On the basis of interviews with EUSR’s spokesperson, Eldar Šubašić (December 2006, May 2007) in Sarajevo. Schwarz-Schilling was aiming to leave all power to Bosnians by that time.

<sup>11</sup> On the basis of an interview, appeared in the DANI on the 17th August 2007.

<sup>12</sup> For more details and a concise overview see Juhász, József: *Két korszak határán – tanulmányok Kelet-Európa jelenkortörténetéből*. Budapest: L’Harmattan, 2007. And also: Györi Szabó Róbert: *Kisebbség, autonómia, regionalizmus*. Budapest: Osiris, 2006.

<sup>13</sup> 3rd Partial Decision in Case U 5/98 as of July 2000, the Serb and Croat judges dissenting. In *Strengthening Legislatures for Conflict Management in Fragile States*. Princeton University – Woodrow Wilson School. See also: Constitutional Court of Bosnia and Herzegovina – Case U 5/98 Partial Decision III Issue of the “Constituent Peoples”, Venice Commission, [http://www.venice.coe.int/docs/2000/CDL\(2000\)081-e.asp](http://www.venice.coe.int/docs/2000/CDL(2000)081-e.asp)

„With a narrow 5:4 vote, and the Serb and Croat judges dissenting, the Constitutional Court decided that all of the three constituent peoples have to be also constituent peoples on Entity level in order to break up the national homogenisation of the Entities without, however, giving clear directions for the necessary constitutional amendments and thereby institutional changes except for a warning to introduce 'vital interest clauses', i.e. veto powers of constituent peoples, on all levels of government.”

In opposition to the amendment's original intent, the veto mechanism has been abused as a tool for political pressure, and its scope is not clearly set. The fact that any decision can be outvoted at state-level leads to paralysis and legitimizes obstructions and blockages in governance. The latest set of measures undertaken by the High Representative on the 19th October, 2007 concerns the CoM and aims to outpace obstructionism by obligating decisions. Just like other OHR-measures, it was immediately obstructed by nationalist forces from the Serb side,<sup>14</sup> resulting in the resignation of the CoM's Chairman, and the falling into total inability.

### *Unconnectedness and everyday uncertainty*

The administrative and governmental-structures in Bosnia that diverge to create a parallel and segregated system can be the best understood through local public institutions: schools – 'two schools under the same roof'-logic, initially launched to accommodate returnees with diverging historical narratives, but that have turned into places where a hostile image of the 'others' is disseminated; municipality (*opština*) governments – obstructing the returnee-process; police-headquarters – the failure of unification, war criminals still serving, obstruction and harassments; and media – reflecting ethnically-biased rhetoric. How to run, for example, a state-level history museum or a national library collectively? In the absence of consensus on narratives, the collection of the History Museum based in Sarajevo that presents the history of Bosnia and Herzegovina is basically reduced to pre-second world war periods and suffers a great deal from lack of financing.

Polarized party politics and nationalist-populist rhetoric serve as tools of legitimization in the hands of political elites and entrepreneurs.

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<sup>14</sup> It used to be Bosniak members who repeatedly boycotted decision-making.

The lack of grassroots implications for politicians and disregard of local, down-to-earth issues<sup>15</sup> make ethnicity-bound narratives the most effective means of community-building. Narratives generate bounded perceptions, such as perceived insecurity and uncertainty, and create the state of fear – of the future, of the present and of the past –, which provide the necessary *marge de manoeuvre* for political, identity and religious entrepreneurs. By pretending that security is exclusively rooted in a strong and coherent ethno-religious community, entrepreneurs create para-state loyalty bonds. Those mobilizable cognitive schemes – highly situational but having collective elements – are artificially shepherded into a homogenized category called 'identity', the ethnic element of which is activated and mobilized through polarized representations of general themes (mostly: security, economy and property issues). And it is precisely those narratives which block any constructive cooperation and even communication among parties, and which make institutionalized blockages inherent to the power-sharing system. As a result, the system of parallelisms, ethnically exclusive institutions and party-systems generate mutual avoidance and the nationalist parties continued use of inflammatory rhetoric and "divisive mobilization in elections"<sup>16</sup> in order to maintain power. The overwhelming majority of political parties are ethnically homogeneous, which further exacerbates the logic of denaturalized or missing citizenship as well as the logic of 'Othering.' All this supposes that votes are ethnically-bounded too. Those continually re-elected, traditionally exclusive-nationalist parties (SDA, SDS and HDZ)<sup>17</sup> and the newly emerging ones (SNSD, HDZ 1990, SBiH) master the space of insecurity, act as 'sovereignty entrepreneurs,' tend to muddle political categories, and often buy votes through economic concessions. Since no coalition was possible right after the 2006 elections, agreement

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<sup>15</sup> As all crucial decisions are made by the High Representative, party-politics are somehow released from substantive work and can concentrate more on populist rhetorics. See Juhász, 198.

<sup>16</sup> Oberschall, Anthony: *Conflict and Peace Building in Divided Societies – Responses to ethnic violence*. London and New York: Routledge, 2007. 34.

<sup>17</sup> SDA: Stranka Demokratske Akcije – Party of Democratic Action, SDS: Srpska demokratska stranka – Serbian Democratic Party; HDZ: Hrvatska demokratska zajednica – Croatian Democratic Community, SNSD: Stranka nezavisnih socijaldemokrata – Party of Independent Social Democrats, HDZ 1990: Hrvatsko Zajedništvo – Croats Together, SBiH: Stranka za Bosnu i Hercegovinu – Party for Bosnia and Herzegovina.

to form a state-level government was achieved only in January 2007, considered a breakthrough. The country has already gone through too many governments (ninth after-Dayton elections in 2006), and only two things seems stable: voting on ethnicity and a lack of cooperation. Nevertheless, there are some fields in which cooperation proves impeccable: for example, the rejection of legislation pertaining to the seizure of assets gained from illegal activities, anti-corruption laws, etc. We cannot ignore the fact that the omnipresent, international politico-military presence is unable or unwilling to repress sprawling mafia-networks or on the omnipotent elites penetrating the media (Miroslav Mišković for instance and his role in financing Milošević's war project), police, politics and church affairs and, in the process, implicating those institutions themselves and creating a space in which insecurity spreads rather than diminishes.

The fascination of nationalism and the accessibility of ethnicity and religion make the nuclear elements of society (family, friends, school-mates, priests and the religious community) the basic narrative sources for reinforcing boundaries: here, top-down ethnic discourse is reproduced, essentialized, interiorized and localized consequently as a new socialization context. It is new in the sense that before the 1990s, polarization of stereotypes and differing narratives (of course, such stereotypes and narratives existed, but not polarized)<sup>18</sup> was not a general phenomenon. Although the sense of belonging should eliminate a feeling of rootlessness, and violent rituals that construct boundaries (in politics, in culture, in sports, on the streets) should eliminate the feeling of defenselessness, uncertainty persists in security terms as well. 'Facing the past' goes hand-in-hand with re-reading the past. Certainly, it would take generations to (1.) socialize populations according to reconciled historical narratives, if this is at all possible<sup>19</sup> (2.) reach justice for 'real victims' of the previous war. While these diverging narratives provide a daily accessible framework for coping with the past and its highly-visible scars, families of war-victims still have not been recompensated. This results in the phenomenon of justice-seeking, individually, in small collectives or through women's associations, for instance, and individual justice-

<sup>18</sup> See Tone Bringa: *Being Muslim the Bosnian way*; Ivo Andrić: *Bridge on Drina-river*, etc.

<sup>19</sup> Serbian history books has been constructing a history of wars, genocide and violence and socializing on the basis of it for long.

making<sup>20</sup> – thus, allowing people to become auto-proclaiming entrepreneurs or masters of life and death. In the absence of a representative civil service (mainly in the case of split police units) and the problematic small arms-harvest (as there are reportedly still huge stocks of hidden arms<sup>21</sup>), minority inhabitants do not know what will happen from one day to another, and continue to link the perception of insecurity to the closeness of the 'Others'. Deprivation of arms easily evokes the war-time scheme of being disarmed in the face of the hostile 'Other', armed to the teeth, and results in alternative security-building measures (e.g. recourse to rearmament through mafia-networks). As a response, the EUFOR replacing the NATO-mandated SFOR since 2004 have launched the so-called LOTs (Liaison and Observation Teams) at potentially instable or strategically key areas. The small mobile teams are participating directly to community life: monitoring inter-ethnic coexistence,<sup>22</sup> harvesting remaining small arms, attending potentially conflictual commemorations, football matches, etc. and predicting threats on security.

As one of the major handicaps of post-war setting's territorial logic is that the new boundaries divided quite a number of *opština*s (e.g. North of the Posavina corridor, the RS municipality of Trnovo), bringing radically changed socio-political and mental realities to the lives of their inhabitants: these people are becoming a minority-population in their previous natural living space. Which means becoming segregated, rejected, and discriminated against in the workplace, schools, administrative offices and police. Becoming isolated, intimidated, harrassed, reduced to being secondary citizens, thus denaturalized of self-esteem and self-determination. And also, derooted, desecuritized, and depoliticized in the absence of credible leaders. Because of discriminatory land-allocation, micro-strategies and practices on the majority's behalf, they are even expelled (and very often denied their earlier real-estate and other property), the

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<sup>20</sup> There are still about 14.000 thousand pending cases, that is missing people (of which 8000 from Srebrenica alone). These people are neither dead nor alive; and their families are not eligible for financial support on the basis of that 'in between' status. On the basis of interviews made at the Sarajevo-based Red Cross Society of Bosnia and Herzegovina in May 2007.

<sup>21</sup> On the basis of interviews made between December 2006 and October 2007 in Bosnia-Herzegovina and Serbia.

<sup>22</sup> LOT-reports on problematic issues of coexistence are strangely kept secret.

majority population entering into illegal occupancies.<sup>23</sup> The belt along the two entities' borderline is a demographic grey-zone that does not have pure ethnic divisions and where the transition from one entity to the other represents an exciting semiotic problem. Although, one very obvious sign tells at those places how ethno-religious local geopolitics are shaped as a tool of rivalry: the condition of cemeteries and churches. The names on the graves and the graveyard's religious symbolism carry striking information about whom used to be living on the land before the war, and the state of graves shows who is actually living there.

Throughout the Balkans, the returnee question is a shared burden since many people have not finally returned to their original homes. When traveling in Bosnia and Herzegovina, there is observable neglect – deserted houses along main roads and in the middle of villages, places to which people have never returned. As the return-process was conceived by emphasis on the 'ethnic minority return', this phenomenon has also caused serious institutional and administrative dilemmas. Many people returned only to get their properties back and then to sell them. Not without reason: who would want to return to a minority position? To hostile neighbours? Or to face police obstruction in the implementation of the peace settlement and the whole process of return? In Serb-inhabited areas Bosniak returnees are often declared Muslim extremists who are trying to restart the war and undermine Republika Srpska.<sup>24</sup> As a result, new demographic and territorial realities have begun consolidating by affirmation of boundaries and striking cultural seclusion: brand-new, huge, ostentatious mosques built along contested border-zones; housing-developments spreading within Eastern Sarajevo that project a total Bosniak-Serb segregation in the capital and the duplication of Sarajevo.

And finally, the social key for bridge-building, that is post-war mixed marriages is practically absent, or quite rare even in towns.

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<sup>23</sup> Dahlman, Carl & Ó Tuathail, Gearóid: The 'West Bank' of the Drina – land allocation and ethnic engineering in Republika Srpska. *Transactions of the Institute of British Geographers*, Vol. 31, Nr. 3, 2006. 304–322.

<sup>24</sup> Ibid.

### *Desintegrational forces*

A platform shared by both Bosnian Serb and Bosnian Croat nationalists is the entity issue. The Republika Srpska is already a (para)state within the state, but interested in further desintegration and a constitutional shift that would, thus, strengthen the cause for autonomous Herzegovina.<sup>25</sup> In January 2007 this was openly reaffirmed by the statement that “each people must have its entity in Bosnia and Herzegovina” (“svaki narod treba dobiti svoj entitet u BiH”).<sup>26</sup> Also, a recent joint declaration of Croat nationalist forces in Bosnia<sup>27</sup> stipulates that:

“A new Bosnian constitution would abandon the existing two-entity organization and establish a more functional and just organization, which will not discriminate against or favour any one people...The document envisages Bosnia as a decentralized state with local, regional and state-level governments, where the regional and state level authorities have legislative, executive and Judicial powers. The most disputed layer of government – on the regional level – is intended to be established on the basis of historical, ethnic, geographic, economic and other important criteria “with the possibility of territorial discontinuity of the present organizational units . . . Sarajevo, as the capital of Bosnia, would enjoy special status.”<sup>28</sup>

### *Republika Srpska – captured by Serbia and Kosovo*

Since he was promoting multiethnic reconciliation and ardently opposing the Milošević regime and Radovan Karadžić’s ethnic-cleansing policy in Bosnia, Milorad Dođik mainly owes his 1997 election as prime

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<sup>25</sup> A continuation of separation-attempts; the previous one took place in 2001, when the HDZ leaders proclaimed in Mostar the self-governing Croat entity and involved Croat soldiers deserting from the Federation army.

<sup>26</sup> Ivo Lučić: *Politička i Medijska Revizija Prošlosti U Bosni i Herzegovini. Status*, broj 11, proljeće 2007.

<sup>27</sup> The declaration was signed by leaders of the Croatian Democratic Union in Bosnia, the Croatian Democratic Union, 1990 (HDZ 1990); the Croatian Party of Rights; the Croatian Rights Party; the Croatian Christian Democratic Union; and the People’s Benefit through Work Party.

<sup>28</sup> Ibrahimagić, Omer: *Bosnia, defended but not liberated*. Sarajevo: Vijeće Kongresa Bošnjačkih Intelektualaca, 2004.

minister to Bosniak voters. At that time too, the Banja Luka-Pale political rivalry reached its peak, and as a result, ties with the Federation under the Plavšić-Dođik tandem were forged and deepened. Since then, Dođik and his party, the Alliance of Independent Social Democrats (SNSD), have radically shifted towards nationalism, decentralization and separatism, and are reproducing a more palatable version of Radovan Karadžić's early 1990s exclusivist rethoric. Karadžić's announcement – as in the prior ideology of Serbs in Bosnia – was formed as follows:

„We can't live in a unified state. We know it very well: wherever fundamentalism comes in, one can no longer live, there is no toleration. Serbs and Croats, given their birthrate, cannot control the incursion of Islam into Europe; in a united Bosnia, within 5 or 6 years the Muslims will be over 51% ...There will be no Muslim foundations laid in any Serb area or any Serb village, for we will give instructions to the Serbs that they must not sell any land to Muslims. Any foundations laid will be blown up.”<sup>29</sup>

The SNSD are continuously making allusions to the 'Islamic danger,' the assimilation, and their rethoric in response to every verbal attack becomes harsher. In the October 2006 election campaigns, Dođik's slogan was “RS, a better part of BiH.”<sup>30</sup> This was a response to calls for the abolition of the RS from the Party for Bosnia and Hercegovina and for the planned assassination of Dođik. He also very recently met Dobrica Ćosić<sup>31</sup>, one of the most influential members of the infamous Serbian Academy of Sciences and Arts, a former president of the Federal Republic of Yugoslavia between 1992–93, who helped bring Karadžić to power in Bosnia. Taking into account the 'mainstream' or overall view of young people regarding the actual political regime of RS – i.e., Ratko Mladić and Radovan Karadžić as absolute heroes, Milorad Dođik also as a “great guy”, Slobodan Milošević as “respected, but rather not liked,”

<sup>29</sup> Florence Hartmann, interviewed by Dani (Sarajevo), uploaded: Thursday, 16 August, 2007. Bosnian Institute, [http://www.bosnia.org.uk/news/news\\_list.cfm](http://www.bosnia.org.uk/news/news_list.cfm)

<sup>30</sup> Milorad Dođik: We will fight for stronger and better Republic of Srpska, interview made by Nezavisne Novine, on 24th, September 2006. English version online: [http://www.vladars.net/en/pm/nn\\_240906.html](http://www.vladars.net/en/pm/nn_240906.html)

<sup>31</sup> Ćosić's literary works from the end of 1980s and the 1990s (Time of the Evil – *Vreme Zla*, Time of the Dead – *Vreme Smrti* and Time of Power – *Vreme vlasti*, The real and the possible – *Stvarno i moguće*, etc.) are again published in Belgrade and according to librarians are very popular.

and “don’t like Tito at all”<sup>32</sup> – we must postulate that recycling the image of defenders of the nation in education results in hero-like perceptions of actual leaders too. Actually, the same happens in Serbia as the state’s educational policy is controlled by nationalist forces.<sup>33</sup> When referencing to the relationship between RS and the Federation, SNSD party members tend to employ the victimization scheme and even distance themselves from the state-identity: “Bosnians (!) try to create a new conflict, like that one in Srebrenica, to try to stop RS working” and “Bosnian part cannot keep up with RS, that is why they try to stop it developing... by creating conflict areas.”<sup>34</sup> Dođik has been threatening to call a referendum on the entity’s status, thus, systematically linking Bosnia’s fate with the future of Kosovo. To back the threat, Vojislav Koštunica stated that “if we would renounce Kosovo (and Metohija), then we would also renounce the right to defend and protect RS as a part, an independent part of Bosnia and Herzegovina.”<sup>35</sup> Disposing of this aggressive bargaining strategy, Dođik’s rethoric illegitimizes and questions the competence and authority of the OHR. In May 2006, Christian Schwarz-Schilling, a former High Representative in Bosnia, categorically refused any possibility of a referendum on RS’s status since it would mean that „some decisions can be made and forced through war.”<sup>36</sup>

„Republika Srpska is neither Kosovo nor Montenegro. The referendum in Montenegro was a special case in accordance with the Constitution of former Yugoslavia. There is no historic Republika Srpska, which would be a basic precondition for its secession. Hence, both the outcome of the referendum in Montenegro and a final decision on the status of Kosovo cannot have any influence on the situation in BiH. This state was agreed, finally, in

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<sup>32</sup> On the basis of interviews made with 18 year-old Bosnian Serbs, finishing students of the ‘28th June Secondary School’ in Serbs-inhabited Eastern Sarajevo, in May 2007.

<sup>33</sup> On the basis of information, provided by the most critical Helsinki Committee for Human Rights in Serbia (Helsinki Odbor za Ljudska Prava u Srbiji) in October 2007, in Belgrade.

<sup>34</sup> On the basis of an interview made with an eminent figure of the SNSD in Eastern Sarajevo, in May 2007.

<sup>35</sup> ICG Report Nr. 180 – *Ensuring Bosnia’s Future: A new international engagement strategy*, 15 February 2007.

<sup>36</sup> In an interview with Schwarz-Schilling, appeared on 29th May, 2006 in *Večernje Novosti*, Sarajevo, English version accessible at OHR-BiH homepage, among archives.

Dayton. Its borders are internationally recognized and there are no open-ended issues. Simply, this is not related to BiH in any way.<sup>37</sup>

When Schwarz-Schilling warned the prime minister of the possibility of being dismissed by the 'Bonn Powers,' Dođik evoked the possibility of collective mobilization for protest and, implicitly, for violence. "If the High Representative wants to see that I can gather 200,000 people in Banja Luka, he can try to remove me, and we shall see what will happen. Do you want me to bring 50,000 Serbs to demonstrate in Sarajevo now?"<sup>38</sup> According to the International Crisis Group report on Bosnia "a substantial majority of RS residents would like to join Serbia."<sup>39</sup> Each entity has its own privatization law, which in the case of the RS allows vast amounts of financial resources to be channeled from Serbia. Through these financial means (i.e., direct investment in Republika Srpska's entity-level budget through the process of privatization process) and the direct political and religious control, Serbia aims to prevent integration of RS with the Federation.<sup>40</sup> This is likely to keep Bosnia and Herzegovina in a state of sustained dependency – from international aid and from Serbia indirectly – and instability. The Dayton agreement relegated the taking-up of special engagements to the competency of entities, which opened the way for the "Special Ties Agreement" between the RS and Serbia in September 2006. The agreement explicitly aims to promote economic and institutional cooperation, but as it implicitly contains territorial claims on behalf of Serbia, it is seen as an attempt to create cross-border Serbian hegemony. In order to make militantism loose ground, removal of the four Cyrillic "C"s<sup>41</sup> from the flag of the Republika Srpska was decided, but along with

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<sup>37</sup> Ibid.

<sup>38</sup> ICG Report Nr. 180 – *Ensuring Bosnia's Future: A new international engagement strategy*, 15 February 2007.

<sup>39</sup> Ibid.

<sup>40</sup> On the basis of information, provided by the Helsinki Committee for Human Rights in Serbia in October 2007, in Belgrade.

<sup>41</sup> "Samo Sloga Srbe Spasava" (Само Слога Србе Спасава), "Only Unity Saves the Serbs" preaches the most important ethno-nationalist mundane slogans of pride and patriotism; it is echoed in street-graffiti, in the ornament of orthodox crosses (even if they had an original and presentable sacred meaning) and T-shirts. During the war, the four 'C's became a kind of insignia Serb militias and the JNA placed on ruined and exploded buildings.

the '3 fingers' (a sign of warmongering among young people), it has rather become an even more popular symbol.

### *Desecularization and the penetration of the church*

In reshaped public settings, superimposed religion acts as a legitimacy vacuum-filler and provider of a cultural model.<sup>42</sup> Moreover, it constitutes a security-net through popular mobilization, rituals as well as through high visibility, audibility, and mediatization—politicizing the spiritual role of church-leaders. Religious indoctrination of political ideas (i.e., reaffirming ethnic and religious roots; the Orthodox Church's involvement in ethnographic discourse on 'Serbianness', identity and community-building through dogmatization and re-traditionalization) make religious entrepreneurs a source of mapping power and indisputable knowledge, possessing the power of 'political Gods.' Churches act as 'para-states' and provide collective knowledge in 'street-politics.' Reis Cerić, Vinko Pulić and Patriarch Pavle are prominent church-leaders that have been vested with overwhelming political and ideological power. In his book entitled 'Nasilje idola' (Violence of idols), professor of theology Mile Babić states that during the war religious institutions usurped the idea of nation in order to consolidate their power;<sup>43</sup> they even portrayed themselves in ethnographic discourses about the ethnic and religious roots of Croatness, Muslimness and Serbianness<sup>44</sup>. On Muslims' side, the recently staged 'Moj ummete: The six centuries of Islam in Bosnia' (My umma) carries three symbolic meanings, which are all collectively conceived from war narratives. First, the celebration was organized in Sarajevo's Koševo stadium. Koševo stadium is a symbolic space for both Bosnian Muslims and Bosnian Serbs: the latter were ousted from that part of the town during the war, and, therefore, it marks the former's victory and read as a symbol of their superiority. Second, the event linked traditionally non-conservative Bosnian Muslims to a more 'traditional' and dogmatic Islam. This is true

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<sup>42</sup> Iveković, Ivan: Nationalism and the Political Use and Abuse of Religion – The politicization of Orthodoxy, Catholicism and Islam in Yugoslav Successor States. *Social Compass*. Vol. 49, Nr. 4, 2002. 523–536.

<sup>43</sup> Babić, Mile: *Nasilje idola*. *Did*. Sarajevo. 2002.

<sup>44</sup> Vladeša Jerošić's *Вера и Нација* (Truth and Nation) is one example of Orthodoxy's nationalist books; it was issued in Belgrade in 2004 and diffused throughout Orthodox communities in the Balkans.

inasmuch as the event is held in several Islamic strongholds in Bosnia, and return to traditions is financed through transnational religious networks (e.g., financial support for women who wear the veil and traditional clothing). Third, via television images, the event spreads the notions about idyllic and secure living conditions in a 'brand-new' – de-ethnicized and confessionalized – community-context and, thus, allowed TV spectators to partake of these sentiments. As is evidenced by the well-groomed appearance of Koštunica (otherwise an ardent believer) at religious events and ceremonies, the practice of Orthodox Church is to deploy power through spectacle; also the introduction in Serbian schools of faith-based education aims to condition the public and affect collective cognition in a similar manner. Finally, the Croat Catholic temple in Mostar (the so-called 'Catholic mosque'), which was built as soon as guns were silenced, marks a powerfully cynical control of space. Its huge minaret-like tower and the giant-cross in its background can be viewed from every non-Catholic window. Minarets and churches are otherwise often erected in places where they have never existed.

### *Conclusions – about the limits of ethnicity*

In Bosnia-Herzegovina the war ended in a deeply divided society, without real societal reconciliation and without substantive transition to 'disarmed' states of mind; though it is doubtful whether any rapid transition is possible after such an unthinkable bloodshed. Some mechanisms of the Dayton-system were originally conceived to diminish ethnic logic, by promoting for instance the return-process, thus, implicitly allowing micro-strategies for 'land-reconquering'. However, it also provided the mechanisms that have cemented the power of nationalist parties. Paradoxically, if practices that obstruct the land-reconquest are eliminated (state-controlled, de-ethnicized police units, dismissal of resisting officials, etc.) the regime could easily recreate circumstances necessary for collective actions in some rural areas, and violence directed at returnees by civilians is expected to reinforce. In other words: while top-down political processes mark a latent institutional revision of the Dayton logic,<sup>45</sup> their impacts, together with the exclusivist party-politics inten-

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<sup>45</sup> For scenarios, see: Szilágyi, Bosznia – Identitások, entitások, lemaradások, op. cit.

sify conflictuality at the bottom-levels in aspects related to the sensible numerical arrangements.<sup>46</sup>

In the aforementioned settings, nationalism seems to be quite a natural phenomenon, with its particular feature that previous wars contextualize politics and serve as a basis for legitimizing the politics of exclusion and discrimination.<sup>47</sup> But legitimized and institutionalized ethno-nationalism poses a wide range of theoretical and practical dilemmas. In the first place, ethnicity is no more an imagined community, but acts as a political community in the Bosnian state-complex, partly due to community borders coinciding entity ones. On the basis of unresolved in-war responsibilities, and the lack of post-war justice, ethno-religious self-determination is the only possible source for political power-building in the hands of community-leaders. Haris Silajdžić's<sup>48</sup> militant politics is often considered for instance as aiming the construction of an Islamic state. It is as alive rethoric as possible, but at institutional levels limits the scope of governability and leads to a dysfunctional state with blockages and, thus, stagnation. In the second place, the ethnicity-based power-building strategies of political leaders are bounded or limited by several factors. First, the power-sharing system acts in itself as an institutional constraint as well. Second, the omnipotent political supremacy, the OHR-EUSR has authoritarian tools to sanction non-compliance in the human dimension of the governance. Third, if it is not by political arrangements, people will get along in their everyday life by personal, interpersonal ones, the need being a most important driving force. Here enters the picture the concept of 'Veze i Poznanstva' or V.I.P. meaning 'contacts and acquaintances', as one of the most important rules of life; a post-communist legacy that has resulted in a strange and barely conceivable admixture of old and new life-management tactics, disrespectful of ethnic and religious affiliation. At the same time, ordinary people criticizing the present system most frequently cite the complete lack of understanding of needs and its distance from social realities. And fourth, if ethnicity constitutes a politically liable, or at least acting community,

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<sup>46</sup> As a bureaucratic continuation of the 'war of numbers', no official census has since come to light.

<sup>47</sup> On the basis of interview with Ugo Vlasisavljević, Faculty of Philosophy, University of Sarajevo in May 2007.

<sup>48</sup> The bosniak member of the collective presidency, party: SBiH. The other two members are: Željko Komšić (SDP-Croat), and Nebojša Radmanović (SNSD).

then its leaders act rather as embodiments than delegates of it.<sup>49</sup> Non-ethnic voting occurs, which can be considered a refusal of the bounded logic, but we cannot talk about the emergence of a demos-like political community.

It is the above contradictions that cannot deter one from thinking about the future desintegration of the whole construct and the failure of the post-conflict state-building process. At present, it is quite unthinkable that politics will take a turn towards de-ethnicization. The intervention from outside and from the very-top will certainly not transform the main patterns of the political culture in Bosnia.

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<sup>49</sup> Sven Gunnar Simonsen: Addressing Ethnic Divisions in Post-Conflict Institution-Building – Lessons from Recent Cases. *Security Dialogue*, Nr. 36, 2005. 297.

# BIOMETRICS

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JULIET LODGE

## Biometrics: A Challenge for Privacy or Public Policy – Certified Identity and Uncertainties

**B** iometric identification is not new. What is new is the speed with which digitised biometric information can be automatically exchanged and linked to other data using information and communication technology including ambient technologies and tools both within states and across state borders. The problem is that digi-space and territorial state borders do not coincide, and ownership, of digital data – including personal biometric data – is ambiguous so it is hard to regulate and control automated data transfers. Problems are compounded by vested interests in marketing identification technologies, unsustainable but plausible claimsmaking about the added value the deployment of such technologies brings to internal and external security, policing, territorial border management and the verification of the authenticity of individual identity documents. Such claims however clash with the public's experience of rising fraud, falsifiability of documents and identity theft.

This paper examines three questions about automated information exchange related to biometric identities (i) the nature of identity and its ownership; (ii) how ICTs commodify information; and (iii) the impact on administration. It concludes with some suggestions for reform in order to ensure that baked-in security features in ICTs become the norm rather than the exception in the development of next generation IDs. The current ones are already obsolete, do not enhance security, compromise data protection and privacy, elude adequate parliamentary control.

Our focus is not on data protection but on technical problems raised by the technologies being used and the way in which they are deployed in areas of judicial and internal security cooperation, including police

cooperation. This is done against a background of a proliferation of data protection regimes in respect of third pillar matters, instruments and agencies: Europol's data protection regime, for example, differs from those of the Schengen Convention, SIS, VIS, the Prüm Treaty, Eurojust, Frontex and related national agencies.<sup>1</sup> While there is a need for an overarching regime to provide a single, clear, consistent, simple and easy to use standard for practitioners, this is insufficient. Personal data protection regulations define data, exemptions, rules on breaches for compliance (sometimes a criminal offence), and roles of data controllers and users in their ever-widening roles (as in the case of the police) but they are rapidly eroded or compromised as the speed of ICT innovation, inter-operability and expansion accelerates. The inconsistencies and problems within the member states policing agencies themselves<sup>2</sup> – such as the UK's Serious Organised Crime Agency's coordinating role in combating serious crime and its incongruous absence from EU information exchange – mean that law enforcement measures gain primacy over data protection<sup>3</sup> and crucially ICT security bake-in, something few parliaments – as the custodians of citizens' liberty and democratic legitimacy – recognise or adequately address.

### *Identity and Ownership*

Does your identity change over time? Is your identity a composite of your digital identities? Do you own those digital identities? How unique are they? Does your biometric remain stable? If not, what is the consequence for verifying your identity as presented in an identity card or passport? Is your digital identity your true identity or a fragment? If it is a fragment, what part of your identity does it represent?

Governments and the manufacturers of identity documents (e.g. chips for passports, means of capturing and measuring unique biolog-

<sup>1</sup> House of Commons Home Affairs Committee, Justice and Home Affairs Issues at the European Union Level, Third Report of Session 2006—07, Vol.1, HC 76–1, 5 June 2007 provides a critical view of the UK position but endorses the UK remaining outside Schengen while lamenting its non-participation in Prüm ab initio.

<sup>2</sup> Bigo, D et al: *Illiberal Practices of Liberal Regimes: the (in)security Games*. Collection Cultures et Conflits, Paris, 2006.

<sup>3</sup> Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (7315/2007–C6–0115/2007–200500202(CNS)), Brussels, May 2007.

ical traits like iris patterns, fingerprints, voice patterns, but not DNA, which is not a biometric as such) claim that by embedding one or more biometrics in an ID document, the risk of identity fraud and identity theft is reduced because it is allegedly harder to impersonate the genuine biometric and or the document in which it is embedded.<sup>4</sup> This in turn is supposed to enhance the state's capacity to verify who you say you are. The aim is to identify and exclude those likely to be a threat to the state from its territory thereby protecting citizens and safeguarding the territorial integrity of the state from hostile attack and intrusion by unwanted 'aliens' (migrants, international criminals, would-be terrorists, and other undesirables).

In the EU, biometric measures have been progressively introduced in relation to border controls, asylum and migration (e.g. Eurodac). Biometric registration of those subject to border control is designed to combat fraud and visa-shopping. To that end, biometric measures are defined to include traditional biometrics (face, fingerprints) and potentially those that can be automatically 'captured' and 'verified' to authenticate someone leaving or entering a state at an official border point (e.g. iris, voice, hand print, facial vein imaging) such as the Schiphol Privium system and those at some London airports to expedite the process for 'trusted travellers.'

Biometric immigration documents can take different forms as can supporting evidence.<sup>5</sup> It has therefore become necessary to define what is meant by 'document' and for the purposes of automated information exchange to specify what type of information is recorded and in what

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<sup>4</sup> A team of cryptography researchers in Belgium have discovered that around 720,000 passports issued by Belgium between late 2004 and July 2006 are not encrypted and the sensitive material they contain, including the holder's signature and photograph, could be read using a commercial RFID chip reader held 10 centimetres away. Datamonitor and McAfee survey on data leaks covering 1400 companies in the US, UK, Australia, France and Germany. According to this survey 60 percent of the companies have had data leaks in the past twelve months. 61 per cent of the leaks are caused by insiders, many breaches of data security were unintentional. However, 23 per cent were malicious. An American textile retailer admitted that information on 45.7m credit and debit cards belonging to 455,000 individuals had been stolen by hackers on its computer transactions system between 2005 and 2007. Source: Majja Palmer, Data leaks hit majority of companies, *Financial Times*, 24.4.2007 page 2 (European edition)

<sup>5</sup> UK Borders Bill as introduced in the House of Commons 25 January 2007, p.4, pt.24. [www.publications.parliament.uk/pa/cm200607/cmbills/053/en/07053x—htm](http://www.publications.parliament.uk/pa/cm200607/cmbills/053/en/07053x—htm).

form. The uniform format for short stay visas exemplifies this need to technical uniformity as a precondition of improving the implementation of the common visa policy. Legal frameworks and consistency in respect of exemptions (e.g. from fingerprinting) are needed. EU member states diverge both on the minimum age for capturing fingerprints (14 for Eurodac, and some states calling for six to combat child trafficking) as well as on the shelf-life of new generation biometric identity documents, and especially those for children whose biometric change rapidly. They differ over out-sourcing biometric capture: consular services<sup>6</sup> and police posts are the norm but external agencies are engaged in the UK, Italy and a few other states. France has 25 consulates with 110 biometric desks and 180,000 biometric visas in the database.

An ID card or passport, or any identity document issued to you by state authorities gives you access to territory and confirms the state's power over you within its territorial boundaries, and potentially to expel or deport those lacking the required, authentic identification 'documents'. The state controls the citizen's identity by having the absolute power to issue or refuse to issue a document confirming who he claims to be. Such a document may permit access to certain services (health, welfare, socio-economic driving licence etc). Private sector organisations (banks, transport bodies, shops) may also issue cards containing personal data and sometimes biometric data (like a fingerprint) to enable an individual to engage in commercial transactions to their benefit. But who owns this data? You – the data subject? Or the state or business? Who has a right to sell such information on to other interests, or to transfer it to third parties without your consent or knowledge? What happens to such information when it is outsourced by government departments to third parties, sometimes outside the state, in order to maximise efficiency gains? How secure is the data? And how safe from theft and fraud is your identity? Even amendments to EU Data protection laws to extend rules under pillar I to pillar III do not sufficiently address extra-territoriality concerns.<sup>7</sup>

<sup>6</sup> European Commission 2006, Proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications, COM(2006) 269 final Brussels, 31.5.2006.

<sup>7</sup> European Data Protection Supervisor (EDPS) opinion available on the EDPS website : <http://www.edps.europa.eu/>; Council of the European Union, Presidency (2007) Proposal for a Council Decision concerning access for consultation of the Visa Infor-

Contradictions and inconsistencies, moreover, arise when governments hesitate over exchanging and sharing information with Europol and Eurojust but exchange data with the US (such as Passenger Name records), or banking information on SWIFT.<sup>8</sup> This compounds the problems of complexity, diversity, non-comparability and divergence.<sup>9</sup>

In EU countries, governments define a biometric as a measurement of a unique physical characteristic of an individual. In the USA, a biometric is defined differently and encompasses other characteristic and behaviours in order to permit profiling. For profiling to be useful, it is essential that bits of information can be linked to a biometric measurement and that data held in one data base can be accessed and exchanged automatically. Note that police authorities expect access to motor and driving licence data bases that in turn can be linked to road tax information and private, foreign, insurance companies, bank data, and health insurance data, and DNA data. What are the implications for citizens, for policing, government and accountability?

Biometric information is to be stored somewhere in addition to the chip on an identity document. This raises numerous issues for EU citizens, including:

- data ownership
- data protection
- data commodification
- data storage and data degradation

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mation System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, Brussels, 20 February 2007 5456/1/07 REV 1/LIMITE – Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters Interinstitutional File: 2005/0202 (CNS) Brussels, 13 March 2007 (15.03) (OR. de) LIMITE CRIMORG 53 DROIPEN 18 ENFOPOL 45 DATAPROTECT 10 COMIX 267 – Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (7315/2007-C6-0115/2007-200500202(CNS)), Brussels, May 2007.

<sup>8</sup> The Society for Worldwide Interbank Financial Telecommunication (SWIFT) shared sensitive EU banking records with the UK Treasury without information EU authorities. The EU's Working Party 29 said that granting the US access to private transactions was illegal. HC76-1, p.76, pt.292.

<sup>9</sup> See OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, 23 Sep1980 at [http://www.oecd.org/document/20/0,2340,en\\_21571361\\_34590630\\_15589524\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,2340,en_21571361_34590630_15589524_1_1_1_1,00.html)

- data security and robustness against attack
- access to data by unspecified agencies, individuals
- automated data exchange
- data management processes
- data linkage
- data privacy
- data obsolescence
- data outsourcing
- data reliability (note how increasingly frequently biometric documents have to be upgraded, and how chips are not guaranteed for the life of such documents)

### *Commodification*

The commodification of data and the opportunities open to those who store digital identities and personal data attached to them, whether private organisations or government agencies and departments, poses problems for citizens. Citizens as data subjects cease to be in control of the disclosure of and access to their personal data. Instead, agencies sell in part or full parts of information about them in a way that mixes public and private bodies. This in turn makes it difficult to enforce accountability. Moreover, the costs of non-compliance with privacy requirements are often low compared to the costs of using privacy enhancing technologies and high level privacy practices from the outset. The costs of auditing compliance are often relatively high, and there is suspicion that only very serious cases come to the attention of data protection services.

EU member states diverge over how they handle data, how they implement data privacy ideals and laws, how modern their IT systems are, how robust against hostile intrusion, phishing, hacking, threats to critical infrastructures, level of data protection, level of screening of data in putters and level of training and management in place, accountability for data misuse, loss, degradation, etc. Information asymmetry compounds the problems of weak compliance with and enforcement of data protection law. EU member states are committed to the principle of the quintessential equality of EU citizens. This principle is undermined by the growing processes of automated data exchange whether by remote, ambient means or by genuine inter-operable systems or by bilateral

accords between departments and states allowing automated access by others to parts of their systems or information that they contain.

The presumed equality of EU citizens is also undermined in this scenario by differences over the definition of 'document', a task which the EU has only recently advanced. The type and extent of information contained, for example, in a passport varies. Not all member states issue identity cards. Can a document presented as a 'passport' in one state omitting information that is mandatory in another be accepted as a legitimate and valid travel document giving access to that state's territory? If that paper-based document is replaced by a digitised document or one that contains a chip, what features and information must be contained in the 'document' or plastic card? It has taken the member states a long time to agree on minimum standards regarding the physical nature of the 'document' and the 'information' and biometric that it holds.

States agree however that the aim of the biometric documents is both to enhance the verifiability of the identity of the holder, and to ensure that automated transactions provide at least the same, and preferably a higher, level of trust as paper transactions. They also generally accept that uniformity is not possible in the short term, and that they will have to rely on mutually agreed and mutually recognised security mechanisms such as PKI, and signatures for authenticating people. This means there is not a level playing field.

The 'hit, no hit' binary matching system used by SIS and Eurodac are supposed to ensure privacy and security but such systems are now increasingly susceptible and subject to error and intrusion. Moreover, border control points use different systems to grant access – automated (like Privium iris recognition at airports like Schipol) and/or human border guards or immigration officers who check travel documents. However, error is still possible: a machine reader may malfunction and be unable to read your document, or reject you as not matching the information on the chip or document that you present. Certain categories of people are unable to provide and enrol reliable biometrics, e.g. guitar and other stringed instrument players' finger tips can be calloused; elderly people with cataracts, handicapped, the very young, socially excluded, and those for whom the cost of biometrics is prohibitive.

The commodification of information arises because information can be transacted for government security purposes or for commercial gain. Information can be transacted and sold for economic gain. This in

turn has implications for governance and for the claims that are made to justify the wide scale introduction of biometric identity documents and their automated processing. Credulous governments may adopt ICTs as a ‘solution’ to managing public policies without fully understanding either the technology, the motives of those selling the technologies, the capabilities of the technologies and the likely impact of adopting those technologies on their own administrative practices. As a result, there is a risk that ICTs (which should be no more than a tool of modern administration) come to be valued more than the purpose, goals and ends of the public polices whose effective and cost-efficient implementation they are intended to assist. Where policymakers adopt technologies because it is ‘known’ or familiar without being in a position to evaluate appropriateness and ensure baked-in security for citizens worried about data ownership and access, etc there a danger that citizen distrust of the technology will be translated into declining confidence and trust in government. Within administrative sectors of government itself, the elevation of ICTs over political ideals, produces a change in the valorisation of political ideals such as liberty and security, accountability and democratic government.

*The who and what of liberty: the implications for good government*

The EU’s custodians of liberty are the member states. The principles of liberty are affirmed and constitutionalised in national, supranational and international agencies and agreements (EU, Council of Europe, United Nations, G8) and agreements such as Schengen and Prum. Such multiplicity and diversity can lead to inequalities and contradictions<sup>10</sup> between Schengen and non-Schengenland states, Prum signatories and others. Multi-level, transversal, organisational, institutional and administrative diversities compound the differences arising from the variable geometry of public policy design and management.

The use of ICTs makes it harder to retain boundaries between the public and private sectors within member states administrations

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<sup>10</sup> For an overview of discrepant systems see OECD, DG for Science, Technology and Industry, The Use of Authentication across borders, DSTI/ICCP/REG(2005)4/final, 24 Nov 2005

themselves and across territorial borders.<sup>11</sup> The claim that ICT enabled administration and the use of biometrics automatically enhances security brings false hope and the mirage of greater territorialized border protection. It may be a contribution to it but any arrangements that depend on information exchange in non-territorialised space – the cyber space of cyber border control whether to enter geographically bounded territory or to access a given service anywhere in cyber space – are vulnerable to the following:

- system incompatibilities
- system integrity
- discretionary disclosure policies
- different standards for data handling and storage
- data coupling
- data mining
- data tracking
- data re-use
- data re-sale
- data degradation
- imprecise data minimisation
- vague purpose limitation
- mixed purpose data use and exchange
- fraud
- crime<sup>12</sup>
- digi-footprinting
- obsolescence
- different socio-political and legal cultures for handing and managing data
- different codes of administrative practice
- different requirements for training and overseeing human data manipulators and automated data exchange

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<sup>11</sup> Lodge, J (2007) 'Information, Intelligence and Interoperability: the principle of availability and the problem of biometricised security', Public Hearing of the European Parliament on the Future of Europol, Committee on Civil Liberties, Justice and Home Affairs, Brussels, April 10, 2007

<sup>12</sup> All EU member states are signed up to the Council of Europe Convention on Cybercrime. Only 11 of the 27 member states have ratified it and brought it into force. The only non-EU state which is a signatory, the USA which ratified it in 2006. See Statewatch European Commission Communication on Cyber-crime: <http://www.statewatch.org/news/2007/may/eu-com-cyber-crime.pdf>

A small example is provided by the issues arising from Europol being granted access to centralised data bases in some member states where problems of inter-operability within the administrations themselves reveal how hard it is to affect automatic data exchange as intended.<sup>13</sup> This arises moreover because there are differences over how and what items of data are categorised and the purposes for which they are taken, stored and exchanged. The result is a rising danger that the creeping erosion of citizens' ownership of their own identities, an identity which is – after all – confirmed by the very state that issues the identity document in the first place increasingly may be questioned by automated machines.

In the scenario of the automated state, there is no sensible answer to the question of public accountability and redress. Instead, there are variable codes of practice, the provision of legal redress (at great expense and over long time periods) and caveats that appear to allow the private agencies retaining or processing data to evade accountability for system intrusion and system breakdown. Obsolete laws that neither address the contemporary problems associated with digi-identity theft and misappropriation nor the way in which citizens are increasingly denied choice in being digitised. Digi-IDs are the key to access services. Even in a state like the UK (traditionally hostile to identity cards), citizens who can opt or not to have a passport face the introduction of mandatory digi-IDs and fines of £1400 for non-compliance, assuming it is possible to track non-compliers and set up genuinely interoperable data bases to check compliance. Whereas the technical difficulties are rarely explained to the public, the suspicion that data is collected for an unspecified and expanding set of mixed purpose uses (migration, visas, social welfare entitlements, health, tax) aggravates fears of a surveillance society where

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<sup>13</sup> Europol, DECISION OF THE MANAGEMENT BOARD OF EUROPOL of 20 March 2007 on the control mechanisms for retrievals from the computerised system of collected information (Official Journal 2007/C 72/14) – RULES FOR ACCESS TO EUROPOL DOCUMENTS, Official Journal (2007/C 72/17); E.Guild & F.Geyer, Justice and Home Affairs Issues at European Level, written evidence submitted by the CEPS to the Select Committee on Home Affairs, House of Commons, November 2006; House of Lords European Union Committee, (2007) The EU/US Passenger Name Record (PNR) Agreement, HL108, London 5 June; Lodge, J (2006) *Communicating (in)security: A failure of Public Diplomacy*, Brussels: CEPS.

accountability is increasingly meaningless or ineffective against insider mismanagement, insider fraud and measures detrimental to the citizen.

The fuzzy logics of fuzzy security lead to processes in which governments or their agents agree on a compartmentalised basis to use ICTs to do something simply because the technology is there and it is possible to do it. There appears to be insufficient joined-up thinking, growing incongruities and less than sub-optimal outcomes. For example, the UK has one of the largest databases of DNA in the world, with samples taken from people who have not been convicted of crimes. All non-Europeans already in the UK will have their fingerprints or iris scans registered from 2008 (to combat social security and border crossing fraud). The associated technology to do this is guaranteed for two years compared to the ten year life-span of a passport and the 50 year durability of paper visas.

The choice of biometrics over biometric encryption already indicates that technological capabilities are defining future political agendas. This elevates the position of faceless, unaccountable bureaucrats in policy agenda setting over elected politicians. The latter's role and power are likely to be further eroded by the process of automatic information exchange in non-territorial space. There is a danger of algorithms taking primacy over analysis, of bureaucratic politics skewing sub-optimal option selection and decisions. Responsibility for delivering and protecting liberty and security shift as a result in unseen and unknown ways.

### *Implications for policy*

Governments and parliaments, as the ultimate loci of authority, legitimacy and public accountability should review issues of public and private access to private data and the impact of generalised, pervasive and creeping securitisation of daily life. There is a need for stronger data protection and laws on ID theft as internal and external security boundaries disappear; for consistency on tightly specifying access rights and accountability requirements, standards, system integrity, and reference architectures. The principle of availability, as implemented by the Hague programme, highlights its contingent nature, and how the prospect and practice of automated data exchange and inter-operability magnify problems of trust in technology, personnel, administrative codes of behaviour, and laws against corruption and digi-data theft.

The EU should develop a model for e-government information exchange between public and private agencies wherever they are located that requires baked-in security, and that addresses the pressing issues raised by ambient intelligence, VoIP information capture and exchange and envisages nano-technological security possibilities and scenarios that address the issue of accountability and lawfulness from the outset, not as an after-thought. Baking in security is a more feasible way of creating a level playing field for citizens than seeking to draft and agree universal regulations within the WTO or UN or even EU.

Automated data sharing, access and exchange magnify the problem of trust in private and public sector personnel, technology, administrators, officers, and politicians both inside the EU and where third parties in third states or NGOs and international organisations are concerned. Communication to and from third parties and non-EU interests needs to be rigorously examined. The mere existence of rules or laws in third states or agencies is but one prerequisite to consider allow information sharing: it is not a sufficient condition in itself. It would be foolhardy to allow a 'tick box' approach to verifying the 'adequacy' (however that term is defined) or otherwise of, for instance, robust data protection.

IOP is not an end in itself. It is a tool of e-governance. It is not neutral in its impact. It must be informed by political priorities. The tasks given to Europol associated with assisting in combating crime and border management highlight dissolving administrative boundaries. This demands attention to how good governance and procedures may provide a model for and shape practice within the member states; and makes imperative a cross-pillar, universalised EU model on information exchange is needed. Trust is at the heart of effective information exchange and communication whether enabled by ICTs or mediated by humans.

The EU Constitution's provisions on freedom, security and justice are illuminating. As yet, however, there remains a big challenge for and a major failure of public diplomacy because understanding and public trust and legitimacy are not being created.

*Implications for theory: externalities and the tragedy of the commons*

There is no satisfactory answer as yet to the problem of an assumed trade off between liberty and security; between limiting individual privacy to protect collective security. The concept of externalities developed

in economic theories of public goods holds that action in one area impacts others not directly linked to it, in beneficial or ill ways. Privacy protection can be seen as a public good in that giving one person privacy does not negatively impact on everyone else or limit the opportunity for all to be given equal privacy. However, if privacy protection is not equally robust, it can be eroded by nefarious intrusions, poor or obsolete ICT systems, administrative data processing, out-sourcing of data, viruses, poor data storage and management, data degradation, weak or non-existent means of vetting data in putters and those with rights to access and exchange data (whether by machines for automated exchange, or humans allowed role-based access). All can be construed as negative externalities.

The problem is that whereas at a theoretical level, negative externalities may be experienced by a particular party, they affect all. Action to redress weaknesses is not swift, routine, robust and, crucially, sustainable and understood as an absolute obligation on all. In the FSJ arena the prospect of growing automated information exchange and judicial cooperation for border management and other judicial, police and migration control processes as well as civil and criminal law means that all must be encouraged to adopt equally robust systems. So far, this has been addressed mainly as a matter of legal regulation, much of it idealistic, much of it imperative and needed to create a European model. The law lags behind politics and politics lags well behind accelerating ICT capabilities. If privacy and data protection continue to be separated from an understanding of ICTs and focussed on civil rights, then there is unlikely to be an adequate appreciation of the real and necessary limits and exceptions arising from the traditional exemptions on transparency applied to security and intelligence bodies.<sup>14</sup> Moreover, there is unlikely to be sufficient response to the need to assess ICT applications in terms of the protection against intrusion and the erosion of citizen liberties and identities they offer before they are bought by governments in the name of enhancing collective security.

In practice, technology and the management of ICTs has to be addressed. Baked-in security obligations must be a core element in the design and updating of all systems, not an after-thought to try and counter hostile intrusions, breaches of individual and collective security, big

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<sup>14</sup> P. Birkinshaw: *Freedom of Information: the Law, the Practice and the Ideal*. London: Butterworths, p. 31.

system failures and identity theft and fraud. This implies that free-riders cannot be accommodated, that uniform standards and regulations must be established and compliance rigorously overseen and enforced. The financial burden of realising this is also problematic. Poorer states may argue that high costs are prohibitive. The logic of collective action requires the others then to balance whether securing the collective benefit is small relative to the size of the benefit and the costs to the collective of doing nothing or muddling through.

In the EU, the demands on government at all levels are vast, the challenges growing and the prospect of balancing liberty and security as private ICT-led instruments and tools of surveillance spread, ever more complicated and elusive. As the Convention on the Future of Europe stressed: 'Citizens must be able to understand the system so that they can identify its problems, criticise it, and ultimately control it'. But they cannot do so unless there is a strong interlocutor in the shape of parliaments. Without revisiting the issue of what it means to control the unboundedness of digi-space that is facilitated by bounded territorial authorities, like governments and private actors, ICTs could endanger political legitimacy and undermine carefully constructed regulations to encourage compliance for the sake of security and liberty. In such scenarios, biometrics are neither the problem nor the solution. They are merely a speck of dust in the mud-pie.

WOLFGANG SCHREIBER

## Biometrics – Applications, Costs and Risks\*

The term “biometrics” has different meanings. Its broader definition refers to statistical analyses of biological observations and phenomena. In the current political debate and for the purpose of this article, it has another: biometrics refers to particular – mainly, physical – characteristics that are unique to an individual.<sup>1</sup> At least two biometric characteristics have a considerable history in everyday identification: the facial image and the signature. Furthermore, fingerprints are also used for identification purposes.<sup>2</sup> The biometric characteristics most frequently used in current and near future identification applications are

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<sup>1</sup> Cf. Lodge, Juliet: *Trends in Biometrics*. Briefing Paper (<http://www.libertysecurity.org/article1191.html>), 2006, p. 9. Lodge’s regional differentiation (USA vs. EU) in the understanding of the term “biometrics” does not seem valid to me. In Germany, the broader meaning is applied in science while the narrower understanding is common in the public debate on identification technologies.

<sup>2</sup> In this case certain cultural differences can be noted. Whereas in societies with high illiteracy rates fingerprints are often used instead of signatures, in the EU the taking of fingerprints is strongly associated with suspects in criminal investigations.

fingerprints, (digitised) facial images (2D or 3D), and the iris. Others are signature, voice and hand configuration. This is an incomplete list. A special case is human DNA, which is often not referred to as a biometric even though it is a unique characteristic of an individual. Its main difference to other biometric data is that DNA not only allows for the identification of a certain individual but provides links between individuals as well.<sup>3</sup> Common recognition techniques require two things: an optical device (e.g. a scanner for a fingerprint or a camera for a facial image or the iris) and software that uses an algorithm to reduce a fingerprint, the iris or characteristic points of the face to a digital code. This code may then be compared to one or more other digital codes to identify an individual.

### *Applications of biometrics*

As stated in the title, this article consists of three main parts, the first of which is the applications of biometrics. The best known set of applications is directly connected to the state. This includes, for example, the use of biometric data in passports and national ID cards for EU citizens or the creation of a biometric database for those applying for a visa to an EU member state. Continual, close cooperation between states and private agencies offers a second set of uses for biometric applications. These include airports where the state's customs officers or border police work with the airport's private security personnel. The airlines and their personnel constitute a third partner in this example. Other "state near" applications may be in the field of social security (e.g. the inclusion of biometric data on health cards) or in other social or public services (e.g. local traffic).

In the private sector, the most important application is generally understood as being for banking and financial transactions.<sup>4</sup> Debit and credit card PIN numbers as well as passwords used for online banking will be replaced by biometric data. Moreover, the use of biometrics in information technology will more generally replace access passwords for

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<sup>3</sup> Relatives or members of the same ethnic group have a chance of closer matches in their DNA.

<sup>4</sup> BITKOM: *Zukunft digitale Wirtschaft*. Berlin, 2007 (<http://www.bitkom.org>), p. 20.

access to computers or particular applications. Also, access to and within work places shall be managed by biometric applications.<sup>5</sup>

In countries with significant social stratification, biometrics will be used in privatised spaces. The extreme cases are so the called gated communities that we especially find in South America, South Africa, parts of the United States, or Russia. These gated communities are residential or commercial areas that are guarded by private security and lower class access is restricted to those who work in these communities.

Finally, biometric applications will eventually be used by private users or households. In addition to computer access, this includes access to houses, flats or cars. Traditional keys will be replaced by biometric tools, and even within a household, biometrics may regulate access to certain devices (e.g. restriction on television programs for minors in a household).

To summarise: Biometric applications are already being applied by governments or, at least, decisions to do so are being taken by governments and parliaments. This is especially true for the introduction of e-passports and the issuing of visas. The situation with regard to national ID cards is very different. Whereas the plans of the British government are quite extensive and have forced intensive discussions in recent months,<sup>6</sup> in France the plans for electronic ID cards were stopped and the inclusion of biometrics has been blocked completely by the refusal of the Commission on Information Technology and Liberties (CNIL) to provide its approval.<sup>7</sup> All other aforementioned applications have not yet been realized on a large scale. As well as government agencies, some private enterprises manage secure relevant buildings or areas through the use of biometrics. Tests with credit cards and other applications are currently being conducted.<sup>8</sup>

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<sup>5</sup> Lehman Brothers: *Security Annual 2006*. 2007 (produced by Jeffrey T. Kessler, sold by Sandra Jones and Company), p. 115.

<sup>6</sup> Schmitz, Patrice-Emmanuel/Huijgens, Ronald/Flammang, Marc: *Biometrics in Europe. Trend Report 2007*, 2007 ([http://www.europeanbiometrics.info/images/resources/121\\_58\\_file.pdf](http://www.europeanbiometrics.info/images/resources/121_58_file.pdf)), pp. 35–38

<sup>7</sup> Schmitz et al, op. cit. (fn. 6), p. 30

<sup>8</sup> The first real biometric credit card was introduced 2006 in Singapore (cf. Citigroup: *Annual Report 2006* (<http://www.citigroup.com>), pp. 4, 8f). For more general observations on “test markets” like Dubai or Singapore cf. Lock, Peter: *The Economic Dynamics of Biometric Controls or the Need to Consider a Plan B*, 2007.

Several reasons are used to justify the development of the above-mentioned applications:

1. The use of biometrics ensures identification. Fingerprints are unique and, therefore, can be related only to one human being
2. It is more difficult to forge biometrical data
3. Ensured identification makes forgery more difficult and, thereby, provides more security
4. Ensured identification and more difficult forgery will result in less fraud<sup>9</sup>
5. Airport passenger check-in will be less strenuous because the use and control of biometric data can save time<sup>10</sup>
6. Customers will be relieved because the use of biometric data for access to bank accounts, computer networks, etc. means that s/he will not be required to remember more or less difficult passwords and/or PIN codes

To a certain extent, these reasons are based on myths. The first myth is that of ensured identification. Like any other identification procedure, errors are common place. On the other hand, it is quite reasonable that biometric error rates will be lower than those for other procedures; this is especially true with regard to the facial image identification by a customs or police officer. The second myth is the difficulty level involved in forging biometric data.<sup>11</sup> Forgery's difficulty level is not a fixed or unchanging. Rather, there is a competition between forgeries and security's technological possibilities, innovations and countermeasures. Striving to forge is also a question of how much can be gained by forgery. Biometrics may provide more security against everyday crime and fraud, but it is questionable how exactly the introduction of biometric applications will – at least, in the long run – affect terrorism or organised crime.

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(<http://www.peter-lock.de/frame.php?datei=txt/turinrev.html&menu=home&view=screen&lang=en>), pp. 6, 10.

<sup>9</sup> Schmitz et al, op. cit (fn. 6), p. 12

<sup>10</sup> Heintze, Dorothea: Wie bei James Bond. Fingerabdruck und Gesichtsscanner: Im Geschäft mit der Biometrie liegen deutsche Anbieter weltweit vorn. *Die Zeit*, 09.03.2006 (<http://images/zeit.de/text2006/11/Biometrie.html>)

<sup>11</sup> Schneier, Bruce: Master Card. *Bulletin of the Atomic Scientists*, March/April 2007, p. 55f

### *Costs of biometrics*

After dealing with actual and probable applications, let me now turn to the second part of this article: the implementation costs of biometric applications.

First, we have to understand that it is practically impossible to obtain only the costs of biometric applications within larger security systems. For example, air traffic is one of the fastest growing businesses worldwide. Therefore, airports around the world are expanding and implementing the most up-to-date technology in their new facilities. In order to avoid the use of different security systems, older technologies in the existing parts of airports may be replaced.

If we look at the costs for e-passports within the European Union, we will find striking differences. The new British passport will cost 66 British pounds,<sup>12</sup> which is approximately 130 Euro. The new German passport will cost 59 Euros.<sup>13</sup> So, a Britain applying for a passport will have to pay twice the amount as a German. We can also compare the fees for passports before and after including biometric data. In the U.K. the difference is approximately 47 Euros whereas the difference in Germany is 36 Euros. If we take the German figures and assume that approximately two-thirds of the German population possess a passport (i.e. ca. 50 million), we can estimate an additional cost of 180 million Euros per year in Germany. Of course, the fees for the new passports reflect only part of the costs for the introduction of biometrics. Other costs – for example, for implementation of respective devices at airports – will be covered by airport fees that will ultimately result in slightly higher ticket prices.

Let's have a short look at the market for biometrics. Worldwide revenue for the biometric industry is actually around 1.5 billion USD.<sup>14</sup> Lobby groups predict annual growth rates of 30 per cent;<sup>15</sup> market analysts provide figures of 15–20 per cent. In Europe, the German market

<sup>12</sup> Lodge, op. cit (fn. 1), fn. 7

<sup>13</sup> Rötzer, Florian: *Was wird ein biometrischer Ausweis kosten?* 01.06.2005 (<http://www.heise.de/tp/r4/artikel/20/20200/1.html>)

<sup>14</sup> Lehman Brothers, op. cit. (fn. 5), p. 116

<sup>15</sup> IBG (International Biometric Group): Press Release. *Biometrics Market and Industry Report 2006–2010*, 2006 ([http://www.biometricgroup.com/press\\_releases/pr\\_2006\\_BMIR\\_2010.html](http://www.biometricgroup.com/press_releases/pr_2006_BMIR_2010.html)) and IBG (International Biometric Group): *Purchasing Information. Biometrics Market and Industry Report 2007–2012*, 2007 ([http://www.biometricgroup.com/reports/public/market\\_report.html](http://www.biometricgroup.com/reports/public/market_report.html))

is leading with total revenues approximating 100 million Euros. To place this figure in a larger context: the contribution of biometrics to European GNPs is actually 0.002 per cent.<sup>16</sup> The biometric market is, therefore, quite small. Even under the assumption of the highest growth rates, this will also be true in the future.

When we look at the market structure, we find very dynamic developments on the suppliers' side. Five years ago most companies that specialised in biometrics were small in size and innovative; they were often founded by small groups of computer scientists. Additionally, the leading electronics and computer technology producers had small branches for biometric applications. Actually, a concentration in biometric development is currently taking place. Investment companies like L-1 Identity Solutions acquired many of the formerly small sized companies and have become the leading supplier for biometric implementations.<sup>17</sup> Larger companies sought co-operations with smaller ones, expanded their branches for biometrics or acquired smaller companies. Despite the tendency towards concentration, the biometric market is quite far from being monopolized by a few companies.<sup>18</sup> For example, in the latter half of 2006 about 12 contracts were signed between European states' agencies and providers of biometric technologies. Only two providers were able to obtain more than one contract.<sup>19</sup>

However, demand is still dominated by states and state agencies. The realisation of various states' biometric agendas is the driving force for the recent and ongoing developments by biometric suppliers. To quote one of the leading investment reports: "the first real U.S. and foreign government orders for biometric systems are critical not just for making the biometric providers (eventually) profitable, but for creating the reference sites and beta tests that will be required for the holy grail of biometrics to become reality: major adoption by commercial users."<sup>20</sup>

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<sup>16</sup> BITKOM, op. cit. (fn. 4), p. 22

<sup>17</sup> Lock/Schreiber, op. cit. (fn. \*), Appendix I

<sup>18</sup> Especially, there is little evidence for the assumption (e.g. Hayes, Ben: *Arming Big Brother. The EU's Security Research Programme*. Amsterdam, 2006) that a security-industrial-complex is in the making. For a detailed discussion of the differences to the military-industrial-complex cf. Lock/Schreiber, op. cit. (fn. \*), pp. 19–30.

<sup>19</sup> Schmitz et al, op. cit. (fn. 6), pp. 28–38

<sup>20</sup> Lehman Brothers, op. cit. (fn. 5), p. 11f

Therefore, governments still play a crucial role in the market for and the implementation of other biometric applications.<sup>21</sup>

### *Risks of biometrics*

The last section will deal with risks connected to the implementation of biometrics. There are at least three dimensions to the problems concerning the use of biometrics. The first one is the technological dimension. Like every identification procedure or system, biometrics are not foolproof; technically speaking, on the one hand, there are False Acceptance Rates (FAR) and False Rejection Rates (FRR) on the other. But error rates are not a serious argument against the use of biometric technologies. High error rates cited in the literature criticising biometric applications are often one or two years old, refer only to certain systems tested and, therefore, often do not reflect the actual state of technology.<sup>22</sup> Furthermore, the combined use of two or more biometrical characteristics reduces error rates significantly. Of course, there cannot be a system without errors, but the alternative to biometrics is identification by human beings, i.e. by police or customs officers based on a passport picture or pictures of certain suspects. It seems reasonable that here the rates of error would be much higher.<sup>23</sup> On the other hand, the belief in the infallibility of a biometric identification system represents a serious risk.<sup>24</sup>

A more technical problem is the question of storage. How and where should data be stored? From the point of view of data protection, the storage of biometric characteristics on a chip – and only on a chip – is preferable. Storage of pertinent characteristics in databases is susceptible and open for manipulation, misuse and illegal access.<sup>25</sup> But the decision

<sup>21</sup> For Germany cf. BITKOM, op. cit. (fn. 4), p. 26

<sup>22</sup> BSI (Bundesamt für Sicherheit in der Informationstechnik): *Untersuchung der Leistungsfähigkeit von biometrischen Identifikationssystemen – BioP II. Öffentlicher Abschlussbericht*, 2005 (<http://www.bsi.de/literat/studien/biop/biopabschluss2.pdf>); Deutscher Bundestag: Sicherheit der biometriegestützten Reisepässe. Antwort der Bundesregierung auf eine Kleine Anfrage, Drucksache 16/161, 09.12.2005, p. 3

<sup>23</sup> In addition, some people may “appear” more suspicious in the traditional identification procedure by human beings because of their skin colour, their hair style or their type of clothing.

<sup>24</sup> Schaar, Peter (ed.): *Biometrie und Datenschutz – Der vermessene Mensch*. Tagungsband zum Symposium des Bundesbeauftragten für den Datenschutz und die Informationsfreiheit am 27. Juni 2006 in Berlin, Bonn 2006, p. 8

<sup>25</sup> e.g. Schneier, op. cit. (fn. 11), p. 56

to store the biometric data necessary for passports only on a chip does not exclude its storage in databases as well. Any use of a chip containing biometric data includes the risk that this data will be copied and stored in a database. This may be the case if current legislation changes so that storage in databases will be allowed in future. Furthermore, passports are mainly for use in foreign countries. The legislation of such a country may already allow copying<sup>26</sup> or may even require the storage of biometric information in a database.<sup>27</sup>

Another technological problem may be the use of biometric data for different types of identification. Nowadays, if someone has knowledge of one of my credit card's PIN codes, this person can only misuse this particular card. But what happens when every identification process occurs via the same tool, e.g. a fingerprint? If someone is able to forge this piece of information, he may gain access to additional debit or credit cards. And what happens if access to someone's house or car is managed solely by his fingerprint? Today, he can receive a new key or PIN code. Of course, he cannot receive a new fingerprint.<sup>28</sup>

A second problematic aspect of using biometric data is that of inclusion or exclusion. To a certain extent, biometric data can only replace existing systems. On the other hand, every IT system allows it to handle more data and, therefore, especially expand the number of excluded persons. A very actual example of inclusion or exclusion is related to international regulations. States which meet the requirements of the US government with regard to their passports and the information contained in them are included in the US visa waiver scheme. On the other hand, all other states – and, of course, their citizens – are excluded from it. A similar problem may be observed on the level of the individual. Within so called frequent flier programs, persons may be registered after they underwent a security check. Participating in the scheme will allow a faster check-in, with fewer security checks, for those registered for each flight.<sup>29</sup> Identification will be achieved through the use of biometrics applications, of course. The questions of inclusion and exclusion are quite obvious in this scheme.

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<sup>26</sup> Deutscher Bundestag, *op. cit.* (fn. 22), p. 2

<sup>27</sup> In this regard the EU is a striking example with the storage of biometric data of all visa applicants.

<sup>28</sup> Heintze, *op. cit.* (fn. 10)

<sup>29</sup> Schmitz et al, *op. cit.* (fn. 6), p. 8

But frequent flier programs still include another dimension: one of trust and distrust. A “frequent flier” who has undergone the required security check seems to be a trustworthy person. But what about those people, who are “frequent fliers” by the fact that they often fly but are not – or don’t want to be – registered within a frequent flier program? And furthermore, what about those who fail the security check?

Another aspect of trust/distrust – and the last point in this paper – is the existing and even growing distrust of a segment of society vis a vis security policies.<sup>30</sup> To illustrate, I will refer to a current discussion in Germany.<sup>31</sup> Politicians have seemed to be entirely concerned with questions of security for quite some time. They do not, however, seem to be concerned in questions of civil liberties. At least since September 11, 2001, new demands for security enhancement measures are continuously being posed. Examples in recent years include the desire to permit the downing of kidnapped planes<sup>32</sup> or extensive security checks for all personnel working within the 2006 FIFA World Cup stadiums. Just recently the Federal Minister of the Interior demanded a list of security measures deemed necessary by him.<sup>33</sup> These included:

- police agencies’ access to databases of local authorities, e.g. where data collected for the issuing of passports are stored, especially digitised passport pictures
- extending the amount of time providers of phone or internet connections must store data
- online search of personal computers by police agencies (of course, without knowledge of the computer owners)

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<sup>30</sup> And of course the distrust of the respective politicians vis a vis parts of their societies

<sup>31</sup> For more general discussions with reference especially to British and French examples cf. Lodge, Juliet: Communicating (in)Security: A Failure of Public Diplomacy, *Challenge Research Paper*, Nr.3, 2006 and CCNE (Comité Consultatif National d’Ethique pour les Sciences de la Vie et de la Santé): *Biométrie, données identifiantes et droits de l’homme*, 2007 ([http://www.libertysecurity.org/IMG/pdf\\_avis098fr.pdf](http://www.libertysecurity.org/IMG/pdf_avis098fr.pdf)).

<sup>32</sup> A respective law was, according to a judgement of the Bundesverfassungsgericht (Federal Constitutional Court), not in line with the German constitution.

<sup>33</sup> One reason for this preoccupation with security measures might be the state’s loss of control caused by globalisation and transnationalisation (cf. Ceyhan, Ayse: Technologie et sécurité: une gouvernance libérale dans une contexte d’incertitudes. *Cultures & Conflicts*, 64 (2006), pp. 11–32).

- use of military personnel and devices to assist police or to take over police duties, especially pertaining to guarding relevant security sites
- storage of the fingerprint data collected for the issuing of passports in local authorities' databases

To conclude, as indicated during the actual discussion on security policies in Germany: Biometric applications are only a minor concern at the moment.<sup>34</sup> Most observers agree that the Federal Minister of the Interior put the storage of fingerprints in databases on his agenda only for bargaining purposes. The opposition in parliament deals with biometrics mainly in technical terms and presses for more data protection, but it articulates no general objection against the use of biometric data for identification purposes. Even in the current yearbook on the state of fundamental rights in Germany,<sup>35</sup> none of the more than 40 articles deals with biometrics.<sup>36</sup>

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<sup>34</sup> This is especially the case for non-state applications of biometrics. Peter Lock (op. cit. (fn. 8), p. 3) stresses the necessity to pay more attention to private sector activities (cf. also CCNE, op. cit. (fn. 31), p. 8f).

<sup>35</sup> T. Müller-Heidelberg et al (eds.): *Grundrechte-Report 2007. Zur Lage der Bürger- und Menschenrechte in Deutschland*. Frankfurt am Main, 2007.

<sup>36</sup> Interestingly, the front cover of the book shows the biometric identification by an iris scan. Therefore, it may be concluded that for the authors of the yearbook as well as for the concerned German public biometric identification seems to be one of the strongest symbols of a policy of securitization and a risk for civil liberties.

# MULTICULTURALISM

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SZABOLCS POGONYI

## Illiberal Practices under the Veil of Multiculturalism\*

Recently, an old debate about the status of immigrant minorities in Western liberal democracies was opened again. A decade ago it seemed that multiculturalism had won. As Nathan Glazer famously proclaimed, “we are all multiculturalists now.”<sup>1</sup> Along the same lines, Will Kymlicka, who is without doubt the most profound and thorough scholar examining multiculturalism and minority rights from both normative theoretical and pragmatic political perspectives, noted that “we can already detect an emerging consensus in the literature” regarding the acceptance of liberal nationalism or, in other words, liberal multiculturalism.<sup>2</sup>

This no longer seems to be the case. More and more politicians, philosophers and public intellectuals question multicultural policies and argue for less recognition of differences. Though there is no exact empirical data available, some signs do suggest that the number of those favoring multicultural policies is on the decline. Anti-immigrant rhetoric and xenophobia are becoming everyday phenomena in Western European countries. Right wing radical parties that propose tighter immigration policies (or even expelling illegal immigrants) have become major political forces in some historically tolerant and immigrant friendly states.

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\* Previous versions of this paper were presented at the ASN 2007 World Convention in New York and the 2007 UCSIA Summer School on Religion, Culture and Society in Antwerp.

1 Nathan Glazer: *We Are All Multiculturalists Now*. Cambridge, Mass.: Harvard University Press. 1997.

2 Will Kymlicka: *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. New York: Oxford University Press. 2001. 39.

Not only xenophobic right wing and populist left wing politicians oppose immigration. The previous celebration of difference and ‘let a thousand identities bloom’ approaches seem to be on the retreat, and assimilationist, or at least difference-blind arguments are in fashion again – even among liberals and social democrats.

In Germany, the introduction of more strident citizenship tests is being discussed, and in some states, religious scarves are forbidden in schools. Whenever a new Mosque is being built, German citizens protest.

In the Netherlands, the Party for Freedom and Democracy (VVD) considers Islam atavistically antithetical to Western democratic norms. Frits Bolkenstein, former leader of VVD considered Islam inherently hostile to human rights and Western political norms.<sup>3</sup> When a Muslim fundamentalist murdered Theo Van Gogh, the controversial and provocative director and artist who was highly critical of Islam, the famous Dutch tolerance seemed to disappear. Christian Democrats proposed curbing radical Muslim groups’ freedom of speech. Based on the Rotterdam “Burgarschapscode,” Rita Verdonk, Minister of Immigration, Juvenile Protection, Prevention and Probation in the third Balkenende cabinet, proposed the introduction of a state wide ban on the public use of foreign languages. Geert Wilders, founder of the Dutch Party for Freedom, stated that the Koran was a “fascist book” on a par with *Mein Kampf* and suggested banning it.<sup>4</sup>

In Britain, “common values” are on the agenda. Since the 2005 London bombings, among British left-wing politicians rhetoric about the importance of common language and common culture has replaced the previous celebration of difference and active tolerance of religious and cultural diversity. Jack Straw, a major Labour politician and Leader of the House of Commons, asked Muslim women from his district to take off religious scarves when meeting him.<sup>5</sup> Tony Blair took sides in the debate over Muslim women’s right to wear the veil when he stated that he backed a Dewsbury school’s suspension of a teacher for her refusal to

<sup>3</sup> Paul Scheffer: Het multiculturele drama. *NRC Handelsblad*, January 29, 2000. <http://www.nrc.nl/W2/Lab/Multicultureel/scheffer.html>

<sup>4</sup> Geert Wilders: Genoeg is genoeg: verbied de Koran. *De Volkskrant*, August 8, 2007. [http://www.volkskrant.nl/binnenland/article451338.ece/Genoeg\\_is\\_genoege\\_verbied\\_de\\_Koran](http://www.volkskrant.nl/binnenland/article451338.ece/Genoeg_is_genoege_verbied_de_Koran)

<sup>5</sup> The politics of identity. *Economist*. October 19, 2006. [http://www.economist.com/world/britain/displaystory.cfm?story\\_id=8057611](http://www.economist.com/world/britain/displaystory.cfm?story_id=8057611)

remove the niqab. He described the veil as a “mark of separation” that made people from outside the Muslim community “uncomfortable.”<sup>6</sup> The government also planned to ask universities to report on students with presumed links to radical Muslim groups.<sup>7</sup> In his first speech to Conference as leader of the Labour Party, just months after his inauguration, Gordon Brown promised to create “British jobs for British workers”<sup>8</sup> – a slogan that had previously been used by the xenophobic British National Party.

The changes in attitudes are partially explained by economic factors. High unemployment rates, slowing economies and less generous welfare policies make for more difficult competition. Immigrants and other visible minorities are usually the first to be blamed for the economic malaise.

Another factor is recent terrorism. After 9/11, the Madrid and the London bombings, and other incidents, some blamed the failed integration of immigrants on multiculturalism and excessive tolerance towards cultural and religious groups. Though these claims highly overestimate the threat posed by non-integrated minorities to Western liberal democracies, ghettoized, illiberal immigrant groups living within Western liberal metropoli certainly became a concern.

It also seems that immigrants’ claims have significantly changed in the last decade. Immigrant groups no longer seem to request public recognition and/or polyethnic rights but favor a degree of autonomy and self-governance instead.

Based on Will Kymlicka’s and Charles Taylor’s works, I will first sketch a brief history of changes in attitudes and policies regarding the integration and recognition of immigrants. Next, I will focus on recent debates about multiculturalism, especially emphasizing hard cases that entail the following dilemma: the challenge of illiberal immigrant communities living within liberal democracies. I will argue that three basic liberal approaches (*modus vivendi* liberalism, difference-blind liberalism and multicultural liberalism) can be identified in the debate about the

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<sup>6</sup> Matthew Tempest: Blair backs school in veil row. *Guardian*, October 17, 2006. <http://education.guardian.co.uk/schools/story/0,,1924479,00.html>

<sup>7</sup> Vikram Dodd: Universities urged to spy on Muslims. *Guardian*, October 16, 2006. <http://education.guardian.co.uk/higher/news/story/0,,1923325,00.html>

<sup>8</sup> Gordon Brown speaks to Conference. September 24, 2007. [http://www.labour.org.uk/conference/brown\\_speech](http://www.labour.org.uk/conference/brown_speech)

limits of tolerance. After examining them separately, I will show that these approaches are either normatively incoherent, pragmatically problematic, or both. As I move through these arguments, I suggest that there is a limited possibility of finding a normatively compelling and pragmatically feasible comprehensive theoretical framework for determining the limits of multicultural tolerance within liberal democracies.

Though my examples will mostly refer to Muslim immigrants, I do not suggest that the Muslim community is homogeneous or that Islam is inherently illiberal. My aim is to demonstrate the normative philosophical weakness and the pragmatic political naivety of liberal frameworks toward illiberal minorities.

### *From melting-pot theories to liberal multiculturalism*

In *From Enlightenment Cosmopolitanism to Liberal Nationalism*, Will Kymlicka writes that Enlightenment liberals had high hopes and little doubt that individuals would emancipate from ascribed social roles and identities and that the age of cosmopolitanism will sooner or later set in.<sup>9</sup> Meliorist liberals considered cosmopolitanism the inevitable outcome of humanity's emancipation. It was taken for granted that smaller groups would assimilate into larger – and usually more developed, more sophisticated – ones. Philosophers thought that every human being is equipped with natural reason, and they shared a belief in the universality of human nature. Circumstances (such as: upbringing, mother tongue, religious views, etc.) were deemed contingent and irrelevant to human nature. Kant spoke about culture in the singular. For him, human beings were rational agents who directed their lives according to universal moral laws. Condorcet predicted the emergence of a universal language and a common culture. John Stuart Mill, the philosopher and colonial officer in India, considered English “tutelage” an obvious advantage for the less developed Indian (and even Scottish highlander) cultures and nations. As a preacher of individual liberty, Mill took for granted that freedom and multinational state are incompatible.

Progressive politicians and political theorist in the first seventy years of the 20<sup>th</sup> century argued that cultural, ethnic, national and religious groups should not be discriminated against on the basis of race, gen-

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<sup>9</sup> Kymlicka: *Politics in the Vernacular*, 203.

der, or sexual orientation. This approach was very much in-line with the previous century's liberal political theories. The primary aim of liberals was to build a public sphere in which differences were unimportant and were not taken into account.<sup>10</sup> In practice, this meant that nationality be separated from politics and be relegated to the private sphere.<sup>11</sup>

The model for this was religion. For Enlightenment liberals, ethnic and religious belonging were always suspicious. As with religious differences, public policy concerns should not address cultural differences. 'Let thousands of flowers bloom' – in everyone's private backyard. But in the public sphere, recognition of cultural differences was not considered important. When it is taken into account that even immigrant minorities did not claim public recognition of their cultural practices, this is not surprising.<sup>12</sup> A color-blind public sphere was not simply imposed by majorities; rather, minorities – including national and immigrant minorities – were hoping for it.

Until the seventies, the 'melting-pot' ideology was the dominant approach towards the cultural differences of immigrant groups. According to the melting-pot theory, immigrants and other cultural groups assimilate or, if they are unable to do so, accept segregation and marginalization.<sup>13</sup> This approach was a consequence of the relegation of cultural differences to the private sphere. The public sphere was supposed to be neutral, but this frequently meant that it reflected the customs and cultural practices of the majority.

Some cultural flowers cannot bloom in private backyards. If public holidays only reflect Christian heritage, Muslims are worse off. It is unjust that Christian holidays are public holidays while theirs are not. If states subsidize historic religions, newcomer immigrants will not have the resources necessary to build places of worship and to practice their religion.

In addition to financial concerns, certain cultural and religious practices simply are unable to be confined to the private realm. As religious Jews need to put on kippahs and Catholic nuns headscarves when in public, observant Muslim women and Sikh men are respectively required

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<sup>10</sup> Will Kymlicka: *Multicultural Citizenship*. Oxford: Clarendon Press, 1995. 30.

<sup>11</sup> Bhikhu Parekh: *Rethinking Multiculturalism. Cultural Diversity and Political Theory*. London: MacMillan Press, 2000. 34.

<sup>12</sup> Kymlicka: *Multicultural Citizenship*, 79.

<sup>13</sup> Kymlicka: *Politics in the Vernacular*, 28.

to wear hijabs and turbans. They must wear these garments not only at home, but also when at school, work, etc. If students are obliged to attend gymnastics classes in short dresses, Muslim girls will break religious regulations forbidding the exposure of the female body. A so understood “neutral” public sphere is usually neutral only for those who are not required to visibly express their cultural, ethnic or religious identities.

While the civil rights movement concentrated on anti-discrimination (i.e. a color blind public sphere) identity politics from the seventies had greater aims. Identity politics that were more sensible to the needs of ethnic and religious minorities called for public recognition of cultural identities. Such movements wanted more than non-discrimination policies or the possibility to privately engage in religious and cultural customs; it also sought public recognition of cultural differences that had previously been confined to the private sphere. Such recognition would require that cultural and religious practices be allowed in public; this would involve the allowance of religious symbols in public life as well as inclusion of immigrants’ religious and cultural heritage within education curricula. Recognition also presupposes the state’s active support of the religious and cultural practices of immigrant minorities – including but not limited to: contributions to the building of Mosques, providing financial support for cultural programs (such as ethnic festivals), etc. Moreover, public recognition also requires that members of minorities may have some exemptions. For example, Muslim women might be provided with separate beaches; girls might be excused from wearing short gymnastic dresses – or even from gymnastic classes.

The theoretical underpinning of the various and often divergent strands of identity politics are derived from political theorists, particularly from communitarian political philosophers.<sup>14</sup> One of the earliest proponents of multiculturalism is Charles Taylor. As he writes in his 1992 essay *The Politics of Recognition*, “our identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back a confirming or demeaning or contemptible picture of themselves.”<sup>15</sup>

<sup>14</sup> Kymlicka: *Politics in the Vernacular*, 18.

<sup>15</sup> Charles Taylor: *The Politics of Recognition*. In *Philosophical Arguments*. Cambridge, Mass: Harvard University Press. 1995. 225.

In contrast to the attempts at nondiscriminatory policies and a “politics of universal dignity,”<sup>16</sup> “the politics of difference often redefines nondiscrimination as requiring that we make these distinctions the basis of differential treatment.” For Taylor, these measures desire more than non-discrimination standards. The politics of recognition not only redresses past injustices and contributes to the equality of individuals from different cultural groups, but more importantly, it also renders the maintenance of distinctness possible.<sup>17</sup> In other words, members of a particular culture have legitimate reasons for wanting to keep their culture intact for future generations.<sup>18</sup>

In the past decades, communitarian political theorists have argued that without public recognition and collective cultural rights individual members of minority cultures – national, ethnic, religious and sexual minorities alike – suffer harm. This – communitarian theorists claim – not only causes suffering for the individual but can also easily lead to social fragmentation. Communitarian philosophers hoped that both humiliation of individual members and the alienation of minority groups could be prevented by providing recognition and granting collective cultural rights to minority groups.<sup>19</sup> Some of them – including Charles Taylor – argued that cultural practices should be protected even at the price of restricting individual freedom. In practice, this would mean that dissenters could be penalized in some form in order to keep up certain religious and socio-cultural institutions and heritage. Some communitarians argue that if individuals can opt out, then some of the linguistic, cultural and religious practices that require a large number of participants will be unable to survive.

From the mid-1980’s, a significant shift appeared in liberals’ stance toward multicultural rights as well.<sup>20</sup> More and more they acknowledged the core ideas of communitarian critics and tried to different extents to accommodate cultural rights within liberal individualist theoretical frameworks. Various theories of liberal nationalism, communitarian liberalism and multicultural liberalism emerged. Even John Rawls,

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<sup>16</sup> Taylor: *The Politics of Recognition*, 234.

<sup>17</sup> Taylor: *The Politics of Recognition*, 235.

<sup>18</sup> Taylor: *The Politics of Recognition*, 235. 16.ff

<sup>19</sup> Charles Taylor: *The Pattern of Politics*. Toronto: McClelland and Stewart, 1970. 64.

<sup>20</sup> Kymlicka: *Politics in the Vernacular*, 20.

an ardent opponent of group rights, very much accommodated communitarian aspects in his constructivist political theory.<sup>21</sup>

Minority rights advocates had won. For two decades, it was widely accepted that minority rights are not inherently unjust, and very few theoreticians believed that justice can be defined in terms of difference-blind rules and institutions. More and more Western states considered themselves as multination states and allowed their constituent nations to maintain their distinct socio-cultural forms and granted the tools necessary to do so – including language rights, self-government, and sometimes even some degree of political autonomy.<sup>22</sup> The cultural and religious differences of immigrant minorities were also widely recognized, and their maintenance was actively supported.

### *The new multiculturalism debate*

According to recent statistics, the percentage of Muslim population comprises less than 2 percent of the population in Canada and the US. In France it is around 8–10 percent; in the UK, Germany, the Netherlands, Denmark, Belgium, Austria and Switzerland, it is between 3 and 6 percent. There are 15–20 million Muslims (mostly immigrants and their descendants) living within the European Union. Alarming metaphors envision “Eurabia” and “Londonistan.”

After 9/11, the Madrid and London bombings, the good old questions of multiculturalism and the limits of tolerance arose in a slightly different context. After these attacks, public attention turned to Muslim fundamentalist groups thriving within Western liberal democracies.

At least in the sense that these groups pose a serious threat to Western liberal democracies, the fears related to Islam are highly exaggerated. Most Muslims do not sympathize with radical fundamentalism, and only a very small minority actively supports it. There is no reason to suppose that Islam could not be in accordance with basic Western liberal democratic norms and institutions.

On the other hand – whether justified or not – the perceived threat shed light on the illiberal practices of immigrant groups that had before

<sup>21</sup> John Rawls: *Political Liberalism*. New York: Columbia University Press, 1993; Will Kymlicka: *Multicultural Citizenship*, 160; Stephen Mulhall – Adam Swift: *Communitarians and Liberals*. Oxford: Blackwell, 1992. 202.

<sup>22</sup> Kymlicka: *Multicultural Citizenship*, 27–30.

the bombings been relatively underreported. These practices might not pose a threat to mainstream Western societies, but they do oppress the (primarily female) members of Muslim communities.

In Western Europe Muslim groups mostly live isolated from the larger society in enclosed, illiberal enclaves, so called “parallel societies.”<sup>23</sup> According to a 2004 report by Papatya women rights’ watch organization, there were dozens of “honor killings” in Germany within the Muslim community in the last decade. Young female Muslims were murdered by close relatives – mostly brothers – because they had left their arranged marriages or, sometimes, only for attending school or not following religious dress codes.<sup>24</sup> The German Ministry of Family Affairs reported that tens of thousands of Turkish women in Germany live in quasi-slavery. Arranged marriage is a common practice: one-fourth of Turkish women in Germany first meet their husbands only on the day of the wedding. Half of them have been raped by their spouses. Fearing that voicing concern would amount to intolerance or even racism, the German public was reluctant to raise the issue.<sup>25</sup> Segregated immigrant communities are common in the United Kingdom, the Netherlands and Denmark as well.

In addition to the perceived threats of non-integrated immigrant minorities, another factor seems to influence the recent debate on multiculturalism. As noted above, according to Will Kymlicka immigrants previously did not seek the same status as national minorities. They did not seek autonomy but only asked for the recognition of their socio-cultural practices and regulations. Their utmost aim was to integrate into mainstream society.<sup>26</sup>

This might have been true in the past, but now the situation seems to be changing. Immigrant minorities more and more demand national minority rights – such as autonomy and self-governance. As of yet, no data is available, and only certain assumptions are possible; however,

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<sup>23</sup> Wilhelm Heitmeyer: Für türkische Jugendliche in Deutschland spielt der Islam eine wichtige Rolle. *Die Zeit*, August 23, 1996. <http://www.zeit.de/1996/35/heimtme>

<sup>24</sup> Papatya: *Outline for Resourcebook HRV 2004*. <http://www.papatya.org/veroeffentlichungen/resourcebook.htm>

<sup>25</sup> “Deutsche Ausländer”. Schlachtfeld Frau. *Sueddeutsche Zeitung*. February 25, 2005. <http://www.sueddeutsche.de/kultur/artikel/474/48426/> (After 9/11 new regulations mirroring Turkish laws were introduced; arranged marriages became illegal in certain states, and burkas were forbidden in public institutions.)

<sup>26</sup> Kymlicka: *Multicultural Citizenship*, 30–1; 78–79.

there are clear signs of a change in the attitude of immigrant groups and, primarily, among third-generation immigrants.

In the past decade, a new phenomenon has occurred in Western democracies. Previously marginalized minorities that were striving for equal respect under the law started to abuse multicultural policies in order to self-segregate. The Muslim Council in Great Britain is advocating faith-based schooling.<sup>27</sup> French Muslims call for local autonomy and the introduction of sharia.<sup>28</sup> The Canadian Islamic Institute of Civil Justice proposed that sharia law should take precedence over Canadian law in civil disputes among Muslim citizens.<sup>29</sup> The list could easily be continued.

How should Western liberal democracies approach the problem of illiberal minorities? Where should the boundaries of tolerance be drawn, if they should be drawn at all? Normative and pragmatist concerns are intertwined in these questions. Many theorists have tried to answer the age-old question about the limits of tolerance. Although oversimplifying their arguments, I identify three basic models of liberal answers to the challenge of illiberal minority groups below. Of course, many other approaches are possible. Communitarians and conservatives may have completely different suggestions, but here, I will only address the liberal approaches.

### *Modus vivendi liberalism*

The first method could be called the *modus vivendi* approach. I have borrowed the term from John Gray who in *Two Faces of Liberalism* writes “The liberal state originated in a search for *modus vivendi*.”<sup>30</sup> With a slight oversimplification, Gray differentiates two major kinds of liberalism. The first is the perfectionist type proposed by Locke, Voltaire, Kant, Rawls and Hayek; in this approach, toleration is considered the best means to discover an ideal lifestyle. The original liberalism is that of Hobbes, Hume, Berlin and Oakeshott; they regarded toleration as

<sup>27</sup> Eric Pfanner: Britain debates state aid for Muslim schooling. *International Herald Tribune*, October 31, 2005. <http://www.iht.com/articles/2005/10/17/news/redislam.php>

<sup>28</sup> Caroline Glick: Our World: The Paris Fall. *Jerusalem Post*, November 7, 2005. <http://www.jpost.com/servlet/Satellite?cid=1131367042134&pagename=JPost%2FJPArticle%2FPrinter>

<sup>29</sup> Jane Little: Debate rages over women and Sharia. *BBC News*, June 11, 2003. [http://news.bbc.co.uk/2/hi/in\\_depth/2977446.stm](http://news.bbc.co.uk/2/hi/in_depth/2977446.stm)

<sup>30</sup> John Gray: *Two Faces of Liberalism*. Cambridge: Polity Press, 2000. 1.

means to peaceful coexistence among diverse ways of life. Though currently tolerance is for many liberals a matter of moral principle, Gray claims that at its inception it was very much a practical and prudent concept without normative moral content.

Though Gray primarily concentrates on the differences between the two strands of liberalism, he also takes for granted that each is inherently linked to tolerance. Perfectionist forms of liberalism rely on tolerance since it is the most appropriate tool for establishing practices and political institutions that are in accordance with personal autonomy and freedom. In this argument, then, tolerance is essential to achieving the main goal of thick liberalism: personal autonomy. In contrast, the less ambitious, thinner *modus vivendi* liberals believe that peaceful coexistence of highly diverse cultures in plural societies is only possible if tolerance prevails. Here toleration is a prudent and pragmatic approach to diversity, but it lacks further substantive value. This thin, live-and-let-live non-universal liberalism is based on the acceptance of an extreme pluralism. The most we can hope for is the peaceful coexistence of individuals and groups with different conceptions of a good life. *Modus vivendi* tolerance requires that liberals should not impose their liberal values on illiberal groups.

It is Chandran Kukathas, a major philosopher who works on multicultural policies, who develops the most clear-cut form of the *modus vivendi* approach towards cultural diversity. He argues that liberalism has nothing to do with the recognition of cultural differences.<sup>31</sup> Rather, he thinks that liberal tolerance requires that illiberal groups within liberal democracies be left on their own, and that the state should not interfere with their practices.<sup>32</sup> He considers tolerance that does not tolerate intolerance only limited and recommends an alternative view that is not based on the liberal primacy of individual autonomy. This extended concept of tolerance would be independent from substantive moral values.

But, this requires that even those cultural practices that impose restrictions on individuals are not disrupted. In this view, liberals should seek to accommodate illiberal groups as long as they do not to impose their values on outsiders. Liberal democracies should not interfere

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<sup>31</sup> Chandran Kukathas: Liberalism and Multiculturalism: The Politics of Indifference. *Political Theory*, Vol. 26, Nr. 5. (Oct., 1998), 691.

<sup>32</sup> Chandran Kukathas: Are There Any Cultural Rights? *Political Theory*, Vol. 20, Nr. 1. (Feb., 1992), 105–139.

with the restrictions placed on particular members of illiberal groups.<sup>33</sup> In practice, this would mean a modern version of the Ottoman millet system: autonomous theocracies living side-by-side.<sup>34</sup> At best, there would be no conflicts between groups, but the price would be the oppression of some individual members of illiberal groups.

The normative problem with this approach is that it overemphasizes the importance of tolerance. If we regard tolerance as the core value of liberalism, then there is no way to criticize illiberal practices. In the name of liberal tolerance, then, individuals would be left as prey of illiberal collectives. For the sake of the peaceful coexistence of various cultural groups, this type of liberalism ignores infringements of basic human rights and is, therefore, contrary to any kind of liberal politics of which I am aware.

The *modus vivendi* approach has pragmatic weaknesses also. How does it provide for the peaceful coexistence of radically different groups? Is it possible to keep a multicultural political unit together, if its subgroups' practices are considered to be base and morally unacceptable by members of other subgroups? And, why should we try to seek to accommodate extreme cultural differences within one political unit at all? If there is no common public space for members of different constitutive groups in *modus vivendi* liberalism, it is not clear why they need to remain within the same state.

### *Difference-blind liberalism*

The second liberal approach to illiberal minorities I would like to label (following Charles Taylor) difference-blind liberalism. Let me briefly refer to a recent essay by the French philosopher Pascal Bruckner. His arguments are not very sophisticated or theoretically well founded (to say the least), but nevertheless, his essay is a clear-cut example of the difference-blind liberal attitude.

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<sup>33</sup> Kymlicka: *Multicultural Citizenship*, 155. (Kukathas in his response to Kymlicka noted that he did not mean that illiberal groups should be let alone and allowed to force their members to stay within the group, see Chandran Kukathas: Cultural Rights Again: A Rejoinder to Kymlicka. *Political Theory*, Vol. 20, Nr. 4. (Nov., 1992), 674–680.)

<sup>34</sup> Kymlicka: *Multicultural Citizenship*, 156–158.

“There’s no denying that the enemies of freedom come from free societies, from a slice of the enlightened elite who deny the benefits of democratic rights to the rest of humanity, and more specifically to their compatriots, if they’re unfortunate enough to belong to another religion or ethnic group,” he wrote in reference to the advocates of multiculturalism.<sup>35</sup> His hasty and purposely provocative opinion can hardly be dismissed by stating that this is not the intention of any proponents of multicultural policies. Indeed, *modus vivendi* liberals have come close to cultural relativism, and in a pessimistic portrayal, their live-and-let-live views can be interpreted as if they unwillingly accepted the denial of certain individual rights for some members of illiberal minorities.

Bruckner’s proposal is that the French norm of non-compromising secularism should be applied. No cultural differences whatsoever should be recognized. Any public accommodation of cultural and religious claims puts liberal democratic states on a slippery slope: illiberal minorities will claim more and more exemptions. “For the more we give in to the radicalism of the bearded, the more they will harden their tone. Appeasement politics only increase their appetite.”

Even if the primitive and stereotypical reference to Muslims is omitted, this approach is a kind of reverse fundamentalism. It is the old fashioned, though somewhat hardcore, version of a difference-blind liberalism that considers public recognition of cultural differences as at best unnecessary for individual autonomy<sup>36</sup> and at worst antithetical to liberal norms.

The difference-blind approach is normatively problematic for the same reason older versions of liberal neutrality were lacking: it does not recognize that the loss of cultural belonging can be a source of individual suffering. Additionally, this version of a neutral public sphere raises pragmatic political concerns.

First, after decades of active tolerance, immigrant minorities – who were previously allowed and even encouraged to maintain their ethnic and religious identities – will hardly accept a difference-blind model.

Second, denial of public recognition of cultural and religious differences could easily become counterproductive. If newcomers and second or third generation immigrants are to leave behind or at least to

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<sup>35</sup> Pascal Bruckner: Enlightenment fundamentalism or racism of the anti-racists? *Signandsight.com*. Jan. 24, 2007. <http://www.signandsight.com/features/1146.html>

<sup>36</sup> Jeremy Waldron: Minority cultures and the Cosmopolitan Alternative. *University of Michigan Journal of Law Reform*, Vol. 25, Nr. 3. 1992. 751–73.

confine their religious and cultural customs to the private sphere, they might easily decide not to leave this sphere at all. If they have to choose between this and a public sphere in which their deepest cultural belongings are not recognized, they might prefer self-segregation. The consequence of less multiculturalism, then, would be less integration – not more, as difference-blind liberals would hope.

Third, knee-jerk opponents of multicultural policies forget that illiberal fundamentalism blooms in segregated parallel-societies. How would the difference-blind approach contribute to the autonomy of members of illiberal groups? A difference-blind public sphere does not guarantee that illiberal practices in private life will cease to exist. How would difference-blind liberals rule out domestic violence and oppression of Muslim wives and daughters? What specific measures are to be taken?

No doubt, clear-cut illegal practices could and should be persecuted. No proponent of multicultural policy would argue that beating up one's wife or murdering one's daughter might be excusable because of any cultural or religious norms. But, how can the less obvious and mostly unreported forms of oppression be eliminated? If females do not address them – out of fear or because of lack of information about their rights or the appropriate legal forums? Would forcing Muslim girls to take off their scarves in public eliminate illiberal and inhumane customs practiced in private places? The implementation of difference-blind policies is often impossible, and it is highly doubtful if it would help in any way to reduce oppressive and inhumane practices in the private sphere. One might enforce secular dress codes, but there is no evidence that this would weaken illiberal private customs. The opposite seems just as likely.

Denying public recognition of any type of cultural practice is morally problematic and potentially counterproductive. It would only add to the alienation of immigrant groups who, in turn, might opt for the informal parallel society alternative. And, illiberal customs practiced in the private sphere may not be visible the public.

### *Liberal multiculturalism*

Will Kymlicka argues that minority rights are in accordance with basic liberal norms as long as they are practiced as an external protection and not

as an internal restriction.<sup>37</sup> Liberal democracies may and should accommodate special cultural needs of national minorities provided individual freedom of group members is respected. Members of national minorities have a justifiable claim for exemptions and financial support that can help them to pass their cultural practices on to future generations.

But from a liberal perspective, this is only justifiable if members might opt out of a particular group without any restrictions or penalties. Internal restrictions – or “the desire to protect cultural practices from internal dissent” – cannot be reconciled with liberal norms. In Kymlicka’s view, tolerance for cultural diversity is not an inherent value; rather, it is only a means of providing cultural belonging without which and individual autonomy would be impossible. From this, it follows that cultural practices that oppress autonomous individuality should not be tolerated.<sup>38</sup> However, all this, according to Kymlicka, applies only to national minorities; that is to groups with distinct cultural customs that have historically inhabited a territory. National minorities could be understood as nations without their own states. The case of immigrant groups is somewhat different. They, argues Kymlicka, chose to move emigrate from their countries and so agreed to leave their culture behind. Thus, their claims for minority rights are different from those of national minorities. From a normative point of view, national minorities and immigrant groups are different. As immigrants were free to choose and left their country to live in another state, the host state has neither moral nor legal obligation to provide them the means to maintain their cultural differences and practices. Minority rights are pragmatic and useful tools for helping newcomers integrate; however, this is only a practical and not a moral or legal concern.

Kymlicka’s argument is highly contestable, but for the sake of my argument, there is no need for a detailed critique. It is suffice to note that his argument that migrants choose to leave their countries freely and, therefore, tacitly agreed to give up their cultural practices seems to be a feeble and hasty assumption. Migrants are often forced to leave. If not by persecution, then they are forced by meager economic possibilities. Most liberal political theorist would not regard such a choice as free of constraint.

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<sup>37</sup> Kymlicka: *Multicultural Citizenship*, 37.

<sup>38</sup> Kymlicka: *Multicultural Citizenship*, 158.

In addition, it is also questionable if immigrants have given up their cultural heritage or the right for its recognition. Free or forced, they left, but there is no evidence that they even tacitly agreed to leave their cultural practices behind. Actually, many host countries do not require this. Will Kymlicka himself argues for a welcoming immigration policy. He calls for an easy and relatively fast naturalization process that requires only 3–5 years of permanent residency, language skills and probably some knowledge of the national history.<sup>39</sup> In the absence of further requirements, immigrants rightly assume that the host nation supports their maintenance of their cultural differences.

As I mentioned earlier, there are clear signs that immigrant minorities demand more than polyethnic rights: sometimes they claim autonomy and self-governance.

It is very important to note that Kymlicka and other liberal multiculturalist thinkers<sup>40</sup> always stress that all measures taken to accommodate cultural needs must meet the basic principles of liberal democratic norms; thus, they cannot violate either the norm of equality of groups or individual freedom within the groups.

Kymlicka asserts that minorities not living up to minimal liberal expectations should not be tolerated nor given group rights since to do so would infringe on the individual rights of its members. Though undoubtedly supportive of minority rights, Kymlicka is critical not only of communitarians but also of difference-blind and *modus vivendi* liberals. He – as other liberal supporters of minority rights – regards group rights as conducive to self-fulfillment and personal autonomy. “Restricting religious freedom or denying education to girls is inconsistent with these liberal practices and indeed violates one of the reasons liberals have for wanting to protect cultural membership – namely, that membership in a culture is what enables informed choice about how to lead one’s life” – he argues in the essay *Toleration and Its Limits*.<sup>41</sup>

Both for political and moral concerns, Kymlicka’s liberal multicultural model seems more promising and compelling than the previous ones. But there are serious shortcomings to Kymlicka’s approach too.

First, there is a representational concern. If immigrant groups have autonomy and self-rule demands, it is mostly some associations – cul-

<sup>39</sup> Kymlicka: *Politics in the Vernacular*, 153.

<sup>40</sup> Yael Tamir: *Liberal Nationalism*. Princeton: Princeton University Press, 1993.

<sup>41</sup> Kymlicka: *Multicultural Citizenship*, 153.

tural or religious organizations – that raise them. Should these associations be considered as legitimate representatives of a minority? It is often more than doubtful. At best the democratic deficit that applies to any civil society organization is valid for minority organizations as well. The classic democratic paradox also recurs here. Who ought to decide about the status of a certain minority group? The whole society? Only members of the group? If the latter, who decides who belongs to the minority group?

But these are only minor concerns. The main problem with Kymlicka's liberal multiculturalism is that in most cases it is simply impossible to differentiate external protection from internal restriction. Kymlicka suggests that multicultural rights meet liberal norms as long as they enhance autonomy and individual freedom – external protection yes; internal protection no; it is as easy as that. But in most cases, external protection and internal restriction go hand in hand.

Take hijabs. One might argue – and Muslims groups do – that females who do not wear a hijab in public suffer harm since they are unable to live up to their profoundest religious expectations. If so, individual well-being for Muslim females would require that hijabs be allowed in public. On the other hand, opponents of the hijabs claim that women do not choose but are forced to wear them. Not necessarily by brute force but because the inherently male chauvinist cultural and religious norms leave females no opportunity to make autonomous decisions about their own lives. The same applies to separate beaches and exemption from gymnastics classes for Muslim women.

At minimum, external protection provides a framework that makes internal restrictions easier to apply. If Muslim girls are allowed to wear hijabs in school, it will be harder for them to opt out of doing so, even if they so desired. If their parents insist they wear it, most of them will comply even if they would prefer a non-religious dress code.

In most cases, there is no method to determine if public recognition of certain cultural and religious practices will contribute to individual autonomy. Presumably, even the subjects would generally be unable to decide easily. Most likely, this is true in both directions. If Muslim women who were brought up in traditional families within a liberal democracy could freely choose their lifestyle, most of them would have ambivalent feelings. Giving up traditions is certainly a hard choice and involves loss, but for many living the traditions of Western liberal

democracies is not an option either. Regardless of how they proceeded, there would be a sense of loss.

And, as I noted above, only autonomous persons can make autonomous decisions. Women living in closed, illiberal communities are simply unable to do so.

This, however, does not mean there are no clear-cut cases of internal restriction. In case of the hijab, it is difficult to determine, but female genital mutilation and honor killings are unacceptable for even the most accommodating multicultural model.

The question is what should be done about the obvious forms of unacceptable, illiberal practices. Kymlicka thinks that though liberal norms are more valuable than others and though they require personal autonomy, illiberal groups cannot be forced to renounce their practices that are not in accordance with liberal expectations. This is another serious weakness of his model. He notes that liberals should try to encourage and persuade illiberal groups to open themselves to reform, but using any means other than persuasion would violate liberal tolerance. "A liberal conception of minority rights will condemn certain traditional practices of minority cultures just as it has historically condemned the traditional practices of majority cultures and will support reform. In cases where the national minority is illiberal, this means that the majority will be unable to prevent the violation of individual rights within the minority community. Liberals in the majority group have to learn to live with this, just as they must live with illiberal laws in other countries."<sup>42</sup>

This is a theory of "tolerance without domination." The assumption behind the argument is that the use of force – even in order to end a morally unacceptable practice – is forbidden for liberals. Whether the violation of individual rights in another country is tolerable is debatable, but maintaining that states cannot enforce individual rights is extremely problematic. Kymlicka refers to national minorities, but as I pointed out earlier, it is also questionable, that immigrant groups' expectations regarding cultural rights are normatively different from national minorities' demands. The problem is the enforcement of certain standards against illiberal minorities, whether immigrant or other. Though not specified by the text, it is implied that any practices – even the most inhumane and outrageous – should not be forcibly prevented by if these

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<sup>42</sup> Kymlicka: *Multicultural Citizenship*, 168.

acts are committed in the name of cultural heritage or religious norms. Though Kymlicka accepts that the liberal conception of tolerance is a tool to enhance individual autonomy and freedom, he provides no means to implement or protect it.

If so, liberal multiculturalism is in practice nothing more than *modus vivendi* multiculturalism with lures dangling in front of it. But if enticements are ineffective, liberal multiculturalism possesses no means of enforcement, not even the minimal liberal democratic norms. Such Weimar type liberalism is simply unable to meet its own moral standards.

Regarding illiberal immigrant communities, this is a very risky strategy. If the immigrant group decides not to relinquish illiberal customs and multiple generations enact such practices, there will be a legitimate historical claim for their illiberal practices.<sup>43</sup> Kymlicka's assumption is that immigrants do want to integrate into mainstream society. If they do not and are also allowed to keep their illiberal traditions, they will become a national minority after a period of time. At this point, it will be even more difficult to argue against illiberal practices.

### *Conclusion*

Though for different reasons, all three liberal approaches to multiculturalism proved to be normatively incoherent and politically unfeasible or counterproductive. Nor could a satisfactory answer be found for the challenges posed by illiberal groups living within the boundaries of liberal democracies. *Modus vivendi* liberalism tolerates even the most egregious violations of individual and human rights of members of illiberal groups. Difference-blind liberals do not acknowledge the importance of cultural belonging and hope that by relegating illiberal practices to the private sphere they will automatically disappear. Multicultural liberalism proposed the distinction between external protection and internal restrictions and considered the former in agreement with liberal norms. But, there is no way of telling whether a certain minority rights policy provides external protection, internal restriction measures, or – in many cases – either.

Before drawing my final conclusions, let me briefly note that integration is sometimes discussed as if it were a purely a cultural issue.

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<sup>43</sup> Kymlicka: *Multicultural Citizenship*, 170.

Economic aspects are often completely elided in the multiculturalism debate. Culture-wise integrated immigrants are often segregated from society sociologically and economically. Many immigrants keep only minor and marginal aspects of their cultural heritage, if they keep any at all. Most third-generation immigrants do not even speak the language of their parents and are not citizens of their grandparents' country of origin. Still, they have significantly worse life perspectives. From education and health care to housing and employment, they are statistically worse off than members of the majority. If anything, this was the lesson of the 2006 Paris riots. Unemployed and uneducated third-generation immigrants are segregated in the poor peripheries of Paris; they are culturally assimilated but are not socially integrated.

Unfortunately, there is no universal solution at hand because cultural claims vary from group to group. In order to determine which policy initiatives would be the most beneficial for all, circumstances must be taken into account. Many practical, policy oriented questions are to be asked, and judgments should be made on a case-by-case analysis in order to determine which claims for cultural diversity do not threaten individual autonomy and which minority claims are to be rejected and which are to be supported. As Steven Lukes put it in *Multicultural Questions*, "there is no multiculturalism *tout court*; there are only specific, context-dependent multicultural problematiques; the search for a universal formula, and a final judgment, is misguided from the start."<sup>44</sup>

While there are a few clear examples of practices liberal societies should never tolerate,<sup>45</sup> there are other practices (like the Islamic scarf) that might not be easily judged. In the German veil-debate, Jutta Limbach, former Chief Justice of the German Constitutional Court, noted: "the religiously motivated veil cannot be seen automatically as a symbol of oppression, or the expression of a fundamentalist basic attitude. Things are different for the burka, a veil that covers the entire head and body apart from the eyes, because the veiled woman is no longer seen by

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<sup>44</sup> Christian Joppke – Steven Lukes: *Multicultural Questions*. New York: Oxford University Press, 1999. 16.

<sup>45</sup> Joseph H. Carens: Muslim Minorities in Contemporary Democracies: The Limitations of Liberal Toleration. In *Culture, Citizenship, and Community*. Oxford: Oxford University Press, 2000. 145.

others as an individual.”<sup>46</sup> Although some liberals might argue that the burka is not necessarily a sign of the oppression of individual autonomy, not one would accept that female genital mutilation is tolerable. In order to prevent such overtly inhumane practices, liberals should acknowledge that force could and should be used as a last resort.

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<sup>46</sup> Jutta Limbach: Making Multiculturalism Work. *Signandsight.com*. July 17, 2005. <http://www.signandsight.com/features/313.htm>

DINI METRO-ROLAND

## Two Varieties of Cultural Essentialism in Multicultural Education

Cultural essentialism turns on the belief that members of a given group possess core characteristics that are both foundational to their identity and largely unalterable. This paper will explore the two most prominent varieties of cultural essentialism found in the multicultural education literature today and examine their implications for instituting a multiculturalist agenda in the United States. The first form, called here primordialist-essentialism (PE), links members of a cultural group to an ancestral origin, insisting on cultural transference and purity. The second variation, labeled situationalist-essentialism (SE), is less tied to notions of a mythical origin but still maintains that one's cultural core, solidified at an early age, determines how one interacts with the world and is of both fundamental and life-long significance.<sup>1</sup> Rather than challenge the philosophical underpinnings of essentialist arguments, this paper provides an immanent critique of both varieties of essentialism as they apply to the education of minority students and the multiculturalist agenda that is pluralistic, democratic and committed to social justice.

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<sup>1</sup> Other interpretations of culture, most notably of a constructivist-instrumentalist nature, have also influenced multicultural education. This paper represents one piece of a larger research project in which I explore different conceptions of culture in the field and provide an alternative interpretation of culture based on philosophical hermeneutic insights.

### *Historical Precedents*

Throughout much of the history of the United States, the justification for the exclusion, mistreatment, or even wholesale destruction of different cultural groups has often reflected essentialist logic couched in the philosophical, religious, and/or scientific languages of each period and place.<sup>2</sup> Early forms of discrimination in colonial British America were based on the belief among white settlers in the superiority of the Protestant faith and Anglo-Saxon culture. By the mid-19<sup>th</sup> century, the rise of scientific racialism, the expulsion of native Indians from their lands and the hardening of lines with respect to slavery all contributed to the view that natural and rigid divisions exist between the races. It is no small irony that theories laden with racialist-essentialist logic were often employed as a foil to religious dogma and superstition. In order to wrest science from the grip of Christianity, phrenologists, evolutionists, anthropologists, eugenicists and psychometricians sought to provide a firmer basis for the categorization of human beings according to various theories of racial or geographic determinism. Polygenesis theories, of which Thomas Jefferson was an early advocate, attained some popularity in the mid-1800s when prominent scientists such as Louis Agassiz and Samuel Morton challenged the authority of the Bible by positing that the various races did not come from one source but from multiple origins and thereby represent different species of human beings. Detailed charts of men and skull sizes, personality types and intelligence scores, psychological and criminal statistics, all contributed to the prevailing tendency in American society to sort peoples into essentialist taxonomies ranked according to their conformity with an Anglo-Saxon Protestant ideal.

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<sup>2</sup> For a detailed analysis of the nature of racism and discrimination in the 19<sup>th</sup> and 20<sup>th</sup> centuries, see: Adams, D. W. (1995). *Education for Extinction: American Indians and the Boarding School Experience 1875–1928*. Kansas City: University Press of Kansas; Ewen, E. (2006). *Typecasting: On the Arts & Sciences of Human Inequality*. New York: Seven Stories Press; Haller, J. S. (1970). The Species Problem: Nineteenth-Century Concepts of Racial Inferiority in the Origin of Man Controversy. *American Anthropologist*, 72(6), 1319–1329; Horsman, R. (1975). Scientific Racism and the American Indian in the Mid-Nineteenth Century. *American Quarterly*, 27(2), 152–168; McLoughlin, W. G. W. H. C., Jr. (1989). “The First Man was Red” Cherokee Responses to the Debate Over Indian Origins 1760–1860. *American Quarterly*, 41(2), 243–264.

While scientific trends of the 19<sup>th</sup> century and early 20<sup>th</sup> century strengthened racial typecasting, religious justifications for the separation of the races also reinforced essentialist categories. Though often at odds, scientific and religious forms of essentialism espousing racial segregation functioned side by side in American academia and popular culture. In the 1965 *Lovings v. Commonwealth* case the presiding judge was certainly not alone in believing that Virginia's anti-miscegenation laws should be preserved on religious grounds. He argued:

[The] Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.<sup>3</sup>

Essentialism was also utilized to justify the exclusion of white minority groups. Turn of the century opponents of South and East European immigration such as Prescott Hall relied on a number of essentialist and pseudo-essentialist theories to exclude non-Teutonic peoples from American society. According to Hall, education would fail to assimilate poor Catholic and Jewish immigrants not only because schools influence only a small fraction of the lives of these children but also because eugenics had shown that heredity was a much stronger factor than environment. Citing Agassiz, Humboldt and Darwin, Hall argued that miscegenation of the races would dilute the American race stock and weaken the moral, intellectual and physical fabric of America.<sup>4</sup>

At the turn of the century, a progressive counter-movement opposed to exclusion and its race-based essentialism gained in popularity. A number of philanthropists and scholars argued *contra* Hall that environment has a significant impact on the formation of culture and thus minorities could be integrated into the great Melting Pot of American democracy. The impact of this countervailing sentiment led, with devastating results, to the boarding school movement for Native American children and, more successfully, to Americanization programs developed for immigrants during the interwar period. Assimilation through

<sup>3</sup> Pascoe, P. (1996). Miscegenation Law, Court Cases, and Ideologies of "Race" in Twentieth Century America. *The Journal of American History*, 83(1).

<sup>4</sup> Hall, P. F. (1921). Immigration and the World War. *Annals of the American Academy of Political and Social Science*, 93, 192.

education did not however mean that minority groups were to receive the quality education enjoyed by elite circles. With few exceptions, early champions of assimilation advocated for them a vocational education that served the economic desiderata of the nation.

Since the Civil Rights movement and the racial desegregation of schools in the United States, the dominant trend in American educational policy has reflected an integrationist agenda that seeks not only to ensure minorities full participation of American public life but also to create a united, colorblind society based on what many critics argue are middle-class Eurocentric values. Given our essentialist heritage, it is not surprising that in recent times essentialism has been employed to defend the cultural integrity of minority groups threatened by this Melting Pot ideal. While separatist defensive strategies are by no means new, the rise to prominence of identity politics along with a renewed attack from many quarters against all forms of Eurocentrism has encouraged some educational scholars to employ essentialist theories of culture to justify the separate treatment of oppressed cultural groups.

Yet it would be a mistake to equate our past essentialisms with the cultural essentialism of today. While essentialist logic provided white leaders with the means for justifying their dominance over members of racial minority groups, essentialist-minded multiculturalists today promote a “cultural pluralism without hierarchy,”<sup>5</sup> rejecting an educational system bent on wholesale assimilation for one that is more culturally congruent with the experiences and values of minority students. Radical members of this group insist that differences between cultures are so great that separate ethnic-centered schools or classrooms are necessary. Others, basing their arguments on a weaker form of essentialism, encourage the intermingling of cultures in a multicultural classroom where due respect is afforded to the cultural backgrounds of all students. The goals of these moderate essentialists are in some respects more ambitious. Not only do they intend to protect the cultural integrity of minority students, but they also hope to institute a progressive agenda that challenges all forms of discrimination and encourages cross-cultural understanding and cooperation. Let us begin our investigation of these two varieties with the radical essentialism of Afrocentrism.

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<sup>5</sup> Asante, M. (1991). Multiculturalism: An Exchange. *American Scholar*, 60(2).

*Primordialist Essentialism: The Case of Molefi Kete Asante*

Afrocentrism is a socio-political movement that has gained notable attention in the United States since its emergence in the late 1980s. One of the aims of this movement is to provide African-Americans with an Afrocentric education that grounds African-American students in their own cultural values and traditions. Citing the deep and continual presence of racism, the lack of attention to people of color in the curriculum, and a general ignorance of African American culture among white teachers, Afrocentrists believe that the current public school system de-centers African-Americans causing irreparable psychological and cultural harm. Underlying their arguments is a “primordialist-essentialist” (PE) interpretation of culture with three components – a myth of origin, the delineation of core characteristics usually drawn in opposition to those of another group, and a communitarian inspired insistence on group-purity. This interpretation is provided clearly in the work of the leading proponent of Afrocentrism, Molefi Kete Asante.

*Myth of Origin*

The belief that the cultural core uniting members of a particular ethnic group stretches back to a distant, yet identifiable, age of cultural purity and greatness is perhaps the most distinctive component of PE. Asante’s conception of cultural identity is rooted in the claim that the “core of [one’s] collective being,” or what he calls elsewhere a person’s “center,” can be traced to one’s continent of origin.<sup>6</sup> African-Americans are aligned with their center to the degree that they connect with their African lineage stretching back to the distant civilizations of ancient Egypt and Nubia.<sup>7</sup> Not only do African Americans and Africans possess common historical experience, they share a spiritual connection to their ethnic origins as well. Though this connection has yet to be fully acknowledged within the African American community, Asante argues that spiritual continuity exists nevertheless.<sup>8</sup>

It is unclear whether the ontological line linking African-Americans to their African past is racially-biologically derived. Asante is quick to

<sup>6</sup> Asante, M. (1992). *Afrocentricity* (2nd ed.). New Jersey: African World Press.

<sup>7</sup> *Ibid.*, 39.

<sup>8</sup> *Ibid.*, 65, 70.

dismiss race as a social construction and has argued that since Afrocentricity is not “based on biological determinism,” anyone can acquire an Afrocentric perspective.<sup>9</sup> “The Afrocentric idea,” he writes, “is beyond decolonizing the mind. Blackness is more than a biological fact; indeed, it is more than color; it functions as a commitment to a historical project that places the African person back on center and, as such, it becomes an escape to sanity.”<sup>10</sup> At the same time, by drawing cultural borders according to the continent of ancestral origin and by insisting with Martin Bernal and others<sup>11</sup> that the ancient Egyptians were all black-skinned, Asante’s essentialism does not fully escape the biological-racial matrix that has almost always been part and parcel of essentialism in America.

It is indicative of his position that he approvingly refers to the work of Michael Bradley who espouses a geographical determinism that turns on its head the racist theories employed by slavery apologists of the 19<sup>th</sup> century. Bradley’s polygenesis theory not only revisits the claim that Africans and Europeans are at root different species of men, but it also underscores an essentialist ideology that hinges on such differences. According to Bradley’s thesis, which is only a “tenuous [and] barely defensible” attempt to explain the origin of Europeans’ unparalleled aggression, the harsh European climate and higher degrees of sexual dimorphism between men and women created a type of human who draws borders (sexually, racially, and temporally) and shows aggression towards outsiders.<sup>12</sup> Asante does not appear to go this far, but he does emphasize the incommensurable gap between Afrocentric and Eurocentric worldviews.

### *Formation of Group Character*

The delineation of cultural borders, usually in juxtaposition with a cultural foil, is a necessary component of PE. Asante’s characterization of Afrocentricity reflects this tendency. Although he describes

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<sup>9</sup> Asante, M. (1990). *Kemet, Afrocentricity and Knowledge*. Trenton: African World Press.

<sup>10</sup> Asante, M. K. (1987). *The Afrocentric idea*. Philadelphia: Temple University Press.

<sup>11</sup> Bernal, M. (1987). *Black Athena: the Afroasiatic Roots of Classical Civilization*. New Brunswick: Rutgers University Press; Diop, C. A. (1974). *The African Origin of Civilization: Myth or Reality* (1st ed.). New York: L. Hill.

<sup>12</sup> Bradley, M. (1991). *The Iceman Inheritance: Prehistoric Sources of Western Man’s Racism, Sexism and Aggression*. New York: Kayode Publications LTD.

some African attributes without reference to a European other, the core of Afrocentricity depends on the following binary oppositions between Afrocentric and Eurocentric mindsets.<sup>13</sup>

<i>Eurocentricity</i>	<i>Afrocentricity</i>
Separates Art & Morality	Harmonizes Art & Morality
Individualist	Collectivist
Ethnocentric	Pluralistic
Materialistic	Personalistic
Linear thinking	Circular thinking
Disconnects from Past	Cultivates link to past
Bias of categorization	<i>Sudic</i> ideal of harmony

The incommensurability of the two cultures runs so deep, argues Asante, that Eurocentric modes of analysis, e.g. phenomenology and structuralism, cannot grasp the true essence of Afrocentricity.

The incommensurability of the two cultures has serious implications for education. Jerome Schiele has argued that since Afrocentricity is ontologically, cosmologically, epistemologically and axiologically oppositional to Eurocentrism, reforming the educational system to reflect an Afrocentric position would require replacing *in toto* the current Eurocentric framework with one that cultivates a holistic, collectivist, subjectivist, and spiritual Afrocentric worldview.<sup>14</sup> Though Schiele is confident that the main features of Afrocentricity can be effectively integrated into higher education, it is unclear given the diametrically opposed paradigms how such reforms might be applied successfully to our multi-ethnic schools.

### *Cultural Purity*

A drive for cultural purity based on a communitarian conflation of the individual's good with that of his or her ascribed cultural group underlies the PE outlook. The insistence on cultural purity in a society of multiple cultures gives new meaning to "cultural pluralism," as mem-

<sup>13</sup> Asante, *Afrocentricity*.

<sup>14</sup> Schiele, J. (1994). Afrocentricity: Implications for Higher Education. *Journal of Black Studies*, 25(2), 160.

bers of different cultural worlds exist side by side without deep cultural interpenetration and overlap.

That Asante privileges cultural purity over hybridity is clear from his statements on the nature of Afrocentricity. “The Afrocentrist,” he writes “studies every thought, action, behavior and value, and if it cannot be found in our culture or in our history, it is dispensed with quickly.”<sup>15</sup> The “minimum requirement for mental resurrection” of the African American community is that the “black madonnas” in black Christian churches give way to new symbols arising out of the lives of Isis, Yaa Asantewaa, and Nzingha.”<sup>16</sup> In response to Anthony Appiah’s critique of Afrocentrism, Asante writes, “one must choose to speak from one place, as one can only speak from one place at a time. Appiah chooses, in his article attacking Afrocentricity, to speak and write as if he is white.”<sup>17</sup> That Appiah (who is of both English and Ghanaian ancestry) must choose to speak from one place embodied within one cultural framework is indicative of Asante’s cultural Puritanism. An identity forged out of multiple cultural sources can only lead to the psychological dislocation of the individual.

Asante’s image of multicultural society as an archipelago of isolated cultures is showcased in his educational tract, “The Afrocentric Idea in Education.” His “centric” vision of multicultural education based on the PE notion of culture is laid out in a series of claims:

- *The aim of education is to initiate the student into a cultural group.*  
“Education is fundamentally a social phenomenon whose ultimate purpose is to socialize the learner; to send a child to school is to prepare that child to become part of a social group.”
- *Educators should practice a “centric” pedagogy.*  
“[C]entricity refers to the perspective that involves locating students within the context of their own cultural references so that they can relate socially and psychologically to other cultural perspectives.”

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<sup>15</sup> Asante, *Afrocentricity*, 5.

<sup>16</sup> *Ibid.*, 77.

<sup>17</sup> Asante, M. (1999). *The Painful Demise of Eurocentrism: An Afrocentric Response to Critics*. New Jersey: Africa World Press, 78.

- *Since African-Americans belong within the confines of African culture and traditions, they must be educated from the framework of Afrocentricity.*  
“Afrocentricity is a frame of reference wherein phenomena are viewed from the perspective of the African person...In education this means that teachers provide students the opportunity to study the world and its people, concepts, and history from an African world view.”
- *An integrationist education is most often a masked Eurocentric education.*  
“A truly authentic multicultural education, therefore, must be based upon the Afrocentric initiative. If this step is skipped, multicultural curricula, as they are increasingly being defined by White “resisters”...will evolve without any substantive infusion of African American content, and the African American child will continue to be lost in the Eurocentric framework of education.”<sup>18</sup>

Despite Asante’s emphasis on cultural centeredness, he claims to avoid ethnocentrism by insisting that no cultural perspective is superior to any other and that all people profit from acquiring different cultural perspectives. “Education,” writes Asante, “ought to be a bridge between separate cultural islands through the sharing of ideas and values.”<sup>19</sup> Yet Asante’s form of cultural pluralism promotes only a detached respect for different cultures without the risk of deep personal investment.<sup>20</sup> One is an inhabitant of a specific cultural island and merely a tourist in others. The transformative potential of cross-cultural contact is thus effectively blocked; societies should be multicultural, individuals clearly should not. But not all essentialist-minded multiculturalists reach such extreme segregationist conclusions.

### *Situationalist-Essentialism: The Case of Geneva Gay*

Geneva Gay is one of the most prominent multicultural education scholars in the United States. Her textbook, *Culturally Responsive Teaching*, is widely used in teacher education programs throughout the country as an exemplar of the multiculturalist approach. In line with the gen-

<sup>18</sup> Asante, M. (1991). The Afrocentric Idea in Education. *The Journal of Negro Education*, 60(2), 171–172.

<sup>19</sup> Asante, M. (2003). *Erasing Racism*. New York: Prometheus Books, 250.

<sup>20</sup> Gutman, A. (1987). *Democratic Education*. Princeton: Princeton University Press.

eral progressivism of multicultural education, Gay's educational work is designed to challenge all forms of discrimination and replace the Eurocentric hegemony of our schools with a pluralist ideology that embraces cultural diversity as a "persistent, vitalizing force in our personal and civic lives."<sup>21</sup> For those multiculturalists who do not find Asante's segregationist vision to be viable, Gay's culturally responsive approach promises to offer teachers a way to provide students with "high degrees of ethnic affiliation" the skills necessary to effectively interact with members of the dominant culture while leaving fully intact their cultural identities. Underscoring this approach is a conception of culture informed by what I call *situationalist-essentialism* (SE). This conception of culture shares with PE the view that one's culture core is foundational to one's identity but differs in both the source and cross-cultural potential of that foundation.

### *Cultural Anchors*

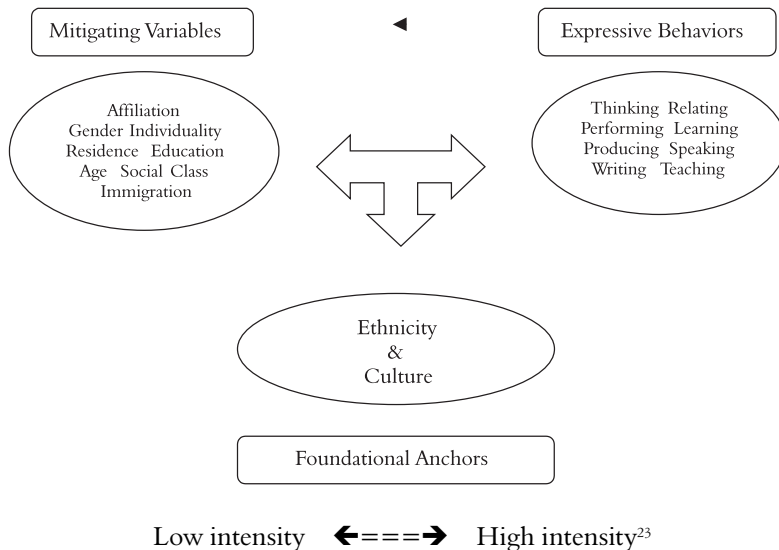
On the surface, Gay's essentialism appears to be of the primordialist ilk. Gay makes explicit the ontological basis of her approach to multicultural education through her description of the "core or modal characteristics" of human beings. "Ethnicity and culture," she argues, "are the foundational anchors of all other behaviors."<sup>22</sup> Though these anchors function in triadic concert with what she refers to as "Mitigating Variables" and "Expressive Behaviors," and though various individuals exhibit varying intensities of cultural and ethnic affiliation, culture and ethnicity represent the core of one's identity. (*Figure 1*)

Gay's stated holism further underscores the significance of one's cultural core and the irreparable harm caused by assimilation. Since one's "race, culture, ethnicity, individuality, and intellectuality" are "inseparably interrelated," all aspects must be taken into consideration in the "redesign of education for cultural diversity." The teacher must therefore infuse the curriculum with the experiences and contributions of minorities, challenge Eurocentric hegemony, and attain knowledge about and respect for the cultural backgrounds of their students.

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<sup>21</sup> Gay, G. (2000). *Culturally Responsive Teaching*. New York: Teachers College Press, 14.  
<sup>22</sup> *Ibid.*, 10.

Figure 1



### *Early Socialization*

Gay's cultural core, the basis of our understanding of self and world, is not however tied to some mythical source or continent of origin. Gay believes that cultural cores emerge in the process of early socialization.

By the time the children begin their formal school career at 5 years of age, they already have internalized rules and procedures for acquiring knowledge and demonstrating their skills. These cognitive processing protocols are learned from their *cultural socialization*. They may be refined and elaborated over time, even superseded on occasion for the performance of certain tasks. But the core of these *culturally influenced* rules and procedures continues to anchor how individuals process intellectual challenges for the rest of their lives.<sup>24</sup> [Italics added]

<sup>23</sup> *Ibid.*, 11.

<sup>24</sup> *Ibid.*, 150.

Individuals need not be raised in the cultural heritage of their ancestors to become “centered” persons. On the contrary, the foundational anchor that “*determines* how we think, believe, and behave”<sup>25</sup> can be forged by a variety of traditions and customs of various origins. Thus Gay is careful in her writings to insist on both the flexibility of and internal variance within cultures. Learning styles, she reminds teachers, are only “patterns of cognitive processing generally exhibited by members of an ethnic group, and...cultural characteristics are descriptions of value configurations and propensities, or inclinations, of ethnic groups. They are not descriptions of individual behavior”<sup>26</sup> “Culture,” she writes, “like any other social or biological organism, is multidimensional and continually changing.”<sup>27</sup> Though individuals with purer cultural identities (i.e. socialization from one cultural tradition) remain, for better or worse, the primary focus of her approach to multicultural education, the rationale behind such emphasis is neither to encourage nor to discourage ethnic purity. While still emphasizing the centrality of one’s cultural core, Gay thus commits herself to respect the whole spectrum of student cultural backgrounds (including those hybrid in nature) as the font from which all learning takes place.

### *Cross-cultural Potential*

Because Gay’s SE does not commit her to defend mythical origins, a *priori* core characteristics, or cultural purity, her culturally responsive approach to teaching can be applied more easily to a multicultural setting. There need not be rigid cultural categories pointing to the incommensurability of cultures, nor need there be an either/or choice between worldviews. This flexibility is further underscored by her focus on procedure (communication and learning styles) over cultural content (established traditions and customs.) To teach in a culturally responsive manner is first and foremost to understand how to interact with students of different cultural backgrounds and assumptions. Such a strategy allows for an integrated vision of cultural pluralism where members of different cultural groups interact on equal footing in the common public

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<sup>25</sup> *Ibid.*, 9–10.

<sup>26</sup> Gay, G. (2001). Multicultural Preparation and Teacher Effectiveness in Desegregated Schools. *Theory Into Practice*, 17(2), 149–156.

<sup>27</sup> Gay, CRT, 10.

sphere. Through mixed pedagogical methods, Gay believes that students can maintain their cultural loyalties and gain from cross-cultural understanding and cooperation.

Despite these differences, however, both strong and weak essentialist interpretations of culture lead in practice to at least three aporias that reinforce segregationist tendencies and threaten the multiculturalist ideals of cultural pluralism and equity for all: a harmful resistance to cultural critique, the artificial creation of cultural islands and a reductionist view of social life.

### *Resistance to Cultural Critique*

An essentialist conception of culture not only entails defending the widely accepted, though perhaps not widely observed, practice that teachers respect and work from the cultural background of their students, it also requires teachers to abandon pedagogic practices that directly challenge a student's cultural core. While this may not pose problems in a culturally homogeneous classroom where both means and aims conform to the cultural norms of students and teachers alike, such a condition represents a serious handicap in multicultural settings because it inhibits learning experiences that emerge from perplexity, critical reflection, and authentic dialogue. Without the possibility of challenging beliefs, education becomes either indistinguishable from indoctrination or reduced to an insipid vocational training.

Asante's primordialism is clear on this account. The prospect for cross-cultural dialogue and critique in a multiethnic classroom is severely hampered if we accept his standpoint epistemology (which renders the truth or falsity of a knowledge claim dependant on the cultural center of the knower), his view that the purpose of education is to "socialize the learner [into] a social group," and his dismissal of the current educational system as a product of a "Eurocentric hegemonism." If we believe that there are no universal standards to which one can appeal in resolving cultural differences and that the conceptual frameworks commonly employed for critique, e.g. positivism, structuralism and deconstruction, are irredeemably tainted with Eurocentric bias, then it would seem that teachers can play at best only a peripheral role in the education of students of other cultural backgrounds. By such logic, the basic pedagogic strategy of encouraging students to reflect critically on their own cultural assumptions leads too easily to cultural displacement.

Gay's weaker essentialism produces similar results, though for somewhat different reasons. "Race, culture, ethnicity, individuality and intellectuality of students" argues Gay, "are inseparably interrelated" and the "insights gleaned" from understanding each aspect must become "the driving force for the redesign of education for cultural diversity."<sup>28</sup> Rather than encouraging students to transcend their ethnic identities and cultural foundations or to "double deal" by being "at once highly ethnically affiliated and academically achieving," teachers should create an environment in which students can "achieve academically, ethnically, culturally, and socially simultaneously without any of these abilities interfering with the others."<sup>29</sup> This complicates critical dialogue between teachers and students of differing cultural backgrounds as it seems to reduce education in a multiethnic setting to the acquisition of knowledge and skills untainted by culture.

The motivation behind Gay's opposition to cultural critique may be attributed in part to the ambiguity of the "culturally-congruent" approach itself. As Eamon Callan has argued, culturally responsive strategies are at once "consistent with multiculturalism and with a zealous cultural monism."<sup>30</sup> After all, one can employ culturally responsive pedagogical tactics to encourage minority students down the path of eventual assimilation. Gay's focus on culturally congruent instructional strategies and communication styles make her vulnerable to such a charge, especially since her arguments are often couched in a pragmatic language that can be construed as, if not totally espousing, at least leaving open, the possibility of cultural assimilation. Take, for instance, the ambivalence in Gay's claim that the purpose of analyzing communication styles is to identify:

(1) habitual discourse features of ethnically diverse students; (2) conflictual and complementary points among these discourse styles; (3) how, or if, conflictual points are negotiated by students; and (4) features of the students' discourse patterns that are problematic for the teacher. The results can be used to pinpoint and prioritize specific places to begin interventions for change.<sup>31</sup>

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<sup>28</sup> *Ibid.*, 14.

<sup>29</sup> *Ibid.*, 19–20.

<sup>30</sup> Callan, E. (2005). The Ethics of Assimilation. *Ethics*, 115 (April), 487.

<sup>31</sup> Gay, *CRT*, 110.

It thus behooves Gay to clarify the direction in which “interventions for change” should proceed in a way that distances her from those who would use such strategies for assimilation. This she does, both clearly and consistently, by identifying “mainstream ethnocentrism and hegemony” as the “greatest obstacle to culturally responsive teaching,”<sup>32</sup> insisting that “school success” should not compromise or constrain students’ “ethnic identity and cultural affiliation,” and aligning herself with ethnic-centered programs that cultivate ethnic self-pride. In doing so, however, Gay must implicitly assume rigid boundaries between cultures, boundaries that teachers should not expect students to cross without inflicting harm on their ethnic affiliations.

Maintaining dogmatic adherence to such a position is as untenable as it is inconsistent with her progressive agenda. Untenable, because given Gay’s holism there is a direct link between culture and education that makes at least some interference inevitable. The mere exposure to a multicultural education classroom – regardless of the teacher’s pedagogical methods – is enough to compromise the cultural and ethnic achievement of students with “high ethnic and cultural affiliations.” In other words, culturally heterogeneous schools, even those based firmly on multicultural education principles, simply cannot avoid entanglement in cross-cultural critique. Gay’s weak essentialism coupled with her holism must therefore ultimately insist upon segregation.

A suspension of cultural critique in the classroom is also at odds with Gay’s progressive agenda as it prevents teachers from criticizing the harmful cultural practices of their students. As Spinner-Halev has noted, since “most cultures are patriarchal, many are racist, and few are egalitarian,” a multicultural approach that treats assimilation as a “dirty word” and simultaneously is “predicated on democratic values like equality and respect for cultural diversity” might find that “much cultural diversity isn’t worthy of respect.”<sup>33</sup> Because Gay would certainly not advocate affording equal respect to *all* forms of cultural diversity, her essentialism – if it is to be consistently maintained – must ultimately drive her to the messy terrain of distinguishing core (inviolable) from secondary (alterable) aspects of each culture. Navigating through this terrain is exceedingly difficult if one seeks simultaneously to respect all cultures equally

<sup>32</sup> *Ibid.*, 208.

<sup>33</sup> Spinner-Halev, J. (2000). *Surviving Diversity Religion and Democratic Citizenship*. Baltimore: Johns Hopkins University Press, 131.

(as the bedrock of their member's identities) and promote progressive reforms that inevitably challenge some of the cultural norms and practices allegedly so integral to students with strong ethnic affiliations.

### *Archipelago of Cultures*

While the conceptualization of cultures serves an important heuristic function in education, delineating borders according to an essentialist interpretation of culture unduly naturalizes divisions between peoples and encourages practitioners to espouse a "cultural conservatism" that reifies cultural groups into static, isolated "cultural bubbles."<sup>34</sup> Cultures become fragile museum pieces that must be preserved at all costs, while cross-cultural overlap and borrowing are treated as the symptom and cause of cultural dissolution. If authentic cross-cultural dialogue leads inevitably to the colonization of one cultural framework over all others, then both weak and strong forms of essentialism ultimately encourage segregation.

Asante's work provides a clear example of this logic. Since children must first be centered within their own cultural framework before learning to appreciate other cultural frameworks, and since various cultural frameworks are in many important respects incommensurable, then developing culturally appropriate curriculum and instruction in a multicultural classroom is an impossible task. Furthermore, if education is cultural socialization, we cannot avoid the inevitable entanglement in cultural critique and conflict that would occur in our integrated schools. From a PE perspective, such entanglement is intolerable. One cannot be oneself, writes Afrocentrist Ama Mazama, if "one lives on borrowed cultural terms and/or when one apprehends reality through another group's center."<sup>35</sup> This danger has not escaped the attention of Afrocentrist Jerome Schiele, who believes that the current educational system in the United States continues to lure African American students away from their own African traditions towards the path of Eurocentric subjugation. This recent "subtle, diffused and almost benign" method of

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<sup>34</sup> McCarty, L. P. (1993). Out of Isolation: Philosophy, Hermeneutics, Multiculturalism. In *Philosophy of Education* (pp. 56–64). Urbana.

<sup>35</sup> Mazama, A. (2001). The Afrocentric Paradigm: Contours and Definitions. *Journal of Black Studies*, 31(4), 397–398.

Eurocentric domination is considered by Schiele to be, in many respects, more insidious than the blatant racism of the past.<sup>36</sup>

Gay's weaker essentialism is better equipped to resist such segregationist implications. Unlike Asante, Gay does not need to defend the cultural borders of specific cultural groups. Rather than engage in debate about where to draw the line and who should draw it, Gay leaves the commonly accepted divisions between cultures largely intact. She also vacillates between encouraging a view of cultural affiliation and cross-cultural interaction that acknowledges the diverse and flexible variations within cultures, and reinforcing the fixed foundations of culture so as to protect them against foreign intrusion. Nevertheless, the nature of her culturally congruent approach strengthens, and in part relies on, rigid delineations of cultural borders. While her exclusive focus on students with high cultural and ethnic affiliations is understandable given that these students are most likely to suffer from culturally incongruent teaching practices, such a focus also serves to highlight cultural differences in a way that privileges cultural divisions over commonalities.

Take for instance the ambiguity in Gay's treatment of the relationship between language and culture; "Culture is the rule-governing system that defines the forms, functions, and content of communication,"<sup>37</sup> while language is a reflection of a cultural system and the "means through which thoughts and ideas are expressively embodied."<sup>38</sup> Gay relies on the Whorf-Sapir thesis to accentuate the centrality of language and its deep interconnection to culture. Language is not "simply a 'mechanical' instrumental tool for transmitting information;" rather, human beings are "very much at the mercy of the particular language which has become the medium of expression for their society."<sup>39</sup> Taken to the extreme, translation across languages and by extension cultures is made impossible. "The worlds in which different societies live," writes Sapir, "are distinct worlds, not merely the same world with different labels attached."<sup>40</sup>

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<sup>36</sup> Schiele, J. (2002). Mutations of Eurocentric Domination and Their Implications for African American Resistance. *Journal of Black Studies*, 32(4), 439–463.

<sup>37</sup> Gay, *CRT*, 79.

<sup>38</sup> *Ibid.*, 81.

<sup>39</sup> *Ibid.*, 80.

<sup>40</sup> Sapir, E. (1949). *Culture, Language and Personality: Selected Essays*. Berkeley: University of California Press.

Where exactly Gay stands in relation to this “culture as island” perspective depends on how language is interpreted. If she interprets language to include not only one’s native language but also a more universally inclusive linguisticity, then one can understand how language can be in a sense bound and yet ultimately open-ended. One can acknowledge the deep and powerful link between a student’s cultural identity and native language without tying the student’s future cultural identities to such a link. On the other hand, reducing a person’s cultural-linguistic possibilities to those encompassed by one’s native tongue and its limited set of communication styles, can lead to the false construction of distinct, isolated, linguistic-cultural worlds that Davidson convincingly criticizes in his “On the Very Idea of a Conceptual Scheme.”<sup>41</sup> It also encourages practitioners to construct rigid cultural categories of students according to their native language or dialect and the corresponding traditions, values and customs that speaking such a language necessarily entails.

That Gay does not appear to come to a definite conclusion on this issue is clear in her examination of the Oakland controversy over the use of Ebonics (Black English) in schools. Gay’s task is complicated by the Janus-faced nature of her aims: she must simultaneously preserve the inviolability of Ebonics as the core of highly cultural and ethnically affiliated African Americans identities while drawing these students out of their cultural isolation through instruction in code-switching and the acquisition of mainstream cultural capital. With some speculation on my part, Gay might try to reconcile these two aims and maintain her essentialist claims described above by reaffirming Ebonics’ (permanent) position at the core of many African-American identities – which can be said to have already been largely set at an early age – and treating code-switching (the ability to interact in two cultures) and the acquisition of cultural capital as secondary, more instrumental appendages that do not impinge on the ethno-cultural core of the student. In this way, highly ethnically affiliated African American students can acquire the means to function successfully in mainstream society without having to alter their ethnic identities.

If this is an accurate description of Gay’s position, then we can reduce her argument to two central claims. The first is that one’s mother tongue represents the core of one’s identity. Not only is the incorporation

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<sup>41</sup> Davidson, D. (1985). On the Very Idea of a Conceptual Scheme. In C. West (Ed.), *Post-Analytic Philosophy*. New York: Columbia University.

of Ebonics in the classroom an effective way to teach African-Americans with strong cultural identities, but failing to do so could have disastrous results. She quotes Robert Williams, the African-American activist who coined the term Ebonics, as saying: "My language is me. It is an extension of my being, my essence. It is a reflection and badge of my culture. Criticism of my language is essentially a direct attack on my self-esteem and cultural identity."<sup>42</sup> Her second claim, that instructing children in code-switching and the acquisition of cultural capital does not impinge on one's core ethno-cultural identity, is evident in the way in which Gay separates "academic achievement" from other aspects of cultural achievement and assumes that both teachers and students can acquire knowledge and communication competencies of different cultures without having to adopt wholesale another cultural framework. Gay thereby avoids segregation by defending an essentialist approach to education that allows for cross-cultural interaction and borrowings without doing harm to students' cultural core.

Given Gay's holism, it is doubtful whether such a position can be maintained while maintaining a robust conception of educational experience and transformation. Because she ties our linguisticity, and its inextricable relationship to culture and identity, to that of a specific language, Gay reinforces the "culture as island" perspective in which one's cultural identity is permanently moored, in a static and bound fashion, to a specific language or dialect. In doing so, she must reject the view that one's identity, manifested through language, not only continually changes but can also extend beyond the boundaries of one language (and ethnicity). Gay suggests that language acquisition is not a zero-sum game; one need not give up one's native language *in toto* to make room for another's. Yet, what are we to make of such language acquisition? Is it simply an add-on skill that one acquires without changing one's cultural identity? In implying the affirmative, Gay renounces the transformational potential of education. Her interpretation of the Sapir-Whorf hypothesis thus succumbs to a linguistic determinism that binds one's cultural identity within the web of a specific language and structure.

Gay is thus caught in a paradox. If she insists that the core of one's cultural identity is fixed at an early age, and is thus inextricably bound to one's mother-tongue, then she can be accused of drawing intolerant-

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<sup>42</sup> Gay, *CRT*, 86.

bly rigid cultural borders between individuals. At the same time, if she denies this link between first language and identity, Gay must acknowledge that acquiring mainstream cultural capital and the capacity to code-switch, far from serving merely as tools, will also have an appreciable impact on the cultural identity of students. One need not call the impact of such acquisitions “assimilation,” but clearly the “cultural and ethnic foundational anchors” of such students will undergo change. The problem can be stated another way; in limiting our linguisticity to a specific language it is not so much that Gay overestimates the significance of one’s mother-tongue on the formation of one’s identity – a significance which is obviously paramount for the vast majority of Americans – but rather, that she underestimates the transformational effect that acquiring a new language has on one’s identity. In so doing, she also ignores the grey middle area between cultural extremes where the majority of students might be said to reside. Though her position is not strictly a segregationist one, she cannot avoid such implications without renouncing her holism and reducing teaching to a bland peddling of skills.

### *Ethnic Reductionism*

A daunting challenge facing essentialists is to defend the “ethnic” criteria by which they separate peoples in a society marked by deep contradictions and complexities. By mapping groups according to essentialist ethnic-cultural categories, scholars must ignore, or at least downplay, other cultural factors that are as, if not more, salient in people’s everyday life.

Asante’s bi-polar categorization of Afrocentricity and Eurocentricity underscores his extreme reductionist approach. Not only does he fail to do justice to the internal complexity of both cultural frameworks, often presenting them as simplified coherent wholes rather than cultural complexes that draw values, beliefs, and orientations from a variety of cultural, religious, and geographical sources, but he also downplays the overlap between Afrocentric and Eurocentric frameworks and ignores almost entirely other cultural frameworks. For instance, the rigid characteristics Asante attributes to the Eurocentric mindset, e.g., individualism, positivism, and materialism, masks others of European pedigree that reflect collectivist, relativist, and idealist sentiments. His commitment to binary oppositions further distorts social reality. By claiming

that Africans are critically aware, he must likewise insist that Europeans have never been able to reflect critically on their own perspectives.<sup>43</sup>

A similar reductionism occurs in his characterization of Afrocentricity. As one scholar has quipped, “The African continent harbours one fourth of the world’s nearly six thousand languages. Can the cultures expressed in these languages develop but a single model for harmony?”<sup>44</sup> In order to fit leading black intellectuals, artists, political activists, and scientists into his rigid Afrocentric model, he must construct a purity scale according to which individuals and their contributions can be judged. Du Bois’s training at a German university imposed a Eurocentric framework on his thought that limited his contributions to the black community and prevented him from achieving his natural potential as a man of African ancestry. While Asante excuses Du Bois for envisioning “integration as the ultimate solution” to American racism, he is less forgiving of contemporary black intellectuals who exhibit a Eurocentric “slave mentality” when an Afrocentric perspective is so readily at hand.<sup>45</sup> This view encourages practitioners to overstate the incompatibility of cultural frameworks and ignore the extent to which cultural overlap and borrowing have cultivated healthy identities of mixed cultural heritage.

Gay’s SE interpretation of culture avoids many of the extreme forms of reductionism that plague primordialists. For one, individuals with a mixed heritage do not face the same problem of mixed loyalties as they would by Asante’s puritanical logic. Moreover, Gay is not compelled to state categorically where one culture ends and another begins. There are no inherent values, beliefs and behaviors that belong to one culture or another. At the same time, her focus on highly ethnically and culturally affiliated students leads to a reductive emphasis on ethnicity at the expense of other societal factors equally worthy of pedagogical attention. Not only does such reductionism encourage multiculturalists to focus too narrowly on inequalities between ethnic groups, thereby ignoring other forms of discrimination, but it also prevents teachers from adequately addressing culturally sanctioned forms of discrimination within ethnic communities. If the only culture that can be criticized for its oppressive practices is the dominant European-American culture, then

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<sup>43</sup> Asante, *Afrocentricity*.

<sup>44</sup> Verharen, C. C. (2000). Molefi Asante and an Afrocentric Curriculum. *The Western Journal of Black Studies*, 24(4).

<sup>45</sup> Asante, *Painful Demise of Eurocentrism*.

the only students who truly benefit from critical self-reflection in the classroom with regard to the legitimacy of their own beliefs and practices are members of the dominant culture. Yet if we are to agree with Henry Giroux that one of the “defining principles of any democracy” is the continual necessity to “rejuvenate itself by constantly reexamining the strengths and limits of its traditions” then something is amiss if such practices are not expected from all members of our democracy.<sup>46</sup>

Gay might add that critique of minority cultures in the classroom too often serves to reinforce the cultural biases of the teacher – biases all too frequently containing racist undertones – rather than encourage healthy dialogue about self, culture, and society. Historically, teachers have played the dubious role of bearers of “American” culture, often singling out and identifying as deviant the cultural practices of minority students that fall outside the norm. Gay is justifiably suspicious of pedagogical approaches that fall back easily into such unreflective ethnocentrism. At the same time, treating ethnic minority students with benign neglect, as if the need to engage in self-reflective and critical dialogue does not also apply to them, not only impedes their educational potential but also prevents practitioners from exploring the full spectrum of political, cultural and social challenges facing our society today.

This is not of course Gay’s intention. Not only does Gay emphasize the importance of placing high demands on students of color, but critique stands as one of the centerpieces of her progressive agenda. Yet in order to secure a place for such social and political critique, Gay must stray far from her original holistic approach and interpret her own theories with tactical acumen. Finding a balance between her essentialist claims and activist agenda has led her to construct unwieldy and somewhat arbitrary categories. She writes, “Although males and females express their cultural heritage in somewhat different ways, this is due more to their engendered socialization than to their being more or less culturally affiliated because of their gender”.<sup>47</sup> By drawing the distinction between “engendered socialization” and “cultural affiliation” Gay constructs a separate space for gender equity as a legitimate pedagogical pursuit. Her argument is that since one’s gendered role is not tied directly to one’s ethnicity (nor apparently to one’s early socialization),

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<sup>46</sup> Giroux, H. (1994). *Insurgent Multiculturalism and the Promise of Pedagogy*. In *Multiculturalism: A Critical Reader*. Cambridge: Blackwell.

<sup>47</sup> Gay, *CRT*, 11.

teachers are free to criticize gender discrimination when they confront it. But how does such a division square with her holism? Is it possible to isolate gender socialization from one's cultural-ethnic socialization?

Gay's own approach suggests not. When Gay addresses the issue of gender inequality in her research, she focuses exclusively on either gender inequality within the confines of the dominant culture or ways in which teachers discriminate against students of specific ethnicities. Multicultural education practitioners get very little help, however, in determining how to address gender discrimination sanctioned by members of minority cultures. This is admittedly not her focus, yet the privileging of ethnicity encourages such benign neglect when practitioners apply her theories in practice.

### *Conclusion*

Leaving unchallenged the ontological assumptions of essentialism, I argue that both weak and strong essentialist interpretations of culture either leads to an intolerable separatism or reduces education to the mere acquisition of skills without the promise of genuine cross-cultural dialogue and meaningful exploration of alternative life options. Multiculturalists must therefore look to non-essentialist interpretations of culture to defend a multiculturalist agenda that is pluralistic, democratic and committed to social justice. While it is not in the scope of this paper to provide such an interpretation, I am optimistic that one can interpret culture in a way that acknowledges both the advantages of cultural diversity and the transformational power of education, as well as highlights the centrality of one's cultural background without creating rigid cultural categories or restricting students to a particular cultural orientation or worldview.

# “EVERYDAYS” IN SOCIALISM AND POST-SOCIALISM

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GYÖRGY MAJTÉNYI

## A Stain on the Blue Couch

*Lifestyles of the Dominant Elite in Hungary during  
the 1950's and 1960's*

“**T**he villa was illuminated with Chinese lanterns decorated with coloured tissue papers. Before the entrance on the right hunters were standing in dress uniform, and on the left were the party-youth wearing blue shirts and red neckties. The celebrated was not only a party member but, of course, a hunter as well. Parked in the lot were a few American automobiles, two Soviet military cars and a few coaches. A police car was also there...”<sup>1</sup> – in his memoir Fülöp Merán – a descendant of Hungarian nobility – informs us of an emblematic event of 1946, a birthday-party for the party secretary of Csákberény. – “On a long table were baked pig, caviar and turkey, along with boar meat, roasted pheasant and stuffed goose. The heavy „Merán” wines from our confiscated vineyards were poured from lead-glass jugs into our glasses. Women were also present, some pretty and dressed according to the new fashion. The lady of the house was very elegant and beautiful.” In this description the author also mentions the host: “The party leader turned forty on this day. He was in high spirits and quite nice.”<sup>2</sup>

This idyllically represented snapshot shows that there were interactions between the old and new elites. This Meeting (co-incidence) of lifestyles must be viewed through the lens of social and cultural change:

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<sup>1</sup> Fülöp Merán: *A vadászat megmaradt*. Budapest: Nimród Alapítvány, 2000. 53.

<sup>2</sup> Merán, 54.

new elements hit against the old, shaping, changing, incorporating and dissolving old behavioural patterns. It can be supposed that not only did certain customs of some individuals continue with the change of power and the building of the state-socialist regime, but so did the lifestyles of social groups. Lifestyles changed only slowly, the habits and mentality of people could not be transformed overnight. For example, a descendant of the Zsolnay-family (a Hungarian bourgeois family) wrote in his memoir that although he was a condom-maker for the Nagytétény Rubberfactory he would never have even thought of setting the cooking pot on the dining table.<sup>3</sup> While representatives of old social groups preserved their traditions, new individuals and groups adopted old consumer customs and lifestyles.

In this study I investigate the differences and similarities between the lifestyles of the new elite that appeared on the scene after 1945 and those of the traditional elite groups, focusing on both the continuity and transformation of habits. I apply the term dominant elite to refer to a distinct group within society which, on the basis of its dominant positions, can be characterized according to a lifestyle that was unattainable to other groups.<sup>4</sup> A position in the hierarchy of the new regime meant a particular, distinguished way of life. Privileges bound the new elite together. The law of the delegation of the nomenclatura gave control over the determination of the most important political positions to the dominant elite: they could appoint individuals to the highest positions. The number of influential positions with power, the number of which we can deduce from the order of former appointments, totalled about

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<sup>3</sup> Kata Jávör: *Életmód és életmód-stratégiák a pécsi Zsolnay család történetében*. Budapest: Akadémiai Kiadó, 2000. 272.

<sup>4</sup> I adopt the term of elite for a relatively small dominant group, which enjoys a privileged status and a specific lifestyle following from this. I use the term of dominant elite instead of power elite on the basis of the way in which Max Weber defined power and dominance. According to Weber's distinction power is the chance that an individual can achieve his or her own will against the resistance of others, in spite of this Weber defines domination "as the probability that certain specific commands (or all commands) will be obeyed by a given group of persons", and he notes: „every genuine form of domination implies a minimum of voluntary compliance, that is, an interest (based on ulterior motives or genuine acceptance) in obedience.” Weber, Max: *Economy and Society: An Outline of Interpretive Sociology*. New York: Bedminster Press, 1968. 212.

2700–3000 in 1950.<sup>5</sup> Analyses show that only the exclusive party leadership (which amounted to only a few persons) and their confidants could get into this circle. A narrow informal group existed within the former nomenclatura which controlled and directed the appointments (i.e. the order of admission into the new elite). A similar circle of 20–40 persons made up a group who possessed certain privileges such as villa-allocations or the attainment of free hunting licenses.

*“members of the highest party leadership would also come here to swim”  
– The “Cadrefield”*

The cadres received significant allowances<sup>6</sup> beside their high salary,<sup>7</sup> so it became also a financial compulsion for them to keep their positions and advance their career.<sup>8</sup> Of course these allowances differed according to the status of the functionaries. The primary allowance was the villa-allocation. While in fin-de-siècle Hungary the symbol of luxury was Andrassy Avenue and its neighbourhood, from the 1930’s on Buda (more specifically Rózsadomb and Pasarét) counted as the most desirable location for villa builders and buyers.<sup>9</sup> The elite, as well as the middle class, wanted to create its own comfortable and luxurious environment, public image was only of secondary importance: there was thus an impetus to build in Rózsadomb and Pasarét. This tradition continued after World War II, when the dominant elite moved to the Buda hills. On the spacious plots in Buda, far from traffic, in the shade of

<sup>5</sup> György T. Varga – István Szakadát: Íme, a nomenklatúrák! Az MDP és a volt MSZMP hatásköri listái. *Társadalmi Szemle*, 1992. Nr. 3. 73–95.; György T. Varga: Adalékok és szempontok a Magyar Dolgozók Pártja hatalmi helyzetéhez. *Múltunk*, 1998. Nr. 2. 175–182.

<sup>6</sup> ÁBTL (Állambiztonsági Szolgálatok Történeti Levéltára – Historical Archives of the Hungarian State Security) 2. (Section 2 – State security documents that do not belong to any organisational entity) 1. V-150028/3. VI/1-b. A Legfelsőbb Bíróság ítélete (1–47.) p. 19–20. MOL (Magyar Országos Levéltár – National Archives of Hungary) M (Section “M” – Records of the Hungarian Working People’s Party and the Hungarian Socialist Workers’ Party)–KS 276. f. 53. cs. 131. ő.e. (őrzési egység – archive unit)

<sup>7</sup> MOL M-KS 276. f. 53/43 ő.e.; MOL M-KS 276. f. 53/180. ő.e.

<sup>8</sup> András Hegedűs: *A történelem és a hatalom igézetében*. Budapest: Kossuth, 1988. 169, 188.

<sup>9</sup> Eszter Gábor: *Budapesti villák a kiegyezéstől a második világháborúig*. Budapest: Fővárosi Önkormányzat, Főpolgármesteri Hivatal, 1997. 38.

huge old trees, the lifestyle of the new elite could blossom. Rózsadomb and Pasarét were referred to as the “Cadre-field” in these years. The party and state leaders could exchange their former apartments for luxury villas that were abandoned or confiscated from the pre-war elite and middle class. In the beginning these houses were handled by the Commissioner of Abandoned Properties, later the State Security Authority (Államvédelmi Hatóság) confiscated and distributed them.<sup>10</sup>

Given the ideology of the system, a tradition of villa-building could not be created in the 1950's. However, one can look at which houses were chosen by party leaders<sup>11</sup> among the wide range of nationalized villas. It is interesting that after the war the more historical styles preserved their popularity against the functionalist and the modern. These buildings – with porticos resting on Doric, Ionic and Corinthian columns, with turrets or wooden pediments – seemed to be more elegant, “nicer” for the party leaders who were not keen on modern art.<sup>12</sup> Some functionaries did choose modern buildings. For example, Zoltán Vas, the president of the National Planning Office, lived in the early 1950s in the Havas Villa on Hankóczy street which was planned by the modernist Lajos Kozma.<sup>13</sup> At the same time, Vas cannot be said to have been an adherent to modern architecture as he banned the review *New Architecture* (Új Építészet), established by Lajos Kozma and others, when the editors published a Kozma memorial issue. In 1949, Imre Nagy's family moved to a Kozma villa on Orsó street 43. According to our sources the Nagy family complemented the original modern furniture of the house with antiques.<sup>14</sup>

Customs and values associated with position and performance, despite all the structural and personal changes, preserved the sharpness of the distinctions between the elite and other groups of society. Even on the level of “consumer” cultures and lifestyles this distinction was well recognised, transmitted via the social, semiotic function of housing, clothing styles,

<sup>10</sup> ÁBTL 3. (Section 3 – Network, operative and investigation files) 1.9. V-150238. VI/6. Tibor Érsek.; ÁBTL 2.1. V-150028/1. V/1-a.

<sup>11</sup> ÁBTL 2.1. V-150028/1 VI/1-a.

<sup>12</sup> Éva Gál: A Hegyvidék betelepülése a török kiűzésétől a XIX. század közepéig. In Ferenc Noéh (ed.): *Hegytörténet. Hegytörténeti konferencia*. Budapest: XII.k.-i Önkormányzat – Tarsoly Kiadó, 2001. 26–27.

<sup>13</sup> György Parmer: *Magyar építészet a két világháború között*. (2<sup>nd</sup> ed.) Budapest: Terc, 2001. 30–31.

<sup>14</sup> Éva Horányi: Kozma Lajos modern villái. In Éva Horányi (ed.): *Kozma Lajos modern épületei*. Budapest: Terc, 2006. 112.

patterns of taste, and forms of interaction, which could be combined into the signifiers “we” and “they,” and which we can combine into the signifier and category “dominant elite.” This signifier remained bound up in social space with traditional separation and borders.

Officers of the State Security Authority while not strictly part of the dominant elite, shared in several privileges, for example allocated for themselves villas or upper middle-class apartments on Andrásy Avenue and its surrounding neighbourhood close to their workplace. They thus indirectly turned back towards the housing ideal of the turn of the century. The details taken of the confiscation of furniture of Andor Csapó – a head of the department of the State Security Authority – show a neo-baroque interior without any modern characteristics. There were, to give one example, 22 Persian carpets in four rooms.<sup>15</sup> His deputy, János Komendó, solved the problem of furnishing his apartment very simply by moving into the furnished apartment of a famous furniture-dealer on Dohány street.<sup>16</sup>

Villas in the 1950's were rebuilt according to the pretensions of the new leaders. The head of the department of the State Security Authority confessed – in the action against the leaders of the State Security Authority –, how he had built a swimming pool for his chief (Gábor Péter, the then head of the state security), as follows: “The pool was already dug and the iron frames were prepared for the concrete work. Then the commander of the party guard objected that it could be seen from outside. I realized then that members of the highest party leadership would also come here to swim. We gave the command to locate the pool in such a way that, taking into consideration the rising ground, it would not to be seen from outside. Then Comrade Péter gave an instruction to turn the pool. Thus the whole iron frame and the dug-up hole had to be adjusted, and the pool was built this way at the end.” According to Gábor Péter's confession, János Kádár was envious of his pool, and ordered himself one, but as he formulated: “János Kádár was always less materialistic than me, but of course he also liked nice and good things.” The apartments of the new elite were defended by armed guards – as in every period. The father of Lajos Kónya (poet and president of the Hungarian Writer's Association) visited his son living in the neighbourhood of Mátyás Rákosi when the

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<sup>15</sup> ÁBTL 3.1.9. V-150262 VI/28. Andorné Csapó.

<sup>16</sup> ÁBTL 3.1.9. V-150244 VI/9. János Komendó.

guards, following strict orders, shot the old man's leg because, being hard of hearing, he did not stop when they called.<sup>17</sup>

The party leaders were permitted to buy foods considered as short-ages, e.g. tropical fruits, salami, and veal, in shops maintained for them.<sup>18</sup> Their apartments were equipped with refrigerators which passed for a modern luxury good in that period. If a direct urban telephone-line was in somebody's office, that already was counted as a privilege. Beside this, the more superior leaders' offices and apartments were supplied with a telephone line called the K-line, through which the county party heads, council- and company-leaders as well as the police could be contacted. The chief party-state leaders could communicate with each other through the ministerial line ('M' line) while the international telephone line gave them direct access to the leaders of allied states.<sup>19</sup> Despite the harsh circumstances of the time, the Kút völgyi Hospital provided the best health provisions for the elite members.<sup>20</sup>

In the beginning, summer cottages were allocated to the party leaders for private use mostly in Balatonaliga, while members of the government (ministerial council) could use the common holiday home in Balatonöszöd, which represented a slightly smaller rank in the period. The party and state leaders could go on a free-of-charge foreign trip during their paid vacations, but in the beginning they could only travel to holiday resorts in the allied countries, e.g. to Zakopane or Karlovy Vary. The first member of the dominant elite who did not place his trust in the eternal power of socialism and wished to insure his family's future by means of private property was József Darvas. He referred to the curative effect of the mountain air when responding to critics who complained that he had built a private summer villa instead of receiving a furnished house for his family in Aliga.<sup>21</sup>

The ambition to acquire property continually grew among other party leaders as well. They also took part in the growing wealth using their privileges, their networks, and their symbolic capital. Beside the financial savings the primary forms of wealth were tied to property accumulation, apartment- and cottage shopping, and the acquisition of high

<sup>17</sup> MOL M-KS-276. f. 65. cs. 379. ő.e

<sup>18</sup> Hegedűs, 167–168.

<sup>19</sup> ÁBTL 3.1.9. V-150244 VI/9. János Komendó.

<sup>20</sup> Hegedűs, 167–168.

<sup>21</sup> Hegedűs, 169.

priced property. The institution of the so-called personal land ownership was created in 1967; limitations concerning private property did not relate to these “economic” territories, and as a result, many farms with swimming pools were built.<sup>22</sup> The government tried to put a stop to the new landowners’ expansion in 1971, when it determined that a family (actually a person) can own only a flat/housing site and a holiday resort. For the state and party leaders these restrictions proved to be easily evaded. So too was the limitation on the possession of precious metals that lasted until 1974 (a private person was permitted to possess at most 500 grams of gold).<sup>23</sup> It quickly turned out that one’s position of power not only translated as transitional benefits, but also led to the growth of the family’s coffers.<sup>24</sup>

The isolated world of the 1950’s proved to be a fleeting moment in the Buda hills narrative as well. From the middle of the 1960’s houses which were said to be elegant according to the period were resurrected in Buda again. The state and party bureaucracy could have likewise moved to the Buda hills, to the neighbourhood of the dominant elite, to new blocks of flats. Building of representative villas received new impetus from the 1980’s – with nostalgic, sometimes atavistic stylistic markers. At that time representatives of wealthy social groups, following the example and lifestyles of the dominant elite, launched an irresistible attack against the unbuilt areas of the Buda hills.

*“he was a very nice guy in his way”  
– Chevies and the Kádár-Mercedes*

In addition to an elegant villa apartment with a luxurious interior, the automobile was another important symbol of power in the period. In Hungary the first car owners had already formed an exclusive society (mostly aristocrats and industrialists) and the prestige of car ownership continued into the communist era.<sup>25</sup> After the Second World War politicians promised that the automobile would no longer be considered

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<sup>22</sup> Act Nr. IV. of 1967, Act Nr. I. of 1987.

<sup>23</sup> Tibor Valuch: *Magyarország társadalomtörténete a XX. század második felében*. Budapest: Osiris, 2001. 289.

<sup>24</sup> János Brutyó: *A választott úton*. Budapest: Népszava, 1983. 199.

<sup>25</sup> György Majtényi: *Életstílus és szubkultúra. Az autózás története(1920–1960)*. Korall, 2000. Vol. I, Nr. 1. 101–109.

a luxury item affordable only to the rich, but would in fact become accessible to all in socialist Hungary. Despite these promises, car use remained the monopoly of a narrow circle of officials and partymen. The free market for cars ceased and private use and ownership of cars were restricted to officials of higher rank, or in some cases scholars, artists, and sportsmen.<sup>26</sup> (The development of an extended public transportation system pushed the automobile industry and consumer demand for automobiles into the background, and the use of personal cars became a luxury reserved mainly for members of the state and party elite. So much so that the then prevailing negative attitudes towards motorists reflected an antipathy for the political leadership.)

It is characteristic of the over-politicization of the automobile that the selection of the driver of Mátyás Rákosi was based solely on political reliability. Selected from the police's staff and without a driver's license, the first driver was a former partisan with a lung shot, until it became clear that his wartime injury had sapped his health.<sup>27</sup> Another episode likewise demonstrates the over-politicization of the ordinary world of the automobilists: Hugó Koch, a technical manager of the Meinl company was heading to the wedding of one of the company's employees when his car crashed into the automobile transporting Mátyás Rákosi. He was carried off from the site of the accident to Andrásy Avenue 60, the headquarters of the State Security, accused of being a recruited member of a group "allied for the perpetration of sabotage," and then interned in the prison camp at Recsk.<sup>28</sup>

A delegate of the workers' councils who met Sándor Gáspár, secretary general of the National Council of Trade Unions (trade union of the party state) during the days of the 1956 revolution, recalled this about the trade union leader: "It was a well-known fact, that he kept for himself cars, anyway, I also saw those personally, in the court of the headquarters there were huge cars parked. He had glamorous beautiful secretaries, and it was also well-known that he liked the weaker sex very much. Well, he was a very nice guy in his way."<sup>29</sup>

<sup>26</sup> Orders of Ministerial Council Nr. 65 of 1950 (III.2.), Nr. 66 of 1955 (XII.1.).

<sup>27</sup> PSZL (Poltikatörténeti és Szakszervezeti Levéltár – Archives of Political History and of Trade Unions) 274. f. 26/45. ó. e.

<sup>28</sup> ÁBTL 3.1.9. V-107373 Koch Hugó és társai.

<sup>29</sup> Interview of József Bácsi. 1956-os Intézet. (Institute of 1956) Oral History Archivum. (Oral History Archive) 214. 158.

Starting in the 1960's, however, the image of and demand for automobiles revived in Hungary as more cars became available to the public. In the 1950's the offices mostly used Skoda and Pobjeda cars, which because of their poor construction quickly deteriorated with ordinary use), while new western automobiles (Chevrolets and BMW's), which could be bought from the foreign exchange quota of the party and state organs, served the comfort of high-ranking officials.<sup>30</sup> As the mass ownership of cars increased, party leaders shifted their sights to even more luxurious automobiles to secure for themselves what became a socialist luxury that further distinguished them from other groups within society. In the Kádár-era Mercedes Benz cars gained cache in elite Hungarian circles. From the beginning of the 1970's the Mercedes 280 became the protocol car. Members of the elite used a car for approximately three years, then it was replaced.<sup>31</sup>

János Kádár has been considered by public opinion to have been a puritan man,<sup>32</sup> according to the legend he spooned his favourite food, the semolina noodles, from his kitchen stool in his villa of Rózsadomb. According to the much quoted memories of his au-pair, the Kádár couple even kept hens in the yard of their house of Rózsadomb.<sup>33</sup> However, there was not only a henhouse, but also a swimming pool in the garden. We cannot see now what existed across the walls of the villa of Cserje street either, so we cannot know his everyday customs thoroughly. Nevertheless, it is ascertainable that the party secretary-general enjoyed the benefits following from his position, observed the elite customs, and the accompanying protocol. Although he was not an enthusiast about cars and travelled on the representative special train of the period (on the Silver Arrow) whenever he could, if he had to use a car, a bullet-proof S class Mercedes Benz would take him wherever he needed to go. The S class Mercedes Benz symbolizing the dominant elite of the former period has been aptly referred to as the Kádár-Mercedes in Hungary.<sup>34</sup>

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<sup>30</sup> MOL XIX (Main Group of Fonds XIX. – High Organs of the Public Administration after 1945)-H (Fond “H” – Transportation and Postal Administration)-12 1. d. (doboz – cartoon)

<sup>31</sup> MOL XIX-H-11 1–40. d.

<sup>32</sup> Tibor Huszár: *Kádár. A hatalom évei, 1956–1989*. Budapest: Corvina, 2006. 248–253.

<sup>33</sup> Huszár, 251.

<sup>34</sup> Tibor Kiss: Talált tárgyak országa, avagy az “Öreg kocsija”. *Szoc.reál*, Nr. 8, 2006.

*“altogether 1710 pheasants, consisting of both cocks and hens”*  
 – *The “worker-hunters”*

Sport hunting was considered traditionally an elite or middle-class custom in Hungary. During WWII it was a particular manifestation of the hunting passion of Miklós Horthy, regent of Hungary, that a bear hunting field was founded in Szin as a substitute for the Transylvanian bear hunting territories lost under the Treaty of Trianon.<sup>35</sup> In order to form the reserve, the population of a whole village (Derenk) was resettled.<sup>36</sup> (This arrangement during the war years did not cause a stir.) At first circus-bears were brought here, but that proved to be a very dangerous and ill-considered arrangement, because these bears attacked the local people many times.<sup>37</sup> After WWII, the principals of the village Szinpetri and the local organs of all the parties asked István Dobi, the minister of agriculture, to modify at least the borders of the hunting ground. The minister, also being a hunting addict, was not inclined to do so, and explained his decision from the viewpoint of game farming.<sup>38</sup> This story can also be interpreted as a symbolic event, demonstrating both the force of passion for hunting and that of the tradition and continuity of lifestyles of the elites which spanned the change of power and the political, social and economic changes.

In the 1950's the Ministry of Agriculture maintained so-called ministerial hunting reserves where state and party leaders could hunt free of charge. Our archival sources show that prominent leaders of the state party shared a passion for hunting; they included Mátyás Rákosi, János Kádár as well as Imre Nagy.<sup>39</sup> Their hunts were not restricted by anybody, but even they followed old traditions of hunting. Personal relationships and the confidence that ensues from hunting together has always

<sup>35</sup> MOL K (Section “K” – Archives of Government Organs between 1867 and 1945) 27 1940.05.24. (46.)

<sup>36</sup> MOL XIX-K (Fond “K” – Agricultural Administration)-1-y 342–343. d.; László Szűts: *A kormányzó úr medvéi*. Budapest: Kossuth, 1965.

<sup>37</sup> Gábor Pápai (ed.): *Gyökörek és lombok. Erdészportrék*. Budapest: Országos Erdészeti Egyesület, 2003. 263.

<sup>38</sup> MOL XIX-K-1-ii 4. d. 161.280/1946.; MOL-XIX-K-1-ii 8. d. 125.725/1947.; Dr. Sándor Tóth: *Nyitány a hírnévhez. Vadászat és vadgazdálkodás Magyarországon, 1945–1951*. Budapest: Nimród, 2007. 182., 191–192.

<sup>39</sup> Tóth, 138.; MOL XX (Main Group of Fonds XX. – High Organs of Jurisdiction after 1945)-5-h 12. d. 1. k.

formed a good part of the hunting experience. Endre Nagy (Schwend), a former gendarme captain and a husband of a baroness, organised the hunts of Mátyás Rákosi in the 1950's, and he wrote in his diary: "It is incomprehensible, that Mátyás Rákosi, János Kádár, Márton Horváth [...] Ferenc Donáth, Mihály Farkas, László Rajk consider me – the former gendarme captain, husband of a Hatvany baroness – their crony."<sup>40</sup> It was due to them that he was able to escape from the State Security to foreign lands.<sup>41</sup>

In 1963 János Kádár, who was a passionate hunter, decided to make hunting more organised and regulated. He instructed the corresponding head of the Ministry of Agriculture to work out the hunting protocol for the state and party leaders. The hunting club of the party leaders was called Concord (Egyetértés), and it was founded on the basis of that protocol. So-called primary game-preserve territories were formed for the members of the Concord. There were originally eighteen founding members, and by 1974, sixty members could enjoy the privileges provided by the Concord Hunting Club. A closing dinner – usually in the officers' club in Budapest – was held each year at which time the members of the club received new issues of the satirical journal (Fácán Matyi) prepared exclusively for them by caricaturists of the popular satirical journal of the period (Ludas Matyi), which treated events in the life of the club. During these dinners comedians and actors were also



Picture 1. Frontpage of Fácán Matyi (The inscription: You are also in this!)

<sup>40</sup> Katalin Beretz: *Puskák, pajzsok, fohászok*. Budapest: Zeus, 2001. 27.

<sup>41</sup> Beretz, 33.

## ALAPÍTÓ TAGOK: — 1964



Apró Antal



Balassa Gyula



Benkei András



Biskó Béla



Cseterki Lajos



Csinege Lajos



Fehér Lajos



Fock Jenő



Földes László



Gáspár Sándor



Kádár János



Losonczy Pál



Nevzöl Ferenc



Németh Károly



Pap János



Szabó Zoltán



Szücs Ferenc



Tömpe István

invited to enliven the club members: they recited patriotic poems and performed parodies and variety shows.

The function of this exclusive club can be interpreted as the hunting-professionalization of the new elite. During each period, the hunt provided a possibility for competitive marksmanship in a ceremonial framework.<sup>42</sup> One member of the Concord later recalled the hunting trips of the trade union leader Sándor Gáspár as follows: “I surely can say that he was the best bird hunter in the country...his individual record can be mentioned with the known and registered ... records..., on December 21, 1986 when he shot altogether 1710 pheasants, consisting of both cocks and hens.”<sup>43</sup> Competition among the hunters also existed regarding who bagged the most valuable trophy, which depended mostly on the circumstances. In the trophy catalogues we can find well-known names. Among the gold and silver medallist trophy recipients are many party leaders.<sup>44</sup> For example in a trophy exhibition at the Agricultural Museum of 1969 the trophy game shot by János Kádár received

Picture 2. Funding Members of the „Concord” Hunting Club

<sup>42</sup> György Kövér – Gábor Gyáni: *Magyarország társadalomtörténete a reformkortól a második világháborúig*. Budapest: Osiris, 1998. 200.

<sup>43</sup> Dr. János Zoltán: *Legenda és valóság*. Budapest: Dénes Natúr Műhely, 1996. 46.

<sup>44</sup> *Vadászati kiállítások és trófeabemutatók*. Budapest, MÉM Vadászati és Vadgazdálkodási Főosztály, 1970. MOL XIX-K-9-aj 44. d.

first and third place.<sup>45</sup> In the international hunting exhibition of 1971 the names of the hunting clubs were read instead of the names of the hunters under the trophies, because the prominent politicians of the period did not want their names to appear together either with names of the representatives of the Horthy era, or with Rudolf Hess. This stifled their hunting pride. However, the issue published for the exhibition also raised a monument to their memory: “Hungary was always well-known for its stags, fallow-deer, roebucks and robust boars. The planned economy of the last 26 years has resulted in particularly nice trophies.”<sup>46</sup>

According to the memories of Concord’s members, cheerful but undisciplined hunts disturbed János Kádár. As a consequence, new hunting clubs were organised for the children and for the women. The Young Nimrod Hunting Troupe (Nimrod is a mythical figure within Hungarian national mythology) was formed and the leadership of the Concord organised separate hunts for “nimrodladies” as well. Later a new club was founded for the pensioners removed from the Concord, which was called euphemistically Friendship, though Concord members mentioned it as a “home for incurables.” If somebody lost his position, he was exiled there from the Concord. Within the elite membership in the Concord could be the symbol of admission to the highest ranks of the party leadership (according to our notions of the dominant elite) and losing that position was a symbol of real loss of power and influence.

Party leader attitudes to trends of the prewar dominant elite partly depended on the new elite’s relationship to the public. For example equestrian sports had less popularity in this circle – maybe due to the wider publicity of equestrian competitions, which also began as an elite (aristocratic) entertainment, but later in fin de siècle Hungary started to become a general popular pastime. From the 1950’s members of the former so called “high ten thousand” and common people crowded in on the competitions.<sup>47</sup>

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<sup>45</sup> *Trófea kiállítás. A hazai vadászok 1969–1970. évi arany és ezüstérmes trófeái.* 1970. VI. 20–30. Mezőgazdasági Múzeum.; Vadászati kiállítások és trófeabemutatók. Bp., MÉM Vadászati és Vadgazdálkodási Főosztály, 1970. p. 62., p. 132. MOL XIX-K-9-aj 44. d.

<sup>46</sup> *A Vadászati Világkiállítás.* Budapest, 1971. Tájékoztató. MÉM Kiállítási Iroda. p. 11. MOL XIX-K-9-aj 40. d.

<sup>47</sup> László Gál: “*Csak a szépre...*” *Budapesti életképek az 1950–60-as évekből.* Budapest: Fekete Sas, 2005. 194.; Miklós Zeidler: A modern sport a nemzet szolgálatában a 19. századi Magyarországon. *Századvég*, Nr. 4, 2006. 76–83.

## AZ EGYETÉRTÉS



Picture 3. The “Concord” Hunting Club from 1974

## TAGSÁGA 1974



Biszku Béla



Bodnár Ferenc



Borbándi János



Cseterki Lajos



Csémi Károly



Czinege Lajos



Gergely István



Hollai Imre



Horn Dezső



Horváth István



Kozarecki Kálmán



Kádár János



Madas András



Marjai József



Maróthy Lószló



Marton Tibor dr.



Molnár Frigyes



Nevzál Ferenc



Papp Lajos



Potaki Lószló



Somi Benjámín



Szabó István



Szabópál Antal



Székér Gyula



Tóth Sándor



Tömpö István



Vallus Pál



Várkonyi Péter



Veres József



Zoltán János dr.

GRATULÁLUNK



– Szép ez a rekord bika. Ebbe jól beugrattak...

Picture 4. János Kádár, party secretary general with one of his record trophies

*“Minister Mihály Farkas dealt a lot with the team”  
– Party leaders and football*

Football-mania among the party leaders can be considered a manifestation of the worker-ethos. It is a fact that leaders of the system acted as midwife beside the cradle of the so called Hungarian “goldteam”; for example the close relationship of the legendary football-player Ferenc Puskás and the party chief Mihály Farkas is mythical in Hungary. A symbiosis between the party leaders and football players characterized the contemporary elite’s relation to the masses (more specifically to

– Asszonytársak,  
megmentettem a  
nök becsületét.  
Jó, ha a vezetőség  
tudja, ránk  
lehet számítani...

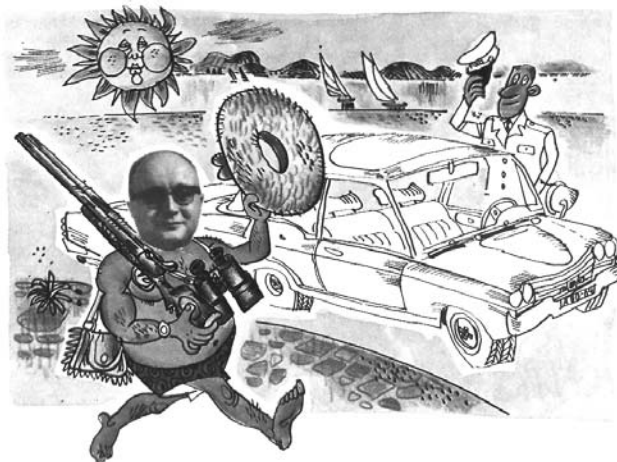


Picture 5. “Nimrod ladies”

the public sphere and to its own social role). Of course, “the masses” is not an appropriate description of society, but researchers investigating elites show a preference for this dichotomy referring to the masses as the adversary of the prevailing elites. It is characteristic that members of the contemporary dominant elite in certain cases tried to step over and generally make invisible the borders separating them from other groups within society to prove their social position. In this period the working class, the industrial workers – who never existed in the form imagined by the ideologists of the system – shaped the virtual mass to which the representatives of the system had to relate incessantly in the interest of legitimatizing their dominance. Sport successes had a legitimizing role, legitimating the “workers’ power”, and the system. Party leaders liked to show themselves together with the justly popular football-players. In 1949, as a reward for winning results (triumphs against the Austrians, the Bulgarians and the Swedes), eleven players from the Hungarian national team were allowed to go first across the rebuilt Chain Bridge of Budapest following Minister Ernő Gerő.<sup>48</sup>

The new system tried to shape and rewrite the meanings and social identities related to the sport clubs. In the period teams from different crafts and trade unions (e.g. miners and railway employees) and teams

<sup>48</sup> Sebes Gusztáv: *Örömök és csalódások. Egy sportvezető emlékei*. Budapest: Gondolat, 1981. 132.



### DERŰS NAPOK

– A Balaton-  
hoz megyek ak-  
tív pihenésre.

Picture 6. Andor László, state secretary, president of the Hungarian National Bank going on a holiday

from the martial organs (e.g. the police, State Security Authority) fought on the football field.<sup>49</sup> And it was mainly the latter which won the championship. In this symbolic field the “working class” was projected as the main actor of society, and the power of the state representing it as strong. From 1949 party leaders became members or presidents of the leadership of the renamed clubs, which led to endless lobbying; the Political Committee of the party withdrew party leaders from this sphere of the public life in 1950.<sup>50</sup> However, they kept their eyes on the football-players and the clubs. (The social identity of party leaders can also be characterized by who sided with which team.) Ferenc Münnich being the leader of FTC, the most popular football club in Hungary with traditionally right-wing fans, stated in his presidential inaugural speech: “The FTC is a real national institution in Hungary. We have to look after it. We have to lead and build it correctly so that it could actually become a strong pillar of sport of the Hungarian people’s democracy.”<sup>51</sup>

<sup>49</sup> MOL M-KS 276. f. 54/116 ó.e.

<sup>50</sup> MOL M-KS 276. f. 54/85. ó. e.; MOL M-KS 276. f. 54/85 ó.e.

<sup>51</sup> Béla Nagy: *Ki kicsoda a Ferencvárosi Torna Club történetében?* Budapest: FTC, 1987. 54.

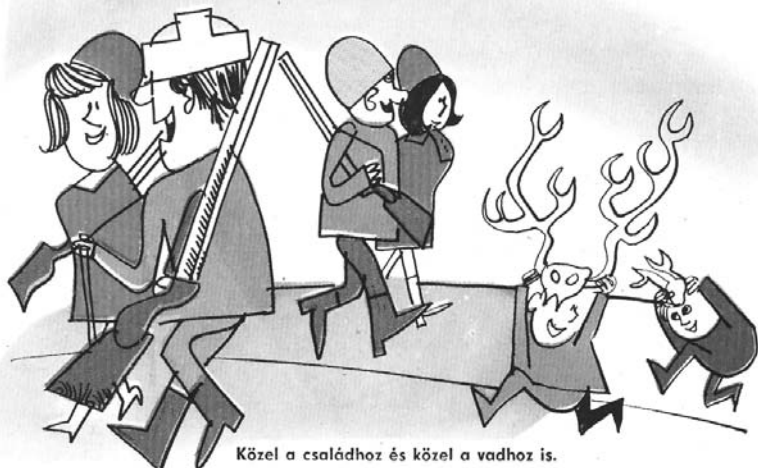
**Újsághír: Két hazai vadász rekordot lőtt dám-bikából**



Picture 7. “Fácán Matyi” revealing the secret of the two unknown hunters about whose records the newspapers wrote: Lajos Fehér, deputy prime minister and Béla Biszku, secretary of Central Committee of the party

It is unquestionable that football offered major chances for mobility in the period. Men of the people could become celebrated stars, and football players, as folk-figures, represented through their own example the democratic character of the system. Members of the dominant elite held this attitude; as in the Hungarian folktale when the king says to the poor man – if he passes the test – he can win the queen’s hand and half of the kingdom at the end of the tale. This tale seemed to become reality on many occasions. When in 1953 Ferenc Puskás celebrated that he was selected for the fiftieth time for Hungary, – according to his memories – Mihály Farkas, Minister of Defence asked him: “Well, Puskás, what kind of gift do you want? I said I asked for others with pleasure, but I did not order for myself. He answered, well, leave that to me! I received from the Honvéd (club of the defence – Gy. M.) silver cutlery for twelve persons

## A LEGJOBB MEGOLDÁS



Picture 8. Family and hunting (The inscription: Close to the game and to the family)

and a Persian carpet.”<sup>52</sup> After emigrating Puskás recalled the Minister of Defence with kindness: “Minister Mihály Farkas dealt a lot with the team. Why shall I scold him now, if he helped?”<sup>53</sup>

Competitive sport offered a possibility for individuals to break out from their ordinary environment, and successes in sport could make the “masses” forget their everyday difficulties – or so the party leaders believed. Thus the large amount of support which competitive sports received in the period is understandable.

It is telling of the social legitimising role of football that the first significant street actions against the government broke out in the evening of the day when Hungary’s team lost the final of the football championship against the German team in Bern. On July 4, 1954 the people’s indignation led to demonstrations.<sup>54</sup> First, the demonstrators lashed

<sup>52</sup> Hámori Tibor: *Puskás. Legenda és valóság.* (2nd ed.) Budapest: Sportpropaganda, 1982. 149.

<sup>53</sup> Hámori, 148.

<sup>54</sup> Mária Ember: A kis magyar “focialista forradalom”. *Eső*, Nr. 1, 2001. 40–45.

out against the coach and the players but later the system and the representatives of that system. It was incomprehensible how the brilliant players of the “goldteam” could lose against the west-German team bringing out grey but hard-working craftsmen. The defeat was so horrifying that ordinary people thought: the players or the sport- or party leadership had sold the match to the Germans. It was said that party leaders had received fifty Mercedes for the match, according to others that the Germans had given new peacombines to the Hungarian state. While fans demonstrated on the streets, the team took part in a protocol dinner with members of the government. Riots were soon spent, and life went on as before. “But they did not forget one thing. The demonstration.” – as we can read in Tamás Aczél and Tibor Méray’s book investigating the reasons for the 1956 revolution.<sup>55</sup>

The question of reform and the redemption of Hungarian football remained a permanent topic of discussion at



– Vadászháznak ezek kicsik!

Picture 9. Károly Németh, member of Political Committee of the party finding the skyscrapers too small for a hunting lodge

<sup>55</sup> Tamás Aczél – Tibor Méray: *Tisztító vihar*. München: Griff, 1982. 216.



Picture 10. Mátyás Timár, state secretary, president of the Hungarian National Bank and in the background the old and the new hunting lodges

meetings of the different party and state organs. János Kádár never concealed that he stayed true to his roots and supported a traditional worker team (Vasas, the team of the ironworkers). It was a symbolic gesture from the Kádár regime that some old clubs, as for example FTC, could receive back its old name, and when in 1963 the club won the Hungarian championship again, according to football-legend its fans chanted the name of the party-secretary general: “FTC are the champs / János Kádár is a swell chap.”<sup>56</sup> (“Bajnok lett a Ferencváros / Faszgyerek Kádár János”)

<sup>56</sup> Literary translation by the author.



Picture 11. Ferenc Szűcs, lieutenant general hurrying home from Saigon to avoid missing the actual hunt

### *Social gatekeepers. Lifestyles and identity*

Of course, members of the new elite were united by strong informal ties. Informal meetings and friendly family gatherings were often held in the beginning. Mátyás Rákosi endeavoured to act in the role of head of the family inside the elite company. He invited the children for cacao and liked to show them his collection of relics. (The fashion of collecting relics set by Rákosi can itself be considered a relic of a petit-bourgeois *biedermeier* custom.)<sup>57</sup> Though the party secretary-general's role as father (following from the monolithic nature of power in the regime) remained inside the narrow elite-community to the very last, cliques evolved between the politicians of the system with very different social and cultural backgrounds. In general it can be ascertained that neither party ideology, nor communist identity, was responsible for strengthening the feeling of belonging to a closed community with a privileged

<sup>57</sup> Schiffné Szakasits Klára: *Fent és lent, 1945–1950*. Budapest: Magvető, 1985. 228.

status for the party leaders. The ideology of the system and the circumstance, that they were the representatives of the so called workers' power, could create some kind of worker self-consciousness and identity in the top functionaries but it was a reference ground rather than a real cementing force.<sup>58</sup> Furthermore, gaps among the elite seem to have been delineated along conflicts between old, traditional identities. For example, the martyr prime minister, Imre Nagy in his notes written in the captivity of Snagov distinguished himself from other Hungarian communist leaders on the basis of his relationship to the national question by mentioning the Jewish origins of his enemies.<sup>59</sup> His argument is a typical example of the way in which traditional elements of one's individual identities remained salient within the communist identity.

The lifestyle, the community of customs, was the force, which could even unite representatives of different groups within the party with different backgrounds. Certain attitudes and behavioral patterns were equally characteristic of the lifestyle of Mátyás Rákosi or János Kádár, as well as that of Imre Nagy. We can interpret the sameness of customs as a conceptually inarticulate identity (as a non-confessed but evidently existing identity-consciousness), that helped them to identify themselves with their new social role and status and take part in the community of the dominant elite. For example, it is significant that in 1957 a fundamental question raised in the discussions on the fate of the so called Imre Nagy-group was board and lodging of the exiled politicians.<sup>60</sup> Beside showing the small-mindedness of the Kádár party-leadership it represents that permitted way of life for the Imre Nagy group's members symbolized their political, and power status in the eyes of the home party leadership.

One's belonging to or dissociation from a group depends on keeping or departing from certain behavioural patterns, customs. Behaviours

<sup>58</sup> See Sheila Fitzpatrick: Stalin and the Making of a New Elite. *Slavic Review*, September, Vol. 38, Nr. 3. 1979. 377–402.; Sheila Fitzpatrick: Ascribing Class: the Construction of Social Identity in Soviet Russia, 1934–1941. In Sheila Fitzpatrick (ed.): *Stalinism. New Directions*. London – New York: Routledge, 2000. 20–46.

<sup>59</sup> Imre Nagy: Gondolatok, Emlékezések. In István Vida (ed. in chief) László Szántó – István Vida (ed.): *Imre Nagy: Snagovi jegyzetek. Gondolatok, emlékezések, 1956–1957*. Budapest: Gondolat Kiadó–Nagy Imre Alapítvány, 2006. 93.

<sup>60</sup> István Vida: Bevezető. In Magdolna Baráth – Levente Sipos (eds.): *Snagovi jegyzetek, 14–15. A snagovi foglyok. Nagy Imre és társai Romániában. Iratok*. Budapest: Napvilág Kiadó – Magyar Országos Levéltár, 2006. 411.

determined by the society with changing meaning and force can characterize dominant groups, the elite of different periods. Some of these behaviours seem to be linked together independently of time and space. The perpetuated behavioural elements can be said to not only determine and cement groups, but they can recreate those in the course of history. From the viewpoint of these lifestyles, the dominant elite of the period played an intermediary role: as a dry sponge that absorbed all that it could from old traditions, thereby safeguarding and innovating the traditions of the Horthy-period. They functioned as social “gatekeepers” as those who distributed opportunities and positions and gave the patterns following from their dominant positions. All in all the contemporary dominant elite can be imagined as a group organised in a buffer zone lying between different and potentially hostile cultures and lifestyles, which by its sheer existence could prevent conflicts between them. (Later its customs and way of living were adopted by representatives of wealthy social groups following in their lead.) On the heritage – which it represented and mediated – the tempests of the history left their marks.

In his memoir Fülöp Merán described how in 1944 the frontline reached Csákberény. On one occasion coming home from the hunt with his brother, they entered the drawing room at home, anxious to show their success to their parents, and found three German officers sitting on the couch. Being a hunting addict himself one of them examined the kill with great excitement: “While blood dropped onto the blue couch, nobody noticed, and the blood which nobody washed off was soaked in the blue cloth leaving an imperishable stain on it. We only realized the blood stain, when on December 11, 1944. after our last lunch we were drinking our last coffee of Csákberény in the drawing room. On the afternoon of this day we left our native village for ever.”<sup>61</sup> In the 1970’s, after a beat for a boar, an old hunting guest of the mansion of Csákberény glimpsed the blue couch in the corner of the dining room in a newly equipped hunter’s home. It was nicely cleaned except for an unremovable stain on blue cloth.<sup>62</sup>

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<sup>61</sup> Fülöp Merán: *Az emlékek nem hazudnak*. Budapest: Nimród, 2006. 62.

<sup>62</sup> Merán, *Az emlékek ...*, 65.

STEFAN PANNONYMUS

## Confessions of a Migrant (A Real Folk Tale)

**L**ife is a great adventure. I have always known this. Moving and travelling is a much larger adventure within it. As a matter of fact, the greatest adventurers were always travellers. And a migrant is a traveller – that is: an adventurer. And similar to the heroes of Hungarian folk tales, he has to tackle several tasks in order to gain the hand of the old king's daughter and half of the kingdom. In my case, the reward is a little smaller in a certain sense, although it is not to be underestimated: it is a paper that enables him to reside in the new place. If you have a paper, everything is all right. Not all gates open before you, but at least, they are not slammed shut before you.

During the journey several monsters must be fought. True, dragons, evil witches or ugly croaks camouflaging themselves as beautiful girls exist only in fairy tales and are today replaced by officials. The bureaucrats. But not in the sense that Max Weber wrote about (or dreamt about) them. Namely, the opponent is the bureaucrat who strictly abides the rules of law. The bureaucrats of the Hungarian immigration authority are similar to Weber's conception of them to the extent that they are making headway in the official hierarchy, but based on our own experience, one can hardly affirm that they are calculating. However, it is not sure at all that bureaucrats are responsible for their responses because even they probably do not find their way through the forest of constantly changing law and decrees, as I will soon exemplify. Furthermore, I would rather say that the majority of bureaucrats were kind and helpful.

And speaking about tales: in migration stories we very rarely meet characters who help the protagonist (the migrant) and are, thus, also positive heroes. On the other hand, there are too many negative characters; no fairy tale could bear it. If the story were read out as a bedtime story, the audience would have nightmares . . .

### *Migration as a fate*

I am an experienced migrant. I was born in the early 1970s in Tito's prosperous, developing (from foreign loans) and apparently calm Yugoslavia. It was not difficult for me to understand why some relatives lived in Germany – since they were so-called Danubian Swabians, they escaped from the Vajdaság area in 1944, from the approaching Soviet army and Russian partisans. A relative was to be found in Hungary as well: after World War II – since he had been conscripted in Governor Horthy's Hungarian Army – he had settled down in Budapest. The relatives in Germany opened up a happier and even more beautiful world for me – happiness manifested mainly through the products of Western consumer society: Adidas gym shoes (which were manufactured in Slovenia but were not available there), the orange juice served for breakfast, and some slush-fund. Many residents of my home village worked in Western Europe as guest workers. The only reason my parents did not emigrate to Germany – even when they would not have been employed as physical workers but could have been employed as, for instance, as a choir conductor – was because they thought that life standards and possibilities at home were simply enough for them. Certainly, if they had known what was to follow, I would – like both my grandmothers – be a German citizen too, and I would have by no means become a writer of Hungarian articles, studies and books. And this case study would not exist.

The gist is: I derive from an environment within which migration never counted as a deviant way of life or as a means of escape; on the contrary, it was a well respected method for social ascendancy, a well-known strategy. Furthermore, nowadays it is nearly recommended, as the local minority and the Hungarian political elite stress: staying at home (what is seemingly preferred by the elite themselves) is not inherently worth it. The fly in the ointment is that when the migrant returns to his homeland as a rich uncle for a few weeks a year, trying to play the

role of the successful man, everyone knows that he stands in the lower third of the social hierarchy abroad.

### *War times*

There is a twist in the plot. In 1991, the Yugoslavian war broke out. During the summer more and more stories were heard about young people who had been conscripted as soldiers but had escaped to Hungary. It was a topic among our friends as well because in September we were to march in the regular Yugoslavian Army, which was not burdened by crimes of war at that time. Although many told us to emigrate – our parents were so frightened that they did not dare ask us these questions – I and one of my friends decided to march. We had a prosaic reason: we were enchanted by Géza Ottlik's novel *School at the Frontier*, which takes place in a military primary school, in a totalitarian institution. We were simply curious whether or not all this worked as our favourite novelist had written. We later realized that our curiosity was nonsense. Reality never imitates art in such a way. Especially, not during war.

During the approximately one-year period, I met several refugees for whom I had to care as a soldier since I was my regiment's scrivener. I also met weeping mothers who had not only lost their sons but all of their fortunes as well – but the army officers were insensitive to their problems, or they simply could not help them. I was shocked by the fate of high-ranking officers, who had originally been veterinary surgeons and with whom I had spent a lot of time with them, escaping from Sarajevo. They could hardly get out, and it turned out that they would have to resign all of their future plans and careers. Instead of a secure military career, each of them now received a military bed; several doctors with the rank of colonel lived together in the hall of the barrack's club, and they kept their civilian things in sacks, if they had anything at all. This was the time when I understood how difficult it is to start a new life from scratch – what it means to escape, to migrate.

Since I worked as a messenger as well, I had the chance to escape to Hungary, but even the thought of escaping made me tremble. I did not dare take the risk. One time, I nearly decided to leave – we were spying along the Serbian-Hungarian borders, but I would have had to “neutralise” the border guard. Even though Serbian squads (“our squads”)

were already shooting at Bosnian Muslims those times, I was not cruel enough to shoot a fellow soldier (and Bosnian Muslim) dead.

### *Peacetimes*

On 28<sup>th</sup> September 1992, a week after I left the army, I travelled to Budapest. I had previously won a scholarship from the Hungarian Government to the International Institute for Preparation, where students who were members of the Hungarian ethnic minority in neighbouring countries were prepared for university admission exams. In our case it was nearly ridiculous, since we should have passed our Hungarian final exams in a secondary school instead.

The one-year visa was arranged by the Institute; as I remember, it took nearly five weeks until our passports were returned and the visas were granted. But at least we did not have to settle anything in person. Oh, happy peacetimes!

### *Pretty girls preferred*

Next autumn, I began my studies at university. This time our hearts were still filled with joy: I was admitted to university, obtained a scholarship, managed to gain accommodation at a students' hostel. It even seemed logical that the visa would be granted for one more year. Our registration requirement was settled at the hostel; the scholarship papers and the school-attendance certification were given to us at the university. I think it could not have been very hard to obtain because I do not even remember it. In the autumn of 1994, we had to queue with the most recent version of our papers at the Alien Police headquarters on Izabella Street in Budapest. At first, I had to wait for seven hours; then another time for five. Fortunately, I and a dear, old female friend of mine went there together, and the time passed more quickly.

But we observed how some of our fellow sufferers were moving within the building and, since the end of the line was there, on the yard. We knew some of these people from the hostel; they were the older, law students deriving from Transylvania (Romania) and Kárpátalja (Ukraine), and they were pacing – out of the office, into the office. They had brought hamburgers and ate in front of us as we leaned against the staircase barrier. Then, not much later, after they went into the office

one more time, they left urgently. And we were left standing there – hungry and thirsty, without the possibility to go to the lavatory.

But the real surprise was when my female friend and I finally stood in front of the official in charge. I still remember the name and the face of Mr. F. I politely let B. go into the office first. Everything was settled quickly, so B. waited for me while I finished my business with Mr. F. This was the first time I was shocked. Pretty B.'s visa was granted for three years while mine was only granted for two years, even though we possessed the same papers. We came from the same place, lived in the same youth hostel, received the same scholarship amount, and were both the second-year students of the same university, although of different faculties. It was completely clear for us that Mr. F. simply practiced his discretionary power.

### *Migration as inspiration*

These experiences inspired me to such an extent that next summer I wrote about them for an essay competition. I won first prize. This example provided a frame for thinking about the concepts of homeland, home and alien status. But I have continued to record my experience of migration and travelling in writing. Even today when I see customs officers, policemen or border guards, I feel ill. I am simply frightened of smugglers. I wrote a short story about them, about cross-border “cultural” barter, and a study about guest workers’ culture of sufferance because these topics are always fresh and very inspiring. As Günther Grass says, “Best books in English are written by emigrants, just like as here, in Germany there are also splendid books written by Turkish people, and it is like this in many other countries. They make us richer.” Yes, maybe – but while one is an earthly mortal person, a simple wanderer – an emigrant or immigrant – one feels nothing from this richness.

### *To stay or to leave*

Two years later, I prolonged my passport under more cultured circumstances. The office was somewhere near Hősök tere (Heroes’ Square) in Budapest. In my final-year of studies, I started working at home, in Novi Sad, and until I obtained my degree, I was commuting. At that time, I did not want to solicit for a new visa or a settlement permit

because I had neither the legal basis nor the money to do so. With the onslaught of the Kosovo conflict in 1998, we were experiencing eventful times in Serbia. Working for the independent media as a kind of maverick intellectual, I had many things to write about. Nearly none of my peers returned to the Vajdaság area; at least 90 percent of them stayed in Hungary, and although with much difficulty, they finally obtained Hungarian citizenship.

But on 24<sup>th</sup> March 1999, NATO forces started bombing Yugoslavia – even though I never treated this country as my homeland, it had somehow felt natural for me to be a Yugoslav citizen. And since one time I had served this “homeland” as a soldier – giving all that it asked of me, I still think that this state has some kind of debt towards me. I left the country on 23<sup>rd</sup> March in order to take a literary prize in Budapest. One day before, on 22<sup>nd</sup> March, an employee of the Beograd Hungarian Embassy with whom I had contact as a maverick intellectual called me up to tell me to leave the country because the bombardment would soon begin and they would also soon leave. Since my ticket was valid for the next day, I told him I would go nowhere that day. I packed hardly anything in my bag because, on the one hand, I thought that I would go there for only a few days and, on the other hand, I did not want to seem like an escapee at the border. Nevertheless, I definitely felt and knew that there would be bombardments; I also knew that I would probably stay in Hungary, since I did not want to come home to war. The Serbian border guard congratulated me on my literary prize while the Hungarian one asked me whether or not I had a return ticket. I had bought a return ticket, but it was in order to deceive the Serbian authorities, not the Hungarian authorities.

I escaped to a NATO member state from the bombardments of NATO forces, to a country that had become a member of the military alliance 8 days earlier. It was really astonishing how Serbian intellectuals who had escaped to Budapest were cursing NATO and Hungary – being among its member states – while they did not really escape from the NATO forces but rather from Serbian authorities. In the beginning we had hoped that President Slobodan Milošević would soon capitulate and we would be allowed to go home. In those times one could spend 30 days in Hungary with a valid Yugoslavian passport without any kind of further requirement. But the days were passing, and the intensity of the bombardments only grew. It was necessary to search for some

kind of work and in order to obtain permission to remain in Hungary. I visited my Beograd acquaintance in the Ministry of Foreign Affairs, but he did not help. He recommended that I go to Romania after 30 days but then return immediately. Naturally, I knew this kind of artifice from earlier, from those who did not settle their papers, but they did not dare go back to Yugoslavia because of their liability for military service. But Romanian borders are not that close, so I solicited for refugee status. I visited the Hungarian President of the Helsinki Committee before applying; he also could only recommend that somewhere I should cross the state border and return immediately; the Hungarian border guards would not keep me up. They would not leave me at no man's land, since I am after all Hungarian. He told me that I would not be granted refugee status because working as a maverick journalist was not proof that I was chased or that any trouble would happen to me upon returning to Yugoslavia. The fact that in the meantime the 12<sup>th</sup> floor of the building where I worked burst into flames was also not a guarantee. My colleagues survived it by hanging from cables; fortunately, none of them died. Only those who were caught in the lift had, but they had worked for another company. It also meant nothing that the regime was having journalists killed since nothing special happened to me and generalizations did not matter. In other words, the Hungarian authorities could have granted me refugee status only if I had been killed or at least beaten half-dead because of my work as a journalist and not for any other reason.

### *Sealed pieces of paper and illegal writing*

My days as an emigrant were passing, and there was nothing else to do but make my plea to the refugee authorities. My passport was confiscated, and they gave me a piece of paper. It was my temporary identity card. My name, a few pieces of personal data, and the address of my accommodation (I was taken in by a friend) were printed on it. No photograph. Even the seal looked as if a child could have made a better one; in other words, it was easy to forge. I do not know that if I had been stopped by policemen whether or not they would have believed me that I had refugee status since this simple piece of paper was a bit suspicious.

I spent time with another writer who had also escaped from the Vajdaság area with his family. I gave interviews to German, Japanese and Hungarian television networks, even to the South African reporter

of the *Wall Street Journal* who was at that time working in Budapest as an expert on Yugoslavian affairs. My writer friend thought that we had better turn to the President of the Republic for citizenship. Since he was also a writer, perhaps he would show some solidarity with us. I myself thought that I would look for some type of governmental support. It was a bad decision. Although I managed to quicken the process, I was granted only a tolerated-migrant status, which was enough to only become an idler because it did not grant employment rights. Fortunately, it was possible to write illegally, on the condition that employment controllers never catch someone who breaks the law of employment while he or she is writing illegally. But if I had worked in the building industry... And so many people say that writing is not dangerous.

Some years later at a birthday party, I asked the question of the then Prime Minister: do you know that a cross-border writer whose works are published in a Hungarian newspaper and would like to get some honorary for them is really an illegal worker? Does he break the law if he wants to get his honorary without a social insurance contribution with which he will never get old age pension in this country? Since it was impossible to obtain the money – unless the given newspaper was willing to commit some kind of fraud – I also wrote gratis several times. I do not know how other countries regulate these things, but it does not seem logical at all that someone who sells a piece that s/he wrote as a tolerated migrant, without labour permit, will get no salary but must ask for state allowances.

In the meantime, the Serbian regime was overthrown. 11 days later the immigration authority would have granted the prolongation of my visa for one more year, but I decided to ask for my passport back. At least I would be able to visit my parents. For a while, I lived in Budapest; then I moved home, migrating back to Serbia for the second time.

### *At home again – among attractions and repulsions*

I got a scholarship, wrote a book, but then I ran out of air. I lived in a village, which was often boring and where Internet was very slow. In October-November 2006, I got an employment offer about which I had to think twice. My used-to-be patrons had gained positions in an institute financed primarily by state funds, and they had invited me to work for them. Furthermore, the work was related to my profession;

I had work experience, and even my university degree was maximally adequate. What arguments did I have for staying or migrating? What arguments, according to the push and pull migration model?

I had few arguments to stay in the village, apart from the fact that most of the times I felt good, lived comfortably and even had money because I had work and, moreover, no bosses. I worked as a freelancer. I could show up only for four months of employment (and health and pension insurance at the same time). On the other hand, this work was the most valuable: it meant much more to be legally employed in an EU-member state than it meant to be employed in any position in the still uncertain Serbia. My friends, acquaintances, peers – that is, my reference group – also always treated believed that if one gets a good offer somewhere, then one should accept it. Financial forces were the main reason the majority decided to become guest workers or emigrants – in the last years, war as such did not push people towards emigration. At the same time, unskilled and skilled workers looked for work in Slovenia and Crna Gora not only for financial reasons but also because they were welcome there. They were (and still are) transported with micro-buses; their employer immediately settle their papers. Because of this, they would rather go there than to geographically closer Hungary, from where they could travel home to their families every weekend. But their general experience of Hungary is that they are deceived by employers, their papers are not settled and they cannot cope on their own. As I see it, Hungary has ceased to be a destination country for skilled workers while the distant – and EU member state – Slovenia has become one. Only one social group wants to reach Hungary: young people who wish to be employed as physical workers (for example, as storekeepers or porters) because the multinational companies that hire them are adept at obtaining permits and because these people are willing to live at workers' hostels and work for subsistence wages. But the only people who are ready to accept such circumstances are those who have no other possibilities at home.

Otherwise, every highly qualified person from our village who wanted to leave left long ago, and from among those who studied in Hungary, hardly anyone returned home. At the most, they are people – economists, traders, entrepreneurs, etc. – who use their Hungarian contacts in order to mediate between the business worlds of Hungary and Serbia.

Professional possibilities and certain employment were one of the attractive forces for emigration. But due to the prices in Budapest, the seemingly high salary was enough only for earlier life standards, if even for that. Furthermore, the city where I lived for 8–9 years would be familiar; I have many friends there, even my brother lives there. It arose that even if my work fails, I can at least finish the immigration authorisation in Hungary, and I would have the opportunity to hand in my naturalisation application. Besides, the law was very favourable at those times, since not only both of my grandfathers were born as Hungarian citizens (both of them in 1905) but even my father in 1942, when the Hungarian Army retook (invaded) the Northern part of Yugoslavia. Furthermore, although I was a member of Hungarian writers' associations – and, due to the nomination of a certain minister, the member of the board of trustees in one of them – it was becoming more and more difficult to obtain tourist visas for these visits. Within 180 days only a 30-day-long residence was assured by the visa instead of 90 days, and the full implementation of the Schengen acquis was approaching. From the autumn of 2006 the Hungarian Consulate in Szabadka was very strict with granting visas. I heard many horror stories about the number of days it took people to get their visas, if they even had the courage to hand in their applications; many did not even attempt to apply because they knew that it was basically hopeless. The border was gradually closed to common people, even artists. For example, a musician was not granted a visa because he did not have a permanent residence in Serbia, although he was invited to an event that was supported by the Hungarian Ministry of Cultural Affairs.

To tell the truth, I could enumerate several persuasive reasons, but fewer and fewer things made me want to stay. In November 2006, my ex-boss in Újvidék (Novi Sad) called me: a government car was sent for me and I met the head of the provincial government and the president of the provincial parliament twice. I told them at once that I had decided to travel to Budapest; nevertheless, they promised me employment. Since they needed a young, Hungarian intellectual, they even offered me a position as a representative for the colours of the given party in the Parliament of the Republic. What a pity that I never desired a career as a politician!

*Official difficulties*

If I had known what was waiting for me, being employed in Hungary only until the middle of July 2007, I might have stayed home and undertaken the government position. By December 2006, I finally decided to move, even if I had deliberately told my parents that I would move 240 kilometres further.

One of my faults was that I was not knowledgeable about employment conditions in Hungary. Around Christmas, while playing billiards I learned from a mate who had already been working in Hungary that the employer has to first ask for a labour permit at the regional centre of labour, and this may take several months. It came out of the blue! I had thought that from 1<sup>st</sup> February I would be able to work. Why I believed this, I cannot explain today. I had deduced it from the previous experience of others: those who are regularly employed by a company can obtain the necessary papers relatively quickly. When I tried to obtain information from my friends and acquaintances about what I needed and where I could find these things, I learned nothing. The majority of them were already permanent residents, and they did not want to remember. Furthermore, it seemed to be a procedure that can take several years. My brother, for example, required more than ten years to organise his residence status because he was unwilling to subject himself to humiliating medical examinations. Data and places – the overall timetable of the procedure – were mixed up within them like this. As if they had wanted to forget about all, as social psychology claims, these bad, uncomfortable experiences were simply cleared out of their brains. “Oh, leave me alone with this, I cannot remember” “How was it...?” “So I have no idea, but it was long ago, thank god” “Ask someone else” “Come on, don’t annoy me with it, I am glad that all of it ended.” Their only useful advice was to contact an attorney specialising in this area. Finally, I managed to obtain the phone numbers of two attorneys.

I visited one of them. The lawyer looked helpful; yes, he said, they could help me. I would have to pay only if I received the visa. I knew this was misinformed, since I had had to obtain a residence visa and a labour permit. I told him that I would have a decent salary at a decent company and a contract of tenancy. The attorney mentioned the difficulty involved in obtaining a labour permit for a profession like mine in which there is not a labour shortage. In these cases, the Centre of Labour Force

Affairs can almost certainly find some kind of problem. For the application, we could choose a custodial position, which is needed everywhere. It was also possible to go through another company with significant manpower, but we should write it for more than the subsistence wage so that they could not disapprove anything. I needed to undergo certain medical examinations, but if I did not want to, no problem. They could also obtain a certificate for ten thousand HUF that stated that I am capable of working. The lawyer also told me that there was a high degree of skill needed to in applying to the Centre of Labour Force Affairs. Since it might have counted as discrimination, Serbian language skills were not to be mentioned as a skill required by the job. Later I discovered that although such a requirement can be noted, no-one is actually interested in these things – even though language skills are nearly always listed as a requirement in advertisements for jobs demanding more qualification. The lawyer provided me with a few blank copies of the application. If I did not choose the “custodial version,” I could take them to the company to have them completed, and then they would help me obtain the residence permit and, finally, the settlement permit. In the end, I would have paid about 250 €. I left the attorney’s office with a headache. How much would this whole procedure cost? When could I finally start working? It was already February 2007...

At the end of January, I rented a flat from one of my acquaintances – three minutes walking-distance from my prospective workplace, in the centre of the downtown. The flat was a bit expensive, 220 € per month, but I would not have been able to find a cheaper or better one, even if I had looked more thoroughly. Plus, the overhead expenses (gas, electricity, water) were about 100 € per month. Internet and television were indispensable for my work. I visited one of the Internet providers, but their conditions were horrible – there was a long- waiting period and a large advanced-payment. Fortunately, one of my friends worked for a cable television, internet and telecommunications company; therefore, it “only” took me a month obtain these services.

My labour papers were not settled very quickly, either. If I had been a Hungarian citizen, I would have already signed the contract and could have started working within a few days time. But I am a third country national, a Serbian citizen, and this is one of the worst “references” in Europe nowadays. Since foreigners are rarely employed there, the legal advisor provided to me by the company did not have much experience

in these matters. The vacancy and employment opportunity had to be reported to the Labour Authority. When such a vacancy is listed, anyone can apply for the position, but EU-citizens enjoy an advantage. Only if no such person applies can they grant the permit based on the received (in this case, my) application. The lawyer and I racked our brains for how to list the position: what were the qualifications specific to me? My university training, Serbian language skills, several years of working experience, publications . . . Although in Serbia I had worked within the black (or, rather, grey) economy, I could certainly bring some type of certification. Then, I had to show my Serbian secondary school reports. The only problem was that my bilingual school report had been already been asked for by the Budapest university, and in the interim, they had lost it. In the Vajdaság area, I only received a certificate of completion in Serbian. I had to have this translated by an official Hungarian technical translator's office, for about 20 € per page. I used a trick: in the Vajdaság area, in the settlements inhabited by a Hungarian majority as well as within the whole area of the province, Hungarian counts as an official language. That is, papers published in Hungarian are as valid as those in the state language. Therefore, I asked a translator of the local self-government to translate my papers – since he is an acquaintance of mine, he did it for free. The “funniest” aspect of this scenario is that my Hungarian university degree required my secondary school reports. I could not have received the degree without them. Why was it necessary? I have never known.

While I was collecting my papers, the attorney called me up: “Don't you have a wife who happens to be a Hungarian citizen? Because I am looking at the law, and if you had one, we could spare this whole labour permit procedure.” – “Unfortunately”, I replied, “I do not happen to have a Hungarian wife and no wife at all.” “Then it is time for you to think about this question, too” – he laughed.

My name is also a permanent problem. In Serbia, Hungarian names are transcribed according to Serbian orthographical rules: Tóth becomes Tot, Kovács becomes Kovač, etc. In my passport my name is indicated with Serbian orthography, but in my degree with Hungarian. Although everyone in Serbia has gained the right to have his/her name written in official papers, identity cards, passports, etc. with their native language's orthography, it is nearly impossible to effectuate in practice. At the same time, the majority of Hungarian authorities cling to the “official” name,

as per the passport. Since I myself had filled in the application form, they made an exception for my address card. In other words, an ethnic-Hungarian foreigner can officially write his name according to the Serbian orthography-rules but use Latin letters.

### *Further difficulties*

As is often said in folk tales, time wore on. I do not know when exactly the lawyer handed-in the application for a labour permit, sometime in the second half of March 2007. In the meantime, my passport was filled with stamps because of my many travels, and there was not enough space for a new visa. Fortunately, at home I used to play football with one of the policemen, and I was able to obtain my new passport within a day. I showed my ministerial paper and did not have to stand in line. I tried to contact one of the consuls. It was alright, but this time it turned out that I should have only spent 30 days out of 180, instead out of 90, in Hungary; the consulate official recognized this discrepancy. “And have you used up your thirty days?” he asked. “No, no,” I replied in my surprise. I lied. “Did the border guards ask nothing?” “No, no,” I said. This was true since my data is not always recorded at the border. Furthermore, I had previously heard from one of my acquaintances, who owns a café in a border village that is visited by border guards, that the border guards were unofficially ordered not to count days for Hungarians from the Vajdaság area. This time I was fortunate. One of the consuls knew my name and my writings; he did what he could do as soon as possible, but the most important was that I received my visa for 90, instead of 30, days. This was important because it allowed me to travel back to Hungary. If they had carefully counted the days I spent there, I would not have received more – which were necessary simply because of the further procedures I had to do – and I could have even been expelled from the country. On a larger scale, this means that people (i.e. Serbian citizens) who cannot obtain a C-type visa due to lack of permanent work, residence, fortune, insurance, etc., cannot settle their official affairs in Hungary in order to obtain a D-type visa and are forced to hire an expensive lawyer. Since my C-type visa was once again in order, I was endlessly pleased.

The Schengen *acquis* meant a long waiting period for me. A month elapsed, and the Labour Authority gave me no answer. On the 2<sup>nd</sup> of

May, the attorney called me: completion of my documents was necessary. A photocopy of my Hungarian university degree was not enough. Only a notarized copy was sufficient. Success! It cost only 7 €. Since these signs indicated that there was no one who had applied for the job, I experienced every single small result as happiness. True, the attorney had mentioned that a sociologist had applied for the job, but he had talked him out of it very quickly. I do not remember accurately enough: at first the job had to be advertised for a month. Did the company then hand in my application? I was waiting for the post and sustaining permanent e-mail contact the lawyer. I was waiting for some kind of message. Finally, he called me: I was granted the permit! I ran to the Labour Authority and waited for two hours, but it turned out that the document had already been sent to the company. True, the lawyer had directly asked them not to send it by post because it would mean a loss of time, yet they posted it. Three weeks later, the letter from the same district arrived.

Since the contract signed with the company had to be handed in, the one-year-long labour permit was valid from 1<sup>st</sup> May 2007. The attorney also knew that it could be signed only for one year, even though we were unable to determine when we would get the permit or if we would get it at all. Like this, the contract was implicitly valid from May to the end of April next year. Because of the post, three weeks were lost. It was at this time when I checked the Office for Immigration and Naturalisation's (hereinafter: OIN) homepage for information regarding the requirements for a D-type visa. I had some kind of routine, so I knew that it was no use collecting the papers in advance since they always ask for the latest one. I contacted another attorney's office and asked if they could help me. They said they could not. I had suspected this since two months earlier the news had been published that the National Security Service was examining those who were involved in the migration business. They do it well, I thought, since a few years earlier I attended a very exclusive conversation about whether or not to grant dual citizenship for cross-border Hungarians. The used-to-be President of the Republic, Minister for Foreign Affairs, President of the Academy of Sciences, world-renowned economists, political scientists and writers were present at this event; it was considered to be new information when I mentioned that those who have enough money and want to will evidently immigrate and receive citizenship, since many attorneys' offices are specialised in this field; although corruption cannot be proved, it is

impossible not to realise that not only ethno-business but migrant and citizenship business exist as well. The greatest brains of the country and of the nation listened in surprise; perhaps they did not even believe this from a young man from the Vajdaság area. I had never felt more strongly than at this time that alienation from everyday reality accompanies the appreciation and wisdom one gains as s/he becomes more accomplished in her/his profession.

Only at one point during the whole procedure did I feel as if it would be possible to bribe certain officials. It is nearly useless to do so; you still have to wait for everything, and the low-ranking officials who are in charge rarely make serious decisions – they only take the papers. Perhaps the procedure can be quickened if you have some influential friends. One can gain a few days; perhaps one does not have to queue, but this is all. And this is an unimportant advantage, not worth a large payment, and why would an official risk his or her job for a small sum? In this sense, the system may not be so bad, but on the other hand, it is overcomplicated; it entails extra costs even for the state itself.

The attorney wrote a new contract of employment that would have been valid from the day when the labour permit was granted, from the beginning of May, on the condition that it would become valid on the second day of the employment visa. I went to the bank where I have had my bank account for years and asked for a certificate that indicated that I had enough money to live on until I received my first pay check. This certificate cost 3 €. I did not even wonder whether or not I had health insurance, although the OIN's web page indicated that I did. As I understand, there is a valid treaty between Serbia (the former Yugoslavia) and Hungary regarding health care. An employee at the attorney's office insisted that the contract of tenancy was unnecessary and that it would have to be handed in with the application for a residence permit while on the web page of the OIN and of the Consulate in Szabadka (Subotica) it was indicated as a criterion. I tried to call the Consulate, but I could only reach an answering machine. I pressed the appropriate buttons, but I learnt nothing. How much the long-distance call abroad, I have no idea. Anyway, I decided that we were to sign a contract with my tenant (together with two witnesses), and I would obtain the title page from the flat's land registry. The Land Office became one of my favourite agencies: if one is there at 7.00 am, exactly at opening time, the case can be solved relatively quickly for 16 €. I thought that once I was

there, I would ask for two copies, and later, I regretted not having done so. Only one thing consoled me: later, I could not have used the other copy because a month had elapsed since it had been published...

*What else is necessary?*

Perhaps I had settled everything, so I travelled home. In our village I went to the photographer one more time. There an old lady, who had possibly been a guest worker in Germany, indignantly complained that here the service was nearly three times more expensive than in the West. And we even had to queue! Certainly this exemplifies the relationship of demand and supply; no doubt that photographers are between the most important beneficiaries of the visa business.

I travelled back to Szabadka and turned in the visa application; fortunately, I did not have to queue for it. True, it is not possible to pay the 50 € fee at the office – you are sent to a bank, but this is nothing. Though, it is useful to know that the sum is really 52 € because there is a transaction fee that must also be paid to the bank. However, my joy was short-lived: I could not attach the photocopies of my two witnesses' identity cards for the contract of tenancy. How could I have known? I should have sent it via fax from Budapest, the official told me. I did not have to settle this in person. Yes, but one of the two witnesses was in London, and the other was often in the country-side. The latter I managed to call. He had left the photocopy in a pub, but I had to wait for the other witness. When he returned, I sent the photocopies via fax. I solicited for the visa in the beginning of July, and I was very excited because the web page indicated and an official also mentioned that the time of adjudging was only 4–8 weeks. (Since the entry into force of the 2<sup>nd</sup> Act, 2007 it is now only 30 days.) I asked the official in Szabadka by whom my documents would be adjudged. By the Ministry of Interior, namely by the OIN, he said. The only problem was that there is no more Ministry of Interior in Hungary. He was evidently thinking of the Ministry of Justice and Law Enforcement. It was also clear for me that it would have been useless to call up some of my acquaintances for positive discrimination. They could not quicken the procedure. But I simply do not understand why a series of documents, permits, certificates published by Hungarian authorities are controlled by yet another Hungarian authority. Is it so that more officials have work? Perhaps the Hungarian author-

ities do not trust each other? Is it the certain freedom of large degree about which the Lawmaker speaks about in the preamble of the 39<sup>th</sup> Act, 2001, about the entry and residence of third country nationals? According to this act *“As for the grant of D-type visa, member states enjoy a freedom of large degree, but EU-interests connected with the security of exterior border-lines must be considered. We also considered the characteristic legal solutions of the member states during the elaboration process of these rules.”*

What is the “characteristic legal solution”? The mutual control of each other? The complication of the process? And why is (was) it true that lawyer’s offices were unable over the course of five years to learn that the D-type employment visa *“assures possibility of residence for at most one year long, without any kind of further permits.”* Thus, no separate residence permit is necessary.

### *Happy End?*

I was informed in July that my employment visa was ready. Five weeks had elapsed since the application; I did not have to wait until the eighth week. Other good news! The times I had spent at home in Serbia and included the 90 days ensured by my C-type visa. Based on the seals in the passport, it was nearly impossible to reconstruct exactly how many days I had spent in Hungary. Naturally, I did not receive my employment visa for a year, and since the Labour Authority had granted the permit from May 2007 through April 2004, nine weeks were lost. Consequently, a one-year-long visa cannot exist in practice. But then why is it advertised?

The next day, a Wednesday, I travelled to Budapest and checked in with the company at once. On Thursday, we signed the new contract, and I went to settle the residence permit. I obtained an application form (from the local district’s government), and we made another contract of tenancy with the latest date, from the day of the granting of the visa (lest they insist that the earlier one was “invalid”). The lawyer called one of his old acquaintances, an old university buddy who was adept at this field. If I understood correctly, he worked for the OIN, and he told what exactly I had to bring with me. He said that the contract of tenancy and the visa were enough. Great – I had everything!

I started my next – and I hoped last – adventure on Monday morning. The temperature outside was around 40 degrees Celsius, but fortunately,

the air conditioning was on in the OIN building. I took a number in line and started reading. Oh, the old queuing times! And I could also smoke in the yard. After one and half hours, I went out and smoke another cigarette. A young man was also smoking beside me; there was a badge on shirt that read “official in charge.” I turned to him and said that I had previously called to ask a simple question; we started talking, and it turned out that I taken the wrong type of number. I only needed to register my address and did not need a residence permit. And, the application form was not right at all; I needed a completely different one. Since turning in my visa application in Szabadka, a whole month had passed, and I needed the latest page of titles from the land register. He kindly explained it to me and handed me the appropriate application form, just for me, as he said. Where can anyone else receive it? We started laughing because the new act would come into force on the 1<sup>st</sup>, the new decrees would become law, and even they, the competent officials, were not completely aware of the new rules. To top it off, in half a year completely new acts would come into force because of the Schengen acquis.

This time, the only problem was that the flat owner was in the country-side, and I would only be able to receive his signature next day. I ran to the Land Office, but by that time there was a line, so I decided to come back next morning at 7. a.m. Aware of my own routine, I explained to others where to queue, where to pay, how to fill in the blanks – I finished very quickly, for 16 € one more time.

On Wednesday the OIN opens at 1.00 p.m. I was there 40 minutes earlier. While Monday is normally a “Chinese day,” today there were more Japanese people arriving, with their legal advisors. I had time to think again. I thought, for example, about how a person can involuntarily give in to prejudices by seeing how quickly the Chinese can settle their affairs. Dostoevsky could write a brilliant novel about this topic – *The Insulted and Humiliated*.

I was the third client of the official in charge, and I did not have to wait long. I still believed that I would get some kind of identity card. But he only took the papers, checked them, tore the edge of the application form, sealed it, gave it back to me and said: “We are finished.” “What?” I asked. “Then where should I go now?” “Nowhere,” he said with a dull face. And I, with a smile on my face and a straight back, quickly left the people who were still sitting in the lodge.

But it was not the end yet: I had to obtain a heap of papers for the company as well. I had to be registered at the National Health Insurance Office, and I did not manage to settle this the first time either. I had to go to a private old age pension insurance office, then obtain a tax identification number. I had to attend a lecture series about labour and fire safety and ask for a certificate of a clean criminal record for 10 € at the Office of Criminal Records (what do they know about me there?). The factory doctor also sent me to a wide range of medical examinations: at first I had to find a general practitioner, then blood and urine examinations, ophthalmology, EKG – each with a 300 HUF fee. The pulmonary examination cost 18 €, because, even though I visited a consulting room in the given district and even though it is inscribed that the examination is *free* for local residents, I had not had my insurance for more than six months. The ophthalmologist said that it would cost an additional 28 € to evaluate the laboratory findings; therefore, it would be better to have them evaluated by the factory doctor.

### *Epilogue – and my costs*

I was not surprised that some of my expenses were very costly within these six months, although not unbearably so. Since then, I have been on diet. And if they had been very violent, I could ask for sick-leave.

During the employment procedure, there are costs directly connected with the procedure itself: two medical examinations (~104 €), two certificate from the Land Office (32 €), visa and transaction fee (52 €), bank certificate (2,5 €), notarized university degree (6,5 €), application forms, photocopying, photographs (~14 €), phone calls for information, fax (20 €), travelling home and back, within the city (~300 €). In total, it is at least 550 €. But there are direct costs apart from these as well while the procedure is in progress and one is commuting from office to office between the two countries. Let us say that in my case during the six month period it was 400 € per month. Although some of these costs were not completely necessary. For example, I could have stayed at home from January to July, but I rented a flat for those six months I was without a salary. Together with the overhead costs, it is 2,400 €. That is to say, if I had stayed at home and had had some work, at the moment I would be 5,000 € richer. Well, minus the costs of friendly beers while speaking with my acquaintances about how they had settled

their own papers or with my landlord and witnesses as we arranged the housing contract. These were really worth the price.

This is the end of the fairy tale: the poor lad gained his reward from the king after slaying all the dragons, only his health is worse than it used to be. In the meantime, he is consoling himself by reading the 2<sup>nd</sup> Act of the Republic of Hungary, 2001, about the entry and residence of third country nationals. It begins like this: *“The Parliament, for the sake of co-operation in the gradual creation of a European region based on liberty, security and rule of law, and the social and economical development of the member states of the European Union and states outside it, considering the content of § 58<sup>th</sup> of the Constitution, is herewith creating the following act about the entry and residence of third country nationals.”*

According to this, the social and economic development of the EU and countries outside it are the main interests of Hungary. Maybe I am misinterpreting the act because of my own personal affronts, but after reading it, I have the feeling that it prefers the interests of countries to the interests of people. It does not even speak about migrants. It is a further contradiction that the entry and residence of a third-country national are hampered by several factors that may be necessary for the security of the country or for the defence of the national labour force (?!), but it is much harder to believe that all of it contributes to the development of the country. After all, many analyses reveal that the existence of borders rather impedes economic and social development.

# REVIEWS

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CĂLIN GOINA

## A Much-awaited Book

Rogers Brubaker, Margit Feischmidt, Jon Fox,  
Liana Grancea: *Nationalist Politics and Everyday Ethnicity  
in a Transylvanian Town*.

Princeton: Princeton University Press, 2006.

There will be no understatement in saying that *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town* is a long-awaited book. Over the last decade Brubaker has been one of the most influential researchers of ethnicity and nationalism, and his analytical contribution has shaped a large part of this academic field. In the early 1990s Brubaker<sup>1</sup> (1994) denounced the reification of nations and ethnic groups and suggested that the analytical focus of the scholars of ethnicity should explore the ‘work’ done by the nation “as practical category, as classificatory scheme, as cognitive frame.” Moving a few steps further, in *Ethnicity without Groups*<sup>2</sup> Brubaker advanced a new perspective for nationalism studies, one built upon the new “cognitive turn” in psychology and cultural anthropology. To me, this means exploring the salience of ethnicity for the everyman in the everyday life, and uncovering the mechanisms through which we act or (more often) do not act ‘ethnic’. This is precisely what Brubaker, Feischmidt, Fox, and Grancea accomplish in *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town*.

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<sup>1</sup> Brubaker, Rogers: Rethinking Nationhood: nation as an institutionalized form, practical category, contingent event. *Contention*. Vol. 4, Nr. 1, 1994. 3–14.

<sup>2</sup> Brubaker, Rogers: *Ethnicity without Groups*. Cambridge: Harvard University Press, 2004. (Note of the editor: See the review of *Ethnicity without Groups* by Călin Goina in *Regio*, Vol. VIII. 2005. <http://www.regiofolyoirat.hu/newspaper/2005/2005eng.pdf>)

The book is essentially a case-study of a Transylvanian city seen from a double perspective: the top-down gaze allowed by the study of nationalist politics, and the view from below offered by the ethnographic immersion in the world of the inhabitants of Cluj, Romania. Though this is not the first book to analyze nationalism through ethnographic lenses, *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town* is surely the most extensive and sustained analysis using this approach.

Researching “nationalism from below” by studying a single Transylvanian town in late 1990s is a potentially hazardous enterprise. The noted Oxford sociologist, John H. Goldthorpe, claims that practitioners of ethnographic method focusing on single case-studies do not obey “the same underlying rules of the game as survey-based, and indeed other, methods of sociological research.”<sup>3</sup> Thus, for him, fieldwork fails to solve (among others) ‘the problem of variation across locales’:

“If research is undertaken within, say, industrial work group, or isolated villages, or inner-city schools, how is the ethnographer to know how much and what part of what he or she observes is indeed recurrent across work groups, villages, or schools of the kind in question or is limited only to the particular locales that happen to have been picked-up?”<sup>4</sup>

This question points to a crucial dimension of the participant observation, which was addressed from within as well as from outside of ethnography. Indeed, what can we find, following Goldthorpe, from a single case-study, and how can we generalize useful scientific statements out of it?

Already in *Beyond Comparativism*<sup>5</sup> Brubaker sketches an answer. According to him an  $N = 1$  project is “not a *case study*, but a *place study*, not as a *unit of analysis* studied in isolation from [...] other coordinate units.” A case might be seen as “rather a *strategic research site* for studying processes that are of more general theoretical interest” on the grounds of the “*vernacular explanatory schemas*” without imposing our own “*analytical*

<sup>3</sup> Goldthorpe, John H.: *On Sociology: Numbers, Narratives and the Integration of Research and Theory*. Oxford: Oxford University Press, 2000. 93.

<sup>4</sup> Goldthorpe, 80.

<sup>5</sup> Brubaker, Rogers, *Beyond Comparativism*, paper posted at the *eScholarship Repository*, University of California, <http://repositories.cdlib.org/uclasc/trcsa/1>. 2006.

*explanatory schemas.*” It is the virtue of ethnographic study which enables us to *discover* the relevant vernacular categories of comparison. Fieldwork provides us with knowledge on the elements of social reality – apprehended under the assumption of subtle realism as they are constructed and shared by the members.

In *Nationalist Politics and Everyday Life Ethnicity in a Transylvanian Town* the authors faced the daunting task of showing that what they advocate is possible, that one can uncover the “vernacular explanatory schemas” in a way that keeps them uncontaminated by the analytical schemas already available in the researcher’s perspective over the world. This is accomplished while providing the reader not with an essentially arid and dated description of a single place, but with concepts and categories of a more general theoretical interest. In my reading the book succeeds in both of these two endeavors.

In order to do so, the authors proceed to a sociological *tour de force*: not only ethnography, but also historical macro-sociology, ethnography, ethnomethodology as well as elements of demography and quantitative analysis are deployed. A large variety of historical sources, archive materials, newspaper articles, oral histories, life trajectories and instruments pertaining to conversational analysis are added to a sustained period of field-work and participant observation. One of the many features of this book that deserves mentioning is its photographic portfolio, which can be seen as a short study in itself.

The first part book opens with a ‘classical’ overview of the national question in East Central Europe in the modern era, zooming in, as the reader advances, over the historical evolution of the region (Transylvania) and of the site itself (Cluj) from the Middle Ages to the agitated local politics of the 1990s. This side of the story is told in the current historical vocabulary, so that the authors need to remind us in a footnote that when the talk about “the Slovaks” or “the Croats” this does not imply that these are seen or considered as collective actors.

It is already a truism that any historical reconstruction of the past involves choices and criteria that are to be made in the present. The history of Transylvania, or of Cluj, sounds different when told by Hungarian or Romanian historians and even more different when told by some Hungarian or Romanian grandfathers. In fact, the presentation of the ‘historical facts’ necessary in any introduction to Transylvania’s past would most probably make some of the readers from the region regard the presentation

as either pro-Romanian or pro-Hungarian. This unfair (but not unlikely) reading would illustrate even more the point of the book.

In the organization of the book, the first part serves a dual role: on the one hand, it introduces the reader to the historical, ecological and economic dimensions of the site of the ethnographic research. On the other hand, it does illustrate the story of “nationalism from above,” so well-known in the literature, in order to provide a counterpart to the following pages focusing on the “nationalism from below,” on the assumptions, needs, longings and interests of the ordinary people.

In the second part we are offered a completely different perspective, focusing on the analytical results of an extended period of fieldwork (1995–2001) in Cluj. If the previous section of the book was somehow reminiscent of *Nationalism Reframed*,<sup>6</sup> the second is made from an entirely new fabric.

The most innovative dimension in the book, to my mind, consists in the ‘oblique’ manner way in which the research project was conceived. Instead of relying on a clear-cut, ‘professional’ research plan, the authors tried to discover ethnicity in practice, exploring Cluj with the hope that under their eyes ethnicity will emerge, rather than trying to impose it on their material. Consequently, the four researchers cast their nets and hoped for the best. The rest of the book consists in a systematization of an analytic vocabulary developed in order to make sense of what the nets brought in.

First, we are introduced to six inhabitants of Cluj and their families so that we may begin to grasp what living in post-socialist Eastern Europe feel like. The sustained interaction with these life-trajectories allows the authors to explore in the following chapter how, *and shows/demonstrates how little* (it turns out) ethnicity matters for these individuals and families. We see most of them preoccupied “with getting by; the more ambitious and favorably situated, with getting ahead; and many, especially young people, with getting out” (p.169). These findings lead the book into one of its most substantial chapters, *Categories*. If, together with Brubaker, we agree that ethnicity is not a thing in the world, but a modality of experiencing it, it is worth exploring and selecting among

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<sup>6</sup> Brubaker, Rogers: *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press, 1996.

the countless, ubiquitous acts of categorization, those that are guided by ethnicity. The chapter proceeds from the distinction between the general (context-independent) nominal characterization of someone as a Romanian or a Hungarian, and his or her (context-specific), experiential characterization, in cases when someone's ethnicity become salient in practice. Thus, we are introduced to the major asymmetries between the 'Hungarian' and 'Romanian' categories in Cluj (such as the asymmetry between the marked and the unmarked category, or between the salience of these categories). The next section explores the cues hinting at the ethnic category: issues pertaining to embodied ethnicity, language, names. Further on we are reminded that we are also "doing things with categories:" we may account for a stances, invoke insider status, mark (or unmark) membership, or control category membership.

In the same vein, the next chapters explore in detail the patterned ways in which language practices 'do' ethnicity in everyday interaction, and explore furthermore the institutional production and re-production of a separate Hungarian world, an "ethno-civic society"<sup>7</sup> in Transylvania, and the intermittent moments when relationships between people *become* ethnic. The last chapter, *Politics*, closes the circle, bringing us back to the issues covered in the first part, but this time focusing on how the ethnically-motivated political struggles are experienced and seen by the ordinary inhabitants of Cluj.

The work is impressive both in its detailed ethnographic survey of a world in transition, as well as in its analytic acumen, bringing in concepts that illuminate its empirical findings from fields such as linguistics, cognitive psychology, ethnomethodology and conversational analysis, to name only a few. The authors try to make good on their promise: to show that one can do in practice what he advocated in more theory-oriented contributions, such as *Ethnicity without Groups*.

Nevertheless, going through the successive chapters of the second part I felt that, at times, the authors were too focused on structuring and accounting of the fieldwork material, and that this effort took over the concern for building a clear and major central argument.

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<sup>7</sup> Kántor, Zoltán: Nationalizing Minorities and Homeland Politics: The Case of the Hungarians in Romania. in Trencsényi, Balázs at al. (eds): *Nation-Building and Contested Identities: Romanian and Hungarian Case Studies*. Budapest: Regio Books – Iași: Polirom, 2001.

Summing up, the book offers a new, complementary way of studying nationalism and it develops a new analytical vocabulary suitable for the task. While not all students of nationalism would (or should) feel compelled to follow the track opened by Brubaker, Feischmidt, Fox and Grancea, the book does provide a new perspective, as well as a series of analytical resources previously unknown or neglected. I am certain that *Nationalist Politics and Everyday Ethnicity in a Transylvanian Town* will become, if it isn't already, a must for any bibliography on nationalism and ethnicity.

JUDIT TÓTH

## Review on *Constitutional Law in Romania*

Dr. Varga Attila – Dr. Veress Emőd: Román alkotmány-  
jog. Csíkszereda: Státus Kiadó, 2007. (340 pages)

**E**mőd Veress and Attila Varga have written the first textbook on the development of constitutional law in Romania since the political transition. The two authors, as academics and law practitioners, are well positioned to represent the depth of changes which have resulted as the law-on-the-books would become the law-in-practice in a new democratic society. However, the 340 pages of the book cannot possibly describe all of the relevant contradictions and incoherent rules of public law in contemporary Romania.

The 17 chapters are intended to cover basic terms and theory, such as the legal and state system, constitutional subjects and sources, and the development of constitutional law in general. The book also contains descriptions of the diversification in Romanian public power, as well as legal sources and a history of written constitutions in the country since 1866 up through the recent reform adopted in 2003. This theoretical and historical introduction to the analysis of actual constitutional institutions and basic rights is meant to guide the book but in a capricious manner. For instance, the notion of law, constitutional law, theory and typology of constitutions, protection of the constitution, citizenship and fundamental rights and protections are substantiated without descriptions of the other criteria of constitutionalism (rule of law, the separation of

powers) that are the basis of a democratic system and which are treated in the middle of the book together with an analysis of state organs. Naturally, relations between the state and the individual should be based on respect for human rights and rule of law, but this constitutional principle is not necessary as a structural guide in an educational material. On the other hand, the fundamental rights and those protections afforded by the Ombudsman and rule of law which are supported or looked after by the Constitutional Court are acceptable in the forefront of a solemn Charter of Constitution. But in a textbook, the theoretical basics should be followed by a description of the structure and operation of the constitutional power explaining the institutional guarantees of democracy and rule of law. However, the book would derive through this structural pattern, the cult of an ideal constitutional state and democratic society. In our region myths, cult and ideas have had a stronger motivational power than pure facts. Taking into account the principle of respect for fundamental rights as the major aim and goal of each state organ and authority, the role played by judges and public prosecutors in the protection of fundamental rights is rather limited. At least according to the brief final chapter on justice the existence of all necessary guarantees of autonomy, personal, financial, institutional independency and impartiality of justice cannot be confirmed.

The textbook, aimed at law and public administration students, also gives a summary of the major Romanian and Hungarian works dealing with various aspects of constitutional studies. For this reason it can function as an intermediary between Romanian authors and Hungarian readers providing the necessary information in order to foster a better understanding of one another. Beyond this cultural and terminological mediation, the overview of recent constitutional institutions can be considered the most important part of the textbook. Allow me to mention two examples from this wealth of information.

- The Law-Decree No.137 of 1990 provided upon request for the reestablishment of Romanian citizenship for an individual whose Romanian citizenship was terminated before 22 December 1989 regardless of his/her dual citizenship and the absence of standard residence in Romania or intention to return to Romania.
- The number of exceptionally issued Government Decrees in emergency situations (of constitutional operation) has been growing since 1995. Although the Constitution entitles the

Government to pass even *contra legem* decrees in a constitutional crisis, exception should be the rule. For instance, in 1999–2000 the number of statutory acts by the Parliament was below that of rapidly issued Government Decrees – thus an abuse of governance power could be observed. The authors warn how the Government may monopolize the legislation: the Parliament would become only a rubber stamp of governmental intentions through the confirmation of emergency government decrees. When it was decided to correct the situation an extraordinary amount of legislative work appeared. For example, the number of statutory acts adopted annually was 796 in 2001, 683 in 2002, 609 in 2003, and it has been extremely high in recent years, while the criteria for exceptional conditions for emergency government decrees, and its legality or conformity with constitutionalism has remained in vogue also by the Constitutional Court.

We can accept the evaluation of the authors on the constitutional transition in Romania: it has been gradual and slow. The first amendment to the Constitution (1991) was adopted in 2003. This ongoing reform of political, social and economic life has taken decades, and it is not finished yet. A quote from the writer Ion Luca Caragiale may characterize the ambivalence between preserving the centralized, unchecked public power or establishing a genuine division of power: “Let us revise the Constitution in order to stop changes, or let us reject a constitutional reform, but we shall modify it in relevant points! – Europe is keeping its eyes on us.” It was written in 1884 and Romania acceded to the European Union in 2006. Where are the heedful eyes? From the textbook, the constitutional influence of accession has been visible only in part.

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