

I. Historical Approaches

Chapter 1

Post-communist Nation Building and the Status Law Syndrome in Hungary¹

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Introduction

More than ten years have passed since the Soviet Block collapsed. The communist regime was a centripetal power, binding the Slavic Eurasian mega-area² into a near-unitary entity for decades. Though the regime is in the past, the question remains: Has the mega-area completely lost its unity with the regime's sudden disappearance? This question is all the more relevant in circumstances where the transformation process is taking a long time and/or the goal of the transformation is unclear. For the process has not been as simple as most people expected. The old institutions were not replaced with new ones overnight. The reality was rather, not the replacement of old with new, but sedimentation which added one layer or more, or a complication of the existing sedimental structure.³

One of the typical issues here is post-communist nation building in the Slavic Eurasian mega-area. After one decade of costly lessons, people began to realise that it was impossible or at least problematic for the 'emerging nations' of the area simply to introduce the nation state system they had originally envisaged in their post-communist nation building. Nowhere in the mega-area has the nation state system worked well.⁴ Neither the Soviet em-

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2 Mega-area and meso-area are the new terminology applied to the analysis of processes of regional integration emerging under globalisation; see Osamu Ieda, 'Regional Identities and Meso-Mega Area Dynamics in Slavic Eurasia: Focused on Eastern Europe', Paper delivered to the Winter International Symposium, 'Emerging Meso-areas in the Former Socialist Countries: Histories Revived? or Improvised?' at Slavic Research Center, Hokkaido University, Sapporo, Japan, 28-31 January 2004. A related reference is available at <http://src-h.slav.hokudai.ac.jp/coe.htm>.

3 Osamu Ieda, 'Systemic change and society building: focusing on post-communist Hungary', *Comparative Studies of Economies* [in Japanese] 40 (2004), no.1, pp. 1-13.

4 George Schöpflin, 'Nationhood, communism and state legitimation', *Nations and Nationalism* 1 (1995), pp. 81-91.

pire system nor the nation state system has created a stable regional and international order among the ‘nations’ in the area. The status law syndrome – which involves nation building across state borders and integrating the kin minorities abroad through law – was a clear symptom of this post-communist institutional challenge, and it was also necessary for the East European nations to re-conceive or re-adjust themselves in the post-communist new environment of European integration. In the view of the Hungarian lawmakers, status laws needed to be adapted to the new European community that would be realised by EU integration. In this context, status laws were not simple reflexes of ethno-national concerns, but also reflected the requirements of the supranational process of regional integration in Europe. At least, this was the case for the Hungarian lawmakers. The status law syndrome was thus a test of the ability of post-communist East European nations to solve the problem in accordance with the EU legal standards, and the scandalous Hungarian Status Law was the acid test. The Hungarian law was, in fact, consciously designed on the basis of a consideration of legislative precedents in Hungary’s neighbouring countries and the West European models in the field of minority protection. The status law syndrome was, in other words, a phenomenon generated by three interactive factors: the communist and Soviet imperial heritage, the emerging new national consciousness, and the eastward extension of European integration. In this triadic interaction, ‘Eastern Europe’ was a spatial field where the interactive processes went on.⁵

Taking into consideration that the Hungarian law was the most comprehensive case of the status law syndrome in Eastern Europe, this chapter concentrates on analysing the Hungarian Law and the ‘nation policy’ (*nemzetpolitika*) pursued by the FIDESZ-MPP (Fiatalkorú Demokraták Szövetsége-Magyar Polgári Párt, FIDESZ-Hungarian Civic Party) government from 1998 to 2002 led by Viktor Orbán. In particular, the chapter focuses on what the government wanted to achieve with this legislation. To this end we will examine the FIDESZ politicians’ arguments, including those deployed in the lawmaking process, and opinions and statements presented by the Hungarian opposition parties, the neighbouring countries, and European agencies.

From a historical point of view, by the way, nation building in Eastern Europe began with the creation of national identities in the nineteenth century. The process developed with the wave of state building after World War I, to be followed by a period of revisionism in the 1930s and World War II. After World War II, however, the reconstituted nation states in the region remained frozen under the sway of communist internationalism until the 1980s.⁶ But again, with the collapse of the communist regime, the existing state system

5 Osamu Ieda, ‘Regional Identities and Meso-Mega Area Dynamics in Slavic Eurasia’.

6 Miklós Szabó, *Politikai kultúra Magyarországon* (Budapest, 1989), pp. 225-251.

was challenged by systemic transformation. Initially, the nations tried to carry out the project of building new states with measures that included secession, unification, and border changes. From the late 1990s, however, it seems that the feverish nation state building in Eastern Europe has come to an end, and another form of nation building, the status law syndrome, has gained more and more influence in the region in the light of the on-going process of EU enlargement. We call this method and process of post-communist nation building a ‘new nation building’, one which differed decisively from the previous one in requiring no territorial changes.

It is, however, still an open question whether Eastern Europe is headed for a ‘West European type’ of civic society⁷ after travelling the long, hard road of nation building within the status law syndrome.⁸ We still have no definite answer to the question: Are EU integration and the introduction of West European norms, *acquis communautaire*, helping the region to complete the process successfully? Or are they helping it in any way? If so, Eastern Europe will cease to be part of the Slavic Eurasian mega-area in the near future, and will become a legitimate member of ‘Europe’, where it is unacceptable to ask ‘the citizens’ officially, ‘Who are you?’ or ‘What is your ethnic national identity?’ The Hungarian Status Law, by contrast, started by asking the citizens just those questions.

On 1 May 2004, eight East European countries – Estonia, Latvia, Lithuania, Poland, the Czech Republic, the Slovak Republic, Hungary, and Slovenia – and the two Mediterranean countries, Malta and Cyprus, joined the EU, though the eight countries in Eastern Europe preserved ‘transitional arrangements’, that is, incomplete implementation of the *acquis communautaire*, to be resolved after their formal accession to the EU.⁹ That is, their membership did not automatically mean full substantial membership. In addition, the Roma and migration questions remained among the sensitive issues which the EU’s annual country reports had repeatedly highlighted as problems to be solved by the candidate countries.¹⁰ The Roma issue related, on the one

7 Recent work in this field is rather suspicious of the stereotypical association of western and eastern European nationalisms with civic and ethnic nationalisms respectively. See Cristiano Codagnone, ‘Introduction’, and Will Kymlicka, ‘Nation Building and Minority Rights: Comparing West and East’, *Journal of Ethnic and Migration Studies* 26:2 (2002) (special number on Ethnic conflict and migration politics in Europe), pp. 173-181 and 183-212 respectively.

8 Schöpflin, ‘Nationhood’, p. 90.

9 EU Commission, *Report on the results of the negotiations on the accession of Cyprus, Malta, Hungary, Poland, the Slovak Republic, Latvia, Estonia, Lithuania, the Czech Republic and Slovenia to the European Union*, http://europa.eu.int/comm/enlargement/negotiations/pdf/negotiations_report_to_ep.pdf.

10 *Commission of the European Communities 2002 Regular report on Hungary’s progress toward accession*, Brussels, 9.10.2002 SEC (2002) 1404. The first part of the section on

hand, to democratisation and free movement of people, and, on the other, to post-communist nation building, in terms of the question, 'Who are you?' This question, however, was not aimed specifically at the Roma minority, but rather at minorities in general, since the new nation building in post-communist Eastern Europe has gone beyond politico-economic integration, involving the cultural and historical components of the nations, and aiming to re-define the notion itself. The Roma issue in the region is, therefore, understandable only when it is viewed from the wider perspective of post-communist new nation building. The Hungarian Status Law and the nation policy of the FIDESZ government was a particularly provocative case not only for the practical reality of post-communist developments, but also for the academic analysis of nation building in modern history.

Rogers Brubaker introduced the concept of a triadic interaction among kin minority, kin-state and home-state as actors in the post-communist challenge to existing nation states.¹¹ Brubaker's conceptualisation draws our attention to transborder interactions between (or bypassing) nation states, in contrast to the classical frameworks, which take integral nation states as their premise for defining national minorities. This chapter, following Brubaker's idea, involves a fourth factor, an external integrating power, the European Union. Charles King, by contrast adopts the same framework, but he focuses on the factor of the kin minorities. He uses the term 'diaspora' as a general definition, and he distinguishes three types of diaspora from the point of view of identity: One is that of guest workers, who basically identify themselves with their kin-state. The second comprises those who have a dual identity with their kin- and home-states. The third and last is made up of people who identify exclusively with their home-state. King proposes this typology for a general conceptualisation of national minorities, though the three types overlap in reality.¹² Cristiano Codagnone also tries to create a general theory of minorities. Addressing not only the national minorities but also migration issues, he analyses minorities using a single theoretical framework with the three aspects of entry, equity, and exit.¹³

These conceptualisations are methodologies for solving kin minority problems through the promotion of multi-culturalism, rather than treating the issues in terms of national minority problems or inevitable ethnic conflicts. In other words, these theories aim to provide a new basis for the civic resolu-

minority issues concerns the Roma question.

11 Rogers Brubaker, 'National minorities, nationalizing states, and external national homelands in the New Europe', *Daedalus*, Spring 1995, pp. 107-132.

12 Charles King, 'Introduction: Nationalism, Transnationalism, and Postcommunism' in Neil Melvin and Charles King, eds., *Nations Abroad: Diaspora Politics and International Relations in the Former Soviet Union* (Boulder, 1998), pp. 1-27.

13 Codagnone, 'Introduction'.

tion of ‘minority’ problem. Though the theories are very important in a normative sense for the project of building civil society, the reality is beyond their reach, since, as we will see, the Hungarian Status Law explicitly and consciously rejected the civic resolution of minority issues, insisting on a new nation building through the supra-border unification of kin minorities and the kin-state.

Among the important analyses by Hungarian scholars of the Status Law, some initial writings deserve mention. One is that of Zoltán Kántor, whose contribution is fundamental, above all in terms of the information it provides. Exploring the significance of the law as a comprehensive approach to the solution of the kin minority issue, he edited a book which included the basic documents, statements, opinions, interpretations, and chronology relating the making of the law.¹⁴ Another important contribution for our purposes is that of János Kis. He was the leading theoretician of the Alliance of Free Democrats. Among the domestic political reactions to the Status Law, that of Kis and his party was most critical. At the same time, Kis expressed a kind of regret that Hungary missed her chance to solve the issue of the Hungarian minorities because of the provocation against the neighbouring countries and European society embodied in the Status Law.¹⁵ The issue still seems too close for the Hungarians, even for the people in academia, to keep aloof from political and social commitment. Any statement on the issue can bring about political and social repercussions.

Nations have been very problematic in modern history, especially in twentieth-century Eastern Europe. Moreover, contemporary European society requires a multi-cultural citizenship,¹⁶ or multicoloured Europe. As a consequence, the range of forms of the nation state in the enlarging EU is ever wider, and too wide to allow of monolithic definitions. This also applies to the Hungarian terminology of nation, *nemzet*. *Nemzet* is the equivalent in Hungarian to ‘nation’. Historically, *nemzet* was the political community, exercising state sovereignty in the society of orders, and it had no connotation of ethnicity. Since the middle of the nineteenth century, however, the term has gradually been monopolised by the ruling ethnic Hungarians for their eth-

14 Zoltán Kántor, ‘A státustörvény: nemzetpolitika vagy a kisebbségvédelem új megközelítése’, unpublished MS, 14 November 2000. A shortened version of this essay is ‘A magyar nemzetpolitika és a státustörvény’, in Nándor Bárdi and Gábor Lagzi, eds., *Politikai és nemzeti identitás Közép-Európában* (Budapest, 2001), pp. 57-77; Zoltán Kántor, ed., *A státustörvény: dokumentumok, tanulmányok, publicisztika* (Budapest, 2002).

15 János Kis, ‘Státustörvény-Magyarország válaszüton’, *Beszélő*, March 2002, or in Kántor, *A státustörvény*, pp. 376-397.

16 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford, 1995); *idem*, ‘Nation building and minority rights’; *idem* and Magda Opalski, eds., *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford, 2001).

nicity, particularly since the end of World War II.¹⁷ The notion became more ethnic in its usage in post-communist Hungary; for example, *nép-nemzeti* was understood as the political camp of the more or less ethnic nationalists.¹⁸ Nevertheless, the word still has both ethnic and political connotations. The ambivalence of the dual definition was the cause of political conflicts, and it is this duality that is the main topic of this chapter.

Another specific term used in the chapter is kin minority.¹⁹ Such terms as diaspora, national minority, or nation abroad have also been applied to these groups – people who share the majority ethnicity of one state but are resident in another. However, since the Venice Commission Report adopted the term ‘kin minority’ in 2001, it has been gradually accepted among scholars. The Commission also used two more related terms, kin-state and home-state, although we already had more ordinary words, such as homeland for kin-state and host state for home-state.²⁰ Nevertheless, we use kin-state and home-state for the categories uniformly in this chapter, in conformity with the Commission Report.

17 The notion of ethnicity is expressed by other terms in Hungarian such as *faj* (which could also be ‘race’), *nemzetiség* (referring specifically to national minority status especially in the 19th century and in the socialist system), or *kisebbség* (‘minority’), depending on the context: Pál Teleki, *Válogatott politikai írások és beszédek* (Budapest, 2000), p. 133. *Magyar nemzetiség* means, in general, the Hungarian national minority in a country other than Hungary. *Magyarság* means the totality of Hungarians all over the world or Hungarianness. Miklós Szabó used ‘Hungarians abroad’, *határon túli magyarság*, as early as 1984: *Politikai kultúra*, p. 237.

18 *Nép* is the equivalent to people in English or *Volk* in German.

19 King, ‘Introduction’. No terminology is yet accepted universally for kin-minority, and each country has its own usage for it; for example, *zahraniční slovak* in Slovak is translated as ‘repatriate Slovaks’ in the English version.

20 Brubaker uses ‘ethnonational kin abroad’, ‘ethnic diaspora’, and ‘ethnic conationals abroad’ for kin minority. Kin minority seems a new usage invented by the Venice Commission, though we have examples of usage for kin-state, such as Francis W. Carter and David Turnock, ‘Ethnicity in Eastern Europe: Historical legacies and prospects for cohesion’, *Geojournal* 50:2-3 (2000), pp. 109-125, here p. 110; Gwyneth E. Edwards, ‘Hungarian national minorities: recent developments and perspectives’, *International Journal on Minority and Group Rights* 5 (1998), pp. 345-368, here p. 366; Kymlicka and Opalski, *Can Liberal Pluralism Be Exported?*, p. 7; King, ‘Introduction’, p. 1. ‘Home-state’ is also a new term. Conventionally, ‘host state’ was popular for home-states (e.g. King, ‘Introduction’, p. 12), and ‘home’ was used for kin-states, as in the use of ‘homeland’ by Brubaker, ‘National minorities’. We can see an implicit message in the decision of the Venice Commission to introduce the usage of ‘home-state’ rather than ‘host country’ to designate the relationship between the members of the kin minority and their country of residence.

I. Status Law and New Nation Building in Hungary

The Hungarian trajectory of post-communist nation building, though circuitous, started with the really sensational nationalist statement of József Antall, the first post-communist Prime Minister, who led the Hungarian Democratic Forum (Magyar Demokrata Fórum, HDF) government from 1990 to 1993. He declared; ‘Our government works for the 15 million Hungarians’,²¹ instead of mentioning ten million, the population of the Hungarian Republic. Thus, the first picture of the nation articulated by post-communist Hungarian diplomacy was not that of a civic social order composed of the individuals living in the country. The statement of the Prime Minister was immediately criticised for its possible revisionist implications by the neighbouring countries. The second post-communist Hungarian government, led by the Hungarian Socialist Party (Magyar Szocialista Párt), however, turned the country’s regional diplomatic policy toward cooperation with its neighbours, and the Socialist government concluded basic treaties with Slovakia and Romania in 1995 and 1996 respectively. Thus the tension between Hungary and her neighbours diminished as long as the Socialists were in power. In 1998, putting ‘nation policy’ in the forefront of the electoral campaigns,²² FIDESZ won the general elections in cooperation with the HDF and the Independent Smallholders’ Party (Független Kisgazdapárt). FIDESZ had already converted their political position to a conservative and nationalist one after the 1994 elections under the leadership of the party president, Viktor Orbán. The purpose of the political conversion was to integrate the nationalist camps in Hungary into a single party, and thus to create a two-party system in Hungary; that is, the Socialists versus FIDESZ.²³

The first political agenda which the FIDESZ government wanted to realise in its nation policy was the new symbol of the post-communist national integration, specifically, restoration of the crown of St. István, the first king of the country, who was crowned by the Pope in 1000 and was the representative historical figure of the Hungarian monarchy up to the end of World War II. István and the crown embodied the historical Hungary, ruling the ‘Carpathian basin’ over the Romanians, Slovaks, Serbs, and other minorities for centuries. However, the restoration of the crown reflected not only the nationalist ideology of FIDESZ, but also their Europeanist ideology, identifying Hungary as a part of Europe through emphasising her Christianity and her historical mission

21 József Debreczeni, *A miniszterelnök* (Budapest, 1998), p. 224.

22 FIDESZ changed the name in June 2003 to *FIDESZ-Magyar Polgári Szövetség* (FIDESZ-Hungarian Civic Alliance).

23 Osamu Ieda, ‘Restoration of St. István’s Crown: Where is the Orbán government of Hungary headed?’ in Jan Sykora, ed., *A New Dialogue Between Central Europe and Japan: A Tension Between Continuity and Change* (Prague, 2001), pp. 96-109, here p. 103.

for the European community. According to this view, Hungary has again and again sacrificed herself to protect the heartland of Europe against non-European invasions.²⁴ The duality in the interpretation of the Hungarian identity, that is, the European and the national missions, was characteristic of FIDESZ's political thought and its rationale for the nation policy.

The Orbán government established a law to make the crown the new national symbol at the end of 1999, and organised an anachronistic ceremony on the New Year 2000, the new millennium and the 1000th anniversary of the kingdom, transporting the crown from the National Museum to the Parliament. The crown was secularly sacralised by the ceremony, which was staged like a canonisation of the crown. It was ironic that a republic, and its three highest political officers, namely, the President of the Republic, the Prime Minister, and the Chairman of the Parliament, sacralised the crown as the symbol of national unity.²⁵ Needless to say, the new national unity was expected to be just as inclusive as St. István's crown had been up to World War II. Following the creation of the new/old national symbol, the Status Law was proposed as the second but substantially the first step in a nation policy designed to create a unified Hungarian nation extending beyond the state borders, or in our terminology, a new nation building in post-communist Hungary.²⁶

The idea of a status law was already an issue within the controversy over the restoration of the crown in 1999, in relation to the institution of dual or external citizenship²⁷ to be given the kin minorities living abroad.²⁸ This proposal was closely linked to the idea that the kin minorities were organic parts of the Hungarian nation which was to be created in the course of post-communist European national integration.²⁹ In 1999 and 2000, when passing the Status Law was at the top of the political agenda, a nation-wide dispute arose around the definition of 'Who is a Hungarian?', because the law would provide a special status only to 'Hungarians' living in the neighbouring countries. The dispute escalated into a political debate over cultural issues,

24 *Ibid.*, p. 98.

25 *Ibid.*, p. 97. On the history of ideas of the Hungarian nation, see Szabó, *Politikai kultúra*; Osamu Ieda, 'The Zigzag Way of Thought of a Hungarian Populist', *Japanese Slavic and East European Studies* 18 (1998), pp. 115-128.

26 Some Hungarian politicians use the phrase 'nation building', *nemzetépítés*, or 'new nation building', *nemzet újjáépítése*; see, for example, Csaba Tabajdi, the Socialist Party specialist on minority policies: www.mkogy.hu (at this website, the minutes of the Hungarian Parliament's plenary sessions are available); Kántor, *A státustörvény*, pp. 98-102.

27 *Külhoni státus* in Hungarian, means a limited citizenship for the Hungarians living abroad; see Ieda, 'Restoration', pp. 101-103.

28 Judit Tóth, 'Legal regulations regarding Hungarian diaspora', *Regio* (2000), [online English edition], pp. 37-64, especially p. 48.

29 See, for example, the FIDESZ election manifesto of 1998: *Szabadság és jólét, a polgári jövő programja, 1998*, pp. 135-138.

and both mass media and the general public engaged in heated discussion on the topic ‘What are/should be the criteria for a “Hungarian” and who can be “Hungarian”?’

The FIDESZ government drafted the Status Law in June 2000, and started to consult with the opposition parties and the Hungarian organisations abroad. By March 2001, the government and the major opposition party, the Socialist Party, reached a basic consensus in drafting the law, and finally the Parliament established the Status Law with minor amendments in June 2001. Thus the lawmaking process was relatively smooth in the domestic political arena. However, when the draft was sent to the Hungarian Parliament, the main contest over the law moved to the intergovernmental arena among the neighbouring countries, and in the second half of the year European organisations also joined battle – notably the Council of Europe, and specifically its subordinate department, the so-called Venice Commission.³⁰ The international repercussions of the issue generated negative attitudes Hungary which contrasted with her so far successful negotiations for EU membership.³¹ Why did the issue become a scandal? What was the nature of the proposed law? What were the points of contention among the countries concerned?

1. Status Law or Benefit Law

The so-called Status Law was adopted by the Hungarian Parliament on 19 June 2001, and was often known in popular parlance as the benefit law. The official name was, however, ‘Act LXII of 2001 on Hungarians Living in Neighbouring Countries’. If we could select which of the law’s popular names best reflects its content, ‘benefit law’ would be the right one. Nevertheless, ‘Status Law’ was the most popular and the name seemed to reflect best the expectations of the people. This was reasonable, because the main interest of the Status Law was initially focused on dual citizenship or external citizenship in 1999 and 2000, and the special status of the Hungarian kin minorities abroad was expected to be comprehensive enough to cover even political rights, such as the right to vote in Hungarian parliamentary elections.

30 www.venice.coe.int/site/interface/english.htm.

31 *The New York Times*, Dec. 10 (Reuters), 2001, ‘Hungary’s neighbors see bias in a law to aid its diaspora, Budapest: A move to provide welfare benefits to minority Hungarians living in neighboring countries has touched off historical sensitivities in Romania and Slovakia, which say the law would encroach on their sovereignty. [...] *In a recent report on Hungary, the European Commission in Brussels, the European Union’s executive branch, said the law was in “apparent contradiction” to the European model of minority protection. Hungary, which has been criticized for not doing enough to improve conditions for its own ethnic minorities like the Roma, took “apparent” to mean possible.* Romania and Slovakia focused on the term “contradiction”. The three neighbors continue to negotiate exactly how the new regulations will be put into effect, but Hungary has clearly signalled that it will go ahead with the law on Jan. 1’. (The emphasis is mine.)

Besides, Hungary was expected to gain EU membership earlier than her eastern neighbours, and it seemed probable that visa requirements would be introduced between them. Therefore, the special status of the kin minorities living in these countries was expected to serve as a remedy against the new iron curtain, the EU Schengen borders. The leaders of the Hungarian governmental coalition parties, FIDESZ and the HDF, openly talked about the introduction of external citizenship.³² It was, therefore, natural that people expected the coming status law to provide some public rights to the kin minorities.³³ The Prime Minister, Orbán, was enthusiastic in establishing the law; for example, he had no hesitation in declaring on February 2001, the eve of the first reading of the draft in the parliament, that the law would be most significant for the integration of the Carpathian Basin.³⁴

The Socialist Party, although basically in agreement with the principle of legal protection for the Hungarian kin minorities, was sceptical about the introduction of dual citizenship, political participation with voting rights, and also about involving the kin minorities' political parties in the official procedures for issuing certificates of Hungarian nationality.³⁵ The Socialist Party preferred the route of legislation to regulate specific interests and benefits, having practised it during its own period in government from 1994 to 1998.³⁶ The party considered dual citizenship and external citizenship as too challenging to introduce, and thus wanted to limit the scope of the law to providing benefits 'to promote and preserve their well-being' in their home countries. This was the basic standpoint of the opposition parties, including the Free Democrats, Szabad Demokraták Szövetsége.³⁷

32 For example, 'The Democratic Forum supports the idea of external citizenship [*külhoni állampolgárság intézménye*], and we consider the citizenship necessary to form an organic part of a special law on their status' (August 21, 2000): Kántor, *A státustörvény*, p. 579. Viktor Orbán stated the possibility of a special visa valid for five or ten years and political rights to be given the Hungarians abroad (29 October 1999): *ibid.*, p. 573.

33 László Szarka, 'Szerződéses nemzet', *Napi Magyarország*, 10 November 1999: *Ibid.*, pp. 407-409.

34 *Ibid.*, p. 585.

35 *A Magyar Szocialista Párt különvéleménye a Magyar Állandó Értekezlet 3. ülésének zárónyilatkozatához, 2000 December 14*: *ibid.*, pp. 172-173.

36 Tóth, 'Legal regulations', p. 58.

37 For example, László Kovács, the leader of the Socialist Party in *Krónika*, 25 April 2000, or his speech at the press conference on 11 July 2000: both in Kántor, *A státustörvény*, pp. 576 and 57. For the Free Democrats, see István Szent-Iványi's speech at the plenary session of the Parliament on 19 April 2001, 202. ülésnap, 34. felszólalás: www.mkogy.hu; Erika Törzsök's statement of 9 June 2000: Kántor, *A státustörvény*, p. 576. The Hungarian politicians, including the liberals, supported the idea of the providing assistance and services for the Hungarians abroad in their home-states, though the idea would be regarded as extraterritorial by the Venice Commission.

The FIDESZ government wanted to establish the law with a dominant majority in the Parliament, so that it could serve as a firm basis for the FIDESZ government to realise its nation policy. To this end,³⁸ the governing party placed less and less emphasis on controversial issues like dual citizenship in the second half of 2000.³⁹ Thus in the end FIDESZ accepted the Socialist Party's view on dual citizenship. The final version of the draft included articles relating only to the Hungarian Certificates which would confirm ethnicity and to the provision of the benefits and services. The Hungarian Certificate was thus apparently not designed to provide any public status for the Hungarian minorities, such as would be bestowed by dual or external citizenship. Instead, the Hungarian Certificate would only authorise their national identity and eligibility for benefits and services. Nevertheless, the certificate was still expected to offer something more, for example, priority access to visas when the EU borders went up between Hungary and her neighbours to the south and east.⁴⁰

2. The Preamble: Objective and Legitimacy

The Status Law consisted of the preamble, Chapter One on the scope of the act (Articles 1-3), Chapter Two on benefits and services (Articles 4-18), Chapter Three on rules of procedure of application for benefits and services (Articles 19-25), and final provisions (Articles 26-29).⁴¹ The preamble of the law has been subjected to less theoretical analysis than other parts,⁴² although its contents merit word-by-word examination. In practice, as it turned out, it was the preamble that was focused on most often in the diplomatic controversies. The preamble was made up of seven components:

- 1) 'In order to comply with its responsibilities for Hungarians living abroad and to promote the preservation and development of their

38 The Socialists also wanted to come to a consensus with FIDESZ, so that the Parliament could pass the Status Law with an effective majority. See the speech of Csaba Tabajdi, 9 May 2001, 206.ülésnap, 440. felszólalás: www.mkogy.hu.

39 Béla Markó, President of the Democratic Alliance of Hungarians in Romania, stated on 3 July 2000, 'it is unfortunate that we have expected so much from the status law', when he learned the details of the new law: Kántor, *A státustörvény*, pp. 577-578.

40 József Solymosi, Socialist, stated in the Parliament: 'We expect many difficulties with the Schengen treaty when our membership of EU is realised. This is why we are making the Status Law in order to find means to solve the problems', 19 April 2001, 202.ülésnap, 420. felszólalás: www.mkogy.hu; Árpád Csekő, 'Státustörvény, az alapkö', *Magyar Hírlap*, 7 February 2002.

41 The texts of the Status Law are available in Hungarian and in English on the web sites; www.kum.hu/szovivoi/Aktualis/statustrv.htm (Hungarian); www.mfa.gov.hu/siwwwwa/online/10037767.html (English), both texts are reprinted in this volume.

42 The one exception is Kis, 'Státustörvény', pp. 376-397.

manifold relations with Hungary prescribed in paragraph (3) of Article 6 of the Constitution of the Republic of Hungary’

2) ‘Considering the European integration endeavours of the Republic of Hungary and in keeping with the basic principles espoused by international organisations, and in particular by the Council of Europe and by the European Union, regarding the respect of human rights and the protection of minority rights’

3) ‘Having regard to the generally recognised rules of international law, as well as to the obligations of the Republic of Hungary assumed under international law’

4) ‘Having regard to the development of bilateral and multilateral relations of good neighbourhood and regional co-operation in the Central European area and to the strengthening of the stabilising role of Hungary’

5) ‘In order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country’

6) ‘Based on the initiative and proposals of the Hungarian Standing Conference [*Magyar Állandó Értekezlet*], a coordinating body functioning in order to preserve and reinforce the awareness of national self-identity of Hungarian communities living in neighbouring countries’

7) ‘Without prejudice to the benefits and assistance provided by law for persons of Hungarian nationality living outside the Hungarian borders in other parts of the world’

The logic of the preamble was as follows. The first component related to constitutional legitimacy, giving the law its domestic legal authority. The second and the third, referring to international agreements and laws, implied an assurance of international conformity. The fourth, mentioning consideration toward the neighbouring countries, declared the diplomatic legitimacy of the law in the regional context. Thus, the first four components stated again and again the legal justification for the law. The preamble then presented the objectives of the law, that is, component five, and this was followed by the subjective justification, the sixth component: Legislation should be based on the ‘national’ consensus, including the assent of the kin minorities in the neighbouring countries. The seventh and last component of the preamble confirmed that the law was not competitive with the existing legislation concerning the rights of the Hungarians living abroad in countries other than the neighbouring countries. As a whole, the lawmakers insisted that the law would be harmonious with any existing legal norms, because they had taken

them fully into consideration. In reality, however, the extent of this consideration was very questionable.

The first point to be examined is the objectives of the law set out in the fifth component. The objectives consisted of three elements:

- A. 'to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole'
- B. 'to promote and preserve their well-being [...] within their home country'
- C. 'to promote and preserve their [...] awareness of national identity within their home country'

It was objective B, the so-called benefits and services, that would be served by the bulk of the regulations set out in the act. The Hungarian Certificate, prescribed in Chapter One, aimed to realise objective C. Objective A, however, was to be achieved only through accomplishing objectives B and C. These were the relations among the three objectives and the relations between the objectives and the chapters.⁴³ The initial main motivation of the legislation was to give the Hungarian kin minorities abroad some kind of public status, such as external citizenship, and that public status would have been covered by objective A. In practice, however, public status was excluded from the final draft of the law, leaving objective A hanging with no related articles in the law to implement it. The reason why the phrase was left in the preamble was obvious, since it was the most important slogan politically and, ideologically, the ultimate objective for the lawmakers.

Objective B, 'to promote and preserve their well-being within their home country', could be also controversial. The reason why the project 'to promote and preserve their well-being' was restricted to 'within their home country' was not self-evident. In fact, an implicit motivation of the lawmakers was to prevent the Hungarians in the neighbouring countries from moving to Hungary. This seemed a consensus among the parties. In any case, it was perfectly clear that the kin minorities should not move from their native land to pursue their individual well-being. The law required them to stay in their hometown or home village in exchange for the Hungarian Certificate and the associated benefits. In post-communist times and places, where people looked to the free movement of human beings, goods, money, and services in order to optimise their resources through the markets, the kin minorities alone were obliged to tie themselves to 'their home country' (in the English version of the law) or to 'their homeland [*szülőföldön*]' (in the Hungarian), just as in the age of the closed socialist world. The earlier EU membership of Hungary than that of, for example, Romania, and the appearance of an EU border between Hungary and her eastern neighbours was only a temporary episode in

43 *Ibid.*, pp. 383-386.

the long historical perspective, but the Hungarian Status Law invoked a permanent mission on the part of the kin minorities to preserve their homelands and to pursue their well-being within the state borders. This mission of the kin minorities was a collective one for the Hungarian communities in the neighbouring countries, to be realised through the procedure for issuing certificates of nationality. At the same time, it would be personalised at the individual level through applying for the Hungarian Certificate. The law might create a ‘contract’⁴⁴ relationship of mutual obligation between the kin-state and the kin minority abroad collectively and individually.

The second point related to the first component of the preamble, which declared the law justified in constitutional terms. The justification was based on a reference to the Constitution, citing what purported to be the original text. The citation was, however, only approximately the same as it was in the Constitution; that is, several expressions in the original text were calculatedly modified; specifically, instead of the original phrases, ‘bears a sense of responsibility for the fate of Hungarians living outside its borders’, the citation was ‘comply with its responsibilities for Hungarians living abroad’. In the Hungarian text, too, the original, ‘*felelősséget érez a határain kívül élő magyarok sorsáért*’, was modified a little: ‘*a határon kívül élő magyarokért viselt felelőssége*’. In the both languages, the verb, ‘bear’ or ‘*érezni*’, was replaced with a much more serious one, such as ‘comply’ or ‘*viselni*’, and the singular ‘responsibility’ in the English version was even pluralised into ‘responsibilities’. The essence of the modification was emphasis on the direct and concrete responsibilities of the kin-state, in practice of the Hungarian government.

The history of these modifications merits examination. The FIDESZ government had prepared the initial draft of the Status Law by the end of June 2000, and the draft did not include any phrases relevant to this issue. Nor did the draft contain the sentence, ‘Hungarians living in neighbouring countries form part of the Hungarian nation as a whole’, and the first objective of the law in the draft was to preserve the Hungarian identity among the kin minorities abroad.⁴⁵ At this point, however, another draft of the legislation was proposed by the chairman of the Hungarian World Alliance in August 2000,⁴⁶ and this draft explicitly stipulated that the Constitution should be amended. This amendment of the Constitution was, in fact, introduced into the govern-

44 A nation by contract, *szerződéses nemzet*; see Szarka, ‘Szerződéses nemzet’, pp. 407-409.

45 *Szomszédos államokban élő magyarokat megillető egyes kedveményekről szóló törvény koncepciója, a külügyminisztérium stratégiai tervezési főosztálya és a Határon Túli Magyarok Hivatala (HTMT) előterjesztése*, July 2000: www.htmh.hu/dokumentumok/koncept.htm; Kántor, *A státustörvény*, pp. 31-37.

46 Miklós Patrubány, ‘Tervezet a külhoni magyar állampolgárság jogintézményének alkotmányos létrehozása’ in Kántor, *A státustörvény*, p. 38.

mental draft, as we have seen. The chairman of the Alliance was honest enough to call it an amendment, since the change of wording in the preamble of the final draft represented a significantly different relationship between the kin-state and the kin minorities from that articulated in the Constitution. It would have been consistent for the government to propose an amendment to the Constitution, if the government wanted to make the unification of the Hungarian nation the ideal of the Hungarian state. Therefore, the proposal of the Alliance was a matter for serious consideration by the government, and it is very likely that the FIDESZ government initiated the amendment proposal behind the scenes in order to monitor public reaction. In fact Prime Minister Orbán himself asked the members of the Hungarian Standing Conference to take the Alliance's proposal into consideration.⁴⁷ There may have been some negotiation between the government and the opposition parties. In the end, however, no amendment was proposed officially; instead, the phrases were silently inserted into the final draft. The history of the constitutional amendment suggests the government's ambition to take on a greater degree of kin-state responsibility to its national minorities abroad than the Constitution envisaged.⁴⁸

The proposal of the Hungarian World Alliance also insisted on 'making a framework for unifying the Hungarian nation as a whole, whose spiritual communities were created historically and developed by a common past and culture, and share a common destiny'. This statement of the Alliance coincided with the objectives of the nation policy and of the Status Law proposed by the FIDESZ government. In fact, 'the unified Hungarian nation as a whole' in the preamble of the governmental draft was a simplified version of this statement. It was not accidental that even this version was scandalous enough to provoke serious political and diplomatic repercussions outside Hungary because it seemed to reveal an ambition on the part of Budapest to exert influence over the kin minorities. In the light of this pre-history, it is understandable that the Hungarian government was criticised and condemned for revisionism and for reviving Great Hungarianism.⁴⁹

47 Viktor Orbán proposed this in the official ceremony for the national holiday of St. István on 20 August 2000: *ibid.*, p. 579.

48 Tóth, 'Legal regulations', p. 48.

49 The Romanian Prime Minister asked that Viktor Orbán strike out the expression, 'form part of the Hungarian nation as a whole' from the draft of the law, but the Hungarian Prime Minister refused, saying, 'This relates to the cultural connotations': *Népszabadság*, 19 November 2001. Nevertheless, Orbán often spoke in domestic fora of the political ties with the Hungarians abroad created by the Status Law: Kis, 'Státustörvény,' pp. 384-385. An official introduction to the law appended after its adoption did not mention objective A: *Törvény a szomszédos országokban élő magyarokról: Érdekek és célok*, www.kum.hu. Orbán was often criticised for taking a two-faced attitude in respect of domestic politics and diplomacy: Pál Dunay, 'Státustörvényzűr', *Heti Világgazdaság*, 12 January 2002, p. 40.

The third point is the Hungarian Standing Conference. The Conference was established by ‘the Hungarian Nation’ with no regard for the political views of those outside and inside of Hungary. It was, according to its self-definition, the organisation of ‘the whole nation’, founded on 20 February 1999. The founding members included all the political parties in Hungary – FIDESZ, the Socialist Party, the Free Democrats, the Democratic Forum, the Independent Smallholders, the Hungarian Party of Justice and Life (*Magyar Igazság és Élet Pártja*) – and all the Hungarian political parties abroad which had representatives in the parliaments of the neighbouring countries affected by the Status Law. The latter included the Democratic Alliance of Hungarians in Romania (*Romániai Magyar Demokrata Szövetség*, Romania), the Hungarian Coalition Party (*Magyar Koalíció Pártja*, Slovakia), the Transcarpathian Hungarian Cultural Alliance (*Kárpátaljai Magyar Kulturális Szövetség*, Ukraine), the Vojvodina Hungarian Alliance and the Vojvodina Hungarian Democratic Alliance (*Vajdasági Magyar Szövetség and Vajdasági Magyar Demokrata Szövetség*, Yugoslavia), the Democratic Community of Croatian Hungarians (*Horvátországi Magyarok Demokratikus Közössége*, Croatia), the Mura District Hungarian National Self-governmental Community (*Mura-vidéki Magyar Nemzeti Öngazgatási Közösség*, Slovenia). Moreover, the Hungarian World Alliance and the Hungarian government were also the members of the Conference.⁵⁰

Although the Conference was not sufficiently comprehensive to legally represent the totality of Hungarian communities in the relevant countries, the Hungarian government officially invited the kin-Hungarians’ political parties to take part in the working committee of the Parliament from the initial stages of the legislation, as if they did represent all Hungarians abroad.⁵¹ These

50 *Magyarország és a határon túli magyarság: 1999 konferencia nyilatkozata*, 20 February 1999, www.htmh.hu/konferencia/990220_magyarsag.htm. The English version is at www.htmh.hu/konferencia/nyil_en.html. The Conference documents are available on the web site at www.htmh.hu and in Kántor, *A státustörvény*, pp. 136-165, and certain of the HSC statements are reprinted in this volume. The Conference was established in the wake of the third Hungary-Hungary Summit, *Magyar-Magyar Csúcstalálkozó*, whose first meeting was held in 1996 at the initiative of the Hungarian government (the Socialist Party was majority at that time), the President of the Republic of Hungary, Árpád Göncz, elected from the Free Democrats, and the Bureau for the Hungarians Abroad, HTMH.

51 The government ordinance, 1079/1999 (VII. 7), ‘on establishing the specialist committees dealing with the tasks on the Hungarians abroad’, prescribed the participation of the Hungarian Standing Conference in the committees, specifically, ‘1) the government sets up the committees of education, culture, economy, health care, social policy, self-government, and EU integration in order to promote the linkages between Hungary and the Hungarians abroad in the spheres of education, culture, economy, health care, social policy, and self-government, to realise themselves in the native lands, 2) the chairpersons of the committees are the State Secretary or their deputies to be pointed by the Ministers of Education, Preservation of the National Culture, Economy, Health Care, Inner Affairs, and Foreign Affairs, 3) the govern-

parties played a monopolistic role not only in the legislative process but also in issuing the Hungarian Certificates.⁵² The Hungarian Standing Conference could be called the administrative organ of the new Hungarian nation building, whose purpose was to put the Status Law into practice in the neighbouring countries. In spite of its very important functions, however, the Standing Conference was a mere voluntary organisation, and it had no legitimate claim to execute the official business of the Hungarian state.⁵³ Therefore, the Conference had no authority at all to bestow legitimacy on the Status Law. We may say that the phrase in the preamble, ‘Based on the initiative and proposals of the Hungarian Standing Conference’, gave authority to the Conference – not the other way around, as the preamble would have it.

The fourth point is the justification of the law in terms of international and diplomatic norms. Though criticised widely, the Hungarian government continued to be convinced that the law was quite compatible with the international and European legal norms. Moreover, the Hungarians firmly believed that the law and their nation policy would contribute to promoting European

ment asks the political parties in Hungary, those Hungarian parties which have representatives in the Parliaments of the home-states, and the World Alliance of Hungarians to send their members to each committees’: *Magyar Közlöny*, 1999/62, pp. 4083-4084. These committees prepared the drafts of the law. It is noteworthy in the ordinance that the FIDESZ government seriously considered introducing local or regional self-government for Hungarians abroad in their home-states. The basic treaty between Hungary and Romania definitely excluded any territorial autonomy of the Hungarian national minorities in the home-state: Takafumi Nakajima, ‘Local government in Romania’ in Osamu Ieda, ed., *The Emerging Local Governments in Eastern Europe and Russia: Historical and Post-Communist Developments* (Hiroshima, 2000), pp. 217-220. We might see a kind of development of this initial concept of autonomy in developments in Romanian politics, such as the establishment of the Hungarian National Council in Transylvania, *Erdélyi Magyar Nemzeti Tanács*, and the Szekler National Council, *Székely Nemzeti Tanács*, which claimed territorial autonomy under the influence of the Hungarian Civic Alliance, *Magyar Polgári Szövetség* (which had close relations with the FIDESZ) in Transylvania in 2003: *Magyar Fórum*, 12 December 2003. László Tökés, the leader of the Hungarian autonomy movement in Romania, legitimised their claim with the consent of the Hungary-Hungary Summit in 1996: *Magyar Fórum*, 27 November 2003.

52 The Christian Churches wanted to be the recommending organisations in Romania, but were rejected; Judit Tóth, ‘Státusmagyarság’, *Mozgó Világ* 4 (2001), pp. 12-19, also in Kántor, *A státustörvény*, p. 256.

53 The Hungarian Parliament issued a statement just after the establishment of the Conference: ‘The Hungarian state welcomes the establishment of the Hungarian Standing Conference, and asks the Hungarian government to prepare the means to sustain its activities. Furthermore, the Parliament asks the government to create institutions for the Conference through consulting with the Conference on its missions’: Az Országgyűlés 26/1999. (III. 26) OGY határozata a Magyar Állandó Értekezlet megalakulásához kapcsolódó feladatokról, *Magyar Közlöny* 1999/25, p. 1749. However, no explanation was offered as to the constitutional basis for granting the Conference such privileges.

integration and a multi-cultural Europe. For example, Zsolt Németh, State Secretary of the Ministry of Foreign Affairs, stated in Parliament:

The Status Law was designed for the future. Western Europe has some fortunate nations which succeeded in the eventual solution of national minority problems similar to the Hungarian one.⁵⁴ The Status Law is based on the same idea as this successful experience. The keywords are the multi-dimensional integration of the minority communities, and the guarantee and extension of their individual and community rights.

[The implementation of the law] promotes cross-border national integration without changing the state borders [...]

State borders are gradually losing their meaning in the course of European integration. The Hungarian nation policy is in the mainstream of Europe where the emphasis is moving from state borders to communities of individuals and peoples. The Status Law is a milestone in this process.⁵⁵

Even in this statement it is possible to see the enthusiasm with which the Hungarian lawmakers believed that the Status Law should become a legislative model for the solution of national minority problems everywhere in Europe. The lawmakers were serious when they referred to international norms in the preamble in justification of the law. Therefore, the criticism of the Status Law by the neighbouring countries and especially by the West European society, including the imputation that it contravened the spirit of the EU (we will see the details later) were bound to have a fundamental influence

54 One of the most important references for the Hungarian lawmakers was the South Tyrolean case. Csaba Tabajdi stated in the Parliament: ‘As János Martonyi, the Minister of Foreign Affairs, also suggested, we seek the same guardian status as Austria exercises in relation to the South Tyroleans. This would set us on a sound path to solving the national minority questions which resulted from the Versailles Treaty. If there were this kind of reliable mechanism for the protection of the national minority, we would not need the Hungarian Certificates’. (9 May 2001), 206. ülésnap, 440. felszólalás: www.mkogy.hu. János Hargitai, FIDESZ, also called for the same status: ‘South Tyrol is a different case under different circumstances, where Austria was given extensive privileges. However, if international law permits, we will also manage the guardian rights, which would be unprecedented. We, however, have no guardian rights. Austria, in contrast, was given them through the bilateral agreement between Italy and Austria. Therefore, Hungary could also be provided with the same kind of the guardian power. We are convinced that any European state would acknowledge this right, if we use appropriate legal measures to establish it’. (9 May 2001), 206. ülésnap, 396. felszólalás: www.mkogy.hu. Along with Austria, the Swedes in Finland were also one of the models for the Hungarian lawmakers. Tamás Bauer, Free Democrat, evaluated these cases, saying: ‘The best solution is self-fulfilment in the place of birth, and preservation of Hungarian national identity in the place of birth. This is the case for the Swedes in Finland and the Germans in South Tyrol who successfully achieved the ideal solution’. (9 May 2001), 206. ülésnap, 357. felszólalás: www.mkogy.hu.

55 Parliamentary statement, 19 April 2001, 202. ülésnap, 28. felszólalás: www.mkogy.hu.

not only on the fate of the law but also on the future path of post-communist interpretations of the nation in Hungary.

The aforementioned four points, that is, the objective of the law (the unification of the whole nation), the practical amendment of the Constitution (the active responsibilities of the kin-state), the authority of the new national sovereignty (the quasi-administrative organisation of the newly constructed nation), and conformity with Europe (the new European integration) were the basic pillars of the new nation building in Hungary. At the same time, those very features provoked suspicion about the law and the country itself – doubts about both their transparency and their legitimacy – on the part of the neighbouring countries and European agencies as well.

3. Who is a Hungarian?

The first chapter of the law, ‘the scope of the act’, defined the range of those to whom the Status Law provided benefits and services. In other words, it was the practical definition of ‘who are the Hungarians?’ Article 1 said: ‘This Act shall apply to persons declaring themselves to be of Hungarian nationality’. This definition was very simple and clear. The additional conditions were only as follows in the article:

- who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine, and are not in possession of a permit for permanent stay in Hungary, and who
 - a. have lost their Hungarian citizenship for reasons other than voluntary renunciation, and
 - b. are not in possession of a permit for permanent stay in Hungary.

The Status Law provided a simple definition of Hungarian nationality, self-identification, in Article 1. However, the law provided for another definition with Article 20. This article prescribed the procedures for issuing Hungarian Certificates, stating: ‘The evaluating authority shall issue the “Certificate of Hungarian Nationality” if the applicant is in possession of a recommendation which has been issued by a recommending organisation representing the Hungarian national community in the neighbouring country concerned, and being recognised by the Government of the Republic of Hungary as a recommending organisation’. According to this technical condition, the self-identification or self-declaration was not sufficient to qualify as a Hungarian, and an external confirmation – ‘a recommendation of the Hungarian national community’ – was necessary.

‘Who is a Hungarian?’ was the focus in the nation-wide controversies over the Status Law from the beginning, and was the hottest issue among the general public. The Status Law, after all, prescribed a necessary condition, self-declaration, and left unstated the sufficient conditions for the eventual

decision by local Hungarian communities. We may say that the law reserved a space for the Hungarian national communities in the concerned countries to find a practical solution to this heated question.⁵⁶ Nevertheless, among the members of the Hungarian Standing Conference a basic consensus was created on the common criteria for the definition.⁵⁷ The Conference released a declaration on this issue when it met in Budapest on 25-26 October 2001. It had in any case been forced to do so under the pressure of the Venice Commission. The Conference gave the three criteria, as follows;

Hungarian ID may be issued to persons [1] declaring themselves Hungarian and [2] mastering the Hungarian language respectively: [3a] he/she is a member of any of the registered Hungarian organizations, [3b] he/she is treated as Hungarian by any of the church registries, [3c] he/she is treated as Hungarian by the country of citizenship. [The numbering is the author's.]

The conjunction 'respectively' in the text seems curious in English, but the original version in Hungarian, *illetve*, is a unique but not unusual conjunction, which might be better translated as 'and/or'; for example, 'A *illetve* B is necessary' can mean that A is necessary and B may be necessary as an alternative to A, or that both of A and B are necessary. Thus, in this case, the recommending organisation might require not only linguistic ability in addition to self-declaration, but also some formal or official documentation to identify the nationality of the applicants, if the organisation wanted it. The scope the law left for the organisation might accordingly be a source of arbitrary or at best inconsistent decision-making in the practical definition by the Hungarian communities of 'Who is a Hungarian?' The Hungarian legislation thus established no universal principles on this question, and there is no doubt that the law failed to ensure fairness from the standpoint of the applicants for the certificates.

Unfairness and ambiguity in defining the scope of application of the act appeared not only in the criteria for individual qualification, but also in many other areas. First, Austria was excluded from the geographical scope of the new Hungarian nation, though the scope had initially included that country as well as the other eligible neighbouring countries in the draft of the law. That is, the Hungarian government, accepting the EU's advice according to which the law was not in conformity with EU norms, abandoned consistency in defining the range of eligible countries. Further significant reduction of the

56 *A szomszédos államokban élő magyarokat megillető egyes kedvezményekről szóló törvény koncepciója: A külügyminisztérium Stratégiai tervezési főosztlya és a HTMH előterjesztése*, July 2000: Kántor, *A státustörvény*, p. 33 (originally published in *Heti Világgazdaság*, 22 July 2000, pp. 79-81).

57 Final Statement of the Fourth Session of the Hungarian Standing Conference, reprinted in the present volume.

scope of the act may follow in the future, when other neighbouring countries also accede to the EU. In fact, the exclusion of Austria made countries like Romania and Slovakia dubious about the European conformity of the law even before their accession.⁵⁸

Second, the law limited its scope to the neighbouring countries, though almost as many Hungarians lived in the rest of the world as in Eastern Europe. It was not natural to exclude them from the post-communist new nation building. Some of the status laws in the region were, in fact, inclusive enough to cover kin minorities all over the world.⁵⁹ Nevertheless, the FIDESZ government introduced the spatial limitation because, as the Prime Minister stated,⁶⁰ the new Hungarian nation building aimed to bring about the regional integration of the Carpathian Basin. The unified Hungarian nation was thus not an abstract totality of the Hungarians in the world, but it had a concrete territorial domain with clear spatial dimensions.

Third, the definitions of ‘Who is a Hungarian?’ in the law contradicted each other. The initial answer to the question in Article 1 was, on the one hand, an individualist concept of nationality, moving away from the historical or primordialist understanding. The practical conditions set out in Article 20, on the other hand, seemed to go against this move. Specifically, ‘the recommending organisations’ were, as a matter of fact, the Hungarian political parties in the home-states, and they could require membership in their own political parties from those who wanted to apply for a Hungarian Certificate. ‘The church documents’ required membership in or affiliation to a religion. ‘Official classification as Hungarian’ was the legacy of the minority policies of the previous regimes.⁶¹ These conditions were all based on a collective or primordialist concept of nationality, independent of the will or ability of the individuals concerned. The law might refuse a Hungarian Certificate to

58 For example, the criticism by the Slovak Prime Minister, Dzurinda on 22 June 2001: Kántor, *A státustörvény*, p. 597. From the Romanian side, the government took notice of the exclusion of Austria from the scope of application of the law, regarding this as a confirmation of the incompatibility of the law with the European spirit: in *Declaration of the Romanian Government with regard to the Adoption of the Law on the Hungarians Living in Neighbouring Countries, 19.06.2001*, www.domino.kappa.ro/mae/presa.nsf/ArhivaEng/AE4FE2BDAEB1A78DC2256A73004A5AFF?OpenDocument.

59 Act No. 70 of 14 February 1997, on Expatriate Slovaks, reprinted in this volume.

60 The call for integration of the Carpathian Basin was not a monopoly of FIDESZ and Prime Minister Orbán, but was also shared by Socialists, such as Mátyás Szűrös, who declared the united Hungarian nation in the Carpathian Basin as early as 1988; see Csaba Tabajdi’s statement of 19 April 2001, 202. ülésnap, 30. felszólalás, or Mátyás Szűrös’s statement in the Parliament on 9 May 2001, 206. ülésnap, 384. felszólalás: www.mkogy.hu.

61 For example, ethnic origin was prescribed in the passports of the former Soviet Union or socialist Yugoslavia.

those who declared themselves Hungarian but had no membership of a Hungarian organisation in the home-state.⁶²

In principle, political party membership might work on an individualist basis, but in reality the Hungarian minorities had only one party in each home-state, with the exception of the former Yugoslavia.⁶³ In Slovakia there were three parties, yet they were united into one party when the Meciar government introduced new legislation on political parties.⁶⁴ In any case, collective forms of national identification might contradict the principle of individual freedom in political and religious life. Moreover, the collective procedures for 'recommendation' for the certificate and its benefits could give rise to patronage systems and even corruption in the Hungarian communities of the home-states.⁶⁵ The communities, consequently, would become exclusive and undemocratic.

The fourth issue was the role of the recommending organisations in the home-states. The Hungarian organisations in the home-states were, first of all, to be recognised by the Government of the Republic of Hungary with the new symbol of the 'Holy Crown of István', and thus to be legitimised to 'represent the Hungarian national communities in the neighbouring countries'. By this authorisation the organisations were expected to complete administrative tasks which had near-official character, that is, to issue recommendations for Hungarian Certificates, which would include confirmation of the applicant's Hungarian nationality, signature, photo and address. The certificate would also record the personal data of the applicant, the name and the official stamp of the recommending organisation, the name and signature of the person acting on behalf of the recommending organisation, and the place and date of issue of the recommendation. The personal data would include 1) the family and given names (also the maiden name in the case of women) as used officially in the home-state, and in the case of persons of Hungarian nationality in Hungarian as well, 2) the name of the place of birth as it was used officially in the home-state and in Hungarian, 3) the date of birth and sex, 4) mother's name as officially used in the home-state and in the case of persons of Hungarian nationality in Hungarian as well, 5) the passport photo, 6) citi-

62 The Hungarian law on minority governments established in 1993 was, in contrast, based on individualism, or simple self-declaration, for the ethnic certification. On the minority governments in Hungary, see Osamu Ieda, 'Local government in Hungary' in Ieda, *The Emerging Local Governments*, pp. 85-129, here pp. 101-103.

63 In Romania the Hungarian autonomy movement – Hungarian National Council in Transylvania – was emerging as another political party under the leadership of László Tőkés in 2003 in cooperation with FIDESZ: *Magyar Fórum*, 18 December 2003. József Csapó, *Közösségi akarattal Székelyföld autonómiájáért* (Sepsiszentgyörgy [Sf. Gheorghe], 2003), pp. 3-15.

64 Tadayuki Hayashi, 'Slovak politics and EU membership: 1993-2002', *Journal for Japanese Studies for Comparative Political Sciences* (in Japanese) 5 (2003), pp. 149-171.

65 'A nemzetpolitikának nincs alternatívája', *Magyar Nemzet*, 1 March 2001.

zenship or reference to stateless status, 7) a signature in the entitled person's own hand, and 8) the date of issue, the period of validity and the number of the document. These comprehensive personal data would be monitored by the Hungarian organisations in the home-states. Criticised by the home-state governments on the grounds of extraterritoriality, the procedure for issuing certificates was almost a form of cross-border state administration involving civic organisations as the basis for new communities of the Hungarian nation.

Fifth, the Status Law extended eligibility for benefits and services to the spouses and the children of members of the kin minorities in the home-states, even if they did not identify themselves as Hungarian. In other words, the families of Hungarian kin minorities were, according to the law, to form a part of the new Hungarian nation, regardless of their national identity, and they were to be given a 'certificate for dependants of persons of Hungarian nationality'. This extension was introduced because, according to the stated purpose of the Status Law, it was not intended to provoke tension among the family members in a mixed marriage, but rather to 'strengthen respect and understanding between the different ethnicities through getting familiar with Hungarian culture'.⁶⁶ Another explanation was that the law reflected the inclusiveness of the Hungarian nation, *befogadó nép*, which had been a feature of the nation throughout the thousand years of its history.⁶⁷ These statements suggested that even non-blood relatives of ethnic Hungarians were expected to form a part of the Hungarian nation. As far as the definition of 'Who is a Hungarian?' was concerned, the certificates for dependants were definitely based on the collective discipline of the Hungarian national identity without any individual elements, and reflected well the duality of the definition of 'Hungarian' established by the law.

The basis of nation building is a definition of the nation. The Status Law, however, could not define the Hungarian nation consistently. This was the result on the one hand of external pressure, that is, the EU's advice to limit the scope of the law. On the other hand, the original concept of the lawmakers was based on the ambiguity of defining the nation both individually and collectively. As a consequence, the perception of the new Hungarian nation inscribed in the law could not be free of contradiction. From the standpoint of an individualist understanding of the nation, its definitions of the Hungarian nation was inadequate because there remained the danger of exclusion on

66 *Indokolás a szomszédos államokban élő magyarokról szóló törvényjavaslathoz*, in Kántor, *A státustörvény*, p. 67.

67 See the statement of the Hungarian Minister of Foreign Affairs on 19 April 2001, in Kántor, *A státustörvény*, pp. 77-78. The official statement attached to the Status Law also stated: 'Hungary has been a country of acceptance [*befogadó ország*] which always gave living space to newcomers throughout its thousand-year history': *Törvény a szomszédos országban élő magyarokról: érdekek és célok*: www.kum.hu.

the basis of the collectivist conditions: Those who identified themselves as Hungarian but had no supporting documents might be excluded from the nation. At the same time, the definitions were too inclusive because those who did not identify themselves as Hungarian were to be included because their spouse or parents were members of the nation. From the collectivist point of view, by contrast, the law's definitions were too inclusive because of the general prescription in Article 1, that mere self-declaration identified a person as Hungarian. At the same time, the law was insufficient because of its limited geographical coverage and the limited membership for relatives (only spouse and children).

4. Benefits and Services

Having declared themselves to be of Hungarian nationality, got confirmation of their nationality from the Hungarian community in their home-state, and received a Hungarian Certificate, the Hungarians abroad would be eligible for the same rights as Hungarian citizens to cultural, educational, and social benefits and services provided by the Republic of Hungary. Before the introduction of the law, as a matter of fact, Hungarians abroad had already enjoyed various privileges offered by the Hungarian governments. However, the privileges were occasional and individual. The Status Law, instead, wanted to establish these privileges as inherent and collective rights of the Hungarian kin minorities. This had no parallel in the minority policies of the previous Hungarian governments.

Chapter Two of the law outlined a series of benefits and services. Articles 4, 5, and 6, stating that 'persons falling within the scope of this Act shall be entitled in Hungary to rights identical to those of Hungarian citizens', prescribed cultural benefits and services, such as the use of libraries, museums, other cultural facilities, and institutions, and including application for awards and scholarships. Articles 9 and 10 set out the rights of the Hungarians abroad to higher education in Hungary and to special scholarships for this purpose. The next two articles, 11 and 12, provided for the eligibility of Hungarian teachers abroad to take part in 'regular further training in Hungary, as well as to receive the benefits', such as 'accommodation costs, [...] travel expenses, and contribut[ions] to the costs of registration' for the training. Article 13 promised to support 'the establishment, organisation and operation of affiliated Departments of accredited Hungarian higher education institutions in the neighbouring countries'. The last educational benefits were defined in Article 14, according to which assistance was offered to children who received training or education in the Hungarian language in their home-state.⁶⁸

68 According to one critique of the Status Law, assistance to the children could not be effective, because, for one thing, the proportion of Hungarian families whose children attended Hun-

Social benefits and services were also to be provided for the Hungarians abroad. The first of these was permission to work in Hungary ‘for a maximum of three months per calendar year without the prior assessment of the situation in the labour market [of Hungary]’, and ‘a separate legal rule may allow for the issuing of work permits for longer periods of time’ (Article 15).⁶⁹ The second was medical care in Hungary through ‘reimbursement of the costs of self-pay health care services’ (Article 7). The third and last one was assistance with transport in Hungary: Hungarians living abroad who were younger than six or older than sixty-five were eligible for unlimited free travel on public transport in Hungary, and others were granted some assistance with travel in Hungary (Article 8).

The fourth group of benefits and services was offered not to individuals, but to organisations. The first category of this assistance served not the Hungarian organisations abroad but the domestic media in Hungary; the state budget would provide the financial resources necessary for ‘the production and broadcasting of public service television programmes for the Hungarian communities living abroad through the establishment and operation of an organisation devoted to such purposes’ (Article 17). The other organisations to be supported were those which operated in the neighbouring countries. Article 18 of the law listed the objectives to be achieved with this assistance. Among the objectives, not only cultural ones but also socio-economic ones were included, such as: ‘e. the enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve their ability to preserve their population and to develop rural tourism, f. the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary, g. the pursuance of other activities promoting the goals specified in paragraph (1)’.

garian schools was high enough – 80% –, and, for another, the main reason why parents did not send their children to the Hungarian schools was not money, but transportation; that is, no Hungarian schools were available in their village or in their town, while the planned subsidy, about 20,000 HF (80-90 US dollars) annually, was not enough to cover transportation to Hungarian schools in other settlements: *Heti Világgazdaság*, 23 July 2001, p. 7.

69 The work permit was sometimes justified by reference to the more limited employment opportunities and lower wages in Romania; see, for example, ‘Zsolt Németh és Tibor Szabó sajtótájékoztatója a szomszédos országokban élő magyarokról szóló törvénytervezetről, Budapest [13 June 2001]’: www.kum.hu. Another justification was the labour shortage in Hungary; see, for example, Prime Minister Orbán’s statement on 7 June 2001: ‘The population of the country, ten million, is not enough for us to maintain the recent rapid growth of the economy in Hungary. In the years to come we have to accept several million people from the neighbouring countries. There are four million Hungarians in the neighbouring countries, and we will build a state structure which makes it possible to accept them. We have not ten million, but fourteen million potential workers’: Kántor, *A státustörvény*, p. 592. This statement is also noteworthy in the light of József Antall’s Great Hungarianist turn of phrase: ‘the Prime Minister of the fifteen million Hungarians’.

The goals specified in paragraph (1) were very simple: ‘the goals of the Hungarian national communities living in neighbouring countries’. Thus the assistance given to Hungarian organisations abroad could be so comprehensive and inclusive that any kind of activities could be supported under the law. Objectives (e) and (f) were a particularly hot issue in the controversy between the Hungarian lawmakers and the EU advisers, as the EU criticised the draft for including private commercial companies in its provisions. We will examine this issue later.

5. Population and Budget

Though the largest national minority in Europe is now the Russians, following the collapse of the Soviet Union,⁷⁰ Hungarians have kept the first position for decades since the Trianon Treaty after World War I. The exact population of the national minorities abroad, however, has been unavailable. The official statistics showed 1.59 million for the Hungarians in Romania in 1992,⁷¹ the equivalent of 15% of the population of the Republic of Hungary (10.08 million in 2002). Then, the Hungarian population in Slovakia was 0.57 million in 1991, in Yugoslavia 0.34 million in 1991 (0.48 in 1971), in Ukraine 0.16 million in 1989, in Croatia 35,000 in 1971, and in Slovenia 8,500 in 1991. In Austria, the Hungarian population was 33,000 in 1991. Altogether around 2.7 million Hungarians lived in the neighbouring countries in 1990s. The Hungarian Ministry of Foreign Affairs estimated 3.0-3.5 million Hungarians in the countries, including 1.5-2.0 million in Romania, 0.6-0.7 million in Slovakia, 0.3-0.35 million in Yugoslavia, 0.15-0.20 million in Ukraine and so on.⁷² In addition, 1.5-2.0 million Hungarians lived in the other parts of the world, such as in the USA.⁷³

The Hungarian government expected that 150-200,000 Hungarians abroad would apply for the certificates in 2002, the first year of implementation of the law. For the issuing of this large number of certificates, 24 dedicated offices were to be set up in the six home-states – 10 offices in Romania, five in Slovakia, four in Yugoslavia, three in Ukraine, and one each in Croatia and Slovenia – and one head and two personnel would work at each office.⁷⁴

70 King, ‘Introduction’.

71 Another set of statistics for 1992 shows 1.63 million: Carter and Turnock, ‘Ethnicity in Eastern Europe’, p. 112.

72 *Külügyminisztérium T/4070/14. számú háttéranyag a szomszédos államokban élő magyarokról szóló törvény végrehajtásának költségvetési vonzatairól*: www.mkogy.hu/irom36/4070/4070-014.htm; Zsolt Németh’s statement in the Parliament on 20 March 2000, 126. ülésnap, 49. felszólalás: www.mkogy.hu.

73 Valuch Tibor, *Magyarország társadalomtörténete* (Budapest, 2001), pp. 87-92.

74 *Külügyminisztérium T/4070/14.*: 1.5 million HF for the office facility and 20.09 million HF for the running costs, including 2.5 million HF for personnel and 18.4 million for other costs, were estimated for maintaining one local office in the neighbouring countries.

Nine billion Hungarian Forints (HUF) out of the state budget would finance the projects to help the Hungarian minorities abroad in 2002 (one US dollar is around 250 HUF). The breakdown of the budget was two billion HUF for issue of the certificates, another two billion for educational assistance, four billion for competitive grants, 0.5 billion for transportation assistance, 0.3 billion for the net contribution to medical costs, and so forth. Fifty thousand children would have their schooling in the Hungarian language supported at a cost of 20,000 HUF per head.⁷⁵ As far as subsequent years were concerned, however, the government estimated 250-300,000 applicants for the certificates annually, with altogether 0.75 million people seeking a Hungarian Certificate.⁷⁶ On average, a Hungarian abroad would receive 3,600 HUF each year, supposing the whole Hungarian population to be 2.5 million. The amount would be 45,000 HUF, roughly the average monthly salary in Hungary at that time, assuming that the budget would be shared by each year's applicants.

6. Semi-citizenship and Responsibility of the Kin-state

The Status Law would provide benefits and services not only for cultural and educational activities of the Hungarians abroad, but also for employment, medical care, and even such purposes as 'to preserve their population', 'to develop rural tourism', 'to establish and to improve the infrastructure for maintaining contacts with the Republic of Hungary', or more generally to 'promote the goals of the Hungarian national communities'. While including no political rights, the law nevertheless actually intended to give the Hungarians abroad broad socio-cultural rights under the title of benefits and services. No international standards existed on how far the kin-state and the home-state respectively might be responsible for the socio-cultural conditions of the kin minority in the cases in point. The Status Law, in place of the phrase 'bears a sense of responsibility for the fate of Hungarians living outside its borders' used in the Constitution, declared in its preamble that the Republic of Hungary sought to comply with '*its responsibilities* for Hungarians living abroad and to promote the preservation and development of their manifold relations with Hungary' and 'to promote and preserve their well-being within their home country'. In this new principle of nation building, the Hungarian government unsurprisingly inflated its responsibilities

75 The Hungarian Minister of Foreign Affairs, János Martonyi's introductory speech on the Status Law in the plenary session of the Parliament on 19 April 2001, 202. ülésnap, 2. felszólalás: www.mkogy.hu and *Heti Világgazdaság*, 23 June 2001, p. 7. Though it is difficult to calculate the exact number of children eligible for subsidy for Hungarian schooling, we have some relevant figures for the Hungarians in Romania, such as 155,000 primary and secondary school children in Hungarian families, of whom 119,000 attended Hungarian schools: *Heti Világgazdaság*, 23 June 2001, p. 8.

76 *Külügyminisztérium T/4070/14*.

for the kin minorities as their kin-state. Therefore, a near-public status with broad socio-cultural rights – we may call it semi-citizenship for the Hungarians abroad – was the deliberate outcome, in keeping with the basic idea of the law and the nation policy of the FIDESZ government.

Moreover, the law prescribed social benefits, such as medical care, for the Hungarians abroad with no reciprocal tax obligation, while the Hungarians in Hungary had to pay tax. This privilege in relation to Hungarian citizens was not a natural consequence of the basic idea of the law. Why did the law guarantee semi-citizenship with such a high priority for the Hungarians abroad? First, strong criticism of ethnic discrimination in the home-states played a role in the background, and the public in Hungary widely shared this perception, stating, for example, ‘the Hungarians in the neighbouring countries live with disadvantages compared to the majority in the home-states, though people do not talk about it explicitly. Legally they do not suffer from discrimination, but in practice they do. In this context, the assistance from the kin-state, or the guardian role the Status Law prescribes, are natural’.⁷⁷ The Hungarian Standing Conference offered a more direct criticism:

The Hungarian communities abroad are still endangered, though the degrees are different in each home-state. We are convinced that we have to maintain active policies to remedy their disadvantageous situation. We are worried about the minority language law in Slovakia, [...] we cannot ignore the Romanian nationalist forces in Transylvania. The responses of the Romanian authorities to them have not been sufficient, and were not always appropriate.⁷⁸

A Hungarian Socialist, Mátyás Szűrös, who was the last chairman of the Parliament in the communist era, also criticised the long-standing discrimination in the neighbouring countries:

The conditions of the Hungarian minorities have never been normalised for 80 years. Therefore, there are no grounds for the statements of the Slovak and Romanian Prime Ministers. Slovakia never makes the Benes ordinance void, and there is no university education in Hungarian language in Romania. Besides, no church properties are given back in Romania, and so on.⁷⁹

77 Kántor, ‘A státustörvény’; Kántor, ‘A magyar nemzetpolitika és a státustörvény’; Kántor, *A státustörvény*, p. 295.

78 *A Magyar Állandó Értekezlet második ülésének zárónyilatkozata* (15 November 1999) in Kántor, *A státustörvény*, pp. 166-167.

79 Session of 9 May 2001, 206. ülésnap, 384. felszólalás: www.mkogy.hu. Csaba Tabajdi, the specialist on minority policy for the Socialist Party, stated on the language policy in his article: ‘Language is one of the most serious issues for the minorities in the Carpathian Basin and in Central-Eastern Europe in general. [...] Use of the mother tongue is the battlefield on which the social majorities try to assimilate the minorities through reducing the minori-

The second and more serious aspect of the background was the psychological one. The Status Law was expected to serve as the means to balance the ‘historical debts’ of the Hungarians at home to the Hungarian minorities abroad. This feeling came from the perception of the Hungarian majority that they had been unable to solve the problems of the Hungarians abroad, and had left them in their ‘miserable’ circumstances for decades following the Trianon Treaty. Not only the nationalists but also the liberals shared this perception, as evidenced by comments like: ‘The Status Law is the redemption for the debts accumulated over eighty years, and it is definitely not the case that the law constitutes a legal recognition of the Trianon Treaty’.⁸⁰ Though the proposition that the Hungarians in the neighbouring countries had really suffered more than the Hungarians in Hungary is open to challenge,⁸¹ a real sense of indebtedness to the Hungarians abroad motivated the Hungarian lawmakers.

II. International Repercussions of the Law

The Status Law was legislation designed to achieve a new nation building across state borders through the issuance of Hungarian Certificates and the provision of benefits and services to Hungarians abroad. The Hungarian lawmakers insisted that they had drafted it with due regard to the need for legal and diplomatic harmony with international norms. In reality, however, the relationship with the EU and the neighbouring countries developed in the opposite way. The diplomatic frictions and conflicts explicitly emerged as early as in March 2001, when the first reading started in the Hungarian Parliament.

1. Neighbours: Against Great Hungarianism

The Romanian government was the first to raise criticism against the idea of the Status Law, having been deeply concerned about the law from the beginning, because Romania had the largest Hungarian community among the neighbouring countries. The president, Ion Iliescu, officially expressed his apprehension about the legislation on March 1, just before the first reading in the Hungarian Parliament. Then the Prime Minister of Slovakia, Mikulas

ties’ use of their mother tongues’.: Csaba Tabajdi, ‘Nyelvi jogok határainkon belül és kívül’ in *Kiút a csapdából? Nyelvi és nyelvhasználati jogok a Kárpát-medencében* (Budapest, 1998), p. 9.

80 See, for example, the statements of Mátyás Szűrös (Socialist), Gyula Molnár (Socialist), Sándor Lezsák (HDF) 9 May 2001, 206.ülésnap, 355. felszólalás: www.mkogy.hu.

81 See, for example as counter-evidence, the prosperous and democratic developments of the Hungarian community in inter-war Czechoslovakia, compared to the authoritarian ones in Hungary under the Horthy regime: Osamu Ieda, ‘Hanza és Hangya’ in F. Glatz, ed., *Szomszédok és szomszédaink között* (Budapest, 1993), pp. 343-354.

Dzurinda, expressed his concern about the law directly to the Hungarian Prime Minister, Viktor Orbán, in Budapest on 23 April, when bilateral talks were held between the two countries. At the same time, an explicit controversy started in Slovakia between Hungarian politicians and Slovak nationalists. For example, Béla Bugár, the president of the Hungarian Coalition Party, responding to Dzurinda's concern, stated on 25 April that the Hungarians in Slovakia had not opposed the Slovak Status Law, and the Slovak government should give more attention to their cultural policy for the Slovaks abroad, instead of criticising the Hungarian government for its measures. On 27 April in turn, the Slovak National Party, specifying the issue of educational benefits for children, criticised the law, and stated that the party would place a bill on the agenda of the Slovak Parliament for budgetary assistance (6,000 Koruna per head a year) to the children of the Hungarian minority if they were sent to Slovak schools. On the same day, the former Prime Minister, Vladimir Meciar, another popular nationalist and the leader of the largest political party in Slovakia, the Movement for Democratic Slovakia, condemned the law as an act of intervention into the domestic affairs of the Republic of Slovakia, stating that 'a foreign intention hides behind the law which would change the ethnic composition of the Slovak state'.⁸²

At the same time, the Romanian Prime Minister, Adrian Năstase, also censured the Status Law, once he had learned its concrete contents; in particular, he saw an element of ethnic discrimination in the law, in that it would provide benefits and services only to Hungarians, and he expressed his deep anxiety that serious ethnic problems might result from the practice of self-declaration of Hungarian nationality.⁸³ He also suggested to his Hungarian partner that they seek agreement between the two governments on the issues of concern, while the Romanian Minister of Justice called for prior consultation between governments before the conclusion of the legislation, specifically on the legal procedure for issuing the Hungarian Certificates. Năstase stated explicitly that no room existed for implementation of the law in Romania without consensus between the two governments.

The Romanian nationalist party, the National Liberal Party, expressed the most aggressive criticism. The leader of the party, Valeriu Stoica, said that the law hid ethnic ambitions so radical that they would provoke the kind of conflicts experienced in Yugoslavia.⁸⁴

82 Kántor, *A státustörvény*, pp. 585-587.

83 *Ibid.* Năstase also stated: 'Seven million people will wake up as Hungarians' if the simple method of Hungarian identification were to be implemented by the law. In reality, not seven million but twenty-two million awoke as 'Hungarians' after the compromise between the two countries, since the compromise made it possible for any Romanian to work for three months without conditions in Hungary: *Heti Világgazdaság*, 5 January 2002, p. 7.

84 Kántor, *A státustörvény*, p. 589.

On 11 June, the Romanian social democrats, the ruling party, condemned the Hungarian understanding of the law as compensation for the Trianon Treaty. Several days later, on 15 June, the Slovak nationalist party also criticised the law for revisionism, aiming to abrogate the Treaty and seeking to restore Fascism.⁸⁵ What prompted Romania and Slovakia unanimously to relate the law to Trianon was not only the law's reference to unifying the Hungarian nation as a whole, which did reactivate their historical trauma, but also the frequent references that Hungarian politicians made to the Treaty. The following statement is a good example of such comments; it was made by Zsolt Németh, the State Secretary for Foreign Affairs, in a plenary session of the Hungarian Parliament. Németh made this speech on behalf of his party, FIDESZ:

The basic question of our nation policy has been whether it is possible to achieve national integration across the borders. The Status Law is FIDESZ's answer to this question. At the same time, the draft law is also a partial answer to unsolved problems of the past. A long-term resolution of the fate of Hungarians beyond the border, of which the adoption of this law is one of the most important stages, will contribute significantly to healing our nation's 80-year trauma of Trianon, to finding a way out, and to extricating us from a situation long considered hopeless.⁸⁶

Acknowledgement of the existing borders was implicit in Hungarian politicians' statements about the unified Hungarian nation living beyond the borders, but it was natural for the neighbouring countries to suspect what the next step might be, or what the 'long-term solution' was, if the Status Law was only a stage on the way. This suspicion resulted in a mistrust of Hungary among the neighbouring countries.⁸⁷

Once the details of the draft and the debates in the Hungarian Parliament were known, Romanian and Slovak politicians raised more voices against the law. The Romanian president, Iliescu, summed it up simply: 'rough and ready'. The Slovak Prime Minister also pointed out that the Hungarian way was not appropriate, specifically because the Hungarian government had not held a consultation between the two governments as required by the basic

85 *Ibid.*, pp. 593-594.

86 Zsolt Németh's statement, 19 April 2001, 202. ülesnap, 28. felszólalás: www.mkogy.hu.

87 See, for example, the criticism by Romania: 'The comments, formulated on the occasion of consultations, were reiterated on the occasion of the meeting of the Romanian and Hungarian Ministers of Foreign Affairs on the 30th of May 2001 and in a letter forwarded by the Romanian Minister of Foreign Affairs to the Hungarian Minister of Foreign Affairs, on the 8th of June 2001. The Government of Romania takes note with regret of the fact that the Hungarian side has not transmitted any reaction to these demarches', *Declaration of the Romanian Government, 19.06.2001*.

treaty before presenting the draft to Parliament.⁸⁸ The Hungarian government, however, had no inclination to accept the Romanian or Slovak claims; instead, it mentioned Ukraine, Yugoslavia, Croatia, and Slovenia as ‘good’ examples to justify the law, since these countries had kept silent on the issue.⁸⁹ Some Hungarian nationalists even tried to counter-attack, referring to historical sources of antagonism: ‘They might, symbolically speaking, want to establish another Little Entente’.⁹⁰ On the other hand, however, some opposition politicians in Hungary were critical of the actions of the Orbán government, saying

just giving notice is not sufficient when one country proposes to do something in other countries. It is necessary to harmonise interests with those of the other countries. [...] According to the history books, notice is the way great powers treat small countries, and in turn, small countries have given the most consideration to harmonising their interests with others. In this respect, Hungary seems to be behaving as if she were a great power *vis-à-vis* the neighbouring countries. In brief, this cannot be the most appropriate way.⁹¹

The Orbán government did not take these external and internal criticisms into serious consideration.

2. European Society: EU Norms *Contra* ‘For the Sake of Peace’

The Hungarian government had no alternative but to compromise, when Western Europe raised a determined criticism against the legislation. The Commissioner for EU Enlargement, Günter Verheugen, notified the Hungarian government of his concerns about the law, stating that the law was ‘out of date’; it would have been in keeping with national minority protection measures of the early 1990s, but it was no longer in harmony with EU norms.⁹² In practical terms, he advised the Hungarian government to exclude Austria

88 The opposition parties often criticised the government for the absence of prior consultation with the neighbouring countries; for example, ‘Today we have spoken again and again about prior consultation with the neighbouring countries. We have to be very sensitive in adjusting ourselves to the world outside, because our country only became independent in the 1990s after the long interval in which we had no real state sovereignty since the age of King Mátyás. We ask the government to take the lessons so far into consideration and to enter into prior consultation with the neighbouring countries and the EU as soon as possible, so that no more problems arise’: Csaba Tabajdi, 9 May 2001, 206. ülésnap, 440. felszólalás: www.mkogy.hu.

89 Kántor, *A státustörvény*, p. 589, and *Heti Világgazdaság*, 4 August 2001, p. 7.

90 Statement of Zoltán Balczó, member of the Party of Justice and Life, 9 May 2001, 206. ülésnap, 412. felszólalás: www.mkogy.hu.

91 The statement of Tibor Szanyi, Socialist, 19 April 2001, 202. ülésnap, 422. felszólalás: www.mkogy.hu.

92 Kántor, *A státustörvény*, p. 591.

from the scope of the law. Austria was included in the initial draft of the law, and this advice seemed unacceptable for Hungary, because the other neighbouring countries, such as Slovakia and Romania, which expected to be EU members in the future, would follow Austria. Nevertheless, the Hungarian government accepted the EU advice at the end of May 2001, when discussions were in the last stage in the plenary session of the Parliament. The first priority of Hungary could not be other than EU membership. The Hungarian government formally offered a spurious rationale for the compromise: There was no economic logic to the provision of benefits and services to the Hungarians in Austria, because of their high standard of living. Another justification offered by the Hungarian government was the very high proportion – 90% – of the Hungarians in Austria who were emigrés. They were to be excluded from the scope of the law, since they did not qualify as those who ‘lost their Hungarian citizenship for reasons other than voluntary renunciation’ (Article 1, Paragraph [1], condition a). The introduction of the law into Austria would result in a division among the Austrian Hungarians.⁹³ Whatever the excuse, the Hungarian government had no other choice than to accept the EU advice. The government consulted on this issue with the Hungarian organisation in Austria, the Central Alliance of Hungarian Associations and Organisations in Austria (*Ausztriai Magyar Egyesületek és Szervezetek Központi Szövetsége*). Ernő Deák, the chairman of the Alliance, understanding the reasoning of the Hungarian government, expressed his deep regret at another division among the Hungarians abroad.⁹⁴ According to him, the Hungarian government was avoiding division among the Hungarians in Austria, but at the same time introducing a division between the Hungarians in Austria and those in the other neighbouring countries. In short, the Austrian Hungarians were excluded from the unified Hungarian nation and from Hungarian integration in the Carpathian Basin as well.

The EU gave advice to the Hungarian government not only on the scope of the law, but also on the scope of the benefits and services. Specifically, the EU required them to strike commercial organisations off the list of the organisations to be provided with benefits and services. The governmental draft of the law had included as Article 19, ‘Assistance to commercial organisations’. The first paragraph of the article prescribed that ‘the Republic of Hungary assists the establishment and activities of commercial organisations in the neighbouring countries in order to support the Hungarian communities abroad’.⁹⁵ The draft did not limit the activities of the organisations to cultural ones. Therefore, the organisations could carry on even ordinary com-

93 *Törvény a szomszédos országban élő magyarokról: érdekek és célok*: www.kum.hu.

94 Kántor, *A státustörvény*, pp. 592-593.

95 *Ibid.*, pp. 53-64, and www.mkogy.hu.

mercial activities which would help the Hungarians abroad. Brussels doubted the paragraph's EU conformity, since public assistance to commercial companies seemed clearly to infringe the rule of fair competition in the free market system. The EU intervention was, therefore, based on fundamental principles. The Hungarian government, however, was also very consistent in matters of principle throughout the preparation of the law and the controversy with the EU. The government draft, first, categorised organisations systematically into commercial and non-commercial ones; second, it devoted an article to each kind of organisation; and third, it insisted that the cases it addressed were exempt from the rules of fair competition. The lawmakers seemed to regard exemption as one of the rules of fair trade, and they did not suspect that their rules would clash with the EU's rules on fair competition. The statement of the Hungarian government on the EU advice reflected well their point of view:

It was repeatedly stipulated in the consultation with the EU that we should respect the rules of fair competition. However, on this issue there were misunderstandings and controversies, and we could have continued to debate about the legal principles; these involve, for example, how indispensable the assistance to local industries was to the aim of preserving the national minority, or how far the assistance infringed fair competition. I will not explain this in detail now. In any case, we have accepted, for the sake of peace,⁹⁶ the requirement to delete the article of the draft which clearly prescribed assistance to commercial companies.⁹⁷

The Hungarian government thus removed the article and the words 'commercial organisations' from the law in order to make 'peace' with the EU. Instead, however, the government inserted a couple of paragraphs into the final version of the draft, as follows:

- e. the enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve their ability to preserve their population and to develop rural tourism,
- f. the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary (Article 18, Paragraph 2)

As before, any organisation, even commercial ones engaged in any form of business, could apply for assistance 'to promote the goals of the Hungarian national communities living in neighbouring countries' (the first paragraph in

96 In Hungarian, *békesség kedvéért*.

97 Statement of Zsolt Németh, State Secretary of the Ministry of Foreign Affairs, at the press conference on 13 June 2001: www.kum.hu.

the article); according to the final version agricultural enterprises, local industries, construction companies, and so forth could qualify for assistance under the rubric of ‘preserving their population’ or ‘improving infrastructure’. In short, the Hungarian government implicitly but consciously preserved its original position; even commercial companies could be supported by the state budget in the interest of preserving the Hungarian communities abroad. Hungary did not give up its own version of fair trade. The EU, in turn, required the Hungarian lawmakers to put another phrase into the final provisions:⁹⁸

From the date of accession of the Republic of Hungary to the European Union, the provisions of this Act shall be applied in accordance with the treaty of accession of the Republic of Hungary *and with the law of the European Communities* (Article 27, Paragraph 2).

It is the phrase in italics that interests us. This phrase was newly inserted; it had not been in the initial draft. Though there is no clear evidence that the phrase was inserted specifically in order to prevent paragraphs (e) and (f) from being applied in the EU after Hungary’s accession, it is very likely that the phrase reflected the determination of the EU not to adopt the Hungarian principles. In any case, we need to acknowledge the Hungarian government’s tenacity in the face of the EU’s persistent criticism and its conviction that there could in fairness be exceptions from the general rules of competitive market discipline.⁹⁹

3. Unanimous Adoption of the Law by the Hungarian Parliament

The Hungarian government had no intention of making any further compromises after the adoption of the EU’s advice. Western European agencies continuously expressed their concerns and apprehension about the law and the diplomatic tensions it was causing in various forms; for example, the representative politicians of the major European organisations, such as the High Commissioner of Minority Office of the OSCE,¹⁰⁰ the Swedish Prime Minister in charge of chair of the EU Commission,¹⁰¹ and the Speaker of the Coun-

98 *Heti Világgazdaság*, 7 July 2001, p. 89.

99 On this issue, the nationalists and the liberals were of the same opinion. See the statement of Sándor Lezsák: ‘You may consider Dezső Szabó as too conservative. I shall cite from István Bibó, who is regarded as a liberal thinker. He [argued] in 1946 [...] “It is almost impossible to guarantee a normal life for the minorities without political efforts. The political efforts, however, should be carried out by no agency other than the kin-state, that is, by us”’. (9 May 2001), 206. ülésnap, 355. felszólalás: www.mkogy.hu.

100 Paul Nemes, ‘News from Hungary, The Status Law is born’, *Central European Review*, 16 June 2001: www.ce-review.org/01/23/hungarynews23.html.

101 ‘The Swedish Prime Minister’s Opinion on the Law Regarding the Status of Magyars Outside Hungary. / The Swedish Prime Minister will contact the Hungarian Government as soon as possible, to discuss the situation created by the passing of the Law regarding the status of

cil of Europe¹⁰² gave personal but critical comments on the law.¹⁰³ The Hungarian government, however, ignored them, and on 19 June 2001, the Hungarian Parliament accepted the draft with minor amendments¹⁰⁴ (except those advised by the EU) by a large majority. The largest opposition party, the Socialist Party, supported the law, apparently on the basis of a party decision, and only the Free Democrats opposed it. As a result, the law received 306 of a possible 331 votes (including eight blank votes).¹⁰⁵

Seeing the almost unanimous acceptance of the law in the Hungarian Parliament, the neighbouring countries intensified their criticism. The Presidents, the Prime Ministers, the Foreign Ministers, and the nationalist parties in Romania and Slovakia stated with one voice that the law was not acceptable due to its anti-European, anachronistic (and so on) features. Năstase, the Romanian Prime Minister, gave the most emphatic response to the law; he declared that Romania was ready to cancel all the bilateral treaties between the two countries with the exception only of the basic treaty,¹⁰⁶ and added that Romania was not a colony to solve the labour shortage in Hungary.¹⁰⁷ This time not only the two countries with the largest Hungarian population, but also Yugoslavia, with the third largest number of Hungarian residents, woke up to criticise after the long silence. On 22 June her Minister of Foreign Affairs released a statement which officially criticised the Hungarian government on the grounds that the Status Law violated the Constitution of Yugoslavia, which prohibited discrimination, and that the certificates of nationality were seriously problematic because not the Yugoslav govern-

Magyars outside Hungary. According to the Romanian Radio Broadcasting Corporation, Mr. Goran Persson said the neighbouring countries should co-operate and take decisions by consensus when such delicate issues were concerned.’: www.ici.ro/romania/news/arheng2001/e_iun26.html.

102 ‘Lord Russel Johnston Disapproves the Law Regarding the Status of Magyars Outside Hungary / The Chairman of the Parliamentary Assembly of the Council of Europe disapproves the Law regarding the status of Magyars outside Hungary recently passed by the Parliament in Budapest. In Lord Russel Johnston’s opinion, expressed at a press conference in Strasbourg and quoted by the public TV station Romania 1, the law could not improve the situation of the ethnic Hungarian minorities abroad, and had only a “cosmetic” purpose’: www.ici.ro/romania/news/arheng2001/e_iun26.html.

103 Kántor, *A státustörvény*, pp. 591-598.

104 For example, the Socialist amendment relating to the grant of work permits for a longer period in exceptional cases.

105 The eight blank votes were cast by four Socialists and four Free Democrats (19 June 2001), 217. ülésnap: www.mkogy.hu.

106 The official statement of the Romanian government on 19 June did not include criticism as radical as Năstase’s, but emphasised that the Hungarian government had never responded to the repeated proposals of the Romanian government for consultation: *Declaration of the Romanian Government, 19.06.2001*.

107 A response to the Hungarian Prime Minister’s statement on ‘fourteen million potential workers’; see footnote 69.

ment but the Hungarian one would issue such documents to Yugoslav citizens. Two days later, on 24 June, Ukraine followed Yugoslavia; extreme nationalists started to raise their critical voices.¹⁰⁸

In spite of these negative repercussions, it was only after the Venice conclusion and the EU regular report to Hungary at the end of October and early November 2001, that Hungary finally suggested a change in her standpoint.¹⁰⁹ Up to then, the Hungarian government had very likely been confident of surviving criticism from the neighbouring countries and even from Western Europe. What made the Hungarian government so sure? There are three possible reasons. The first was the West European stance on minority questions. NATO and the EU, and other European institutions also, were putting more and more emphasis on respect for minority rights as one of the conditions for membership. The Hungarian government regarded the Status Law as a European-style measure of minority protection, in the mainstream of developments, certainly not against it. Therefore, the government had expected that the criticism would have passed away sooner or later, and there would be no problem as long as Hungary could normalise relations with the neighbouring countries. The Hungarian government also believed it would be able to persuade the neighbouring countries to accept the law. This belief related the second reason for its original optimism: The Orbán government and even the Socialist Party overestimated their power to negotiate with the neighbouring countries, seeing themselves as playing a privileged role among the East European countries in the process of European integration. NATO membership was the priority diplomatic objective for Romania and Slovakia at that time, and the Hungarian government thought it might have some influence on their accession to the NATO, since Hungary was already a member.¹¹⁰ Though any Hungarian influence could only be psychological, Romania was sensitive to it. For instance, the Romanian Minister of Defence, as early as 26 June 2001, explicitly stated on this issue that the controversy over the Status Law would have no serious influence on Romania's membership of NATO.¹¹¹ The Minister of Foreign Affairs of the country, when he visited Slovakia in March 2002, again referred to the issue, criticising the fact that

108 Kántor, *A státustörvény*, pp. 597-598.

109 *Commission of the European Communities 2001 Regular Report on Hungary's progress towards accession*, Brussels, 13.11.2001 SEC (2001) 1748, p. 91.

110 *Heti Világgazdaság*, 4 August 2001, p. 7. Ministry of Foreign Affairs of the Slovak Republic: Euro Atlantic Security Department Meeting of Slovak-Hungarian bilateral commission in Slovakia, 25-26 July 2002: www.foreign.gov.sk/En/index.html. See also the critique by a Hungarian specialist on diplomatic policy: 'It was a failure of Hungarian diplomacy that the Hungarian government could not finish its negotiations on the Status Law with Romania and Slovakia in time for the NATO summit in Prague': *Heti Világgazdaság*, 7 December 2002, p. 7.

111 Kántor, *A státustörvény*, p. 599.

some Hungarian politicians had said that Hungary would approve Slovak's membership of the NATO on condition of her acceptance of the Status Law.¹¹² Moreover, the Hungarian Socialist Party pressed the Romanian Social Democrats to make the nationalists within their party remain silent and to support the law; otherwise the Hungarian party would not support the bilateral agreement between the two parties and Romanian membership of the Socialist International.¹¹³ The Romanian government at that time was a minority one supported by only the Social Democrats, and it needed the support of the Democratic Alliance of Hungarians in Romania for the majority in the parliament.¹¹⁴ Taking these factors and others into consideration, the Romanian government decided at last to accept the implementation of the law in Romania when the compromise was possible with its Hungarian counterpart at the end of 2001. The hard criticism by the Prime Minister, Năstase, might have been tactical manoeuvring to pave the way for a compromise with hard-line Romanian nationalists in domestic politics and the possible acceptance of the law in the future.

The third reason was the status law syndrome in Eastern Europe. Many countries in the region established their status laws in the 1990s, including Slovakia and Romania. The Hungarian one was in the mainstream of this syndrome. In fact, the Hungarian lawmakers often referred the precedents for the legislation in parliamentary sessions; for example:

So far various laws have been enacted to protect the kin minorities. [...F]or example, among the neighbouring countries, Poland,¹¹⁵ Slovakia, Romania, Slovenia, and Croatia have established status laws.

112 www.foreign.gov.sk/En/files/file553.shtml.

113 *Heti Világgazdaság*, 23 June 2001, pp. 7-8. The Romanian National Liberal Party made this point in criticising the Romanian Social Democratic Party for its weak stance on the Status Law (20 June 2001): Kántor, *A státustörvény*, p. 596.

114 On the close relationship between the Romanian Social Democrats and the Hungarian Democratic Alliance, see *Heti Világgazdaság*, 16 February 2002, pp. 17-18. The distribution of seats in the Romanian Parliament after the 2000 elections was:

	Senate (140 seats)		Chamber of Deputies (344 seats)	
	number	percent	number	percent
Social Democrats	70	(50%)	164	(47.67%)
Great Romanian	36	(25.71%)	76	(22.09%)
National Liberals	13	(9.29%)	29	(8.43%)
Hungarian Democrats	12	(8.57%)	27	(7.85%)
Democrats	9	(6.43%)	29	(8.43%)
Minorities	-	-	17	(4.94%)
Independents	-	-	2	(0.58%)

Source: www.mofa.go.jp/mofaj/area/romania/kankei.html.

115 The statement was not entirely correct because Poland was only preparing its status law at that time.

Therefore, our status law would be an organic part of European and Central European legislation.¹¹⁶

Zsolt Németh, the State Secretary for Foreign Affairs, also defended the law against the Slovak criticism:

The Slovak status law was the birth parent of the Hungarian one, greatly stimulating the Hungarian lawmakers. [...] I am convinced [that we will achieve] mutual and better understanding, instead of criticising each other.¹¹⁷

Thus the Hungarian government, referring to legislation already established abroad in the preparation of the their own law,¹¹⁸ did not expect any serious friction with the neighbouring countries at all. Rather, they assumed that the law would be easily accepted, as long as the neighbouring countries, which shared the same kind of minority issues, understood the non-revisionist intention of the Hungarian lawmakers, that is, that the legislation concealed no territorial ambition.¹¹⁹ Moreover, the Hungarian lawmakers expected the law to promote better understanding among the countries on the question of national minorities. The status law syndrome, according to the Hungarian government, would work positively to ease acceptance of the law by the neighbouring countries.

III. The Venice Commission Report

The Romanian government appealed to the European Commission for Democracy through Law of the Council of Europe, also known as the Venice Commission, on 21 June 2001, just after the acceptance of the law by the Hungarian Parliament. The Commission was established to be the international centre for constitutional advice to the post-communist countries,¹²⁰ and

116 The statement of Árpád Potápi, 19 April 2001, 202. ülésnap, 1-30. felszólalás: www.mkogy.gov.hu.

117 The statement at the joint press conference of the Hungarian and Slovak State Secretaries of the Ministries of Foreign Affairs on 23 January 2002: www.kum.hu.

118 'The idea of assistance to the kin minorities is not unique to the Hungarian Status Law. In our region, for example, Slovakia, Croatia, and Romania give special support to their kin minorities': Kántor, 'A státustörvény' and *idem*, 'A magyar nemzetpolitika és a státustörvény' in Kántor, *A státustörvény*, p. 291.

119 See, for example, the statement of Vilmos Szabó, Socialist, 'I am convinced that we can solve the misunderstandings of the neighbouring countries which are expressing their profound anxiety about the Status Law, since, as was also pointed out today, Slovakia and Romania established their status laws in 1997 and 1998 respectively. Besides, other countries like Ukraine and Poland also put the same kind of law on the parliamentary agenda. So I cannot understand why the Hungarian government has lost the initiative. We sincerely ask the government to recognise the causes of the failure, to change its approach, and to answer the claims, questions, concerns, and suspicions without any reservations'. (9 May 2001), 206. ülésnap, 410. felszólalás: www.mkogy.gov.hu.

120 'The commission was established just after the fall of the Berlin Wall, in 1990, and has played a leading role in the adoption, in eastern Europe, of constitutions that conform to the

the Romanian government expected the Commission to judge the Hungarian law incompatible with European norms.¹²¹ Contesting the Romanian appeal, on 2 July, the Hungarian government called on the Commission to investigate the conformity of all status laws, including not only the Hungarian one, but also others, since the Hungarian government had established its law with reference to them and regarded it as unfair that the Commission should make a judgement only on the Hungarian Status Law.¹²² In the following, we will examine first the contents of the Romanian appeal from the viewpoint of the definition of ‘nation’, and then the Commission’s conclusions.¹²³

1. The Romanian Appeal: ‘Ethnic Nation Competes with Civic Nation’

The Romanian government asked the Commission to give a judgement on whether the Hungarian Status Law was acceptable according to international standards on discrimination in favour of national minorities. Romania’s Minister of Foreign Affairs stated their standpoint:¹²⁴

We have always held that what is good for Europe is good for Romania. We have embraced European values: the rule of Law, democracy and social solidarity; respect for fundamental human rights and freedoms, including first and foremost equal rights and non-discrimination. [...]

The sovereign State is the basis of the European and international system. Nowadays, modern European States are founded on the co-

standards of Europe’s constitutional heritage. Initially conceived as a tool for emergency constitutional engineering at a time of revolutionary change, it has seen its activities evolve as the early upheavals gave way to a more gradual process of change. Constitutional engineering remains essential to keep machinery in working order that would otherwise tend to seize up. The Commission therefore keeps a close watch on the changes that constantly affect society and are reflected in its fundamental, that is its constitutional, rules. [...] In general terms the Commission’s work falls into three categories: specific issues relating to constitutional assistance to particular countries, general topics, to which a comparative approach is adopted, and the centre on constitutional justice’: www.venice.coe.int/site/interface/english.htm.

121 Romania seemed to be trying to involve Slovakia and to make the Council of Europe to conduct a report against the Hungarian Status Law, but in vain: Kántor, *A státustörvény*, p. 599.

122 The Hungarian government examined more examples of status laws very carefully, including the Spanish, Portuguese, Finish, Irish, and Israeli; see the statement of Sándor Lezsák on 9 May 2001, 206. ülésnap, 355. felszólalás: www.mkogy.hu.

123 The official opinion of the Slovak government on the Hungarian Status Law was offered after the Venice Report: ‘Reservations of the Slovak Republic concerning provisions of the Act on Hungarians Living in Neighbouring Countries’: www.gov.sk/En/files/file581.shtml.

124 The appeal of the Romanian government was not available. This passage from the statement of the Romanian Minister of Foreign Affairs to the Venice Commission is supposed to be almost identical with the appeal to the Commission: www.domino.kappa.ro/mae/presa.nsf/ArhivaEng/213755868EB51264C2256AEB00500FA0?OpenDocument.

hesion between various ethnic groups living within their borders, a cohesion based on citizenship, which gives rise to rights guaranteed by the State and the concept of loyalty to the State. And there are other important elements linking ethnic groups within a State, such as: their common history, their attachment to their geographical space, their common endeavour for social justice in their State. [...]

Romania shares a common European destiny with Hungary and all our neighbours. What is of fundamental value in building the Europe of the future? We hold that it is the concept of a civic nation; not one that is defined according to ethnic criteria but one which builds upon its ethnic components, viewing its national minorities as an asset. Citizenship is the overarching identity which includes not only ethnicity but also other elements defining the individual. The architects of today's and the future Europe are sovereign States which embrace the concept of the civic nation.

[...] According to European standards, national minorities are an integral part of their State. Belonging to a national minority should not be the source of segregation between minority and majority. [...]

Declaring their definition of 'the modern European states of citizens', the Romanian government condemned the Hungarian law for denying the European ideal of 'nation state based on citizenship' and for its preference for 'ethnic criteria'. The Romanian government further criticised the details of the law:

- a) 'The Hungarian law runs counter to current European standards for one State to attempt, by issuing a "certificate of nationality" to citizens of another State on ethnic grounds, to substitute the home-state's responsibility towards its own citizens', and 'these certificates would contain more personal data than a passport which would be recorded in a register in Hungary. [...W]ith no legal accountability to those individuals as to the use of such data, [...] these certificates are tantamount to national identity cards'.
- b) 'According to current standards, ethnic origin should not be mentioned in an identity document and should not become a source of discrimination'.
- c) 'Positive discrimination is only acceptable where equal opportunity does not yet exist and then only in the field of cultural and educational rights'.
- d) 'Positive discrimination in the social and economic field, whether by the State of citizenship or by the kin state, is absolutely irrelevant for the protection of the identity of the persons belonging to national minorities. This is established in well-known European legal instru-

ments, as the Framework Convention for the Protection of National Minorities and the European Social Charter’.

e) ‘Non-governmental organisations in the neighbouring countries would be invested by the Hungarian Government with the quasi-official function of certifying the ethnic origin of citizens in those countries’. This ‘mechanism as envisaged in the Hungarian Law would have extraterritorial effects’.

Specifying the criticism of the law, the minister’s statement concluded with a comparison between the Hungarian law and the Romanian standpoint:

The ‘ethnic nation’ would be competing with the civic nation. [...] National minorities should be considered a liaison between the State of citizenship and the kin state, not a source of divisiveness; a bridge, not a chasm. They should work together with their own State in promoting good bilateral relations with the kin state. The ‘natural’ way to solve any problems concerning national minorities is in our view through cooperation between the State of citizenship and the kin state, through bilateral treaties, prior information exchange and consultations on any measure to be taken by the kin state. Bilateral cooperation has the advantage of allowing the States concerned to take steps to protect national minorities which are mutually acceptable.

The five specific issues raised by the Romanian government were all accepted by the Venice Commission Report. However, the Romanian definition of nation and citizen is worth examining. The Romanian government, indeed, insisted again and again on citizenship not based on ethnic criteria, and emphasised that this was the form of citizenship that was compatible with the *status quo* in Europe. Nevertheless, their substantial definitions of citizenship were ‘loyalty to the state’, ‘common history’, ‘attachment to their geographical space’, and ‘the common endeavour for social justice in the state’, in brief, ‘citizenship is the overarching identity’. The Romanian government, that is, put the accent on the comprehensive character of citizenship. But the European ideal of citizenship was a political one without consideration for origins, social norms, and cultural backgrounds, or it was a form of economic behaviour in accordance with formal rationality. By contrast, the Romanian definition of citizenship included ethnicity and national minorities, invoking them in positive phrases like ‘on the cohesion between various ethnic groups’, ‘upon its ethnic components’, ‘asset’, or ‘a liaison’ and ‘a bridge between the state of citizenship and the kin state’. Therefore, in spite of the seeming contradiction in the Romanian statement – ‘the “ethnic nation” would be competing with the civic nation’ – the Romanian understanding of citizenship and nation was not far from the Hungarian one, since the latter, also based on the comprehensive definition of a nation, aimed at better understanding by solving the minority questions through the status laws which

would provide institutional connections between the kin-states and the kin minorities. Though the means of building the bridges could differ between the two countries, they shared a basic understanding of 'nation'. By the same token, there was considerable distance between the Romanian understanding and the Western European definition of a political nation-state or a civic nation.

2. Report No. 19/2001 on Preferential Treatment of National Minorities by Their Kin-State

The Venice Commission examined the cases, and on 19 October 2001 presented the two governments with its report on 'preferential treatment of national minorities by their kin-State'.¹²⁵ Practically regarded as Europe's judgement on the Hungarian Status Law, the report had the formal status of setting the general standards that were to be observed when any country developed a policy for preferential treatment of kin minorities abroad. According to the report, 'the adoption by kin-States of such unilateral measures is legitimate' as a rule. However, that legitimacy was not unconditional. The Commission raised four principles: 'a) the territorial sovereignty of States, b) *pacta sunt servanda* or respect of agreements in force, c) friendly relations amongst States and d) human rights and fundamental freedoms, in particular, the prohibition of discrimination'.

a) The territorial sovereignty of States. 'The mere adoption of legislation with extraterritorial effects, per se, can be seen as an interference with the internal affairs of the other State'. Therefore, providing benefits to the kin minorities abroad is acceptable only when the following conditions are fulfilled:

- 1) Domestic effect of the law: 'a State can legitimately issue laws or regulations concerning foreign citizens without seeking the prior consent of the relevant States of citizenship, as long as the effects of these laws or regulations are to take place within its borders only'.
- 2) Prior consent of the home-state: 'when the law specifically aims at deploying its effects on foreign citizens in a foreign country, its legitimacy is not so straightforward', and 'the consent of the home-states affected by the kin-State's measures should be explicit'.
- 3) Independence from national backgrounds: 'in certain fields such as education and culture, ... the consent of the home-state can be presumed and kin-States may take unilateral administrative or legislative measures'. But 'it is a common practice for States to pro-

125 The whole document is available at www.venice.coe.int/site/interface/english.htm, and is reprinted in this volume. The specialists in charge of the report were Messrs Franz Matscher, François Luchaire, Giorgio Malinverni, and Pieter Van Dijk.

mote the study of their language and culture also through incentives to be granted to foreign students, independently of their national background’.

4) No exercise of power abroad: ‘a State cannot exercise its powers, in any form, on the territory of other States. [...] The grant by a State of administrative, quasi-official functions to non-governmental associations registered in another country constitutes an indirect form of state power: as such, it is not permissible unless specifically allowed’.

b) *Pacta sunt servanda* or respect of agreements in force. ‘Treaties must be respected and performed in good faith. When a State is party to bilateral treaties concerning, or containing provisions, on minority protection, it must fulfil all the obligations contained therein’.¹²⁶

c) Friendly relations amongst states. In general, ‘States should abstain from taking unilateral measures, which would risk compromising the climate of co-operation with other States. [...] The issuing by the kin-State of a document proves that its holder belongs to the kin minority, it is highly likely that the holders of these documents will use them as identity cards at least on the territory of the kin-State. In such form, this document therefore creates a political bond between these foreigners and their kin-State. Such a bond has been an understandable cause of concern for the home-states, which, in the Commission’s opinion, should have been consulted prior to the adoption of any measure aimed at creating the documents in question’.

d) Human rights and fundamental freedoms, in particular the prohibition of discrimination. ‘The legislation aiming at conferring a preferential treatment to certain individuals, i.e. foreign citizens with a specific national background creates a difference in treatment which could constitute discrimination – based on essentially ethnic reasons – and be in breach of the principle of non-discrimination’. Therefore, the benefits to the kin minorities are providable only when the following conditions are fulfilled:

1) Social discrimination: the minority ‘is given a less favourable treatment on the basis of their not belonging to a specific ethnic group’.

126 The basic treaty between Hungary and Slovakia is available in English at www.riga.lv/minelres/count/hungary.htm. The followings are also useful: Minelres Project (directory of resources on minority human rights and related problems of the transition period in Eastern and Central Europe) www.riga.lv/minelres/; Consortium of Minority Resources (COMIR): www.lgi.osi.hu/comir.

- 2) Field: ‘preferential treatment might be granted only education and culture’ and ‘the preferences accorded must be genuinely linked with the culture of the State’.
- 3) Proportionality: ‘the preferences accorded must be proportionate’. ‘In the Commission’s view, for instance, the justification of a grant of educational benefits on the basis of purely ethnic criteria, independent of the nature of the studies pursued by the individual in question, would not be straightforward’.
- 4) Restrictive exceptionality: In the fields other than education and culture, preferential treatment might be granted in very exceptional cases, only ‘when it is shown to pursue the genuine aim of maintaining the links with the kin-States and to be proportionate to that aim’.

While approving the preferential treatments by kin-states of the kin minorities as a rule, The Venice Commission was in the end very critical of the Hungarian Status Law, since the concrete issues raised in its report were almost identical to those raised in the Romanian objections: extraterritorial effects, unilateral action, the procedure for issuing Hungarian Certificates, and the areas in which benefits and services were offered. According to the report, a kin-state could provide preferential treatment unilaterally only within its own borders, and ‘deploy[ment of] its effects on foreign citizens in a foreign country’ was firmly restricted in the absence of prior consent by the home-state. Needless to say, this tough restriction was understandable in the light of historical events. In this context, the significance of the report may lie in its clarifying the conditions – however limited – under which a kin-state could provide unilateral preferential treatments to the kin minorities without the consent of the home-state. Be that as it may, the Commission report judged that the Hungarian Status Law, in extending nation policy over the state borders, overstepped the conventional limits of respect for the sovereignty and responsibility of the home-state.

At the same time, the Commission report comprised another landmark statement, in that it recognised the question of kin minorities as an issue to be solved. So far the issue had been almost neglected. The report stated:

The more recent tendency of kin-States to enact domestic legislation or regulations conferring special rights to their kin minorities had not, until very recently, attracted particular attention, nor aroused much, if any at all, interest in the international community. No supervision or co-ordination of the laws and regulations in question has so far been sought or attempted. Yet, the campaign surrounding the adoption of the Hungarian Act on Hungarians living in neighbouring countries shows the impellent necessity of addressing the question of the com-

patibility of such laws and regulations with international law and with the European standards on minority protection.

The Commission, in practice as well, examined the eight cases of similar legislation in order to make its judgement on the Hungarian law; these included the Law on the Equation of the South-Tyrolean with Austrian Citizens in Particular Administrative Fields (25 January 1979), the Resolution of the Slovenian Parliament on the Status and Situation of the Slovenian Minorities Living in Neighbouring Countries and the Duties of the Slovenian State and Other Bodies in This Respect (27 June 1996), the Act on Expatriate Slovaks and Changing and Complementing Some Laws (No. 70, 14 February 1997), Public Order of 15-29 April 1998 on the Conditions, Duration and Procedure for the delivery of a Special Identity Card to Albanian citizens of Greek Origin, the Law Regarding the Support Granted to the Romanian Communities from All Over the World (15 July 1998), the Federal Law on the State policy of the Russian Federation in Respect of the Compatriots Abroad (March 1999),¹²⁷ the Law for the Bulgarians Living outside the Republic of Bulgaria (11 April 2000), the Law on the Measures in Favour of the Italian Minority in Slovenia and Croatia (No. 73, 21 March 2001). It is noteworthy that every one but the Austrian one concerned kin minorities living in the post-communist countries, and especially in Eastern Europe. Moreover, these laws were all established in the second half of the 1990s. The Hungarian law followed them. Poland was also seriously discussing the same kind of legislation at about the same time.¹²⁸ The Venice Commission finally granted ‘citizenship’ to the kin minority question, though the question *per se* has been a serious issue for decades all over the region. In brief, the significance of the Venice Commission Report lay in its officially highlighting the issue, the status law syndrome, as an international question, regardless of how the countries concerned accepted the Report.

IV. The Fate of the Law

1. Against the Venice Commission Report

The Venice Commission Report had a conclusion which seemed a mere summary of the report. But it was very likely intended as advice to the Hungarian government, since, for one thing, the principles were rewritten in

127 One of the earliest and most interesting comments on the law was made by the Jewish group in the former Soviet Union ‘Content and comment on the Venice Commission’s view on “kin-state’s protection of minorities”’, *Bigotry Monitor: A Weekly Human Rights Newsletter on Antisemitism, Xenophobia, and Religious Persecution in the Former Communist World and Western Europe*, 1:18 (9 November 2001): www.fsumonitor.com/stories/bigotrymonitor.htm.

128 See the report on the one and a half million members of Polish kin minorities in the CIS, *Heti Világgazdaság*, 23 June 2001, p. 10.

accordance with the Hungarian case, and, for another, a new regulation, that is, clear criteria for eligibility for benefits, was introduced. The vagueness of the criteria for eligibility was, as we have seen, another deficiency in the Hungarian law.

The Hungarian government initially, ignoring the stipulations and the conclusion of the Commission, focused their attention on the fact that the Commission report accepted preferential treatment as a general principle. The Commission, according to the statement of the Hungarian Standing Conference, ‘proves the basic notion of the Act according to which Hungary provides assistance to Hungarians living in neighbouring countries’, and it required no amendment of the law. Moreover, the statement declared: ‘the Commission's Report confirms that the Act, building on European values, is in conformity with European thought and practice, as well as the general principles of international law’.¹²⁹ The statement sounded like a victory for Hungary, though there was one reservation in it: ‘Executive orders should be in accordance with the conclusions of the Report and, at the same time, some of the Commission’s observations may contribute to the implementation in practice of technical questions’. Thus the Hungarian government mentioned only ‘technical questions’ initially. However, the government soon changed its interpretation of ‘technical questions’ substantially. That is Hungary finally accepted the advice of the Commission *de facto*. It is very likely that the government had no other choice than acceptance, when considering the final process of the negotiation with the EU for accession, since this was happening just at the point when the EU’s regular annual reports of the year were being completed. They were released to the public on 13 November, 2001. Consequently, the official statement of the Hungarian government on 5 November, while still including the triumphalist wording, explained reluctantly the *de facto* amendment of the law relating to the issue of the ‘technical questions’, as follows:

It is not surprising that misunderstanding and wrong information are given on the report, since it concerns a problem which has never existed and relates to complicated legal norms. [...] It is understandable that Romania interprets the conclusions of the specialist commission according to her own interests. [...] The report represents a victory, but it is neither a Hungarian nor a Romanian victory, but a victory for the minorities in Europe. [...] The basic idea of the Status Law was criticised once for being out of date. But this is not the case.

129 Final Statement of the Fourth Session of the Hungarian Standing Conference, Budapest, 26 October 2001, reprinted in this volume (Hungarian text at : www.htmh.hu/archivum/maert4.htm).

The Venice Report shows that our concept can be woven into the discussions relating to the future of Europe ...

The Venice Report justifies the two principles which we have made efforts to realise for years; one is national unification, that is, the understanding that the Hungarians abroad are part of the Hungarian nation. The other is the interpretation of state sovereignty, and our view was adopted, according to which assistance given by a kin-state to the kin minority abroad does not violate the sovereignty of the home-state.

On the other hand, as far as the practical implementation of the law is concerned, [...] the Hungarian Certificate certifies not ethnicity, but eligibility for the benefits and services.¹³⁰ The Hungarian Standing Conference revised the unclear prescriptions of the law on the conditions and the procedures relating the Hungarian Certificate. [...] It is the Hungarian consulates that deal with certifying the recommendations, and the recommending organisations provide only information necessary for the certification.¹³¹

As the statement said, the most essential concept of the nation policy for the FIDESZ government was 'national unification' and 'assistance given by a kin-state to the kin minority abroad'. Indeed, it was most essential to the basic idea of the Hungarian Status Law that the kin-state could take the responsibility to care for the Hungarians abroad as if they were semi-citizens of the kin-state. The Hungarian law, therefore, intentionally aimed to reduce the absoluteness of state sovereignty. From the viewpoint of post-communist Eastern European new nation building, the focus of the issue was whether the kin-state could create a quasi-state-citizen relationship alongside (or against) the conventional state-citizen relationship between the kin minority and the kin-state. The Hungarian law wanted to answer to the question by, first, issuing the Hungarian Certificates to the Hungarians abroad, second, involving their organisations in kin-state administration, third, supporting their cultural, educational, and even commercial activities, fourth, making an official commitment to the reproduction of Hungarian communities abroad, fifth, making Europe recognise the kin-state's official commitment to its kin minorities, and sixth and last, sharing this form of new nation building with the other nations in Eastern Europe.¹³² This was the ambitious project of the FIDESZ gov-

130 The Venice Commission Report says: 'In order to be used solely as a tool of administrative simplification, the Commission considers that the document should be a mere proof of entitlement to the services provided for under a specified law or regulation. It should not aim at establishing a political bond between its holder and the kin-state and should not substitute for an identity document issued by the authorities of the home-state'.

131 *Népszabadság*, 5 November 2001.

132 Zsolt Németh, 'Status law, nation policy, neighbourhood policy: a Hungarian perspective',

ernment, or, in their own terms, ‘the two principles which we have made efforts to realise for years’. Though the statement of the Hungarian government insisted ‘the Venice Report justifies the two principles’, the Venice Commission clearly gave a negative judgement on both of them.

2. Failure of the Nation Policy of the FIDESZ Government

The post-communist Hungarian governments and the Hungarian nation had supposed that national unification would be possible beyond the nation-state system and across the state borders in the context of ongoing European integration, especially under the terms of EU integration.¹³³ This expectation was also one of the reasons why Hungary continued to stand firm against criticism from the neighbouring countries and Western Europe. However, in the end the FIDESZ government was faced with the reality, and had to recognise the distance between the anticipated new European integration and the existing one, when the Venice Commission gave its report and the EU advised Hungary to accept the report without reservation.¹³⁴

In the eyes of the Hungarians, European integration seemed to be a process in which state sovereignty was being gradually restricted, and, indeed, the

Foreign Policy Review 1:10 (2002), pp. 8-21. János Hargitai, FIDESZ, referring to the Austrian *Schutzmacht*, insisted on a guardian power, *védőhatalom* or *oltalmazó hatalom*: ‘Considering the criticism directed at the Hungarian Status Law on the grounds of ethnic discrimination, we reply that the neighbouring countries have given their kin minorities a sort of protection as their kin-states, and we have recognised it as natural that the kin-states, as the guardian powers, provide those Hungarian citizens who identify themselves as Croatian, Romanian, or Slovak with some protection’. (9 May 2001), 206. ülésnap, 396. felszólalás: www.mkogy.hu. Zoltán Kántor’s suggestion is also worthy of notice for understanding the Hungarian perception of the importance of a *new solution of the kin minorities problem in the region*: ‘The nations, whether they are minority or majority, in the region are now involved in nation building processes. However, no basic solutions have been offered for how to treat the issue of kin minorities. The critical question is whether Hungary gives up the idea of assistance for the kin minorities or persists in the face of conflicts’: Kántor, ‘A státustörvény’.

133 Osamu Ieda, ‘Hungary and EU accession from a viewpoint of social integration’ in Tadayuki Hayashi, ed., *Changes of Regional Relations in Central-Eastern Europe* (in Japanese) (Sapporo, 1998), pp. 79-99.

134 ‘[T]he law was adopted by Parliament [...] without due consultation. [...] Some of the provisions laid down in this law apparently conflict with the prevailing European standard of minority protection, as determined in a report adopted on 19 October 2001 by the Council of Europe’s Commission for Democracy through Law (Venice Commission)’: *Commission of the European Communities 2001 Regular Report on Hungary’s progress towards accession*, Brussels, 13.11.2001 SEC (2001) 1748, p. 91. In the following year, too, the EU report pointed out that the problem remained unsolved: *Commission of the European Communities 2002 Regular Report on Hungary’s progress towards accession*, Brussels, 9.10.2002 SEC (2002) 1404. The Council of Europe sent a Commissioner, Erik Jürgens, to Budapest in March 2002 to examine the case, and criticised the Hungarian government for provoking the neighbouring countries and their nationalism: *Népszabadság*, 13 March 2002.

barriers of state borders were becoming less and less significant. However, firstly, limitations on state sovereignty, where they were possible at all, were realised through collective agreements by the states. It was not possible simply to bypass state sovereignty and still less to abolish state borders by unilateral legislation like the Hungarian Status Law. Secondly, the existing EU integration was achieved not by destroying states or their sovereignty, but by the collective and harmonious exercise of state sovereignty on the basis of mutual respect between states. The free circulation of goods, capital, services, and persons did not necessarily or not automatically mean the disappearance of their state affiliations. This was especially true of persons, since their attachment to particular states was the basis of state sovereignty. For example, fundamental human rights and obligations, such as citizenship, political rights, social rights, and the duty of military service were transferable over the state borders to only a very limited extent, if at all.¹³⁵ And it was none other than this affiliation of individual persons to particular states – the most sensitive aspect of state sovereignty – that the Hungarian Status Law and the Hungarian new nation building aimed to change. The law, in effect, wanted to transfer responsibility for the concerns of Hungarians abroad from the home-state to the kin-state as part of its ‘domestic politics’.¹³⁶ Specifically, personal data, civic organisations, teachers, educational institutions, and so on were, according to the law, to become part of the home affairs of the kin-state. These transfers effectively challenged the sovereignty of the home-states. Here the Status Law clashed with the doctrine of the conventional Western European view of the state system, which was still the basis of EU integration.

Hungary had, in practice, already provided the Hungarians in the neighbouring countries preferentially with goods, money, and services through ‘private’ foundations in the 1990s. Even under communist rule, a cultural foundation was established for assistance to the Hungarians abroad.¹³⁷ Surveys of legislation carried out before the introduction of the Status Law concluded that under occasional measures already introduced Hungarians in the neighbouring countries already enjoyed significant preferential treat-

135 Recently, some public rights, though limited, have been granted to permanent residents without citizenship in some countries. In the future we may talk about forms of citizenship across state borders, such as EU citizenship. The issue of the Hungarian Status Law and the status law syndrome could be meaningful in this context, when ideas of state sovereignty have become sufficiently flexible to allow for the new nation building.

136 Kis, ‘Státustörvény’, p. 395.

137 For example, the Gábor Bethlen Foundation: see Osamu Ieda, ‘A history of post-communist political reforms in Hungary (3)’, (in Japanese) *Mirai* 284 (1990), pp. 28-31, here p. 28.

ment.¹³⁸ The scope of their benefits and services covered a wide range of commercial and non-commercial activities; for instance, scholarship holders numbered as many as 22,994 in 2001, coming from the six neighbouring countries.¹³⁹ As long as the benefits remained private, there was no clash with sovereignty of the home-states or EU norms. The Orbán government, however, aiming to complete its new nation building, introduced governmental measures of integration which restricted benefits and services to the Hungarian communities, instead of private provision on the basis of formally open competition.¹⁴⁰ The governmental and closed way resulted in friction with the neighbouring countries and Western European norms.

‘Revision of the unclear prescriptions in the law’ in the 5 November statement of the Hungarian government, namely the statement that ‘the Hungarian Certificate certifies not ethnicity, but eligibility for benefits and services’, represented a grand conversion for the government from the challenge to the sovereign state system to abandonment of the basic concept of their nation policy, because this revision officially denied the possibility of identifying the Hungarians abroad as having Hungarian nationality. If the Status Law did not identify the beneficiaries as Hungarians, it could not be the means to define the legal status of the Hungarians abroad as a part of the Hungarian nation. The initial and main objective of the policy of the Orbán government was no other than to formally fuse the beneficiaries as individuals with a national identity.

The Orbán government was ideologically defeated by the conventional state sovereignty when it was forced to accept the advice of the Venice Commission. As a consequence, the governments were ready to make any practical compromises that would make the law acceptable in terms of other political interests. The Prime Minister, Orbán, decided to negotiate with the Romanian partner; he accepted the requirement that any Romanian citizen be granted a permit for three months’ employment in Hungary,¹⁴¹ and in return, Năstase accepted the implementation of the law in Romania.¹⁴² This com-

138 Tóth, ‘Legal regulations’, p. 56.

139 *Heti Világgazdaság*, 23 June 2001, p. 8; specifically, 7989 from Romania (2385 primary and junior high school students, 2707 high school students, and 2897 university students), 4012 from Yugoslavia (865, 1,505, 1,642 respectively), 3319 from Ukraine (804, 1542, 973 respectively), 2673 from Slovakia (217, 815, 1605 respectively), 404 from Croatia (113, 135, 156 respectively) and 67 from Slovenia (3, 20, 44 respectively).

140 Tóth, ‘Legal regulations’, p. 50.

141 Some mass media commented cynically on the compromise with Romania that the Hungarian government got 33 million Hungarians, including the 22 million Romanians, rather than control of 14 or 15 million Hungarians: *Heti Világgazdaság*, 5 January 2002, p. 7.

142 Orbán was criticised for the compromise with Romania on the grounds that it violated the Constitution, since he had changed the content of a law established by Parliament without any lawful procedures. According to J. Debreczeni, the Orbán government retained its

promise formally looked like a successful political achievement in keeping with the Venice Commission Report, but in terms of principle it represented the defeat of post-communist new nation building in Hungary.¹⁴³

V. Topology of ‘Who Is a Hungarian?’

First, the question related not only to those whom the Hungarian Status Law intended to integrate into the unified Hungarian nation, that is, the Hungarians living in neighbouring countries, but also, and more seriously in Hungary, to those whom the law did not intend to integrate, or, more simply, those whom the law wanted to exclude from the unified Hungarian nation. This dualism of the question came from the other side of what we have discussed so far, that is, the targets of the law. The two groups the law distinguished reflected the two sides of the Hungarian national identity policy. The Hungarian Status Law, beginning with an inclusive definition of Hungarian nationality – identification by simple self-declaration – itself denied that initial

high popularity in general, though its policies were no more distinguished than those of previous governments. The nation policy, however, was their key policy and the government was successful in increasing its popularity as long as it established the Status Law in cooperation with the Socialists and persisted in it against the criticism of the West. By the same token, however, the government lost its popularity because of the compromise with Romania. The defeat in the general elections in 2002 may be accounted for on the same grounds: *ibid.*, pp. 531& p. 547, József Debreczeni, *Orbán Viktor* (Budapest, 2002), pp. 501, 529-531, 547; and Kis, ‘Státustörvény’, p. 376.

The results of the parliamentary elections in 2002 were:

	County and Metropolitan lists		Local districts	National list	Total
	Votes (%)	seats	seats	seats	seats
FIDESZ/HDF	41.07	67	95	26	188
Socialists	42.05	69	78	31	178
Free Democrats	5.57	4	2	13	19
Socialists/FD	-	-	1	-	1
Justice and Life	4.37	0	0	0	0

Source: www.valasztas.hu/hu/13/ogy2002.html.

143 The failure of the Orbán government’s nation policy may be followed by more nationalistic developments in this camp. The leader of the radical nationalists, István Csurka, criticised the Status Law for being too moderate, insisting on a tougher one (19 April 2001), 202. ülésnap, 38. felszólalás: www.mkogy.hu. FIDESZ, though commonly regarded as monolithic, includes some potential radicals; see, for example, the statement of László Pószán, ‘Such a statement as “We should not put European integration at risk for the sake of Status Law” or “We should give up everything for the European integration” reminds us of the slogans of the past, that is, “In the name of the solidarity of the proletariat or internationalism we should not endanger our good relationship with the neighbouring countries”. Do we have to surrender the Hungarians living beyond the borders for these aims? I myself say good-bye for ever to them since they were in the past’. (19 April 2001), 202. ülésnap, 424. felszólalás: www.mkogy.hu. Pószán was elected to the Parliament in 1998 and 2002 from the local district in Debrecen city, and was a member of the parliamentary Education and Foreign Affairs Committees.

definition with its own Article 20 and the additional criteria given by the Hungarian Standing Conference. Thus the legislation, as a whole, significantly increased the exclusivity of the definition. Specifically, if the three criteria were interpreted as necessary conditions, the law could provoke a discriminatory attitude and even an acceptance of ethnic cleansing, instead of – or along with – building a united nation beyond the state borders. The collective certification of nationality based on communal belonging, such as membership of political parties, religious communities, kinship, or historical ties, would work effectively as a discriminatory criterion for nationality, on the one hand forcing people to give up their multiple identity and to show exclusive loyalty to the mono-identity. The collective method of national certification could function as a selective mechanism between the two alternative identities, the kin-state or the home-state. On the other hand, the definition of Hungarian nationality was an issue not only in the neighbouring countries – where the question was understood as: ‘Who is a Hungarian?’ – but also in the kin-state, in Hungary – where the same question was understood as ‘Who are not Hungarians?’ The selective definition had the same consequences in both of the two geographical spaces. Namely, those who lived in Hungary and who were not Hungarians according to the exclusive and selective definition were, in a sense, the focus of the hot controversies over the issue. This was the case especially for Roma and Jews. It was practically impossible to define Hungarian nationality differently in the kin-state and in the home-states. Thus the definitions of Hungarian nationality categorically eliminated the ‘non-Hungarian’ people from the united Hungarian nation in the neighbouring countries and in Hungary as well. This elimination was the logical consequence of the exclusive definition of nationality, and had an impact in conceptual terms on the general understanding of the Hungarian nation. This would be followed by psychological repercussions and behavioural reactions against the ‘non-Hungarians’.

The Roma and the Jews were the largest minorities in Hungary.¹⁴⁴ Having no kin-states in the region, both of them were outside the scope of the

144 The Roma population was officially 140,000 in 1990, although unofficial estimates put it at 400-600,000. The second largest minority in Hungary was, officially, the Germans with 30,000 in the statistics, and an unofficial estimate of 200,000: Róbert Győri Szabó, *Kisebbségpolitikai rendszerváltás Magyarországon* (Budapest, 1998), pp. 454-455. The definition of the Roma is still problematic. According to ‘external’ definitions – those who are regarded by others as Roma – the number of Roma who were school pupils in compulsory education (seven to fourteen years old) was 74,000 in 1992: Gábor Kertesi, *A cigány népesség Magyarországon* (Budapest, 1998), p. 320. The Jewish population was 165,000 in 1946 according the last statistics provided by the Jewish World Congress, and a recent estimate gave 150,000 as the Hungarian Jewish population: Tibor Valuch, *Magyarország társadalomtörténete a XX század második felében* (Budapest, 2001), pp. 80-82.

new nation building on the part of Eastern European nations.¹⁴⁵ However, these minorities gradually became the main focus of attention in Hungary,¹⁴⁶ and another question was inevitably and logically put to them: ‘Who are you?’ In this question, the dualism of the law was crucial. The simple definition would have included them in the new Hungarian nation building. The additional criteria, by contrast, could easily work to exclude the ethnic minorities in Hungary from the new nation building,¹⁴⁷ though in constitutional terms they formed organic parts of the Hungarian nation.

The new division according to exclusive and selective criteria, in the long run, would have a serious impact on people’s way of thinking about the nation, since the national minorities could not be a part of the new Hungarian nation under the restrictive definition. This division and the exclusion of the minorities, especially the Roma, had even been ratified by actions of Western European states, which categorically expelled the Roma back to Eastern Europe,¹⁴⁸ although the EU had advised the Eastern European countries to integrate them into their own societies.

The new nation building of the FIDESZ government involved a serious contradiction, declaring, on the one hand, a multicultural Europe and multiple identities, while denying the multiplicity of the minorities’ belonging, on the other. This was the reason why the Hungarian minorities living in the neighbouring countries could not accept the concept of the new nation building without reservation. Even the members of the Hungarian Standing Conference displayed a negative attitude to the idea of ‘the unified nation’ because of their political status as representatives of parliamentary parties in their home-states.¹⁴⁹ A ‘benefit law’ without the Hungarian Certificate, instead of

145 Some Romanian Roma applied for the Hungarian Certificate. The Romanian authorities opposed their application; this happened in Cluj in Transylvania, for example. See BBC Website report of 27 March 2002, ‘Hungarians unwanted in Romania census: Funar threatens to visit anyone who claims to be Hungarian’, by Nick Thorpe, BBC Central Europe reporter:

news/Europe/news.bbc.co.uk/hi/english/world/europe/newsid_1896000/1896641.stm.

146 Ágoston Vilmos, ‘Ady-gögel az EU-ba’, MS 2002.

147 Csepeli György, ‘Képzelt magyarság’, *Népszava*, 28 January 2002, in Kántor, *A státustörvény*, pp. 566-567.

148 See, for example, ‘Európa tragikus sorsú fantomnépe: az olaszok támadásba lendültek a táborlakók ellen’, *Magyar Nemzet*, 16 September 1999, p. 3.

149 The Hungarian political parties in the home-states did not use the phrase ‘part of the unified Hungarian nation’, and limited the objectives of the Status Law to promoting national identity and well-being in one’s place of birth: see ‘Magyar Állandó Értekezlet a Romániában, a Szlovák Köztársaságban, a Jugoszláv Szövetségi Köztársaságban, az Ukrán Köztársaságban, a Horvát Köztársaságban és a Szlovén Köztársaságban parlamenti, illetve tartományi képvisellel rendelkező tagszervezetei képviselőinek nyilatkozata’, 27 June 2001, in Kántor, *A státustörvény*, pp. 178-179. ‘A határon túli magyar politikai vezetők nyilatkozata a Magyarországgal szomszédos országokban élő magyarokról szóló törvény hatályba lépése alkalmából’, Budapest, 9 January 2001, *ibid.*, pp. 180-181. See also the articles from the

a ‘status law’, might have been a realistic alternative, easily acceptable for the Hungarian minorities in the home-states.

The last but not least important dimension of the issue is the relationship between the status law syndrome and European enlargement. The leading theoretician among the Hungarian liberals, János Kis, drew a pessimistic conclusion from the failure of the status law policy, as follows;

There were doubts about the conformity of the Status Law with both European legislation and the fair interests of the neighbouring countries. Now, we will need a very long interval until we can raise the issue again in the future.¹⁵⁰

Kis was right if the conclusion was drawn in the national context of Hungarian history. However, as the Venice Report clearly suggested, not only Hungary but also most Central East European countries shared the ambition of somehow uniting kin minorities beyond the state borders. Therefore, the EU, in integrating these ‘new nations’ with kin minorities beyond their borders, could not be indifferent to the issue, or leave its resolution to the countries directly concerned. The EU had to provide practical and theoretical answers to the question of managing the tension between extraterritoriality and protection (or unification) of kin minorities. The defeat of the Hungarian Status Law and the FIDESZ policy of new nation building might be a necessary step back for future steps forward in integrating the region’s new national projects into the wider Europe. Moreover, the issue could also be relevant to the eastern neighbours, such as Russia. The largest kin minority in post-communist Europe, ‘the Russian diaspora’, is a sleeping volcano for almost all the other CIS countries. The Caucasian and Central Asian nations are also faced with the same or more serious difficulties resulting from post-communist national/ethnic policies. In brief, new nation building in Slavic Eurasia is likely to present challenges in the long run, involving neighbouring regions such as Europe, the Islamic world, and other parts of Asia.

standpoint of the Hungarian minorities in Slovakia and Romania: László Magyarai Nándor, ‘Státusmagyarkodók, egy erdélyi szempont a státustörvényről’, *Élet és Irodalom*, 1 March 2002; Levente Salat, ‘Erdély státusa’: www.cla.sk; Gábor Hushegyi, ‘Gyarmatok és alattvaló törvénye’: www.cla.sk; Center for Legal Analyses-Kalligram Foundation, ‘The reception and application of the Act on Legal Status of Ethnic Hungarians (Status Law) in the Slovak Republic (A magyar státustörvény fogadtatása és alkalmazása a Szlovák Köztársaságban)’: www.cla.sk.

150 Kis, ‘Státustörvény’, p. 397.