Pázmány Péter Catholic University
Doctoral School of Law and Political Sciences

Abstract of the Doctoral Thesis

Hungarian and Romanian legislative answers to challenges posed by the multinational state between 1784 and 1940

Fazakas Zoltán József

Supervisor:
Prof. Dr. István Szabó
Head of the Department of Legal History

Budapest

2021

I. Short overview of the research objective

The year herein thesis was written marked the centenary of the remembrance by Hungarians worldwide of the end of World War I (1914-1918) in Hungary, *de iure* by the signing of the Treaty of Trianon (hereinafter the Treaty of Trianon or Trianon) on 4 June 1920,[1] enacted in the Hungarian legal system one year later through law Act XXXIII of 1921.[2] The Treaty of Trianon, as well as the peace treaty signed with the United States of America in Budapest on 29 August 1921,[3] and enacted in the Hungarian legal system by Act XLVIII of 1921,[4] represent tragic landmarks and a turn of fate in the evolution of the Hungarian state and legal system, as well as of the evolution of Hungarian society as a whole.

Despite it being overwritten by the Paris Peace Treaty of 10 February 1947, enacted by Act XVIII of 1947,[5] which is the legal instrument that regulates the current statehood of Hungary, but is cast into oblivion, Trianon and the aforementioned peace treaty signed with the USA still represent a central element of general thinking.[6] The provisions of the Paris Peace Treaty of 10 February 1947[7] are even more severe than those of the Treaty of Trianon[8] – *particularly in that it reflects the protection of minorities only as an indirect aspect of the protection of universal human rights*[9] – yet both public opinion and history, political science, and legal science consider Trianon to be one, if not the greatest, tragedy in the history of the

[1] Dumitru PREDA: Factor diplomatic şi factor militar în înfăptuirea şi recunoaşterea internaţională a Unirii românilor. De la Alba Iulia, 1 decembrie 1918, la Trianon, 4 iunie 1920. In: Vasile PUŞCAŞ – Ionel N. SAVA (szerk.): *Trianon, Trianon. Un secol de mitologie politică revizionistă*. Cluj-Napoca, Editura Şcoala Ardeleană, 2020. 27–28.; Ignác ROMSICS: *A trianoni békeszerződés*. Budapest, Helikon Kiadó, 2020. 163–165.; Miklós ZEIDLER: *A magyar békeküldöttség naplója. Neuilly – Versailles – Budapest (1920)*. Budapest, MTA Bölcsészettudományi Kutatóközpont Történettudományi Intézet, 2018. 39.

[2] 1921. évi XXXIII. törvénycikk az Északamerikai Egyesült Államokkal, a Brit Birodalommal, Franciaországgal, Olaszországgal és Japánnal, továbbá Belgiummal, Kínával, Kubával, Görögországgal, Nikaraguával, Panamával, Lengyelországgal, Portugáliával, Romániával, a Szerb-Horvát-Szlovén Állammal, Sziámmal és Cseh–Szlovákországgal 1920. évi június hó 4. napján a Trianonban kötött békeszerződés becikkelyezéséről.

[3] *Az amerikai-magyar békeszerződés (Budapest, 1921. augusztus 29.).* In: Lajos GECSÉNYI – Gábor MÁTHÉ (eds.): *Sub Clausula. 1920 – 1947. Dokumentumok két békeszerződés – Trianon, Párizs – történetéből*. Budapest, Magyar Közlöny és Lapkiadó, 2008. 671–674.; Gyula TEGHZE: *Nemzetközi jog*. Debrecen, Városi Nyomda, 1930. 89.; ROMSICS (2020) 174.

[4] 1921. évi XLVIII. törvénycikk az Amerikai Egyesült-Államokkal 1921. évi augusztus hó 29. napján Budapesten kötött békeszerződés becikkelyezéséről.

[5] 1947. évi XVIII. törvény a Párizsban 1947. évi február hó 10. napján kelt békeszerződés becikkelyezése tárgyában.

[6] Ignác ROMSICS: *Magyar sorsfordulók 1920-1989*. Budapest, Osiris Kiadó, 2012. 168–169.

[7] János BARACS – Béla CSÁNK – Jenő CZEBE – Béla FAY – Árpád SNYDER – Imre SZABÓ – Zoltán VIRÁGH: *A Párisi Magyar Békeszerződés és Magyarázata az Atlanti-óceáni Alapokmány és a Fegyverszüneti Egyezmény teljes szövegével*. Budapest, Gergely R. R.-T. Kiadása, 1947. 5–68.

[8] ROMSICS (2012) 155–167.

[9] Géza JESZENSZKY: *Kísérlet a trianoni trauma orvoslására*. Budapest, Osiris Kiadó, 2016. 22.

Hungarian nation.[10] Accordingly, Trianon's acceptance by the Hungarian side is far from uniform, and even if it is present as a fact, a significant part of the public is not resigned regarding its provisions[11], not even with the passing of a century, especially regarding the fact that despite Hungary had gained full sovereignty after centuries of struggle for independence, it never managed to become a modern nation-state that embraced the whole of the Hungarian nation within its borders.[12] As to the responsibility for its creation, as well as the possibilities for its modification, the lack of social processing regarding Trianon gave birth to legends, myths,[13] which went beyond the scholarly debates.[14]

The Treaty of Trianon – as well as the Peace Treaty of Budapest signed with the United States of America – however, is a crucial historical fact and a reference point not only for Hungarian society, but also for the successor states of the former Hungarian Kingdom, especially in the view of Romania. Trianon is a concept enshrined in Romanian society as *the great unification*, as a myth of historical justice.[15]

The difference in attitudes of the two states with regard to Trianon and the territories annexed to Romania at that time – which we now collectively call Transylvania after the historic Transylvanian Principality – still prevent the development of an impartial and objective historical synthesis on the issue.[16] For this reason Trianon and its political, social, economic, legal, as well as artistic afterlife have induced unstoppable debates over the past hundred years, and thus have a decisive and fundamental influence on the relationship between individuals, communities, and states. As presented above, Trianon is thus a contradictory concept in the public thinking of both states, and a fundamental myth of social and political thinking.

According to the constitutional order of the Hungarian state, the parts of the nation living within and outside its borders belong together, and the constitutional responsibility enshrined in the Fundamental Law is not only a declaration, but also an obligation to act.[17] Accordingly, in the Hungarian constitutional order, the concept of a Hungarian nation is both a cultural and a political nation-concept: the members of the Hungarian nation are Hungarians living anywhere in the world, regardless of their citizenship, while the members of the political

---

[10] Miklós ZEIDLER: *A revíziós gondolat*. Budapest, Osiris Kiadó, 2001. 7–11.
[11] ROMSICS (2012) 9.
[12] Róbert GYŐRI SZABÓ: *A magyar külpolitika története 1848–tól napjainkig*. Budapest, Helikon, 2011. 11.
[13]Balázs ABLONCZY: *Trianon legendák*. Budapest, Jaffa Kiadó, 2010. 29–147.
[14] Ignác ROMSICS: *A múlt arcai. Történelem, emlékezet, politika*. Budapest, Osiris Kiadó, 2015. 334–361.; Ignác ROMSICS: *A nagy háború és az 1918-1919-es magyarországi forradalmak*. Budapest, Helikon Kiadó, 2018. 7–34.
[15] Lucian BOIA: *Történelem és mítosz a román köztudatban*. Bukarest – Kolozsvár, Kriterion Könyvkiadó, 1999. 100–144, 162–170.; MAKKAI László: *Magyar-román közös múlt*. Budapest, Héttorony Könyvkiadó, 1989. 99–105.; László SZENCZEI: *Magyar-román kérdés*. Budapest, Officina, 1946. 14–15.
[16] Neagu DJUVARA: *Lehet–e igaz a történetírás?* Kolozsvár, Koinónia Könyvkiadó, 2017. 126–128.
[17] Zsuzsanna ÁRVA: *Kommentár Magyarország Alaptörvényéhez*. Budapest, Wolters Kluwer Kft., 2013. 35.

nation are Hungarian citizens, including the state-forming minorities (called for this reason *nationalities* in Hungarian context, but for the purposes of herein abstract the author prefers to use the internationally accepted term *minorities*).[18] The factual basis for this constitutional responsibility and the legislation created thereunder have thus been a necessary consequence of Trianon and the 1947 Paris Peace Treaty.

The development of the concept of a political nation, which is the basis of the current constitutional law[19], and its impact on the rights of national minorities, is one of the main subjects of the present dissertation, which is why *the Treaty of Trianon is of special but not exclusive* importance. The dissertation aims to examine the multinational states that existed in the period before the Treaty of Trianon, and also those which resulted from the Treaty, in terms of a legal perspective on the rights and constitutional status of national minorities. *Trianon* appears to have a *dual role* in this endeavour: on the one hand as the *international legal framework* defining the subject matter of the investigation and on the other hand as a *factual and temporal demarcation line*. Accordingly, Trianon is a *dividing* as well as a *connecting* point, it marks *the end of the multiethnic Hungarian state and the beginning of the multiethnic Romanian state*, from which, within the framework of the dissertation, Trianon appears in two planes and research aspects.

The first research aspect is the factual issue posed by the multinational state. As a result of the Trianon and the Paris area peace agreements, *Hungary* became a *quasi-single-nation state*[20] from a multinational state, but in the case of *Romania* the opposite result is true: the previous quasi single-nation state had become a *multinational state*.[21] This change in the factual situation of the multinational state results in the *second aspect of the research*, in which the rights of minorities, especially those of national minorities, were examined in *two periods*: the first period up until Trianon and the second period from Trianon to 1940. The legislative answers given by the Hungarian and Romanian states to the challenges posed by the issue of national minorities in the multinational state were examined in these two periods of time, basically focusing on the constitutional regulation and its consequences, which have a decisive influence on both Hungarian and Romanian constitutional thought to this day.

---

[18] László TRÓCSÁNYI: *Az alkotmányozás dilemmái*. Budapest, HVG–ORAC Lap–és Könyvkiadó Kft. 2014. 57–58.; DUCULESCU, Victor – CĂLINOIU, Constanța – DUCULESCU, Georgeta: *Drept constituțional comparat*. București, Lumina Lex, 1996. 556–557.; VARGA Zs. András: Szuverenitás, identitás és autonómiák a magyar közjogban. *Kisebbségvédelem*. 2019/1. 46–48.

[19] István CSEKEY: A magyar nemzetfogalom (Folytatás). *Magyar Kisebbség,* 1938. XVII/14. 319–326.; János GYURGYÁK: *Ezzé lett magyar hazátok. A magyar nemzeteszme és nacionalizmus története.* Budapest, Osiris Kiadó 2007. 19–82.; Imre MIKÓ: *Nemzetiségi jog és nemzetiségi politika.* Kolozsvár, Minerva, 1944. 9–247.

[20] ROMSICS (2020) 181–183.; ZEIDLER (2018) 43.

[21] Lucian BOIA: *Miért más Románia*. Kolozsvár, Koinónia Könyvkiadó, 2013. 54–60.

According to the author, although significant works of history and political history can be found within the field of research of the dissertation[22], there have been few comprehensive publications in the field of classical and comparative legal analyses other than the literature of the pre-World War II period. Given the fact that, in addition to its historical and political significance, the issue still *has constitutional significance, it is essential to approach it from a legal-history and purely legal point of view*. Regarding the basic principles and directions of the research, the dissertation acquiesces to the view that the cultivation of legal history has a topical effect on the present, and knowledge regarding the formation and operation of the examined legal institutions is a means of understanding the present and of shaping the future[23], thus its actuality is cemented by the legal-historical foundations of the issue of national minorities.

Accordingly, the aim of the research is to explore the legislative solutions to the challenges posed by the issue of minorities in the multinational state, undertaken by the states concerned during the period under review, and whether conclusions can be drawn which might constitute a relevant answer to the challenges posed by the issue of minorities today, or if these might constitute a basis for a system which might be of assistance in solving the issue of minorities, while such research can also form the basis for legislative and interstate cooperation by summarizing the legal history lessons it proposes.

II. Regarding the methodology of the research

2.1. Regarding the structure of the research and of the dissertation

The methodology of the research and the structure of the dissertation have been fundamentally influenced by the historical fact that in the case of Hungary the ethnic challenge within the quasi single-nation state created by the Treaty of Trianon ceased to exist.[24] Thus *with regards to Hungary only the period before World War I is of interest in this endeavor*. On the contrary, *with regard to the Romanian state, the issue of minorities appears primarily after*

[22] Nándor BÁRDI: *Otthon és Haza. Tanulmányok a romániai magyar kisebbség történetéről*. Csíkszereda, Pro-Print Könyvkiadó, 2013. 19–28., 37–41.
[23] Emőd VERESS: Erdély mint jogtörténeti tér. In: VERESS Emőd (ed.) *Erdély jogtörténete*. Kolozsvár, Forum Iuris, 2018. 19.
[24] Gábor MÁTHÉ – Barna MEZEY – Mihály T. RÉVÉSZ: A parlamentáris monarchia. In: Barna MEZEY (ed.): *Magyar Alkotmánytörténet*. Budapest, Osiris Kiadó, 2003. 290.; Ignác ROMSICS: A 20. századi Magyarország. In: Ignác ROMSICS (ed.): *Magyarország története*. Budapest, Akadémiai Kiadó, 2016. 773.

World War I.[25]

The dissertation is basically chronological and comparative in structure, *first exploring the legal, social and historical factors of the multinational state*, which become important as impulses for substantive legislation.[26] The dissertation *then analyzes the Hungarian and then the Romanian legislation, revealing the general parts of the laws on minorities*. Finally, *the effect of international law* on the legislation of the two states is examined, revealing the special part of the laws on minorities and *the national minority protection regime of the period between the two world wars within the framework of the League of Nations, and its individual case-law with regard to the Romanian-Hungarian relations*. The basic starting points and conclusions of the comparison of the internal and external aspects of international law are recorded in the discussed chapters and subchapters. In the concluding part of the dissertation, a summary of the main results of the comparison, as well as a description of the current law and certain aspects of possible future legislation form the conclusions of the dissertation. Some parts and chapters of the dissertation contain repetitions due to the chronology of the matter and the subject of comparison. These were inevitable, due to the fact that their aim is to facilitate the proper understanding of the issue at hand in a particular context.

The choice between the two states that are the subject of the dissertation seems to be somewhat arbitrary, however, the constitutional comparison of the rights of national minorities with regard to the successor states of the Kingdom of Hungary was supported by several obvious reasons which have to do with the Hungarian and Romanian legal systems. *The first reason* basically stems from the fact that *the largest national minority* in the multinational Hungarian State was the Romanian minority[27], while part of the Hungarian nation, which beforehand constituted an absolute majority within the Hungarian state, became the largest national minority within the enlarged Romanian state.[28] To this day the most numerous Hungarian group outside the borders of Hungary lives in Romania.[29] Consequently, the results of the research may be more pronounced in the case of Romania. Accordingly, in the *majority-minority relationship, the factual situation was reversed*, and thus became the basis of herein

[25] Catherine DURANDIN: *A román nép története*. Budapest, Maecenas Könyvek, 1998. 224.
[26] Júlia T. KOVÁCS: A belső jogalkotási eljárás – jogalkotási metodika. In: Zoltán TÓTH J. (ed.): *Jogalkotástan*. Budapest, Dialóg Campus Kiadó, 2019. 145.
[27] Gyula VARGHA: *Magyar Statisztikai Közlemények 42. Kötet – A Magyar Szent Korona Országainak 1910. évi népszámlálása – első rész – a népesség főbb adatai községek és népesebb puszták, telepek szerint*. Budapest, Magyar Királyi Központi Statisztikai Hivatal 1912. 5–6.
[28] Sabin MANUILĂ: *Recensământul general al populaţiei României din 29 decemvrie 1930, Vol. II*. Bucureşti, Editura Institutului central de statistică, 1938. XXIV.
[29] According to the Romanian census of 20 October 2011, there were 1,237,746 Hungarians living in Romania, which is 6.5% of Romania's total population. - *Recensământul Populaţiei şi al Locuinţelor din 2011*. București, Institutului Național de Statistică, 2014. 10.

comparative analysis.

A particular link between the reasons for the comparison is the existence of a pair of opposites arising from the reflection of the examined legal institutions and the constitutional status, namely the comparison of the constitutional status and rights of national minorities in Hungary with the minority rights and political program of the Hungarian minority in Romania. *The aim of the Hungarian minority in Romania in the period under study was to achieve the same constitutional situation, legal status and the guarantee of rights as that which was enjoyed by the Romanian minority in Hungary*.[30] The comparison between the goals formulated in the political programs and the material legislative results shown by both states reveals the *legal reality* of this period in history by means of the method of comparative legal analysis. A special aspect of the *reflection* is also the exchange of state goals: namely, in the case of Hungary, *irredentism*, referring to the unification of all Hungarians within one state, could not be interpreted until Trianon, while in the case of Romania the implementation of the political program – which appeared in 1838[31] and was emphasized starting with 1848[32] – concerning the unification of all Romanians within one state, as the fulfillment of the aspirations for unity[33] of the Romanian national idea and as the basis of an independent and unified nation-state, which was accomplished through Trianon.[34]

The reason for the *interval* used as the period covered by the research can be found in *the organic development of the Hungarian constitution and in the particularity of the Hungarian historical constitution*.[35] Due to the characteristics of the historical development of the Hungarian constitution, a clear demarcation of the starting date of the discussions surrounding the issue of minorities cannot be identified, because it stems from medieval social development: from a legal point of view the issue is organically related to the process of dismantling the feudal organization of the Hungarian state. As a result of the historical development of the state, the idea of minorities and the challenge posed by minorities induced the need for a response by the Hungarian legislature to different degrees in different periods of

---

[30] Sándor BALÁZS: *Magyar képviselet a királyi Románia parlamentjében*. Kolozsvár, Kriterion Könyvkiadó, 2008. 42.

[31] Sándor BÍRÓ: *Kisebbségben és többségben. Románok és magyarok 1867-1940.* Csíkszereda, Pro-Print Könyvkiadó, 2002. 22.

[32] Cornelia C. BODEA – Bujor SURDU: Az önkényuralom és a „liberalizmus" rendszere (1849-1867). In: *Erdély története II.* Bukarest, A Román Népköztársaság Akadémiájának Kiadója, 1964. 179–188.; Gergely MOLDOVÁN: *Magyarok, románok. A nemzetiségi ügy kritikája*. Máriabesnyő, Attraktor 2011. 21–24.

[33] Benedek JANCSÓ: *A román irredentista mozgalmak története.* Máriabesnyő – Gödöllő, Attraktor Kft., 2004. 11–12.

[34] DURANDIN 219.

[35] Ernő NAGY: *Magyarország közjoga (Államjog).* Budapest, Az Athenaeum Irodalmi és Nyomdai R.-T. Kiadása, 1907. 189–199.

time. The antecedents highlighted in terms of the subject of the research are briefly outlined in the dissertation, however, the research basically undertakes to discuss the period following the decree of Joseph II of 11 May 1784 regarding the officialization of the German language, a date which – as described in the dissertation – can be interpreted from a legal point of view as the beginning of the development of the idea of the nation. A clear definition of *the end date of the research*, *marked by the Second Vienna Award* was also justified by several facts. Following the First Vienna Award, solving the issue of Transylvania came to the forefront of Hungarian revisionist policy, and Hungary was prepared to solve this issue even with the use of military force, if necessary. As a result of this position, negotiations were held at Turnu Severin, after the failure of which the Romanian side requested an arbitration award.[36] The Second Vienna Award was adopted and announced in the Belvedere Palace in Vienna on 30 August 1940: according to the decision of the German imperial government and the Italian royal government[37] Hungary was to regain 43.104 square kilometers, with a population of 2 and a half million people, of which – according to the 1941 census – 54%, or one million three hundred and forty four thousand declared themselves as being Hungarian.[38] *In accordance with the Second Vienna Award, Hungary practically became a multinational state once more, however the previous Hungarian constitutional regime was maintained for years to come*. In the meantime, *Romania formally maintained its status as a kingdom*[39]*, however the week following the Second Vienna Award, the remaining constitutional regime was abolished*[40] *(the Constitution was suspended*[41]*), and the building of a totalitarian state had begun,* with the appointment of Ion Antonescu as *conducător* on 5 September 1940.[42] Consequently, *after 5 September 1940, due to the lack of a constitutional regime in Romania, the comparison was no longer possible*.

---

[36] Balázs ABLONCZY: *A visszatért Erdély 1940-1944*. Budapest, Jaffa Kiadó, 2011. 39–46.; Keith HITCHINS: *România 1866-1947*. București, Editura Humanitas, 2013. 519–521.; MIKÓ Imre: *Huszonkét év – az erdélyi magyarság politikai története 1918. december 1-től 1940. augusztus 30-ig*. Budapest, Studium, 1941. 261–262.; ROMSICS Ignác: *Erdély elvesztése (1918-1947)*. Budapest, Helikon Kiadó, 2018. 330–334.

[37] A második bécsi döntés (Bécs, 1940. augusztus 30.). In: ZEIDLER Miklós (ed.): *Trianon*. Budapest, Osiris Kiadó. 2020. 317–318.; A német-olasz döntőbíróság ítélete. *Magyar Kisebbség,* 1940. XIX/18. 407–408.

[38] Béla KÖPECZI: Kitekintés. Erdély útja 1918 után. In: Béla KÖPECZI (ed.): *Erdély rövid története*. Budapest, Akadémiai Kiadó, 1993. 596.; ABLONCZY (2011) 46–47.; DURANDIN 289–290.; ROMSICS (2012) 104.; ZEIDLER (2001) 216–218.

[39] Official Gazette of 5 September 1940 No. 205. Containing the royal decree for investing with full powers and reducing royal prerogatives. Official Gazette of 6 September 1940 No. 206. Containing the decree-law regarding the regulation of the succession to the Romanian Throne of the Grand Voevod Mihai de Alba-Iulia.

[40] Cristian IONESCU: *Tratat de drept constituțional contemporan*. București, Editura C.H. Beck, 2019. 749–750.

[41] Official Gazette of 5 September 1940 No. 205. – containing the suspension of the Constitution.

[42] T. Ion AMUZA: *Istoria statului și dreptului românesc*. București, Editura Sylvi. 2001. 279–281, DURANDIN 291–292.; A Külügyminisztérium béke-előkészítő osztályának feljegyzése Románia béke-előkészítő munkájáról (1945. július 30.). In: GECSÉNYI Lajos– MÁTHÉ Gábor (szerk.): *Sub Clausula. 1920 – 1947. Dokumentumok két békeszerződés – Trianon, Párizs – történetéből*. Budapest, Magyar Közlöny és Lapkiadó, 2008. 1026.

2.2. Regarding research methodology

The implementation of the goals thus set forth and the accomplishment of the comparative analysis was basically made possible by the use of the available Hungarian, Romanian and foreign scholarly sources. In particular, the exploration of the positions of national legislators was facilitated by the fact that the positions of Romanian MPs in the Hungarian Parliament[43] and the arguments of Hungarian MPs in the Romanian legislature[44] are both available in Hungarian and represent primary sources, providing a complete overview of the topics in question. In this context, however, it is important to state that the main subject of the dissertation is the exploration of the legislative responses of the examined states. Accordingly, *the philosophical, historical, political and legal concepts and opinions* related to these matters are only discussed and presented to the extent that they are necessary for facilitating a complete understanding of the examined legislative responses. Also, the concepts relating to the idea of the nation are presented as they had been interpreted in the legislative processes at those particular points in time, as tools of said legislative processes.

The understanding of the historical and legal foundations was provided by the publications of authors from the 19th century and the first half of the 20th century, while the research of contemporary scholarship, in addition to the literature on constitutional law, were made possible by the abundant literature in the field of history. The research conducted in Budapest was complemented by the research visits made by the author to the library of the Sapientia Hungarian University of Transylvania in Cluj-Napoca, to the Kolosváry Bálint Legal Research Library of the Collegium Iuridicum within the aforementioned institution, as well as the Central University Library of Babeș-Bolyai University in Cluj-Napoca, which provided important sources for Hungarian and Romanian language scholarly works and legal texts. However, the exploration of the topic in both Budapest and Cluj-Napoca was facilitated and hampered by the abundance of available literature and *primary* sources, which made it particularly important to synthesize literature positions and *primary* sources when applying the analytical-comparative method, going beyond a descriptive character of the dissertation. Drawing conclusions became a necessary and important task, while the selection of the concepts relevant to the legislative process have been essential during the conducted research. The dissertation placed special emphasis on these aspects in the opening and closing remarks of every chapter and subsection, while in some cases including the appropriate references was

[43] MIKÓ (1944) 89–247.
[44] BALÁZS 199–522.

inevitable, serving to emphasize certain aspects which the author found to be essential.

The dissertation, despite the particular political and historical sensitivity of its subject, presents the issue exclusively from a legal point of view. The use of resources from the field of history and political science was therefore inevitably subordinated to the legal perspective, making it necessary to properly abstract the results of these disciplines and subject them to the legal perspective. In addition to the above, it was sometimes necessary to describe legal, historical and meta-juridical, especially sociological, aspects which serve the better understanding and proper exploration of the subject of the research. Due to the abundance of sources, the fine-tuning of the research methods became an important task, because the processing of all the available literature, especially the historical literature, would have made it impossible to carry out the substantive and in-depth legal research. Accordingly, the author focused on contemporary legislation and its origins, i.e. not on analyzing and judging the political, historical or sociological aspects and the results of historical moves or those of political concepts, but where the author considered it appropriate for producing a proper understanding of the subject and the law, did not shy away from such endeavors.

The subject of the dissertation is the exploration of the challenges posed by the issue of minorities and the different legislative answers given to it, which in the case of the two examined states are represented in legislative acts and international legal documents. Legislation is at all times influenced by historical, sociological, political and economic facts, programs, concepts and goals, as well as by the results of legal theory[45], which are considered to be of *internal origin*. International legal obligations and the historical and political facts on which they are based are *external actors* in the legislative process. *With regard to the internal influences on the legislative process, the dissertation mainly emphasized the fact of the multinational state and the conceptual thinking surrounding the nation-state, its goals and historical significance, from which, together with the external factors, an analysis of the legal results was undertaken, proposing the exploration and critique of the constitutional situation*. Accordingly, a casuistic analysis of the law of national minorities and the basic concepts of nation-state thinking, the elements of philosophical and political thinking about the nation, and the specific elements of national law related to a particular right or area of law, including but not limited to the discussion of concepts related to administrative law, could only have been undertaken within the dissertation in a way that facilitated an understanding of the particular context. Consequently, the dissertation does not provide a deeper exploration of the legal-

[45] Zoltán J. TÓTH: Jogalkotás és tételes jog. In: TÓTH J. Zoltán (ed.): *Jogalkotástan*. Budapest, Dialóg Campus Kiadó, 2019. 37–38.

theoretical and political-philosophical foundations of these rights and concepts, due to the fact that such an endeavor would have stretched the framework of the dissertation, which did not include an analysis of the political practice.

As a kind of intersection of internal and external elements, it is necessary to note that in a significant part of the examined period Hungary faced the challenges posed by the issue of minorities as part of the Habsburg Empire and later of the Austro-Hungarian Monarchy. However, in this case too, the dissertation basically focuses on the foundations and results of the Hungarian legislative process. The challenges faced by the Habsburg Empire and the Austrian Empire, their conceptual responses to these challenges, and their legislative solutions, are presented only tangentially and only to the extent that the clear impact of these actors on the Hungarian legislative process can be established. Reform proposals of the Habsburg Empire and the Austrian Empire were necessarily aimed at reducing the internal tensions induced by the issue of minorities[46], but until 1849 there was no real constitutional answer to this question. The neo-absolutist attempts to reform the empire, as well as the Austrian constitutional responses following the Compromise, did not materialize in Hungary after 1867. It arose from the essence of the Compromise – the restoration of the historical constitution and the territorial integrity of Hungary – that the Austrian solutions[47] and concepts[48] related to the issue under investigation did not fundamentally affect the Hungarian legislation – and since each of these concepts would have abolished the Hungarian state's territorial integrity, they were incompatible – so these are only described to the extent necessary for a proper understanding the subject of the dissertation.

With regard to the basic principles and directions of the research, it should be noted as a starting point that scholarly work which discusses the issue of *nationalism* in a *consensual* and *universal* way is fundamentally non-existent, due to the fact that its components and thus its results vary and differ by period, by country and by region.[49] Similarly, *neither does the term nation* have a *universally* accepted *concept*.[50] Despite the above facts, there is a consensus in law, philosophy, political science and history that nationalism and the national issue, or the national challenge, is a modern phenomenon, the birth of which is tied to the French Revolution

[46] István SZABÓ: Belső autonómiák a dualista Monarchiában. *Jogtörténeti Szemle* 2020/1. 1.
[47] SZABÓ (2020) 5–6.
[48] Alan John Percival TAYLOR: *A Habsburg Monarchia 1809-1918.* Budapest, Scolar Kiadó, 2011. 287–289.; ROMSICS (2012) 16–17.; ROMSICS (2020) 18–20.
[49] John LUKACS: *A XX. század és az újkor vége*. Budapest, Európa Könyvkiadó, 2006. 220.
[50] Péter KOVÁCS: *Nemzetközi közjog*. Budapest, Osiris Kiadó, 2003. 356–358.; GYURGYÁK (2007) 15–17.; IONESCU 854.

of 1789 and is closely linked to its program of dismantling the feudal state.[51] The fact that the first steps taken by the Hungarian legislative in this field took place at the same time as the birth of this idea of nation, i.e. the legislation was not only influenced by the national idea, but its results also influenced its development, as well as the growth of expectations of national minorities. It follows from the constant and continuous development of Hungarian constitutional law beginning in the 11th century[52], that there is no unified conceptual system in this period of time. The conceptual uncertainties partly explain why up until the middle of the 19th century, and even beyond that, the interpretations related to these concepts were mixed up.[53] This is also why the *concept of nation* based on the *feudal* system and the need for the recognition of the privileges of the feudal system *appeared side-by-side with the modern interpretation of the concept of nation* and with the intention to enforce predominantly collective rights, which were based on the latter concept. Despite conceptual uncertainties,[54] the dissertation utilizes the concept of *linguistic minorities* used and accepted as the term for *nationalities* in the period under review in both states,[55] and – wherever no further adjective is used in order to emphasize, especially in the case of religious minorities – this meaning is also to be understood for the concepts of minority, nation, nationality, thus maintaining the terminology used in the original sources. It must be highlighted that the basis of a significant number of national identities in the world is still not the language,[56] but various other characteristics together or without the element of language, in particular religion, bloodline, culture and other cohesive traits.[57] *The reason for the conceptual choice can be found in the fact that in the case of the researched states the language-based approach to the nation was primary, in some cases exclusive, the language was decisively perceived as an attribute of*

[51] Francis FUKUYAMA: *A történelem vége és az utolsó ember*. Budapest, Európa Könyvkiadó, 2014. 450–466.
[52] Bálint HÓMAN: Történelmi átértékelés. In: (BUZA János szerk.): *Hóman Bálint – A történelem útja*. Budapest, Osiris Kiadó, 2002. 357.
[53] József EÖTVÖS: *A XIX. század uralkodó eszméinek befolyása az álladalomra. Első Kötet.* Budapest, Révai Testvérek Irodalmi Intézet R.-T., 1902. [(EÖTVÖS (1902a)] 38.
[54] Boldizsár SZENTGÁLI-TÓTH – Anna GERA: Az 1868-as nemzetiségi törvény és a politikai nemzet koncepciójának utólagos értékelése. *Erdélyi Jogélet*, 2020/2. 85–91.; István CSEKEY: A magyar nemzetfogalom. *Magyar Kisebbség,* 1938. XVII/11. 221–233.; István CSEKEY: A magyar nemzetfogalom (Folytatás). *Magyar Kisebbség,* 1938. XVII/12. 254–267.; István CSEKEY: A magyar nemzetfogalom (Folytatás). *Magyar Kisebbség,* 1938. XVII/13. 286–295.; Kálmán PONGRÁCZ: A szórványvédelem jelentősége és az asszimiláció problémája a kisebbségi életben. *Magyar Kisebbség,* 1938. XVII/5. 117–118.
[55] László POMOGYI: *Magyar alkotmány-és jogtörténeti szótár*. Budapest, Mérték Kiadó, 2008. 595–596.; EÖTVÖS (1902a) 63–64., 113.
[56] *Vintilă I. GAFTOESCU: Poziţii juridice în dreptul internaţional. Problema minorităţilor*. Bucureşti, Imprimeriile „Curentul" S.A. 1939. 41–43. 53.; MIKÓ Imre: Nyelv és jog. In: MIKÓ Imre: *Változatok egy témára*. Bukarest, Kriterion. 1981. 26–27.; KÉSMÁRKI Gergely: Páneurópa és a kisebbségi kérdés. *Magyar Kisebbség,* 1930. IX/4. 121–122.; EÖTVÖS (1902a) 179–181.; IONESCU 154–155.; LUKACS 234.
[57] Krisztián MANZINGER: *A területi fókuszú kisebbségvédelem szükségessége és főbb ismérvei Európában*. Budapest, Károli Gáspár Református Egyetem Állam–és Jogtudományi Kar, 2019. 18–20.

nationality.[58]

Somewhat similar conceptual uncertainty exists in the case of the right to self-determination[59] which acquired international recognition during World War I, and which, by becoming closely related to the idea of nationality, was named within the research as an external actor constituting a partial basis of international agreements, and the accomplishment of which practically became the lastly announced goal of the Allied and Associated Powers during the war.[60] The right of peoples to self-determination, proclaimed at the Hague Conference in 1915,[61] which, by becoming the 10th point in the 14 Points of U.S. President Wilson published on 4 January 1918 gained the status of one of the principles of the peace process. This right was nevertheless only used as an auxiliary element, and thusly utilized in exculpating the war efforts, but was in any case a complex concept.[62] The right to self-determination was understood by the leaders of the time *as representing both the individualistic approach regarding individual rights and freedoms, the right of nations to create a sovereign state, and finally at least as the right of minorities living within the territory of a state to national and cultural rights*.[63] The Treaty of Trianon, as well as the treaties regarding minorities signed by the Allied and Associated Powers with the successor states attached particular importance to ensuring the rights of minorities, which were derived in part from the right of peoples to self-determination.[64] The borders of the new Europe created by the Paris peace treaties and the stability of the states that have gained their independence or have increased their size territorially, was fundamentally threatened by the fact that from the territories of the Central Powers – partly due to the application of the right to self-determination – the states which resulted were by no means pure nation-states.[65] After the First World War, *the right of peoples to self-determination played an*

[58] József EÖTVÖS: *A XIX. század uralkodó eszméinek befolyása az álladalomra. Harmadik Kötet.* Budapest, Révai Testvérek Irodalmi Intézet R.-T., 1902. 185.; MIKÓ (1981) 31.

[59] László BÚZA: *A kisebbségek jogi helyzete a békeszerződések és más nemzetközi egyezmények értelmében.* Magyar Tudományos Akadémia, Budapest, 1930. 18–22.

[60] Tibor GLANT: *Az Egyesült Államok útja Trianonhoz. Az Inquiry és Magyarország jövője, 1917-1918.,* Budapest, MTA Bölcsészettudományi Kutatóközpont Történettudományi Intézet, 2020. 9–24.; Mária ORMOS: *Padovától Trianonig. 1918–1920.* Budapest, Kossuth Kiadó. 2020. 21–28.; Tamás MAGYARICS: Nagy-Britannia Közép-Európa politikája 1918-tól napjainkig I. rész. *Pro Minoritate*, 2002/nyár. 5.; Az Amerikai Egyesült Államok béke-előkészítő szakértői testületének (Inquiry) emlékeztetője a háborús célokról és békefeltételekről (1917. december 22.) In: Lajos GECSÉNYI – Gábor MÁTHÉ (eds.): *Sub Clausula. 1920 – 1947. Dokumentumok két békeszerződés – Trianon, Párizs – történetéből.* Budapest, Magyar Közlöny és Lapkiadó, 2008. 358–359.; TAYLOR 302.

[61] TEGHZE 235.

[62] Henry KISSINGER: *Diplomácia*. Budapest, Panem Könyvkiadó, 2008. 220–221.; Woodrow Wilson amerikai elnök 14. pontja (1918. január 8.) In: Lajos GECSÉNYI – Gábor MÁTHÉ (eds.): *Sub Clausula. 1920 – 1947. Dokumentumok két békeszerződés – Trianon, Párizs – történetéből*. Budapest, Magyar Közlöny és Lapkiadó, 2008. 361–363.

[63] BÚZA 18–22.

[64] Erzsébet SZALAYNÉ SÁNDOR: *A kisebbségvédelem nemzetközi jogi intézményrendszere a 20. században*. Budapest, Magyar Tudományos Akadémia Kisebbségkutató Intézet – Gondolat Kiadói Kör, 2003. 50–52.

[65] SZALAYNÉ SÁNDOR 76–77.

ancillary role, i.e. the creation of pure nation-states was overridden by military, economic and political realities.[66] *The conflict between political and military reality on the one side and the principle of the right to self-determination on the other, has always been decided in favor of the former*. Thus, the application of *the right to self-determination* within the Paris peace treaties *did not solve the challenges posed by the issue of minorities*, *resulting once again in the establishment of multinational states and thus in the repetition of the challenges posed by the issue of minorities*.[67] This result justified the elevation of the rights and the protection of national minorities from an internal state level to an international level, as the rights of national minorities who did not exercise their right to self-determination or were exclude from exercising it, were now guaranteed within the framework of the League of Nations, or separately, through minority agreements.[68] Accordingly, in the case of Romania, the minimum framework for responding to the challenges arising from the existence of a multinational state which bears the issue of minorities was laid down in the Treaty on the Protection of National Minorities between the Allied and Associated Powers and Romania signed on 9 December 1919 (hereinafter referred to as the Paris minority treaty)[69], which contained the basic provisions and obligations of a constitutional importance[70], and which together with the Treaty of Trianon, constituted the criteria and subject of the study of external actors.

III. The summary of the results of the research, and opportunities for their utilization

3.1. The fundamental theses of the dissertation

Based on the invariance of the fact of existence of national minorities independent of changes to state borders, the research focuses on the constitutional rules of the multinational state, the constitutional situation of national minorities in the period under review with regard

[66] GYURGYÁK (2007) 307–308.; TAYLOR 322–323.; ZEIDLER (2001) 24., 27–28.
[67] David J. SMITH: Minority Territorial and Non-Territorial Autonomy in Europe: Theoretical Perspectives and Political Challenges. In: Zoltán KÁNTOR (ed.): *Autonomies in Europe: Solutions and Challenges.* Budapest, Nemzetpolitikai Kutatóintézet – L'Harmattan Kiadó, 2014. 16.; János GYURGYÁK: *Európa alkonya?* Budapest, Osiris Kiadó 2018. 130–132.; TAYLOR 322–323.
[68] SZALAYNÉ SÁNDOR 76–78.
[69] Law No. 3699 by which the government is authorized to ratify and execute the peace treaty and its annexes, entered into by the Allied and Associated Powers with Austria in Saint Germain on 10 September 1919 and The Treaty on Minorities signed in Paris on 9 December 1919.
[70] Béni L. BALOGH: *Románia és az erdélyi kérdés 1918-1920-ban*. Budapest, Bölcsészettudományi Kutatóközpont, 2020. 52–57.; Lajos NAGY: *A kisebbségek alkotmányjogi helyzete Nagyromániában*. Kolozsvár, Minerva Irodalmi és Nyomdai Műintézet Rt., 1944. 20–25.

to Romania and Hungary. The basic principles of the research and the premises determining its direction can be summarized in the following, taking into account the structure of the dissertation:

1. *The multinational state is a historical fact, a factual situation that changed fundamentally after World War I in the case of the two states*.

The criterion of the multinational state has been reversed with regard to the studied states. In this context, it should be added that while ethnic relations developed along the centuries during the development of the Hungarian state, multi-ethnic Romania, which emerged after World War I, inherited the complex ethnic relations of several predecessors together with the annexed territories[71] in just a period of two years. Given that these relations did not originate from the same predecessors, the issue of the challenge posed by minorities was complemented by other aspects independent of the numbers, in particular the issues of *different legal systems,*[72] *economic development and religious freedom*.

2. The right to self-determination of peoples only played an auxiliary role in the Paris-area peace settlements, thus not constituting a solution to the issues posed by the multinational state.

It follows from the above that the right to self-determination was a complex concept, which based on the social situations, stood at the basis of the Trianon Peace Treaty, as well as that of the agreements on minorities signed by the Allied and Associated Powers with the successor states, which in turn attributed a special importance to this principle regarding the assurance of minority rights, which in part were deduced from the right to self-determination of peoples.[73] The new borders of the new Europe created by the Paris-area peace system and the stability of the states that have gained their independence or increased territorially in this process, i. e. the established system of peace was fundamentally threatened by the fact that, from the territories of the Central Powers – in part as a result of the application of the right to self-determination grew in territory, gained or re-gained their independence – these states were by no means pure nation-states.[74] The state borders created by the Paris-area peace system were designed primarily from a military, economic and political point of view, meaning that in the

[71] Lucian BOIA: *Románia elrománosodása*. Kolozsvár, Koinónia Könyvkiadó, 2016. 43–47.
[72] Emőd VERESS: Kilenc évtized- Az Osztrák Általános Polgári Törvénykönyv Erdélyben. In: VERESS Emőd (ed.): *Ad salutem civium inventas esse leges- Tisztelgő kötet Vékás Lajos 80. születésnapjára.* Kolozsvár, Forum Iuris Könyvkiadó, 2019. 160–167.
[73] SZALAYNÉ SÁNDOR 50–52.
[74] SZALAYNÉ SÁNDOR 76–77.

case of the new national borders, the right of peoples to self-determination played at most only an auxiliary, secondary role. The creation of pure nation-states, partly based on the right to self-determination, has been overridden by military, economic and political realities,[75] and consequently the conflict between political and military reality, on the one hand, and the principle of the right to self-determination on the other hand, has always been decided in favor of the former. Thus, the right to self-determination was not considered to be the universal basis and organizing principle of the peace process, on the one hand, it was enforced only against the defeated, and on the other hand, its enforcement would have led to the drawing of different borders, even in ethnically homogeneous areas. Consequently, in the absence of general principles of the peace settlement, the application of the right to self-determination in its principal quality cannot be justified at all, while its ancillary nature is debatable. In fact, the Allied and Associated Powers, enshrining the principle of the right to self-determination, asserted their primary war goals against the defeated by concealing them the help of this principle.[76] As a consequence of the above, the challenges posed by nationalities have not been solved by the *ad hoc* application of the right to self-determination, in the Paris-area peace system have once again resulted in the establishment of multinational states and the re-appearance of the challenges of nationalities. However, in the interests of the stability of the peace system, this result justified the placing of the rights and the protection regime of national minorities at an international level, as opposed to the domestic solutions applied beforehand, for national minorities which have been prevented in exercising their right to self-determination, guaranteed within the framework of the League of Nations, as well as through separate minority treaties.[77] During the establishment of the Paris-area peace system, the conflict between the declared goal of nation-states and the reality of multinational states proved unsolvable, despite the newly established international guarantee system put in place to resolve it. *Due to the unresolved minority issue and the complexity of the international guarantee system, nation-states pursued different but* de facto *discriminatory policies, one of the consequences of this was the destruction of the peace system and the international institutional system it established* in less than two decades.[78] Before World War I broke out, Austria-Hungary, especially Hungary, was apostrophized as a 'prison of the peoples'[79] not only by the

[75] GLANT 39., 41.; GYURGYÁK (2007) 307–308.; TAYLOR 322–323.; ZEIDLER (2001) 24., 27–28.
[76] Gábor AJTAY: A nemzetiségi elv az ántánt szolgálatában a világháború alatt. Magyar Kisebbség, 1926. V/10. 374–383.; GYURGYÁK (2018) 103.; ZEIDLER (2001) 27–28.
[77] SZALAYNÉ SÁNDOR 76–78.
[78] SZALAYNÉ SÁNDOR 135–149, 170–173.
[79] Pál HATOS: *Az elátkozott köztársaság. Az 1918-as összeomlás és az őszirózsás forradalom története*. Budapest, Jaffa Kiadó, 2018. 260.

Entente Powers, but also by significant sections of the Monarchy's population and, in many cases, on paper by allied neighbors.[80] Despite all this, the enforcement of the right of peoples to self-determination and, on this basis, the disintegration of the Austro-Hungarian Monarchy in order to preserve the balance in Europe was never the originally declared goal of the War.[81] As a result of the pragmatist exercise of the right to self-determination explained above and its interpretation aiming to conceal the primary war goals, a historical view was proliferated in the new and enlarged states – not sustained by any of the goals enounced at the beginning of the war – that those who had fallen in the war, had sacrificed their lives for the independence of their nation based on this right.[82] Undoubtedly, the dissolution of the historical Hungarian state was caused, among other things, by the fact that national minorities, based on the right of peoples to self-determination, declared their secession from Hungary in various national assemblies in the last year of the war,[83] a process which was then enforced in the Paris-area peace treaties. Nevertheless, it should be noted that the pragmatic goals of the Entente Powers enjoyed primacy at the peace conference, which in many cases were also influenced by the prejudices of the members of the peace conference's experts against Hungary to the detriment of Hungary. All this was only aggravated by the fact that the territorial needs of the successor states were discussed by independent expert bodies,[84] which only two of the hundreds of expert bodies dealt with the issue of Hungarian borders, which were considered to be of minor importance.[85] Together, the above illustrated situations led to an unprecedented loss of territory in Hungarian history, regardless of the application of the right to self-determination.[86] The unilateral nature of the negotiations is further proved by the fact that, unlike in the previous practice, the losing states were not invited to the substantive part of the peace conference, only to sign the prepared treaties,[87] when their movement and the possibility to express their position was severely limited.[88] In addition to the unilateral nature of the negotiations, the goal of post-

---

[80] ROMSICS (2020) 7–28.
[81] József GALÁNTAI: *Trianon és a kisebbségvédelem*. Budapest, Maecenas, 1989. 17–19.
[82] Alexander WATSON: *Acélgyűrű. Németország és az Osztrák-Magyar Monarchia az első világháborúban (1914-1918)*. Budapest, Park Könyvkiadó, 2016. 587.
[83] Ignác ROMSICS: *A nagy háború és az 1918-1919-es magyarországi forradalmak*. Budapest, Helikon Kiadó, 2018. 292–295.
[84] Deborah S. CORNELIUS: *Magyarország és a második világháború*. Budapest, Rubicon-Ház Kft., 2015. 34–35.; GECSÉNYI – MÁTHÉ 349.; Az 1919-es párizsi békekonferencia szervezete, elvi alapjai, valamint a magyarkérdéssel kapcsolatos munkálatai c. összefoglaló a Külügyminisztérium béke-előkészítő osztálya számára (1946-1947.). In: Lajos GECSÉNYI – Gábor MÁTHÉ (szerk.): *Sub Clausula. 1920 – 1947. Dokumentumok két békeszerződés – Trianon, Párizs – történetéből*. Budapest, Magyar Közlöny és Lapkiadó, 2008. 717–720, 743–748.
[85] Balázs ABLONCZY: *Ismeretlen Trianon*. Budapest, Jaffa Kiadó, 2020. 70.
[86] Bryan CARTLEDGE: *Trianon egy angol szemével*. Budapest, Officina Kiadó, 2011. 81–90.
[87] KISSINGER 220–221.; ZEIDLER (2018) 220–221.
[88] ZEIDLER (2018) 7, 25.

war stability was made illusory from the outset by the fact that, as stated above, *general settlement principles were not available* except for the ancillary and *ad hoc* application of the principle of self-determination.

3. *The sources and thus the results of the national legislation differed fundamentally in the case of Hungary and Romania.*

The reasons for *legislating on the issue of minorities in Hungary*, beyond the sociological facts, can be traced back primarily to the liquidation of the feudal constitutional order within the state, based on the abolition of feudalism and particularism and the establishment of legal equality under the auspices of liberalism, thus resulting in a mainly individualist foundation. Accordingly, the foundations of the Hungarian legislation on minorities can be traced back mainly to internal reasons, it being directly related to the April laws of 1848, to the lessons taught by the Revolution and War of Independence of 1848/49[89], to the moral obligation to reconcile with minorities, to the Compromise of 1867 and to the subsequent need for the creation of a unitary Hungarian state. Accordingly, the Hungarian legislation on minorities – as the first in Central Europe, as well as the world on this matter[90] – *was not influenced by international obligations* and its implementation was not monitored or forced by an international forum. *The Hungarian legislation on minorities was a result of the organic development of the Hungarian state and constitutional system, which led to the adoption of the Act on the Equality of Minorities, the XLIV. law of 1868*[91] *(hereinafter: Minorities Act), which remained in force throughout the period under review, and on the basis of the regulatory concept of which the sources of law were created belonging to other areas of the law.* The international law element in this matter only appeared with the provisions of the Treaty of Trianon, which *did not have a decisive influence on it*, given that the results of Hungarian national legislation far exceeded those required by international obligations, and that Hungary essentially became a single-nation state after Trianon.

Romanian legislation on minorities, as opposed to Hungary, *was induced by international legal obligations*, mainly due to the delayed formation of the state, starting from the 1878 Berlin Congress recognizing its independence, up to the Paris Treaty on the Protection of Minorities. In the *absence of a feudal state organization*, Romania gained the recognition of

[89] GYURGYÁK (2007) 22.
[90] GYURGYÁK (2007) 22.
[91] Law no. XLIV of 1868 regarding the equality of rights of minorities. In: *Corpus Juris Hungarici – Magyar Törvénytár – 1836-1868. évi törvényczikkek*, Budapest, Franklin – Társulat Magyar Irod. Intézet és Könynyomda, 1896. 490–494.

its independence in 1878 and became established as a unitary state, by implementing a constitutional system based on foreign modells, basically while it was *already in the possession of the attributes of a nation-state*.[92] The idea of the formation of Romania as a federal state did not even arise at this point, despite the fact that the foundations of such a state were otherwise laid by the two predecessor states, the principalities of Wallachia and Moldova.[93] The constitutional consequences of this fact, that of *the establishment of the unitary nation-state justifies* sub-chapters 3.3.1. and 3.3.3. which present the *1866 Romanian Constitution* and the framework of the state established on its foundation, as well as the presentation of the thusly established constitutional thought. As a result of World War I and partly as a result of the implementation of the right to self-determination, territorially enlarged, Romania became a multinational state. As *a condition of the territorial acquisitions*, Romania *made an international commitment* regarding the protection of minorities, but *despite this fact and such commitments*, *it maintained the constitutional foundations of the nation-state laid down in 1866, to which it clings until this very day*, *constituting one of the principles of its legislative activity*.[94] The concept of the unitary nation-state, declared as a state goal despite being a multinational state, has a decisive influence on Romania's political behavior, on the creation of its constitutions, and on its legislation regarding minorities. Despite internal and external legislative actors, *Romania did not create a uniform law containing the legal regime of national minorities*, nor did it come up with a constitutionally interpretable *concept* for national minorities. It even *neglected and then deliberately refused to implement the international obligations it assumed*. The general and specific part of the rights of national minorities in the Romanian legal system can be found in various legislative instruments adopted on various matters.

In this context, it is also worth noting that the discussion of the issue was decisively influenced by the sharp caesura found in the Romanian professional literature, which was Trianon. The Romanian professional literature mainly formulates and emphasizes the critique of the Hungarian minority policy of the pre-Trianon era,[95] however, with a few exceptions, it does not criticize the multi-ethnic Romanian state. Romanian constitutional thought treats the issue of minorities hidden behind the equality clause of the Romanian constitutions, which is

[92] George ALEXIANU: *Dreptul constituțional*. București, Editura Librăriei Socec & Co., 1926. 82.
[93] BOIA (2013) 55.
[94] Cristinel Ioan MURZEA – Roxana MATEFI: *Evoluția statului și dreptului românesc*. București, Editura Hamangiu, 2015. 243.
[95] Zenovie PÂCLIȘANU: *Minorities and the policy of Hungarian goverments from 1867-1914.* Bucharest, 1944. 5–168.

essentially the same as the Hungarian concept of political nation, *acknowledging that linguistic differences are indifferent to the state-forming political nation.*[96] *Consequently, the Romanian professional literature treats the issue rather one-sidedly: it criticizes the concept of – Hungarian – political nation, however it does not apply this criticism to its own constitutional concepts, nor to its state policy*. Taking into account that the Romanian constitutions are based on the adoption of foreign models, the dissertation could not objectively outline the same way in the case of Romania the decades-long legal development of minority law governed by the equality clause in Hungary.[97]

With regard to the legislative activity, it should also be noted that in addition to the factual situation of the multinational state, there has also been an exchange of state goals between the two states. Accordingly, in the case of Hungary, *irredentism* – like the unification of all Hungarians within a state – which was not understood earlier, appeared with Trianon and prevailed as a primary political goal in the subsequent period, while in Romania the political program of Romanian irredentism was fulfilled within the peace system which ended World War I.

4. *Modern states in the majority-minority relationship basically utilise three models, which are the exclusionary, the cooperative and the inclusive models.*

The exclusionary model is characterised by legislation which directly or indirectly violates minority rights and equality of minorities in relation to the majority. The cooperative model is based on equality of rights and seeks essentially formal equality on an individual basis, but recognizes some collectively exercisable rights explicitly on an individual basis. The inclusive model recognizes the community rights (collective rights) of minorities, including municipal rights, which may extend as far as a federal state system.[98]

The fundamental thesis of the research in this area can be summarized in that Hungary mainly professed the cooperative model, but some elements of the inclusive model appeared in its legislation, while Romania de facto and partly de jure established the exclusionary model despite its international obligations, which contained elements of both the collaborative and inclusive model.

Romania has openly refused the local government of the Transylvanian Szekler and

---

[96] Constantin G. DISSESCU: *Dreptul constituțional*. București, Editura Librăriei Socec & Co., 1915. 630–632.
[97] The particularities of Romanian law in this regard are outlined within sub-chapters 3.3.1.–3.3.4. of the dissertation.
[98] László TRÓCSÁNYI: Kisebbségi politikák, kisebbségi jogok. In: HOMOKI-NAGY Mária: *Emlékkönyv dr. Ruszoly József 70. születésnapjára*. Szeged, Szegedi Tudományegyetem Állam–és Jogtudományi Kar. 2010. 893–894.

Saxon communities regarding religious and educational matters, which constituted part of the inclusive model and was enshrined in Article 11 of the Paris Treaty for the Protection of Minorities, while the obligations pertaining to the *cooperative model were only performed formally*. During the application of the *cooperative model*, however, practically the *exclusionary model* came to be applied, *at the beginning in an indirect*, *but then in a direct manner as well*.

5. *The impact of international law on minority protection legislation was fundamentally different in Hungary and Romania.*

In the case of Hungary, legislation on the rights of national minorities was pioneering and was mainly induced by internal reasons. Regarding *the impact of international law*, the hybrid factors of *the public law relationship with the Austrian Empire, which also has an international character*, *and the formation of bordering states should be emphasized*, due to the fact that the multinational Hungarian state was also formed by the national minorities living within its borders.[99] In addition to the disintegration of the state, this particular fact also entailed the danger of the territorial claims of neighboring states prevailing, so the legislative process was primarily influenced by the international legal relationship with neighboring states and the aim of defending against territorial claims. *The system of international legal protection of minorities established after World War I basically did not have any effect on Hungarian legislation.*

In the case of Romania, however, international law had a fundamental effect on its legislation, and the reason and result of Romanian minority legislation had been the fulfillment of international obligations. It must be noted that Romania has not or has only partially complied with these international legal obligations, nevertheless the direct effect of international law can be established beyond a reasonable doubt. As a result of the Paris peace treaties, the system of international legal protection of minorities established within the organizational framework of the League of Nations, meant that the legislative process involving minority rights, as well as the regime of minority protection, had come under the supervision of an institution of international law. Although the international minority protection regime was mostly a political system rather than a legal one, despite its many legal shortcomings, its very existence had a different but demonstrable impact on legislation and enforcement, which was especially significant in the case of the Hungarian community in Romania.

[99] TAYLOR 188–189.

Regarding bilateral international agreements, it should be emphasized that no bilateral minority protection agreement has been concluded between Hungary and Romania, nor has the possibility for reaching such an agreement arisen. Due to the small number of Romanians living in Hungary, Romania was never interested in concluding such an agreement.

3.2. The main conclusions of the dissertation and the summary of the research results

Regarding the constitutional status of minorities, reviewing the legal systems of Hungary and Romania in force during the period under review, it is possible to draw conclusions summarizing the differences and similarities in this regard, and to draw conclusions regarding the constitutional responses to the challenges posed by the multinational state.

Regarding the subject matter, Hungary's legislation began at the same time as the political history of the idea of the nation took root. It therefore organically evolved, firstly with the Hungarian national idea as a political program opposing the centralization within the Empire and with a view to eliminating the feudal system, and not as a program opposing the non-Hungarian speaking parts of the population. By accepting the liberal theorem of equality of rights, the Hungarian legislation adopted the concept of a unified, unitary state in response to the fact of a multinational state as a result of historical processes. Hungarian constitutional thinking – although it accepted language as the attribute of nationality – could not stand on the concept of a language-based nation-state, which relied on the relative majority of the Hungarian-speaking population. Rather it relied on the reinterpretation of the medieval concept of *hungarus*, extending the rights of the members of the feudal Hungarian nobility to the so-called political nation, which holds constitutional significance to this day. *At the beginning of the studied period, the national idea and its theorems, as well as classical nationalism, were not available in a matured form, so the legislation was both following and preventing.* However, with the rise of nationalism, not only the idea of the Hungarian nation, but also those of linguistic minorities began to develop. *Accordingly, the Hungarian legislation was both a response to the challenges posed by the issue of minorities and an impulse for the growth of these challenges. Regarding the challenges posed by minorities, several solutions have been proposed, however the concept of the political Hungarian nation was the one to become dominant, mainly because in the view of the leaders at the time this conceptual framework provided an opportunity to create the most ethnically neutral framework for the state, without compromising its territorial integrity. In addition, the establishment of the primacy and mediating role of the Hungarian language could indirectly facilitate the desired assimilation.*

The acceptance of the concept of a political nation was also influenced by the political reality that the Compromise resulted in the Hungarian political leadership gaining a leading role in the dual state system of the established Austrian-Hungarian superpower. Thus, the political leadership at the time was basically not interested in deviating from the political nation concept.

As to the main subject of the dissertation, which is the challenge posed by the minority issue, with regard to this the results are contained in the Minorities Act, according to which *equal Hungarian citizens form a single nation in a political sense, an indivisible unified Hungarian nation, regardless of nationality. Accordingly, the constitutional order of the multinational Hungarian state ensured the wide use of all minority languages, while establishing the primacy of the Hungarian state language, as well as its official quality next to its status as a mediatory language. Accordingly, the constitutional status of nationalities in the majority-minority relation was mainly based on the cooperative model, in accordance with the principle of legal equality the legislation on minorities was fundamentally individualist, combined with a natural recognition of the right to exercise rights collectively. However, the collective legal personality of minorities, the constitutional recognition of their territorial self-government never came about (with the small exceptions of the unrealistic legal instruments on autonomy of the First Republic, as well as the Ruthenian autonomy in Transcarpathia which was never implemented due to the Second World War).* The Hungarian state developed its ethnically neutral nation-state structure on the foundations of the political nation, i. e. the state system existed as a nation-state constituted on a non-linguistic basis, but recognized linguistic and religious minorities and their rights, and formed chiseled legal concepts. Finally, it should be noted that the Hungarian state accepted the primacy of international law in the period under review, however *the international law obligations on minority protection which were laid down after the First World War, never amounted to obligations superior to what had been established by the Hungarian legislation, thus the transposition of these norms only helped in clarifying some of the existing provisions.* Consequently, the image of the Hungarian state, which suppresses its nationalities – and thus the prevailing public opinion establishing that this was the primary cause of the First World War – must nevertheless be nuanced, as such a view cannot be justified from a legal point of view.

In the case of the Romanian legislation, the foundations of its legislation are mainly to be found in international law. Romania's legislation was basically *based on the adoption of foreign legislative models and the fulfillment of obligations under international law*, both in the case of its constitutions and in other areas of its positive law, including legislation on minority rights. *The multinational Romanian state did not take into account the consequences of*

multinational statehood, its constitutions were based on the idea of a unitary and indivisible Romanian nation-state, thus international obligations, were only formally transposed into the legal system, as they conflicted decisively with this constitutional basis. As a result, Romania only seemingly fulfilled the conditions of the cooperative model concerning minorities, practically implementing its opposite, the exclusionary model and soon reached an interpretation of international law which openly denied the principle of pacta sunt servanda. In this period the only internal relevant legislative acts relating to the realities of the social structure of Romania were the Resolutions of the National Assembly of Alba Iulia, which formed a possible moral basis for the increase in territory of the state, but they were fundamentally ignored. *Based on all this, the theorem of equality of citizens and the unitary, indivisible Romanian nation-state's unchanged constitutional basis since 1866 substantially prevented the creation of a law on minorities, as well as the elaboration and application of chiseled legal concepts similar to the Hungarian model, including a constitutional Romanian nation-concept. Accordingly, no comprehensive, real legislation setting out the framework for minority rights was enacted in this period, instead a multitude of conflicting legislation scattered in the hierarchy of sources of law was created, not to ensure minority rights but basically to serve the nation-state goal.* The reality of a unified and indivisible Romanian nation-state was further undermined by the fact that all constitutions provided for a review of the law in the territories acquired from different states, because parallel and possibly competing legal systems were in force in Romania at that time.

Despite the principle of equality of civil rights and the catalog of rights established on their basis, *the lack of chiseled legal concepts has already caused inconsistencies in the text of the Romanian constitutions*, the concepts of Romanian, Romanian citizen and naturalized Romanian citizen have been distinguished without any further explanation. This distinction led to the appearance of the notion of *racially Romanian* in legislation and its application, which later also gained constitutional recognition, thus codifying *de jure* the former *de facto* exclusion despite declaring the equality of citizens. *Due to the lack of a legal formula for the nation-concept, conclusions about the era can be drawn from Romanian constitutional thought. According to Romanian constitutional thought, one can only be part of the nation – regarded as a community – if one professes the spiritual togetherness of Romanians,* consequently *the lack of the individual confession of Romanian spiritual togetherness, its consciousness and the lack of identification with it, legitimizes from a constitutional perspective the exclusion and the subordination of minorities. The concept of the political Hungarian nation hoped for and encouraged the result of a common identity, but did not contain the exclusion from the political*

community and the withdrawal of rights for those who did not wish to identify with it, contrary to the Romanian concept which treated identification as a condition, the rejection of which, justified the exclusion from the community and the loss of rights. As a result of the conceptual difference, the *Romanian state language*, as opposed to the Hungarian model, did not have a status of primacy or that of a mediatory language, practically it had an *exclusive status*, except for private and religious language use, so there was no chance of linguistic equality either. Accordingly, *instead of the Hungarian indirect assimilation policy, the Romanian state was in favor of direct assimilation.*

However, similarities can also be observed in the case of the examined legal systems. *The first similarity is practically identity*, namely in the Transylvanian areas which are of special importance for the subject of the dissertation, Article 1 of Decree No. I of the Transylvanian Governing Council maintained the Hungarian legislation enacted before 18 October 1918, meaning that the applicable law was identical. There was also identity in the content of international obligations, however not in their implementation. There was also some similarity in the marginal (or non-existing) role played by bilateral minority protection treaties. With regard to the issue of similarity of the legal systems, it should also be noted that despite the facts posed by the multinational statehood, both states directly or indirectly sought to create a linguistically homogeneous nation-state. Education policy was treated as a priority in achieving this goal, so policies regarding the teaching of the state language, the financing of education, and the examination of teachers can be observed as similarities in the two legal systems. Further similarities can be observed in the case of churches. Namely, Hungarian law recognized the Romanian church organizations and their autonomy, as well as their representation in the legislative, while in the case of Romania minority churches became quasi-national churches, gaining constitutional recognition through their representation in the senate by church leaders. The rules of ecclesiastical representation also mean the similarity of the structure of the legislature in this area. There are similarities also with respect to the main regulatory concepts of press freedom, although its implementation and practice have been far from similar. With regard to issues of political participation, parties organized on a national basis were established in a similar way in both states, the representatives of whom faced the same challenge in representing the claims for collective minority rights, having their proposals constantly rejected, as well as the repeated questioning of their loyalty towards the state as a fact that no longer occurs on a legal but rather on a political level. Finally, with regard to the two examined legal systems, there is a similarity in the perception of the Jewish community as a minority, with the fact that in the case of Hungary the equality of Jews as opposed to the

medieval conception of law was recognized in line with and before the European trends in this matter were established. Despite the social fact of anti-Semitism, the Hungarian legislation reached a breakthrough with the legislative recognition and civil equality only at the end of the period under review, while in the case of Romania the treatment of Jews as foreigners and the issue of citizenship was practically unresolved during this whole period.

Accordingly, the analysis and research from a legal history perspective can provide a basis not only for understanding the substantive legal institutions and exploring their bases, but also for identifying solutions that meet the challenges of the present, validating specific aspects beyond the approach to history and political science, and thus shedding light on different aspects of the issue at hand. Accordingly, in order to answer the current questions surrounding the issue of minorities and to understand its constitutional foundations, the dissertation seeks to contribute not only with the above final thoughts and lessons, but with the following findings:

1. The fact of the multinational state has historically changed in the relations between Hungary and Romania, the exchange and reflection of the roles of the nations and minorities basically justifies the exploration of the positions of the parties and the means of confronting these positions. The presentation of historical positions does require special attention and a legal approach, however, mainly due to the fact that today's social and legal realities differ significantly from those of the period under review, patterns in the responses to the challenges posed by the issue of minorities can be found which represent the roots of current regulatory models – notwithstanding their distortion and the issue of nationalist excesses. However, regardless of changed social and legal circumstances, the social foundations of the minority rights actors, as legitimate foundations of such rights – in particular, but not exclusively, the rights to language use and education, the right to hold office and political participation – are fundamentally unchanged, and require effective regulation for the present and the future.

2. Taking into account the fact that the substantive Hungarian legislation developed at the same time as the idea of the nation, the examination of the results of this development should be judged primarily in relation to the realities of the period under review. Accordingly, the theorem enshrined in the public perception that the Hungarian legislation provided an inadequate answer to the nationality challenge should be fundamentally nuanced. Given the views expressed in the debate on the Minorities Act, the special public law status of Croatia and the results of Austria's legislation based partly on collective rights, it can be stated that legislation based on collective rights could not have taken away the power of the challenge posed by the issue of minorities at

that time. In the case of Austria, the strength of nationalist movements against territorial integrity was also observed, the guarantee of Croatian public law status did not dampen secessionist aspirations based on South Slavic movements, and the failure of negotiations with the Romanian minority pointed to the fact that the issue had transformed into a social trap. Nevertheless, it should be emphasized that despite the above, the Hungarian legal system based on civil equality continued to strive for the establishment of an ethnically neutral rule of law and minorities became subject to unprecedented cultural development under the Minorities Act, thus we cannot talk about minority repression. The Hungarian legislator treated the Minorities Act as a condition for consolidation related to nationalities and did not deviate from its neutral status later, nor did it expect minorities to give up their identities. It is an entirely separate social and sociological issue that of the individual sense of justice of national minorities and their members, the fact that this sense of justice is tied to individual destiny raises a multitude of subjective questions in the case of all legislation. The assimilation efforts of Hungarian politicians did not deviate from the general perception of the age, so it was not characterized by violent assimilation – in contrast to the initial and later codified practice of Romanian law.

3. In light of all this, it is also necessary to nuance the role of the right of self-determination in connection with the peace system that ended World War I. After all, it was used only in a complementary manner by the Allied and Associated Powers in all cases subordinated to their pragmatic goals. Accordingly, the application of the right to self-determination within the peace treaties did not solve the challenges posed by the issue of minorities, which necessarily led to the creation of multinational states and thus to the repetition of the challenges posed by the issue of minorities. Given that the conflict of political and military reality with the right to self-determination has always been decided in favor of the former, or it has only been enforced against the defeated, it can be stated that *exercising the right to self-determination as a principle cannot be justified at all, its ancillary character is highly debatable*. In fact, the Allied and Associated Powers, enshrining the principle of the right to self-determination, asserted their primary war goals by hiding behind this principle. The legislation and jurisprudence of the Romanian state as a successor state, pertaining especially to the violent assimilation efforts and the nation-state policy, which resulted from the impatient nationalism that followed in the victory of World War I, should be judged in light of these facts.

4. Prior to World War I, the international regime for the protection of national minorities basically did not exist, thus subjecting Hungarian legislation to international expectations is

anachronistic. It is especially important to highlight this item in relation to the Romanian literature, the emphasis of which is still based on the critique of pre-Trianon Hungarian minority rights policy. However, to this day, with few exceptions, the same literature does not produce criticism of the Romanian multinational state, even though Romania was one of the first states bound by the Paris minority protection agreements, a state which at that time had been in debt for four decades with fulfilling its previous international obligations on minority rights.

5. In the case of Romania, the results of the law of nationality – in contrast to the Hungarian law – did not arise for internal reasons, but in most cases entered its legal system as a formal fulfillment of external, international legal obligations. Unlike Hungarian law, Romania initially implicitly and later openly refused to fulfill these obligations, did not enact a law regulating the constitutional status of minorities, and also refused to recognize the constitutional rights of minorities, although these obligations were imposed as a condition for the acquisition of territories. International legal obligations and minority protection provisions had been severely distorted during their transposition into the Romanian legal system, and basically both the act of legislation, as well as the application of the law produced results which contradicted the *ratio legis* of the Paris minority protection agreement. While it scrambled to maintain the model of a compliant state, in reality Romania managed to reach acceptance as a model of a formally compliant state.

6. Among modern states which constitute models regarding the majority-minority relationship, the research comes to the conclusion that the Hungarian legislation of the period under review recognized and fulfilled the real cooperative model according to today's standards, in which the elements of the inclusive model also appeared. Romania applied the exclusionary model from its conception, formally changing the regulations of the 1878 Congress of Berlin, but did not switch to the cooperative model until 1918. As a result of international obligations after World War I, Romania *de jure* formally fulfilled the cooperative model, but did not fulfill the religious and educational autonomy of the Szekler and Saxon communities, which were part of the inclusive model, and then broke through the elements of the model in its 1923 Constitution regarding the issue of religion. The Romanian legal system subsequently gradually suffered distortions against the principle of equality of citizens, which were finally sanctified by the 1938 Constitution. Romania has formally complied with the provisions of the cooperative model, initially using an indirect and then a direct exclusionary model in order to create a unitary, linguistically based Romanian nation-state.

7. Regarding the impact of international law, it can be stated that this impact was marginal for Hungary. The reason for this is that the Hungarian legislation regulated the minority rights well above the level of protection guaranteed in the international rules of the time. The Hungarian state, which assumed a revisionist policy, without any modifications to its constitutional regime, later undertook to implement integration policies, as a consequence of once again becoming a multinational state. In the case of Romanian law, international law constituted a primary factor for legislation, as stated above. Regarding the effects of international law, it should be reiterated that the unresolved issue of minorities and the lack of ethnic consolidation in the hands of the political elite of the neighboring states and of the Hungarian minorities prevailed as a trump card assisting in long-term goals against the Monarchy. The agreement of the Hungarian state with its nationalities and genuine social consolidation, would have endangered the realization of the South Slavic, Romanian and Czechoslovak state goals, thus it was impossible to bring the negotiation bases closer and to find an honest solution. A solution from the part of the minorities was not a goal, for this reason the solution and the consolidation of the Hungarian state were not really advocated, neither by the ethnic representatives, nor by the neighboring kin states, which points to the fact that at that time no solution could have prevented the "Finis Hungariae" result.

8. When discussing the issue of bilateral international agreements, it should be emphasized that no bilateral minority protection agreement has been concluded between Hungary and Romania, nor has the possibility for the conclusion of such an agreement ever arisen. Due to the small number of Romanians living in Hungary, Romania was never interested in concluding such an agreement. In contrast, an agreement with partial effect was reached with Yugoslavia, where a Romanian community of significant size was living, and an international agreement was reached with regard to the Turkish population living in Dobrogea to resettle them, which points again at the aim of creating a homogeneous nation-state.

9. The protection of national minorities today lacks the prominent international legal attention and status which it had following World War I. Although the protection of minorities before the League of Nations did not fulfill its legal function, the mere existence of the procedure for the protection of minorities before the League of Nations was in some cases suitable to encourage legislation to amend minority objectives and effectively remedy certain violations.

As a result of the legal-historical and constitutional comparison of the examined legal systems, the issue of the regulatory models of minority law in the case of the two states is of primary importance for the present and the future. The historical experience gained as a consequence of the research revealed that *the exclusionary model cannot be justified at the level of legal development today and cannot be accepted due to the expectation of legal equality*.[100] Nevertheless, the research found that elements of the exclusionary model also appear and are applied in the case of the codification of the formal cooperative model, concluding that neither model can solve the challenges posed by the issue of minorities. If a state decides to use one of these models, regarding its content there must be at least some real cooperation, otherwise the *de facto* exclusionary elements may result in reactions which endanger the stability of the state and ultimately make the desired integration impossible. What is more, the exclusionary model is also counterproductive when it comes to the assimilationist expectations of the majority. Accordingly, *exclusionary and purely formally cooperative minority rights regime models are unsuitable for addressing the minority issue.*

3.3. The impact of the findings of the research on current legal and political thought

In today's single-nation Hungarian state, the application of a cooperative model rooted in Hungarian historical traditions and of constitutional significance in the political Hungarian nation is invariably justified. Accordingly, the current Hungarian law states that the right to identity of minorities and its commitment to maintaining this right derives from the human right to dignity.[101] *Minorities are a state-forming element and thus, in essence, the main part of the Minorities Act is still in force today*. Accordingly, the cooperative model can be invariably conceived as a basic institution of Hungarian constitutionality, which also carries in its content the essential elements of the model: recognizing both individual and collective rights.[102]

In the case of Romania, which is still a multinational state, the effective application of the cooperative model can be formulated as a minimum requirement. In addition to the results of legal development, the minimum expectation is also substantiated and justified by historical facts. By the summer of 1940, the formally completed cooperative model had actually failed and resulted in severe territorial losses. *The political failure of the Hungarian state which*

[100] TRÓCSÁNYI (2010) 893.
[101] Bernadette SOMODY: A nemzeti és etnikai kisebbségi önkormányzatok választása. In: András JAKAB – Péter TAKÁCS (ed.): *A magyar jogrendszer átalakulása 1985/1990–2005 I. kötet.* Budapest, Gondolat– ELTE ÁJK, 2007. 87.
[102] ÁRVA 208–209.

professed the cooperative model proves that even a genuine implementation of the legal institutions required by the cooperative model, when combined with the neglecting of the legitimate claims of minorities, while in the long run may result in some assimilation, cannot constitute a solution for the issue of minorities in the case of a minority of a sizeable proportion. It is the author's firm position in this regard that in addition to the application of the cooperative model, the universal implementation of a model of cultural autonomy,[103] and a partial implementation of a model of territorial autonomy is a legitimate and justified objective the Romanian state should adopt. The demand for autonomy, which has been consistently expressed for generations by minority groups, suppressed by unitary constitutions, cannot be justified today.[104] The individualist standing regarding minority rights has become obsolete after World War I.[105]

In addition to the numerous advantages of territorial autonomy and cultural autonomy, they offer enormous possibilities, as their elements can be *combined*.[106] Furthermore their application is not only *compatible with the principle of territorial integrity of the state*, but also constitutes a guarantee in this sense.[107] In the case of the inclusive model, not only distant examples are available from Western and Northern Europe,[108] as well as North America, but also the Republic of Moldova (considered a sister state by Romania): the autonomous territory called Gagauzia of the former Bessarabia[109]. In this context, it should be emphasized that in the absence of a territorial aspect of cultural autonomy, *per defitionem* it does not carry a secessionist element, while the demand for Szekler territorial autonomy, which accounts for about half of the Hungarian minority in Romania, due to its geographical situation in the middle of the country, makes it objectively impossible to secede from Romania. The counter-arguments to autonomy stem mainly from the fact that it is seen as a first step towards secession from the state,[110] but both the examples indicated above and Romania's special ethnic conditions fundamentally and factually refute these arguments. Nevertheless, the basic position of the Romanian nation-state, which has remained unchanged since 1866, and the nationalism which

---

[103] Bálint KOVÁCS: Autonomia culturală. In: FÁBIÁN Gyula (szerk.): *Standarde controversate ale coexistenţei juridice dintre majoritate şi minoritatea maghiară în România*. Bucureşti, Editura Hamangiu, 2020. 221–246., 266–267.

[104] BAUBÖCK, Rainer: Területi vagy kulturális autonómiát kapjanak a nemzeti kisebbségek. *Pro Minoritate*, 2002/nyár. 140.

[105] PONGRÁCZ 125–127.

[106] BAUBÖCK 142–143.

[107] BAUBÖCK 139.

[108] Gyula FÁBIÁN: Autonomia teritorială. In: FÁBIÁN Gyula (szerk.): *Standarde controversate ale coexistenţei juridice dintre majoritate şi minoritatea maghiară în România*. Bucureşti, Editura Hamangiu, 2020. 320., 347–356.

[109] FÁBIÁN 357–359.

[110] BAUBÖCK 161.

dominates public opinion, apart from a narrow social stratum, make it impossible even to debate the issue. *Romania remains a state standing on the foundations of a centralized nation-state*.[111] An essential element of Romanian constitutional thinking is the premise that the nation, as the custodian of sovereignty in the nation-state sense, is the most advanced form of human community – fundamentally determined by citizenship[112] – and in accordance with this Romania is a nation-state.[113] Romanian constitutional law – without disputing the existence of a social concept of nations in an ethnic sense independent of citizenship[114] – thus, due to its unitary nation-state status, understood as the Romanian nation-state[115] does not consider it to be possible to effect decentralization on ethnic terms in Romania.[116]

Hungarian constitutional thought, as opposed to the Romanian one, professes that there cannot be constitutionality without the community that carries it, which is – similarly to Romanian thought – the nation, but which is formed also by the minorities. In the Hungarian constitutional thought, the synthesis of the concept of nation according to the social conception and according to the legal conception, constitute the basis of Hungarian public law. This is the message to the present of the relation between the historical constitution and the political Hungarian nation in the case of Hungary. The laws constituting the civil transformation that took place in the 19th century are part of the historical constitution which is the foundation of the modern Hungarian 'State of Rights' (*jogállam, or Rechsstaat*)[117], thus the sources of law of that time are still of critical importance in the examination of specific cases today. *Accordingly, the Minorities Act is not only a memory of legal history, but also part of the historical constitution, as an element of the cooperative model, which also encompasses the political Hungarian nation – in which minorities are state-forming factors[118] – and also as an element of the constitutional responsibility[119] for Hungarians living beyond the borders of Hungary*.

In the case of Romania, the message is a set of criticisms and constitutional lessons from the previous constitutions, mainly formulated in Romanian legal literature, as well as all of the obligations under international law. In essence, Article 1 paragraph (1) of the current Romanian

---

[111] Sorin MITU: *Az én Erdélyem*. Marosvásárhely, Mentor Könyvek Kiadó, 2017. 105., 108–109., 119.
[112] Ion DELEANU: *Instituţii şi proceduri constituţionale în dreptul român şi în dreptul comparat*. Arad, Editura Servo-Sat, 2003. 273.
[113] DELEANU 264., 277.
[114] IONESCU 804–805.
[115] Tamás KISS – Tibor TORÓ – István Gergő SZÉKELY: Erdélyi magyarok: kisebbség, politikai közösség vagy diaszpóra? In: Nándor BÁRDI – György ÉGER (eds.) *Magyarok Romániában 1990-2015*. Károli Gáspár Református Egyetem – L'Harmattan Kiadó, Budapest, 2017. 278–279.
[116] DELEANU 262–263.; IONESCU 150.
[117] 33/2012. (VII.17.) Decision of the Constitution Court of Hungary.
[118] DUCULESCU – CĂLINOIU – DUCULESCU 565.
[119] DUCULESCU – CĂLINOIU – DUCULESCU 556–557.

Constitution[120] states, with unchanged content since 1866, that Romania is a sovereign and independent, unitary and indivisible nation-state,[121] within the framework of which the application and effective implementation of a formally cooperative model against minorities is limited. Article 4 paragraph (1) of the Constitution of Romania states that the unity of the Romanian people and the solidarity of its citizens constitute the foundations of the state,[122] a provision further nuanced by paragraph (2),[123] stating that Romania is the common and indivisible homeland of all its citizens. regardless of race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth or social origin.[124] *The paragraphs reiterate the unjustified distinctions between the Romanian people and Romanian citizens also enshrined in Romania's previous constitutions, without establishing a concept of minority or a concept of a political nation as a legitimate reason for the distinction.*

It must be emphasized that *solidarity does not mean cooperation*, despite the fact that Article 6 paragraphs (1) and (2) of the Constitution contain provisions similar to the *cooperative model* in the field of the right to identity,[125] but their *approach is one-sided*. According to these provisions, *the Romanian state unilaterally recognizes and guarantees the right of persons belonging to national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity.*[126] *The unilateral approach – essentially the lack of dialogue and cooperation – is further underlined by the fact that state protection measures aimed at preserving, developing and expressing the identity of persons belonging to national minorities must meet the requirements of equality and non-discrimination compared to other Romanian citizens.*[127] That is, the attainment of *de facto* equality by means of differentiation (positive discrimination) is precluded by this fundamental positioning. *The Romanian nation means the community of citizens in the constitutional sense, but unlike in the case of the Hungarian political nation, national minorities are not state-forming elements. The constitutional provisions explicitly recognize ethnic distinction*, but in these cases the principle of full equality must be observed.[128] *The above Romanian constitutional concept of the right to identity, together with the fundamental position of the nation-state, treats the formally established*

[120] Official Gazette of Romania of 29 October 2003 no. 758. – The Constitution of Romania – Constituţia României.
[121] DELEANU 298., 302–303.; IONESCU 801–805.
[122] DELEANU 264., 277.; IONESCU 844.
[123] DELEANU 266.; IONESCU 847–848.
[124] DELEANU 277.; IONESCU 844.
[125] DELEANU 264–266.; IONESCU 866–868.
[126] IONESCU 850–862.
[127] IONESCU 871–872.
[128] IONESCU 855., 859.

cooperative model as a unilateral declaration, despite the fact that the conceptual origin of the model is at least a bilateral one. It stems from the essence of the cooperative model that it presupposes dialogue between the parties, after all dialogue creates an opportunity for finding constructive solutions in the minority-majority relations, it helps in discovering social claims and thus establishes the foundation for legislative intervention. *Minority legislation at the level of a unilateral declaration cannot, by its very nature, provide answers to the challenges posed by the issue of minorities without exploring and listening to minority demands and their specific issues. In this context, it is necessary to reiterate regarding these provisions that the effective implementation of equality requires not only the recognition of minority rights but also their effective enforcement, which, according to the jurisprudence, legitimately breaks through the constitutional clauses of formal equality and non-discrimination.* International law, the primacy of which today is a legal axiom, has established the theorem in this field almost a century ago that although equality precludes all discrimination, *de facto equality may in fact include differential treatment, i.e. positive discrimination, which strikes a balance between actual situations on the basis of justice and reasonableness, reducing the conditions and causes of inequality*.[129]

With regard to the two countries, it must be emphasized invariably that as the protection of minorities has become an aspect of the protection of human rights, an indirect part of it, and is currently the subject of mainly regional and bilateral agreements in international law, the issue requires further enhanced cooperation between the parties involved. The foundation of cooperation is the political will to do so, while the intention may be influenced by the set of principles and lessons of history and law outlined in this dissertation. Among the lessons learned from legal history, it is worth highlighting that if the presentation of a minority claim from the Romanian side was legitimate within the Hungarian state, the argument formulated from the Hungarian side is necessarily legitimate within the Romanian state as well. These legitimate demands on both sides should result in genuine constitutional tasks and obligations which require genuine solutions, both from the part of Romania and that of Hungary.

---

[129] SHAW, Malcolm N.: *Nemzetközi jog*. CompLex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft. Budapest, 2008. 257.

IV. Publications of the author in connection with the topic of the dissertation

1. Az Erdélyi Fejedelemség nemzetközi elismertsége, külpolitikájának főbb irányai. *Iustum Aequum Salutare,* IV. 2008/2. 121–133.

2. Gondolatok a hadisírokról. *Korunk*, 2020. XXXI/3. 67–73.

3. A magyar nemzetiségi törvény megalkotása: a többnemzetiségű magyar állam nemzetiségi kihívásra adott alkotmányos válasza. *Valóság Társadalomtudományi Közlöny,* 2020/9. 6–18.

4. Bánffy Miklós: Tékozló fiú, művész, államférfi. In: VERESS Emőd (szerk.): *Erdélyi Jogászok. Jogászportrék I.* Kolozsvár, Forum Iuris, 2020. 26–35.

5. Karácsony Benő: A napos oldal árnyai. In: VERESS Emőd (szerk.): *Erdélyi Jogászok. Jogászportrék I.* Kolozsvár, Forum Iuris, 2020. 88–95.

6. Mikó Imre: A nemzetiségi jogász életei. In: VERESS Emőd (szerk.): *Erdélyi Jogászok. Jogászportrék I.* Kolozsvár, Forum Iuris, 2020. 122–129.

7. Szász Pál: Kisebbségvédelem a gazdaság és jog együttes erejével. In: VERESS Emőd (szerk.): *Erdélyi Jogászok. Jogászportrék I.* Kolozsvár, Forum Iuris, 2020. 162–169.

8. Életek az életben: megjegyzések Mikó Imréről (1911–1977). *Erdélyi Jogélet,* 2020/1. 36–42.

9. A nemzetiségi törvény megalkotása. *Erdélyi Jogélet,* 2020/2. 58–83.

10. Egy század eleji képviselő rajza. A dualizmus megjelenése, problémái, végórái Bánffy Miklós Erdélyi történetében. In: FEKETE Balázs – MOLNÁR, András (szerk.): *Iustitia emlékezik: Tanulmányok a "jog és irodalom" köréből*. Budapest, Társadalomtudományi Kutatóközpont Jogtudományi Intézet, 2020. 95–106.

11. A nemzeti ébredés, a nemzetiségi mozgalmak és a nemzetiségi jogalkotás a Gyulafehérvári Határozatokig Erdély területén. In: VERESS Emőd (szerk.): *Erdély jogtörténete*, Budapest – Kolozsvár, HVG-Orac Könyvkiadó – Forum Iuris, 2020. 363–381.

12. A nemzeti kisebbségek nemzetközi jogi védelme. In: VERESS Emőd (szerk.): *Erdély jogtörténete*, Budapest – Kolozsvár, HVG-Orac Könyvkiadó – Forum Iuris, 2020. 478–489.

13. Az ostromállapot. In: VERESS Emőd (szerk.): *Erdély jogtörténete*, Budapest – Kolozsvár, HVG-Orac Könyvkiadó – Forum Iuris, 2020. 536.

14. A simile… A román-magyar viszony és tanulságai az alkotmányjog-történet tükrében.

Erdélyi Jogélet, 2020/3. 31–63.

15. FAZAKAS Zoltán József – FEGYVERESI Zsolt – VERESS Emőd (szerk.): *Forrásszemelvények Erdély jogtörténetének a tanulmányozásához.* Kolozsvár, Forum Iuris, 2021. 1–384.

16. Foreign Policy and International Relations of the Principality of Transylvania. *Acta Universitatis Sapientiae Legal Studies. 9.* 255–268.

17. Ezernyi szégyenfolt? Gondolatok a Nemzeti Összetartozás Emlékhelye kapcsán. *Magyar Szemle. XX. 2021/3-4.* 37–47.

18. Önfia vágta sebét? *Hitel. XXXIV. 2021/6.* 50–59.