

# Pulling Back from Neo-Medievalism: The Domestic and International Politics of the Hungarian Status Law<sup>\*</sup>

Stephen Deets

The Hungarian Status Law sparked a debate across Europe on the relationship between nations and states and the state's role in bounding communities. As sovereignty and citizenship have been surprising resilient features of the post-Westphalian world, the 2001 Hungarian Status Law represented a radical challenge to existing norms; it invoked a neo-medievalist world in which there are competing legitimate organising principles for the international arena and in which individuals are legal members of a transnational community while also being under the control of the territory on which they reside. As challenges to norms often result in clarification and expansion of norms, an examination of the law, the ensuing criticisms of it by various European institutions, and the domestic politics surrounding it both shed light on European norms of sovereignty and minority rights as well as illustrate why these norms were created.

As others in this volume discuss, the Hungarian Status Law is not the only European law concerning national minorities and their 'kin-states'. By providing specific benefits to individuals who do not necessarily seek citizenship or a permanent return to the ethnic kin-state, however, these laws move towards a concept of a 'transsovereign nation' and a vision of Europe as a collection of nations, not states.<sup>1</sup> Particularly in Eastern Europe, such laws are seen as a natural consequence of a future Europe

---

\* The author gratefully acknowledges the financial support from a H.H. Powers Grant from Oberlin College and a Short-Term Travel Fellowship from the International Research and Exchange Board (IREX).

<sup>1</sup> Zsuzsa Csergo and James M. Goldgeier, 'Nationalist Strategies and European Integration', *Perspectives on Politics* 2:1 (2004), pp. 21–37.

without borders. While other laws received little notice, the Hungarian Status Law set off a firestorm of criticism. From the government's perspective, the law fell within European norms, particularly in a Europe which has increasingly promoted minority culture and identity and has chipped away at simplistic notions of sovereignty. European institutions, though, viewed the original Status Law as different from these other kin-state laws in several significant respects.<sup>2</sup> Particularly important is how the Status Law regulates co-nationals while in their country of citizenship. This issue sparked concern over such matters as how membership in the Hungarian nation is determined, how to provide benefits to members of the Hungarian nation who are not Hungarian citizens, and the role of the neighbouring states in regulating the provisions of the law that at least partially takes place on their territory.

This paper examines the Status Law in the context of European norms on sovereignty and minority policy. The Hungarian government correctly observed that the oft used notion of sovereignty, the ability of a state to prevent outside actors from influencing domestic politics, has long been abandoned in Europe. This paper argues that the understanding of sovereignty in the European Westphalian system is something else. The first section of the paper provides a brief overview for how European sovereignty norms, built on security concerns, are based on several interlocking principles regarding minorities. As the nature of the state and society has changed, European minority norms have become more explicitly grounded in public goods approaches combined with liberal individualism. After this background, the provisions of the 2001 Status Law will be discussed, highlighting how the intent of this law was to overturn both norms on state sovereignty and on minority policy. Only by seeing this challenge to deeply embedded European norms is it possible to understand the strong negative reaction to the law by the three major European institutions. The final section will examine this European reaction and the process for modifying the law in 2003, which did result in

---

<sup>2</sup> 'Report on the Preferential Treatment of National Minorities by Their Kin-state', adopted by the European Commission for Democracy through Law (Venice Commission) at its 48th Plenary Meeting, Venice, 19–20 October 2001, CDL-INF (2001) 19. <[http://www.venice.coe.int/docs/2001/CDL-INF\(2001\)019-e.asp](http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.asp)>, accessed 3 November 2004; Gábor Gál, Adriana Lamačková, and Balázs Jarábik, *Comparative Analysis on the So-called Status Laws in Hungary and Slovakia: The Border of the Status* (Bratislava, 2002).

a law that, according to the European institutions, largely adheres to European norms.

## I. Medievalism

The pre-Westphalian world was characterized as a ‘system of overlapping authority and multiple loyalty’.<sup>3</sup> Not only were the Church and Holy Roman Empire based on different notions of legitimacy, but individual rulers were enmeshed in complex webs of often contradictory obligations. The emergence of the sovereign state therefore signalled a fundamental change in the international system. As Westphalian sovereignty commonly refers to legitimate and hierarchical authority within the state and bounded, rational states operating in a world of external anarchy, the emergence of neo-medievalism would entail the decline of state sovereignty. This begs the question of the meanings of sovereignty and what kinds of challenges to it would constitute such a fundamental reordering as to constitute a shift to neo-medievalism.

Currently the word ‘neo-medievalism’ is generally used in two ways. Focusing on how states have lost control over their domestic affairs, one details the rise of non-states actors, transnational networks, and international institutions. However, increasing interdependence and reduction in domestic capacities does not necessarily reduce sovereignty in the absence of new organising principles competing with the state. The European Union (EU) may represent an alternative view of neo-medievalism. The relevance of states has become a core question as scholars puzzle over meanings of intergovernmentalism, supranationalism, and sovereignty in the EU. While the EU is already more than the sum of its states, states are not disappearing. While sovereignty may be diminished, authority structures are not in open competition, as would be the case if authority were truly overlapping. Because of this strong institutionalisation, the EU is far from the chaos and competition implied by neo-medievalism. Furthermore, neither of these models generates real issues of multiple loyalty.

While the world is not rapidly moving towards neomedievalism, neither are states immune from external interference. Currently

---

<sup>3</sup> Hedley Bull, *The Anarchical Society* (New York, 1977), p. 254.

sovereignty in Europe is understood to mean that states may not interfere directly into the domestic affairs of other states; in other words, horizontal violations of Westphalian sovereignty are impermissible. International institutions do not constitute the excluded ‘external actors’, so vertical violations of sovereignty are allowed. This difference between vertical and horizontal violations is deeply rooted in the emergence of the Westphalian order and its concern with minority rights. The following sections detail this development and assert that the logic underpinning this notion of sovereignty also contributed to the casting of minority policy in terms of individual rights.

### **1. State Sovereignty, Minority Rights, and European Security**

Since the Treaty of Westphalia, most major European treaties have addressed minority rights. The mere existence of international documents delimiting state treatment of its citizens seems to violate usual definitions of Westphalian sovereignty. The grand bargain of Westphalian sovereignty, though, has been that states are recognized as independent entities with power over their people to the extent that they do not violate certain rights of minorities. If norms are violated, the international community has the collective right to intervene. This bargain is rooted in fears of prolonged violence, and while not consistently applied, its endurance for 350 years is rather remarkable. So, in some ways, Europe is still living in the shadow of the Thirty Years War.

The intertwining of sovereignty and minority rights is rooted in the 16th century, the time of both the emergence of the sovereign state and the Protestant reformation. The sudden religious differences combined with the principle *cuius regio, eius religio* (the religion of the ruler is the religion of the ruled) meant that state borders clearly marked the boundaries of religious identity communities, although religious minority communities were created in the process. Given that interventions of one state into another were increasingly framed in terms of protecting co-religionists and the resulting ‘religious’ wars were incredibly destructive, the Treaties of Westphalia and, by the mid-eighteenth century quite a number of other international treaties, modified the *cuius regio, eius religio* standard by including broad provisions for states to tolerate different Christian faiths on their territory as a way to increase international stability. In the 19th century European concerns shifted to

include national and ethnic minorities. The 1878 Congress of Berlin was organized to address problems of the emerging states in the Balkans and specifically in reaction to Russian intervention in favour of its ‘Slavic brothers’ in Bulgaria. In setting the conditions for acceptance into the international system for these states, the Congress required both Bulgaria and Romania to undertake certain measures towards their minorities.<sup>4</sup>

The imposition of minority rights on weak states, instead of representing ‘organized hypocrisy’,<sup>5</sup> was rooted in fears of international conflict. This reflected the increasing power of the masses to press for government intervention in foreign disputes as well as the recognition that aggrieved minorities could destabilize the international system through civil war and spark contagions of violence.<sup>6</sup> This was one lesson of 1848 as the Austrian Empire had to rely on Russia to end the Hungarian Revolution. The central dilemma faced by the Great Powers was how to handle the emergence of new national states without encouraging nationalist movements either within existing states or amongst the minorities in the new states. These treaties, then, were attempts to ensure new players did not disrupt the game.

## **2. State Sovereignty, Minority Rights, and Individual Autonomy**

Since the late 19th century, some Great Powers have supported expanding minority norms beyond the vague non-discrimination that regularly appeared in treaties. Earlier rights could be granted to ‘peoples’, as many of the international agreements did, because the role of the state was limited. In essence, the acknowledged language and education rights could only be practiced in terms of collective action of individuals. This changed with state centralisation and bureaucratic expansion. Only in the world of the modern state did rights of peoples (group rights) have meaning. Since nationalist aspirations were so closely tied to World War I, there was considerable discussion after the war on these issues. One problem was the meaning of the right to self-determination, which earlier had been implicitly endorsed by recognising both those national states

---

<sup>4</sup> Jennifer Jackson Preece, *National Minorities and the European Nation-State System* (Oxford, 1999).

<sup>5</sup> Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, 1999).

<sup>6</sup> Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York, 2000).

escaping Ottoman rule and certain rights to cultural autonomy. At Versailles it remained unclear how self-determination could be operationalised to be compatible with a stable system of states. The lack of congruence between 'national' boundaries and state boundaries highlighted this as well as raised questions of the role of kin-states with regards to their co-ethnics. Conflicts over the meaning, impact, and desirability of the 'right to self-determination' meant it was put aside in the peace treaties and the charter of the League of Nations.

After World War I the peace treaties primarily enshrined equal rights for citizens, although ideas about nations as collective entities did not disappear. The League of Nations was left as the ultimate protector of European peace, and hence it was also responsible for resolving competing ideas about the rights of European minorities. While the League did become a forum to which minorities and third-party states could bring complaints, it limited, but did not stop, attempts at direct intervention by states. Given the territorial revisions envisioned by many European states, these states were only too happy to maintain ties with their co-ethnics and advocate for greater rights of 'self-determination'. In the late 1930s the forceful emergence of claims of national minorities to exercise their natural rights of collective self-determination and the failure of Europe to clearly delimit the rights of minorities again plunged Europe into war.

After the horrors of World War II and the concern that codification of collective minority rights would be the source of continued instability, the victors subsumed minority rights under a doctrine of individual human rights. After all, horizontal intervention by one state on behalf of co-ethnics only makes sense if individuals are conceived of as members of trans-boundary collective entities, and so the rationale for individual rights is partly based on the effort to delegitimise ties between minorities and their kin-states. If states did not uphold their duties toward their minorities, it was presumed the United Nations, not individual states, would have primary responsibility for addressing human rights violations. These norms are clear in the odd formulation over the treatment of the German-speaking minority in South Tyrol, in which an Italian-Austrian agreement authorises Austria to provide monitoring reports to the United Nations, and in the 1955 decision by West Germany and Denmark to announce parallel declarations regarding their respective minorities

instead of signing a bilateral treaty, which could have been seen as legitimating interference.

In Western Europe the stress on individual rights tied to theories of liberalism are clear throughout the post-war period.<sup>7</sup> Recent documents, like the Council of Europe's 1992 European Charter on Regional and Minority Languages, for example, does not protect speakers of these languages, but the languages themselves. So while the state must promote the use of minority languages, it does not guarantee the right of any individual to use the language in any specific situation. The 1995 Framework Convention for the Protection of National Minorities is similarly formulated. Furthermore, the norms are carefully constructed so that state responsibility for minority education and culture are a matter of the state providing public goods instead of a question of collective or individual minority rights. As a result, states cannot discriminate in who enjoys these provisions of goods; in other words, one does not have to self-identify as a member of a minority to participate in minority language classes in public schools, for example. By avoiding any hint of collective rights or tying the rights to specific persons, it limits the ability of any minority to make claims against the state.<sup>8</sup> As these documents were drafted against the conflagration of Yugoslavia and fears of right wing nationalism in Eastern Europe, the conclusion is inescapable that this formulation was meant to promote stable democracies, limit horizontal intervention while further legitimising vertical intervention, and otherwise enhance the prospects of European peace.

## **II. The Hungarian Status Law: Envisioning a New Europe**

The above section argues that the Westphalian system encapsulated a system of state responsibility for implementing certain minority policies as a way to inhibit horizontal violations of sovereignty and legitimise the possibility of vertical intervention by inter-governmental bodies, both of which were seen as ways to promote international peace and security.

---

<sup>7</sup> Stephen Deets and Sherrill Stroschein, 'Dilemmas of Autonomy and Liberal Pluralism', *Nations and Nationalism* 11:2 (2005), pp. 184–203.

<sup>8</sup> Stephen Deets, 'Reconsidering East European Minority Policy: Liberal Theory and European Norms', *East European Politics and Society* 16 (2002), pp. 30–53.

Related to this, since World War II the substance of minority policy norms has combined the perspective of liberal individualism with increasingly detailed requirements of state-provisions of public goods. The Hungarian Status Law explicitly intended to overturn both of these norms.

## 1. The Rationale for the Status Law

The timing and rationale for the law can be explained in several ways. The 2001 Hungarian Status Law can be seen as the culmination of earlier efforts towards the Hungarians abroad.<sup>9</sup> As discussed in this volume by Stroschein, it also represented a projection of domestic minority policy into the international arena. Hungary's impending entry into the EU was important for a variety of reasons, particularly in generating fears that ethnic Hungarians might try to immigrate en masse to Hungary. The overwhelming parliamentary support hints at a second rationale. Parliamentary elections were expected in April 2002, and, in light of various political calculations, only the Alliance of Free Democrats (SZDSZ) voted against the measure.

A third motivation, however, is clearly a desire to reassert the existence of a Hungarian nation that exists beyond borders. The first step in giving it legal form was the 1998 creation of the Standing Committee of Hungarians (MÁÉRT), an official Hungarian government body that includes representatives from political parties in Hungary, ethnic Hungarian parties in the neighbouring states, and diaspora organisations. The official proposal for Status Law actually came out of MÁÉRT.<sup>10</sup> This drive to unify the Hungarian nation is clear in the law's preamble, which states that it is 'to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole'.<sup>11</sup> In reimagining the Hungarian community, Prime Minister Victor Orbán tried to root the law within current European discourse, speaking of Europe as becoming 'the Europe of national communities',<sup>12</sup> a Europe in which borders are

---

<sup>9</sup> Deets and Stroschein, op. cit.

<sup>10</sup> Miklós Duray (Member of Slovak Parliament, Hungarian Coalition Party). Interview with author, Bratislava, Slovakia, 24 June 2003.

<sup>11</sup> 'Act LXII of 2001 on Hungarians Living in Neighbouring States' [Hungarian Status Law]. 2001.

<sup>12</sup> Quoted in: Csergo and Goldgeier, op. cit., p. 28.



‘virtual’, making legal border changes irrelevant. However, the Status Law uniquely encapsulates a vision of neo-medievalism; the vision would entail a fundamental restructuring Europe and the reconception of the relationship between a citizen and the state.

## 2. Core Controversies Surrounding the Status Law’s Content

After formal complaints by the Romanian government to both the EU and the Council of Europe, in October 2001 the Council of Europe’s Venice Commission reviewed the Hungarian Status Law. In its report, the Venice Commission upheld the legitimacy of Hungary’s concern over its co-nationals, but it criticised its approach. Ruling that differential treatment of citizens of other states could only be justified in education and culture, it noted that preferential treatment in other areas should be reserved for ‘exceptional cases’ that are ‘shown to pursue a legitimate aim and to be proportionate to that aim’.<sup>13</sup> The Commission clarified the debates over the means for deciding who is eligible for benefits, what kinds of benefits are viewed as legitimate, and how sovereignty norms restrict the application of the law. As the Hungarian government was in the process of drafting the regulations necessary for the law, the Venice Commission seemed to target these regulations. This section will touch on these areas while the next section will detail the broader criticisms by other European institutions.

One controversy was how to determine who is covered by the law. Given the perceived benefits of being an ethnic Hungarian, instrumentalists would predict that individuals might try to change their identity.<sup>14</sup> In this vein, one Hungarian author entitled his article on the law, ‘When Siberians Become Hungarians’.<sup>15</sup> The law’s supporters emphasise that the determination of identity requires individuals to self-declare as Hungarian. As initially-envisioned, the process also would have involved a recommendation by an evaluating authority that the individual is of

---

<sup>13</sup> Venice Commission, op. cit.

<sup>14</sup> David Laitin, *Identity in Formation: The Russian-Speaking Populations in the Near Abroad* (Ithaca, 1998).

<sup>15</sup> Andras L. Pap, ‘When Siberians Become Hungarians’, *Transitions on Line*, 18 May 2001. <<http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=22&NrSection=3&NrArticle=902&search=search&SearchKeywords=pap&SearchMode=on&SearchLevel=0>>, accessed 6 January 2006.

Hungarian nationality. The law itself provides no criteria for what constitutes Hungarian nationality. Subsequent regulations indicated that this evaluation may take place according to linguistic criteria or may be based on evidence of registration in a Hungarian organisation.<sup>16</sup>

While self-declaration may be in line with liberal norms (and Hungary's own domestic policy), many found troubling the power of the evaluating authority. The law initially intended a strong role for ethnic Hungarian political and cultural organisations in the neighbouring states. In most states existing organisations were to be used, but in Slovakia the Association for Common Goals, an umbrella for many Hungarian organisations, was created to facilitate with this and other aspects of the Status Law.<sup>17</sup> Some feared the process would be open to corruption, and one can imagine that the determination of how well one speaks Hungarian might depend on whether the individual provides some benefit to the appropriate party. Roma organisations, on the other hand, feared that Roma who self-identified as Hungarian would face discrimination.<sup>18</sup> Through 2001 the Hungarian government grappled with concerns over the increased power of local Hungarian institutions.

This role of Hungarian institutions also was key to complaints about the extra-territorial nature of the law. Measures were introduced in both Romania and Slovakia to restrict the ability of their domestic organisations to comply with Hungarian law. Slovak law also provides for free declaration of national identity, raising questions whether the Association for Common Goals could issue recommendations.<sup>19</sup> Partly due to the extra-territorial concerns, which were also noted by the Venice Commission, subsequent regulations greatly reduced the role of local Hungarian organisation and clarified that the final decision on who should receive the cards lies with a central authority in Hungary.

Once the identity cards have been issued, the primary provisions of the Status Law indeed apply on Hungarian territory. However, given that one of the law's goals is to encourage ethnic Hungarians to remain in their

---

<sup>16</sup> Sára Görömbei (Department for Strategic Analysis, Office of Hungarians Abroad). Interview with author, Budapest, Hungary, 5 June 2002.

<sup>17</sup> Balázs Jarábik (Center for Legal Analysis, Bratislava, Slovakia). Interviews with author, Bratislava, Slovakia, 10 January and 30 May 2002.

<sup>18</sup> Lilla Farkas, 'Roma Under Hungary's "Status Law"', *Roma Rights Quarterly* 2/2002 <[http://lists.errc.org/rr\\_nr2\\_2002/noteb4.shtml](http://lists.errc.org/rr_nr2_2002/noteb4.shtml)>, accessed 6 January 2006.

<sup>19</sup> Jarábik, op. cit.

country of citizenship, it is inevitable that some provisions try to improve the situation of those individuals there. The educational provisions were potentially the most problematic. Article 14 of the Law initially allowed identity card holders to apply for financial assistance for educating their children, provided that at least two of their children attend a Hungarian-language school in their home country. While these subsidies remain relatively low, the act of designating some children eligible and others ineligible for outside funding provoked resistance by those who were not ethnic Hungarians. Where there are ethnically-mixed marriages and tight budgets, this provision may make a family more likely to decide in favour of Hungarian-language education than they otherwise would.

The actual mechanism to distribute the funds also long remained unclear. The eventual solution was for the Hungarian government to distribute most funds to the Illyés Foundation in Hungary, which in turn would disperse funds to educational foundations in the neighbouring states. Under this institutional framework, parents would then apply to these local foundations for grants. Parents then would not be receiving funds directly from the Hungarian government, but they would still only be eligible for these funds because of a Hungarian-government issued document. Still, both Romania and Slovakia threatened to impose special taxes on any grant money received by the parents.

The extent of benefits to ethnic Hungarians also raised questions about discrimination. There are numerous prohibitions in Europe against discrimination against citizens because of their ethnic or national origin, which is one reason why Hungarians in Austria are not included in the law. The Venice Commission acknowledged that in some circumstances citizens can be treated differently if the difference is proportional to a legitimate goal. It was not clear, though, what legitimate goal entailed providing ethnic Hungarians abroad with social security, health benefits, work permits, cash payments for children attending Hungarian-language schools, and other special treatments. As the law states that its purpose is to create a transsovereign nation, a vision that in and of itself is considered illegitimate by European institutions, it became increasingly difficult to justify most of the provisions in the law.

### III. Domestic Politics, International Debates, and Reasserting European Norms

After the issuance of the Venice Commission Report, the Hungarian government considered how to address the objections. First, they sought to resolve the issues through the regulations. Second, since the Venice Commission stressed such principles as good neighbourly relations and *pacta sunt servanda*, the government, which hitherto argued the law was solely a domestic matter, sought to sign bilateral treaties with its neighbours regarding the law's scope and application. For the OSCE's High Commissioner on National Minorities (HCNM) and increasingly both the Council of Europe and the EU, though, the problem was not with the law's implementation, but the law itself. These organisations each came to believe that the law fundamentally violated European norms on sovereignty and minority policy, and as such it had the potential to disturb the international peace. By the time the Council of Europe held a session on the Status Law in June 2003, the law had been fundamentally transformed.

There is no question that the law caused serious deterioration in relations between the government of Hungary and its neighbours, particularly Romania and Slovakia. Their reactions reflect their reading of historic relations with Hungary. Hungary's attempts at territorial revision during the inter-war period are part of the story. While Romania and Slovakia give certain benefits to co-ethnics, these benefits apply to co-ethnics living anywhere in the world. Hungary's law, on the other hand, only applies to ethnic Hungarians in the neighbouring states. The law itself justifies this by stating that it 'shall apply to persons declaring themselves to be of Hungarian nationality who are not Hungarian citizens and who [...] lost their Hungarian citizenship for reasons other than voluntary renunciation' (Article 1). A plain reading of the law would indicate that it only applies to individuals who lost their Hungarian citizenship when the borders changed in 1920, meaning one would have to be at least 84 to receive an identity card. While some recognised this was a mistake in legal formulation,<sup>20</sup> there is little mistaking that it is meant to once again redress the impacts of Trianon. The law also sparks memories

---

<sup>20</sup> Judit Tóth, 'Pulling the Wool over Hungarian Eyes', *Regio* (2002), pp. 129–150.

of Hungarian assimilation campaigns in Slovakia and Transylvania during the Austro-Hungarian Empire as well as the virtual disappearance of minorities in Hungary during the post-war era.<sup>21</sup> In this respect, the issue of dependents, which could encourage spouses and children to self-identify as Hungarian, is particularly problematic.<sup>22</sup> In fact, in Fall 2002 there was a surprising increase in the number of Transylvanian children enrolling in Hungarian-language schools, which some believe reflects the monetary incentives in the law.<sup>23</sup> In towns with high unemployment and large numbers of ethnic Hungarians, the law's benefits could have significant implications for the relative material wealth between groups.

In December 2001, Hungary and Romania signed a Memorandum of Understanding on the Status Law. As a primary concern of the Romanian government was the provisions for dependents, the Memorandum eliminated the eligibility of dependents for an identity card. The Romanian government also focused on the employment issues, and earlier the Prime Minister had declared 'Romania is not a colony from which Hungary can recruit labour'.<sup>24</sup> The text of the Memorandum thus outlines that 'all Romanian citizens, notwithstanding of their ethnic origin, will enjoy the same conditions and treatment in the field of employment on the basis of a work permit'<sup>25</sup> on the territory of Hungary, thus officially removing ethnic criteria from consideration in employment for Romanian citizens.

The memorandum's signing sparked a period of extremely complicated political calculations involving the Status Law. Coming at the beginning of Hungary's parliamentary election campaign, the Socialists

---

<sup>21</sup> Igor Grexa (Directorate for International Legal and Consular Affairs, Slovak Ministry of Foreign Affairs). Interview with author, Bratislava, Slovakia, 2 July 2003.

<sup>22</sup> Balázs Szechy (Department for Strategic Analysis, Office of Hungarians Abroad). Interview with author, Budapest, Hungary, 11 June 2003.

<sup>23</sup> F. István Nagy (Advisor on Education Policy, Democratic Alliance of Hungarians in Romania). Interview with author, Cluj/Kolozsvár, Romania, 17 June 2003.

<sup>24</sup> *Radio Free Europe/Radio Liberty [RFE/RL] Daily Report* (22 June 2001) <[www.rferl.org](http://www.rferl.org)>.

<sup>25</sup> 'Memorandum of Understanding between the Government of the Republic of Hungary and the Government of Romania concerning the Law on Hungarians Living in Neighbouring Countries and Issues of Bilateral Co-operation'. Signed 22 December 2001. <<http://www.hhrf.org/htmh/dokumentumok/memorandum.htm>>, accessed 10 October 2004.

now argued that the Memorandum's provision allowing ethnic Romanians to work in Hungary would hurt domestic labour interests.<sup>26</sup> The Socialists also began to criticise the overall cost of the law (estimated at \$16–20 million annually),<sup>27</sup> as well as the health and social security guarantees, a touchy issue as social service benefits for Hungarian citizens had earlier been cut. As polls indicated the majority of voters opposed the labour and social service aspects of the agreement and there was unusually high turnout in Hungary's rust belt along the Romanian border, there is reason to suspect these issues made the difference in the Socialists' incredibly narrow win in the April 2002 elections.

The new coalition government between the Socialists and SZDSZ had a variety of reasons for changing the Status Law. The increasing European criticism was only one. Cynical Hungarian opponents of the law believed Orbán was using it to effectively take-over the ethnic Hungarian parties in the neighbouring states. Starting Fall 2001, very large sums of money were being transferred from the Hungarian government to Hungarian organisations in the neighbouring states, and a disproportionate amount of this money reportedly went to individuals with close ties to FIDESZ,<sup>28</sup> changing the Status Law was one way to strengthen politicians closer to SZDSZ and the Socialists. Given their roles in the coalitions in Slovakia and Romania, influence over these Hungarian parties is no small matter. Being national minority parties in states with problematic relations with their kin-state, their position in the government is always tenuous because of potential criticism over being more loyal to the kin-states. The moderates, therefore, were particularly interested in reaching a compromise over the Status Law.<sup>29</sup>

Changing the Status Law was not a simple matter, though. Any modifications had to be approved first by MÁÉRT and then the Hungarian parliament. Shortly after taking office, the new Hungarian government asked an interagency committee led by the Office of Hungarians Abroad to prepare modifications to the law in line with European norms. Its draft closely followed the Romanian-Hungarian agreement, and the provisions

---

<sup>26</sup> Allan Fraser, 'Romanian "Solution" Provokes Status Law Row', *Budapest Sun*, 10–16 January 2002, p. 1.

<sup>27</sup> Pap, op. cit.

<sup>28</sup> Jarábik, op. cit.; Szechy, op. cit.

<sup>29</sup> Edith Bauer (Member of Slovak Parliament, Hungarian Coalition Party). Interview with author, Bratislava, Slovakia, 10 June 2003.

on employment, health, and social security were entirely eliminated, a particular concern of the EU.<sup>30</sup> While recognising that not all neighbouring states would accept the new version, the government hoped that the new draft would represent a compromise between the sentiments on MÁÉRT and the HCNM, whose staff had been consulted on the text and which was the most vocal opponent among the European institutions. While it was approved by MÁÉRT in November 2002, the three European institutions all agreed that it did not go far enough.<sup>31</sup>

The EU, Council of Europe, and HCNM continually hammered away on several points. First was that the law could not promote a transsovereign nation. This objection was rooted in three interrelated concerns. The traditional formulation since the Treaties of Westphalia is that ‘responsibility for minority protection lies primarily with the home states’.<sup>32</sup> If Hungary violates this norm and takes responsibility for the ethnic Hungarians in its neighbours, it raises questions about whether the home state can then abrogate its responsibilities to its minority citizens. Furthermore, the prospect of a transsovereign nation challenged the notion of sovereign states as the primary actors in international affairs. Certainly the staff of the European organisations appreciated the apparent irony in pressuring Hungary to change its domestic laws in the name of sovereignty, but they argued that they were not undermining the basic nature of the state itself, which they believed the Status Law did.<sup>33</sup> Finally, in their eyes the law ‘allowed for discriminatory treatment of the majority in that state’ by requiring legal identities and providing special treatment on the basis of those identities.<sup>34</sup> Because of these concerns, these institutions insisted the Hungarian government could broadly promote Hungarian language and culture to the extent allowed by bilateral treaties,

---

<sup>30</sup> Szechy, *op. cit.*

<sup>31</sup> Gábor Zoltán (EU Law Department, Hungarian Ministry of Foreign Affairs). Interview with author, Budapest, Hungary, 20 June 2003.

<sup>32</sup> Rolf Ekéus, ‘New Challenges in the Prevention of Ethnic Conflict’, Special Address to the Annual Convention of the Association for the Study of Nationalities, New York, 15 April 2004.

<sup>33</sup> John Packer (Director, Office of the OSCE Higher Commissioner on National Minorities). Interview with author, the Hague, the Netherlands, 5 June 2003.

<sup>34</sup> Jürgens Report [Report of the Council of Europe Committee on Legal Affairs and Human Rights]. ‘Preferential treatment of national minorities by the kin-state: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries’, Doc. 9744 rev. (13 May 2003).

but anything beyond this was a violation of sovereignty and principles of good neighbourly relations.

As a result of these pressures, the government essentially started over. The task of redrafting the law was given to the Ministry of Foreign Affairs's International Law Department, which had close professional ties to the EU. The revisions were made in close cooperation with the staff of the HCNM and the EU's Legal Service. There was one issue that was completely non-negotiable for these two European institutions: the phrase in the preamble that the law was 'to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole' had to be removed.<sup>35</sup> The paragraph stating that it applied to 'Hungarians who [...] lost their Hungarian citizenship for reasons other than voluntary renunciation' was also removed. In fact, almost everything that implied a transsovereign nation was removed. Added throughout the text are references to the importance of bilateral treaties for implementing provisions of the law.

This new draft was presented to the May 2003 MÁÉRT meeting. At this point, the government desperately wanted the law changed before the Council of Europe's June 25 meeting on the Jürgens reports, a report on the Status Law which was known to be critical. The fear was that if there was not a new law in place, the Council would demand extensive revisions that might never be approved by MÁÉRT. Furthermore, it was hoped the new law would allow the Hungarians to avoid criticism and, if the Council approved of the revisions, it would encourage Slovakia and Romania to cooperate on the law. In preparing for the meeting, not only had the government consulted extensively with the member parties, informing them of the red lines and pressures of the European institutions, but it also sought to carefully engineer who would attend the meeting. Most notably, Miklós Duray of the Slovak Coalition Party (SMK), who many considered the father of the Status Law, was explicitly told not to come.<sup>36</sup>

There were still several contentious issues at MÁÉRT. First, there was bitter debate about restoring the phrase regarding the 'Hungarian nation as a whole', but the Hungarian government held the line. The other fights were over support for education and culture. In the draft, a teacher

---

<sup>35</sup> Zoltán, op. cit.

<sup>36</sup> Duray, op. cit.



or a student with an identity card could receive training and education benefits only while in Hungary itself. Support for education and culture in neighbouring states, on the other hand, could be provided only to organisations. This formulation was opposed by the many representatives who wanted individuals to be able to receive benefits without leaving their home state.<sup>37</sup> From their perspective, it not only had a symbolic reason, but it was also rooted in fears that the current formulation would prompt emigration to Hungary. However, allowing individuals with identity cards to receive benefits while in their home country violated EU law.<sup>38</sup> The eventual compromise was that students and teachers could apply to an institution in their home country for support even if they did not have an identity card. In the final draft, this was expanded so that all students enrolled in Hungarian-language schools and teachers in these schools or of Hungarian culture at universities are eligible to participate in programs in Hungary even if they do not have an identity card or even consider themselves to be Hungarian.

The new law clearly did not please everyone. Many ethnic Hungarians in the neighbouring states believe there now needs to be a second law to tie together the Hungarian nation<sup>39</sup> and as part of this, the possibility of allowing ethnic Hungarians in the neighbouring states to gain Hungarian citizenship has been raised. Slovakia continued to complain about the law's violation of sovereignty and the fact that there were no international negotiations over the law after the changes at the May MÁÉRT meeting,<sup>40</sup> but it eventually signed a bilateral agreement. The HCNM was unhappy with the changes made by the May MÁÉRT meeting,<sup>41</sup> but the radical modifications to the law otherwise so closely conformed to European pressures that it no longer seems a significant issue for any of the three major European institutions.

---

<sup>37</sup> Ibid.; Szechy, op. cit.

<sup>38</sup> Zoltán, op. cit.

<sup>39</sup> Duray, op. cit.

<sup>40</sup> Grexa, op. cit.

<sup>41</sup> Packer, op. cit.

## IV. Pulling Back from Neo-Medievalism

By envisioning a Europe that legitimately encompasses sovereign nations and sovereign states, a ‘system of overlapping authority and multiple loyalty’, the Hungarian Status Law did seek neo-medievalism in Europe. The controversy surrounding the law, however, reminds one why Europe moved away from medievalism and established norms on minorities in the first place. To restrict states from intervening on behalf of their co-religionists, states accepted religious toleration and, in this way, sought to enhance their sovereignty. Discrimination of minorities was therefore seen as threat to international peace, which in turn implied that minority policy is a matter of collective concern for Europe. This paper argues that this series of understandings, which delegitimise horizontal violations of sovereignty while accepting vertical violations, have been remarkably durable since the Treaty of Westphalia; this is true even while the nature of state-society relations have changed, which did prompt more explicit discussion of minority norms rooted in individual human rights. Minority-kin-state laws such as the Hungarian Status Law inevitably whittle away at this notion of state sovereignty combined with state non-discrimination and individual rights.

These principles can be seen in the reactions by the European institutions. The European Union focused on questions of equality and free choice of identity, particularly as they applied to such economic issues as employment rights and social support. It is for this reason that these provisions were the easiest to strike from the law. The HCNM and Council of Europe, on the other hand, were immediately concerned with the security and sovereignty implications of the law. In response to the Venice Commission report, Hungary did address many of the issues of extra-territoriality in the law, particularly the role of the NGOs. However, for these two organisations, the issue of ‘nation’ was the most important part. The Council of Europe’s report deals extensively with this issue, stressing that ‘[t]he Council of Europe, and public international law in general, is based on the concept of “state” and “citizenship”. This leaves no room for the concept of “nation”.’<sup>42</sup> Together these institutions set out to quash notions of transsovereign nations and its neo-medievalist implications; they therefore stressed state responsibility for minorities,

---

<sup>42</sup> Jürgens Report, op. cit.

liberal notions of identity, and how kin-state and kin minorities had to be mediated by bilateral treaties between the kin-state and home state.

The European institutions were not worried that the Status Law would spark violence between Hungary and any of its neighbours. But they were very worried about the precedent it would set if allowed to stand. As discussed in other papers in this volume, Romania, Slovakia, and Croatia already provided some benefits to their co-ethnics across the borders, but these laws are less wide-ranging than those of the 2001 Hungarian Status Law. There were larger fears of Serbia using such justifications to destabilise a Bosnia that already has been buffeted by problems of multiple loyalty and overlapping sovereignty. All of these paled in comparison to the fear of Russia passing a law asserting sovereignty over the Russians in the near abroad and how it might impact the loyalty or perceptions of loyalty of ethnic Russians in these states.<sup>43</sup> It is for these reasons that the HCNM touts the radical transformation of the law as a critical accomplishment.<sup>44</sup>

This set of norms remains problematic for many Hungarians and other nations trying to institutionalise an imagined community that crosses borders. The Status Law reflects on-going Hungarian concerns since Trianon about the fate of ethnic Hungarians outside the borders. Both inside and outside the Hungarian state many feel a deep need for a legal expression of these feelings of being members of a single Hungarian nation. In light of democratisation, increased European attention to the problems of minorities, and EU accession, in 2001 the Hungarian government believed there was an opening to assert a transsovereign nation. However, there was simply no way to balance a transsovereign nation with European norms. At the same time, the issue became engulfed in power struggles inside Hungary itself. The way these struggles spilled over into its neighbours serves as another reason to remain wary of transsovereign nations. Perhaps at some point there will be more willingness to reopen these questions about the meanings of state sovereignty and to allow more experiments on institutionalising nations across political boundaries. For now, the shadow of Westphalia still looms too large.

---

<sup>43</sup> Packer, *op. cit.*

<sup>44</sup> Ekéus, *op. cit.*