

## Introduction

The topic of the book is *kin minority*, *kin-state* and *home-state* in the process of European integration, focusing on East and Central Europe, and specifically on the Hungarian Status Law (more precisely, *Act on Hungarians Living in Neighbouring Countries*). The set of the three notions – kin minority, kin-state, and home-state – is a recent creation of the Venice Commission (European Commission for Democracy through Law of the Council of Europe), in its official report on *Preferential Treatment of National Minorities by their Kin-State* released on 22 October 2001.

The topic *per se* has evoked fierce debates between the states of the region, which have been especially sensitive to the issue of national and ethnic minorities since the collapse of the communist regimes; needless to mention here, for example, the details of the breakdown of the former Yugoslavia into ‘nation states’. The scope of the debates, however, extended much more widely, involving the Council of Europe, the European Union, the OSCE and so forth, and these West European concerns were prompted not only by the conflicts between Hungary and her neighbours, but also by aspects of the Status Law which those agencies saw as inherently problematic. Thus, the topic was a hot political issue in the countries directly affected and in Europe-wide diplomacy as well, and it still may hold the banked coal for another fire. Moreover, this could be a long-term prospect according to the report of the Venice Commission, which suggested that the Hungarian case was the tip of an iceberg. For East and Central European countries have established status laws one after another since the second half of the 1990s. We can speak of a ‘status law syndrome’ in the region.

The topic provoked not only political debates, but also academic controversies over the norms and the reality of nation states, nation building, citizenship, and/or minority protection in the context of post-communist regional integration and EU enlargement. In other words, the status law syndrome was sufficiently rich in challenging innovations to inspire scholars and specialists to reconsider the conventional interpretations of those notions and to rework them in terms of their specific disciplines. This is why the present volume contains the original documents produced in the course of the political debates alongside wide-ranging academic essays by authors from various parts of the globe including not only East and Central Europe but also Western Europe, North America and East Asia. Their specialisations are very varied, including sociology, political science, law, history, and more, and they come from positions in academia, government and social organisations.

This variety is reflected in the three sections of the book. The first part is devoted to historical analyses of the topic, providing a good introduction for understanding the development of the relevant issues and institutions in the

context of Hungarian politics and society. The second section is devoted to social science approaches, and the third, last section extends the studies and comparisons into the specific field of legal theory and practice.

Comprehensiveness, though not exhaustiveness, was the aim that informed our selection of the works and the documents included in the book.<sup>1</sup> Thus the volume, while focusing on the Hungarian Status Law, takes into consideration similar legislation in the neighbouring countries as well. Among them, so far, Slovenia, Slovakia, and Romania have passed specific laws on the preferential treatment of kin-minorities. Their English versions are reprinted along with other documents in the book. However, none of the three status laws has aroused such a fervent debate as the Hungarian legislation. This can be explained largely by the size of the Hungarian minority populations in the neighbouring countries and by the history of the region. But it is probably the complexity of the Hungarian Status Law that explains the interest it has aroused among academics. At any rate, the syndrome is novelty in the world of international and national law and politics.

Status laws may rest on two *assumptions*. The first is the conception of a nation in ethno-cultural terms, which assumes that a group of people who have once formed a nation and developed a strong sense of national identity – regardless of the borders that separate them at present – have something meaningful in common; the second is the fear that the home-state, rather than adequately protecting and promoting the rights of kin-minorities, may instead assimilate them. This can lead to the view that it is a legitimate right of the kin-states to give special treatment to their kin-minorities and even to institutionalise that treatment through legislation. Though the practices of the kin-states differ substantially from each other, the underlying assumptions must be the same. A possible explanation for this is that the national ties (understood in ethno-cultural terms) are not perceived by the kin-state and the kin minority as less significant than other types of allegiance (notably citizenship, or the ‘political nation’).

*Cultural* and *political* nations have to be redefined. The former denotes the nation as an ethno-cultural entity and emphasises common language and culture; the latter, in contrast, stipulates that the inhabitants of the state constitute the nation. ‘Political’ is the adjective and ‘nation’ is the subject.

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1 Two of the book’s chapters reproduce articles originally published in academic journals, which we thought indispensable to a conspectus of writings on the subject. One is Judit Tóth’s ‘Connections of Kin-minorities to the Kin-state in the Extended Schengen Zone’, originally published in *European Journal of Migration and Law* 5 (2003), pp. 201-227 and the other is Zs. Csergő and J.M. Goldgeier’s ‘Nationalist Strategies and European Integration’, originally published in *Perspective on Politics* 2:1 (2004), pp. 21-37, © The American Political Science Association. The editors of the book express special thanks to the publishers for their permission to reproduce the texts here.

With respect to the cultural nation, ‘cultural’ is the adjective, and ‘nation’ is still the subject. Both conceptualisations suggest that there is something distinct and meaningful called a ‘nation’. In other words, a nation in reality cannot be separable into the two definitions. Nation either in the political sense or in the cultural sense is a term constructed first and foremost to denote various processes in the evolution of a particular identity and/or to institutionalise political and administrative structures on its own principles. Therefore, it would be an over-simplification to say that the status laws presumed an ethno-cultural nation, and the criticism against the laws, in contrast, emphasised the political nation. The idea of a tension between the two conceptions, the ethno-cultural and political nations, or the ‘particularist and universalist’ conceptions, has surfaced on the European agenda as a result of the status law syndrome, and especially of the Hungarian version. The second part of the book argues the issue of nation and citizenship from the various viewpoints.

Debates have also revolved around objective and subjective criteria for defining the persons who fall within the scope of the law. A dichotomy emerged between the subjective self-identification and the objective criteria represented by language and institutional affiliation. Theoretically, the debates focused on the eligibility of members of the kin-minorities in neighbouring countries for the Hungarian Certificate, though eligibility was essentially based on nothing other than ethnic affiliation. The Hungarian Status Law inevitably raised the question of *who is a Hungarian*, since it was unavoidable that the beneficiaries – those in the neighbouring countries who should be regarded as belonging to the Hungarian nation – would be identified according to their ethno-cultural origins. The law attempts to determine the group which would become subjects of the law by stipulating that *only* those people are eligible who belong to the cultural nation, but the categories finally deployed in the Hungarian law were sufficiently problematic to result in political controversy.

Another serious argument focused on the claim that the Status Law enforced ethnic discrimination, since it differentiated among the citizens of a foreign state on the basis of ethnic origin. Although those who voiced their criticism on this point were not apparently conscious of it, this argument clearly reflects a longstanding and regularly re-emerging debate over the interpretation of minority rights. This time, however, the Status Law formulated the dichotomy in a rather different context. The two norms, prohibiting positive discrimination in favour of ethnic minorities and granting their protection, need not necessarily collide with each other, since measures for the elimination of disadvantage could fit the Aristotelian concept of ‘equality as justice’, which is based on the idea that not everybody should be treated in the same way, but only those who are in the same situation. In this understanding, one could act justly if one treats similar cases similarly and

different cases differently. The third part of the book discusses this issue at length.

Bearing in mind the ongoing political controversies on the topic, the editors, including the English language editor, have made great efforts to harmonise the use of technical terms between chapters and between the articles and the official published translations of the documents they comment on. In some cases, however, the authors' original wording has been retained, often at their own request in order to highlight key issues of interpretation. One of the most troublesome points was the phrase 'unitary Hungarian nation' in the original version of the Status Law. This phrase does not appear in the official translation of the law, but Günter Verheugen, EU commissioner, used it in his letter to the Hungarian government, and some of the authors of the book make direct reference to it. The term used in the official version is 'Hungarian nation as a whole', a phrase which in English is less politically problematic than 'unitary Hungarian nation'. In fact, the original version of the term is '*az egységes magyar nemzet*', which is indeed much closer to 'unitary Hungarian nation' than to 'Hungarian nation as a whole'. The difference between the translations thus represents initially a product of the diplomatic manoeuvre of the Hungarian government, presenting *per se* an issue to be examined in the book.

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