

## Chapter 6

# The Status Law: Hungary at the Crossroads<sup>1</sup>

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The Status Law is the cherished baby of the FIDESZ government. If there is anything Orbán and his colleagues did from conviction, then this is it. The twist of fate is that since getting into government they have not paid such high a price for anything as for their favourite creature. If they fail at the 2002 elections, the international conflicts which the Status Law drifted Hungary into will occupy an illustrious place among the causes of their defeat.

According to all indications, Orbán and his colleagues thought that the European Union would not involve itself in the matter, and that discontent in the neighbouring countries, which would thus be isolated, could be ignored. They were wrong. Although somewhat late, the EU distinctly stated that the adoption of the law should have been preceded by consultations with the governments of the neighbouring countries and that such consultation and agreement should at least be conducted *post hoc*.<sup>2</sup> Thus the government was forced to negotiate and make concessions. To disguise its humiliating defeat, it left the law unchanged and merely overrode it with executive orders.<sup>3</sup> However, under the rule of law, a piece of legislation cannot be revised by lower level directives. So disregard for international law was compounded by a disregard for the Constitution. The present situation cannot continue. An amendment to the Status Law seems unavoidable.<sup>4</sup>

If the Orbán government wanted a Status Law, it should have conducted talks with Hungary's neighbours, certainly before presenting a bill. But a law adopted on the basis of bilateral agreements would not be identical with the one that is before us. This law essentially reflects the view that a legal

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1 Originally published in *Beszélő*, March 2002.

2 See Commission of the European Communities: '2001 Regular Report on Hungary's Progress Towards Accession', Brussels 13 November 2001, SEC (2001) 1748.

3 In two excellent articles Tamás Bauer has pointed out what a grave political price Hungary paid for postponing the modification of the law for prestige reasons: 'Az Orbán-Nástase-paktum,' *Magyar Hírlap*, 4 January 2002, and 'A státustörvény: kisebbségvédelem helyett "nemzetpolitika"'. The latter study, which is awaiting publication in the Transylvanian Hungarian journal *Magyar Kisebbség*, has helped me a great deal in thinking over my own standpoint.

4 On the impossible and mendacious nature of the present legal situation see Boldizsár Nagy, 'A szándék-buborék', *Élet és Irodalom*, 25 January 2002, pp. 3-4.

bond established between the Hungarian state and the Hungarian-speaking citizens of a neighbouring country is an exclusively Hungarian domestic matter. If that is so, then of course there is nothing to ask the neighbours about. The question is merely whether the Hungarian government has enough strength to deflect its protesting neighbours: ‘Hungary cannot be blackmailed by whipping up nationalist emotions and anti-Hungarian invective’.<sup>5</sup> If it is not so, however, then the point is not that the Status Law should have been made differently; something completely different should have been done instead. What follows is an elaboration of this point.

First, I will analyse the notion of preferential status (‘status’ for short) as a legal institution. Secondly, I will examine the aims pursued by the establishment of such a status and whether they can be justified. Then I will clarify whether, if the aims can be justified, the status is an effective means to achieve them. Then we will come to the decisive question: If the status is a suitable means, is its employment lawful, and does it violate interests which the Hungarian state (any state) is obliged to respect? From here there is only one step to drawing the practical consequences. We can make that step provided we agree on the standards against which the outcome of the analysis is to be assessed.

At present, two major traditions are wrestling with each other in Hungarian political thought. One finds its sources in liberalism, the other in non-liberal nationalism. I will try to characterise the two and to highlight where they are now in Hungary. I will make an attempt to show that the Status Law was a mistake, even from a nationalist point of view.

## I. The Third Status

The Status Law defines a range of benefits which are due to the beneficiaries (mostly) as of legal right. It specifies the population of those who have a right to apply for such benefits. The target group comprises the Hungarian minorities of six neighbouring countries.<sup>6</sup> Hungarians living in a minority position are recognised as entitled to the preferences, although in order to activate their entitlement, they have to take out a Hungarian Certificate.<sup>7</sup>

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5 Zsolt Németh, the Political State Secretary at the Ministry of Foreign Affairs during a press conference on 17 February 2002.

6 The legislation covers Hungarian-speaking citizens of all the contiguous states except for Austria. Hungarians with Austrian citizenship had to be left out of the group of beneficiaries in deference to EU regulations, since the Status Law provides benefits which cannot be granted in the EU on grounds of ethnic discrimination.

7 The law also provides for the issuing of a Hungarian Relative’s Certificate to a non-Hungarian relative of the holder of the Hungarian Certificate. According to the Orbán-Năstase agreement, this clause will not be applied in Romania, which makes its future questionable with respect to the other countries.

The applicant becomes the owner of the certificate on the basis of a personal agreement concluded with the Hungarian state. He expresses his own willingness to take on the status by handing in his application. The state has no discretion to decide case by case whether to grant the status or not. If someone can provide the requisite evidence that he is a citizen of a country listed in the law, that he lives in that country, and that he is Hungarian, the document certifying the status has to be issued without any further deliberation.

The Hungarian state has obliged itself by law, by a one-off act, to potentially issue a Hungarian Certificate to any Hungarian living in one of the six neighbouring countries who applies for it. Thus, in addition to the status flowing from the certificate, it has also created a more fundamental status – that of those who are entitled to the Hungarian Certificate as of right. They are free to apply or not, but if they do so, the state is not free to deny the request. A new constitutional subject has been created.

The Constitution of the Hungarian Republic recognises two kinds of constitutional subjects. Some of the basic rights pertain to ‘Hungarian citizens’ (with respect to whom the Constitution states that they can return home from abroad at any time, after having become of age they can vote at general and local elections, can participate in public matters and can have public office, and so on). On the other hand, ‘everybody’, ‘every person’, ‘every man’ are subjects of the other set of constitutional rights (for example, everybody has an innate right to life, human dignity, freedom and personal security, and freedom of speech is also due to everyone). This second status applies to foreign citizens as well as to the citizens of Hungary, provided they stay on the territory of the Hungarian state.

Since the 1989-90 changes, every Hungarian government has made significant efforts to assist minorities living outside Hungary’s borders. In addition to initiatives effected within the arena of international politics, including agreements conducted with neighbouring countries as well as important symbolic gestures, such efforts have taken the form of state support for Hungarian media, book publishing, culture and education carried out by non-governmental agencies outside the borders of Hungary. The recipients of such support were not mainly individuals but publishers and educational and cultural institutions. Nobody was considered to be entitled to the preferences simply by virtue of who he was. Applications were accepted or refused as a matter of discretion of the Hungarian authorities. Since this practice did not recognise entitled persons from the start, it therefore did not have to be decided who the subject of the entitlements could be. Traditional forms of support before the Status Law, and of course after, did not require the donor of benefits to define a particular class of those entitled to benefits within or other than the entirety of ‘Hungarian citizens’ or ‘every person’.

The Status Law changed all that. Its beneficiaries do not become Hungarian citizens, and they do not apply for assistance to get integrated into Hungarian society. Those who settle in the territory of Hungary or gain Hungarian citizenship automatically lose their status acquired on the basis of the law. The law promises support to Hungarians living outside Hungary as citizens of another state, on the territory of another country. It singles them out from the totality of non-Hungarian citizens residing across the borders of Hungary, in one of the neighbouring countries. The bearer of the Hungarian Certificate is entitled to various benefits over and above the treatment due to any foreigner entering the territory of Hungary, and he or she may enjoy a part of these benefits without ever stepping onto Hungarian soil. In addition, there are benefits provided by the certificate which are not due even to Hungarian citizens.

Thus the Status Law creates a third category besides 'Hungarian citizens' and 'every man'. This immediately raises the question whether it can stand at all without amending the Constitution. At first sight it may seem that it can. The Constitution specifies the subjects of fundamental rights – i.e., of those rights which the legislator cannot confer and withdraw at will, and which are morally due to every person, either in respect of any state under whose jurisdiction he or she may find himself or herself (human rights), or in respect of the state whose citizen he or she is (citizens' rights). However, the Status Law is not about fundamental rights but entitlements which the legislature creates at its own discretion.

There are some obvious analogies. For example, the law refers to the practice whereby states undertake on the basis of a bilateral agreement to provide free emergency medical treatment for each other's citizens, just as if the person in need were their own subject. The beneficiaries of such agreements are not just 'everyone', while at the same time they do not become citizens of the receiving state. We still would not consider that the Constitution should include this category of beneficiaries.

However, the aim of the contracting states with such a bilateral agreement is not to support the citizens of the other state. Rather, they seek by this measure to ensure emergency medical help for their own citizens when abroad. To entitle foreigners to similar help is merely a means of effectively serving the interests of their own citizens. The logic of the Status Law is different. Just as the Constitution provides for the subject of fundamental rights, the Status Law grants special treatment to its beneficiaries for their own sake, not for the reason that it is, indirectly, good for citizens of the Hungarian state, but because it is good for them. The benefit is to serve their interest.

The Status Law declares that apart from its own citizens the Hungarian state provides special rights to the members of another group of people,

namely the Hungarian-speaking citizens of the neighbouring countries who reside in their own homeland. The rights are held in relation to the state which is assisting them. It is up to the legislating authority to determine the content of the preferences to which the rights-bearer is entitled. But there are limits on that authority's discretion. It cannot say that although it recognises the 'external Hungarian status' as one in which claims against it are grounded, it will leave those claims without any content. Nor can it, say, refuse Transylvanian Hungarians, as Romanian citizens living in their mother country and having Hungarian as their mother tongue, the support given to other Hungarians outside Hungary.

This is not such an unusual construction. Hungarian constitutional law knows of similar cases. Under the standing interpretation of the Constitutional Court, the right to 'physical and psychological health at the highest possible level' and to 'social security' are like this. They imply obligations for the state, which means it cannot avoid the task of establishing and maintaining institutions of health, pension insurance and unemployment benefits. Within a wide range, it is up to the government to decide what institutions it sets up and what level of support it provides to the bearers of the entitlements. Legislation can choose from among various institutional schemes and may decide what health or social expenses the budget can cope with. But it has no discretion to leave these provisions completely empty, nor to deny them to particular groups of citizens.<sup>8</sup> The logic of the Status Law is no different.

To sum up: The Status Law is based on the implicit assumption that from the perspective of the Hungarian state, Hungarians living in the neighbouring countries represent a third constitutional status. However, there is no constitutional provision that could create the status in question.

It is true that the Constitution stipulates that '[t]he Republic of Hungary feels responsible for the fate of Hungarians living outside its borders and promotes the tendency of their connection with Hungary'. But this is not sufficient for the constitutional establishment of an 'external Hungarian status'. The passage defines a constitutional aim. It does not say anything about how that aim must be pursued. Even if the Hungarian state simply stays within the traditional support for minorities, it still fulfils its constitutional obligation of helping Hungarians living outside the borders of the kin-country. Taking responsibility only implies the state having to do something reasonable for the Hungarians living outside its borders and not that Hungarian-speaking citizens of neighbouring countries have a right to be provided with personal support by the Hungarian state. This right is presup-

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<sup>8</sup> See decisions of the Constitutional Court Nos. 31/1990, 26/1993, 43/1995, 44/1995, 56/1995.

posed by the Status Law and so it ought to be recognised in the Constitution, assuming the necessary majority of Parliament agrees.

However, this, we might say, is the simpler, relatively easily solved aspect of the issue. It is up to Parliament to amend the Constitution, and this can be carried out within its sovereignty. The real difficulty is caused by the fact that the Status Law implies a constitutional status that will exist within the jurisdiction of the Hungarian state but that is to be held by persons who are citizens of other states and reside in the territories of those states. By establishing such a third status the Hungarian state extends its jurisdiction over individuals who are under the jurisdiction of another state and are intended to remain so.

## II. The Aims of the Law

The preamble of the Status Law stipulates that its aim is ‘to promote for Hungarians living in the neighbouring countries their belonging to a unitary Hungarian nation, prosperity in their mother country, and the consciousness of their national identity’. It is worth noting that these aims are mutually supportive. If Hungarians living in the neighbouring countries prosper in their mother countries, the pace of relocation to Hungary (or a third country) will decrease. At the same time, if their sense of national identity grows, the impetus behind assimilation to the majority will be reduced. These two effects together might slow down the retreat of the Hungarian-speaking population of the region to the territory of the present Hungarian state. And if this population does not divide into many isolated Hungarian enclaves, separated by as many countries, but local communities instead preserve their cohesion *in situ*, then the ‘unitary Hungarian nation’ will survive, and it will do so in more or less the same geographical territory which it had populated before the division of the historical Hungarian state.

The opposite relationships also hold. If Hungarians living in the neighbouring countries not only adhere to their local community but also to a broader Hungarian nation, to a nation whose largest community has its own state, then it will be easier to preserve their identity consciousness. If the members of the local Hungarian communities preserve their identity and, as a result, assimilation into the external environment is slowed, then their communities will resist attrition in a key aspect: They may still be able to maintain their own intelligentsia and other professional elites. With their own intelligentsia and professional strata, they can provide a culturally rich environment for their members, and the possibilities for Hungarians living in neighbouring countries to prosper in their home-states will improve.

However, it makes a difference what we understand to be the longer-term vision underlying this set of aims. One may take their final objective to be the prosperity of minority Hungarians, that is of particular people, individual

human persons of Hungarian nationality. In this case, the goal is that these individuals should, without relinquishing their Hungarian identity, have the opportunity to prosper on the basis of equality with the majority of citizens of their country. Alternatively, the final objective might be the survival and prosperity of the ‘unitary Hungarian nation’. If we tie the long-term aim to the interests of the nation as a whole, we are adopting a collectivist world-view. If the final aim is tied to the interests of particular human persons, our world-view is individualistic.<sup>9</sup> The individualist view was introduced into modern political thinking by liberalism. Today, it is more or less shared beyond liberal circles as well, but collectivism tends to re-emerge with the opponents of liberal thought. This is also true for nationalist thinking. Below, with some simplification, I identify the individualist view with liberalism and the collectivist one with the approach of nationalism. When we raise the question whether the aims of the Status Law are legitimate and justifiable, we must be aware of this distinction.

Political aims do not need to be justified to those who already agree with them. Justification needs to be directed at those who (rightly or wrongly) believe their interests will suffer a setback as a consequence of the realisation of the aims. In our case this includes tax-paying Hungarian citizens, who bear the cost of providing benefits to minority Hungarians, the majority citizens and the states of the neighbouring countries whom the legislator expects to accept the special relationships between the minority Hungarians and the Hungarian state along with the resulting benefits, and finally the community of the European democratic states, which has an interest in the principles and rules of international law being abided by throughout the continent.

Let us begin with the citizens of the Hungarian Republic. What does nationalist argumentation say to the tax-payer who does not identify with a nation that extends beyond borders? It tells him that he is Hungarian and it is his duty to make sacrifices for the Hungarian nation as a whole. This, however sounds like being told, ‘Hungary is a Christian country and it is your duty to make a sacrifice for “our” Christianity’. Both demands are condemned by the principle of political neutrality. He who restricts his loyalty to the community of Hungarian citizens cannot be subjected to legal obligations with the justification that the Hungarian nation, an entity beyond borders, has legitimate claims against him and that he must identify himself with this nation. Individual persons have the right to choose their ethno-national identity,

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9 Individualism is not identical either with the idea that an individual must care only for his own personal well-being (egoism) or with the view that individuals can live well if they do not belong to a community (atomism). Individualism is the negation of collectivism; it proposes that only the prosperity of individuals is good in itself – the enrichment of communities is valuable only if their members as individuals can lead a better life.

at least in the negative sense that they have no duty to identify themselves with any particular cultural community, linguistic or other, and particularly, they have no duty to endorse any particular shape of the community they happen to identify themselves with. Thus, a citizen of Hungary may or may not consider herself a member of the Hungarian ethnic nation, and if she does, she may or may not conceive of this nation as extending beyond the boundaries of the present-day Hungarian state.

The liberal argument says this to the tax-paying Hungarian citizen: ‘Your loyalties may or may not reach beyond the borders of this country; but however you feel, remember that these borders were not drawn up through the choice of the region’s population. It is not that those who ended up on this side of the border chose Hungary and those on the other side chose Romania, Czechoslovakia, etc. You are Hungarian and so are they, only you were fortunate, and they were not. They have had the bad luck to pay the price of the post-First World War division of what Hungary used to be, and you have the good luck of not being forced to pay the price for it. This being the case, then you, as a member of the community of citizens of the Hungarian state, together with your fellow citizens, bear some responsibility for those Hungarians who suffer the disadvantages of the territorial division. And so does the Hungarian state, which is supposed to act on behalf of the community of its citizens. It is bound to try to see to it that being Hungarian over the border should not be a serious disadvantage, and that the Hungarians in a minority position should be able to live as well as you, as far as possible’. Such a statement does not conflict with the principle of political neutrality.

The nationalist argument says this to the majority citizens in the neighbouring countries: ‘The Hungarian nation was one and indivisible before the cutting up of the Hungarian state. It has the right to preserve its unity, even across the borders. We have come to accept the new borders; in exchange, you must accept that the Hungarian state gives entitlements to the Hungarians living in your country in the interest of preserving the nation.

No Romanian or Slovak has reason to endorse this kind of reasoning, not even if, in general, he tends to recognise Hungarians living in his country as equal fellow citizens’. ‘Why should the Hungarian nation as a whole be entitled to survive over the borders?’ could be the response. ‘I can easily imagine that Hungarians in my country might limit their ethnic loyalty to their local group (just as the French in Switzerland refuse to identify with the “unitary French nation”). Suppose this is the case, or could become the case with the passage of time – what kind of right has the “unitary Hungarian nation”, then, to establish institutions operating in the territory of my state only to attract these people back into its radius of loyalty? Show me that how would serve to benefit my Hungarian-speaking compatriots – or stop interfering with the internal matters of my country’.

It is exactly the well-being of such ‘Hungarian-speaking compatriots’ that is the basis for the liberal argument. It tells the citizens in the majority population: ‘Hungarians living there are your fellow citizens, and they are entitled to the same rights. They have a right not to suffer any disadvantage in your common country merely because they are not members of the majority ethnic nation. But being in minority entails suffering disadvantages; the mere abolition of legal discrimination does not do away with these; in order that people living as a minority would have the same opportunities as you do, and so that at the same time they would not have to give up their ethnic identity, their initial disadvantages must be counterbalanced. You yourselves as their fellow citizens who enjoy the advantages of the existence of your common state must make sacrifices – how could you object to the Hungarian state taking its share’?

Finally, it is not nationalist but liberal reasoning that can speak to the community of democratic states. International law recognises national and ethnic minorities. It takes note of the fact, too, that those in a minority position have initial inbuilt disadvantages and these cannot always be counterbalanced by rights established for the individual – in other words, it is not hostile to the idea that minority protection also requires collective rights. But with this, the minority collective does not become an ultimate bearer of rights like an individual person. The rights of the individual must be protected because it is important in itself that a person can lead her life in freedom, in dignity, and in equality with others. However, collectives must have rights not for their own sake but, if it is justified, in order that their members, particular people may lead their lives in freedom, in dignity and in equality with others. The community of democratic states does not recognise collective rights as non-derivative principles; it does not accept the reasoning based on the supra-individual good of national collectives. Let us now apply these considerations to the aims postulated in the preamble of the Status Law.

### **III. Evaluation of the Aims**

Of the three aims set out in the law’s preamble, the second is the easiest to interpret. Hungarians left outside the borders of Hungary live as minorities. Individuals in a minority have a justified interest in having opportunities to prosper which are equal to those enjoyed by the majority; therefore their initial disadvantages have to be addressed. The kin-country may participate in this task as long as its measures respect the sovereignty of the minority’s mother state. Let us call this the aim of levelling up.

The third point, the promotion of the ‘sense of national identity’ is also relatively easy to interpret. The fact that someone’s mother tongue and culture is Hungarian does not mean that the person identifies himself as Hungarian. Identification is anyway not something which either exists fully or is

completely absent; it has degrees, it can be stronger or weaker. And minority existence polarises the people with the same mother tongue and culture. There is likely to emerge a subgroup that responds to its minority position with a fierce resistance to any pressure for assimilation. The heavier the pressure, the stronger the identification with the minority community. Others, however, are made uncertain by their minority situation. They assimilate to the majority more easily or at least make less effort to prevent their children's assimilation. The self-conscious part of the minority feels threatened by this polarisation because the continuous melting away of the uncertain penumbra demoralises the remaining community and worsens the demographic conditions of minority existence. The time may come when the minority shrinks below a critical size where it cannot have its own university even if the majority state does not stand in the way of establishing one; it cannot have its own lawyers, doctors or economists even if its members are not hindered by discrimination in getting diplomas; it cannot maintain its own theatre even if the financial means are at its disposal, etc.

It is a basic right of the individual to make her own, independent choice between preserving her minority existence or assimilating to the majority. It is not permissible either to force people out of the minority community or to force them back there. But non-coercive ways of helping them to preserve their identity by lowering its relative costs are clearly permitted and, given the asymmetry between the burdens and benefits of the two options, it can be even said to be required. By encouraging identity preservation at the uncertain edges of the minority community, such a policy would improve the prospects for those who opt for persistence anyway, because it slows down the attrition that is threatening them. I would call this target the aim of identity conservation.

It is a harder matter to interpret the first item in the list of aims in the preamble, which says that the law intends to ensure that 'Hungarians living in the neighbouring countries belong to the unitary Hungarian nation'. In the vocabulary of the FIDESZ government this is called nation policy. The nation policy aim, however can mean different things depending what is meant by the 'unitary Hungarian nation'.

One can understand this expression as referring to a linguistic and cultural community. In this sense, it seems to mark the totality of those who regard Hungarian as their own language, Hungarian culture as their own culture, Hungarian history as their own story and who, on this basis, define themselves and one another as Hungarians. In this understanding, the unity of the Hungarian nation means that carriers of Hungarian language and culture separated geographically and politically (Hungarians in Hungary, Romania, Slovakia and so on) see themselves as belonging to a totality of Hungarians living in the Carpathian basin. In other words, although local Hungarian

communities necessarily come about (for example, Romanian Hungarians creating a separate community within the Hungarian population of the broader region), they do not take the place of the more comprehensive community, but merely inflect the relationship of their members to the latter. Those who regard themselves as Transylvanian Hungarians will still identify with the whole Hungarian population of the region. Read in this way, the aim stipulated in the first point is to slow down outwards assimilation and to strengthen the loyalty of individual Hungarians to the entire Hungarian population whose ethnic homeland is the territory of the historic Hungarian state. This aim could be called that of maintaining the cultural nation.

In another sense, however, 'the unitary Hungarian nation' implies not just a cultural but also a political entity. Interpreted in this way, the expression refers to more than a group of people united by the bonds of mutual recognition based on shared language and culture. Hungarians of the Carpathian basin might share this kind of a sense of community and still fail to form a 'unitary nation'. The 'unitary Hungarian nation' becomes a palpable reality if it unites politically again. If this is the message conveyed by the cited expression, then the task of the law is to be understood as set by the political separation of the various geographic parts of the Hungarian nation. And the fact of political separation does not set this task indirectly, *via* the disadvantaged position of the minority parts of the Hungarian nation, but directly, as a consequence of the inseparability of the nation and its state.

Such a political reading of what the 'unitary Hungarian nation' is presumes a bond established by public law between Hungarians living anywhere in the region and the Hungarian state. This bond is not held to rely on an extension of the territorial jurisdiction of our state over the territories of its neighbours. It links an individual with a state in virtue of a relationship that is not based on the authority of the state over a territory. The set of people who stand in this relationship with the Hungarian state is defined in terms not of residence but of ethnic belonging. The law is accordingly held to establish a legal and political bond among the individual members of this set themselves. They belong to each other legally and politically through their shared relationship with the Hungarian state. The Status Law makes the Slovak, Ukrainian, Romanian, Yugoslav, Croatian and Slovenian Hungarians members of the same legal category – they all have the right to apply and receive the external Hungarian status. A cultural nation does not have a centre; its members living in different countries do not necessarily connect to one another *via* the capital of a particular country. The centre of the Hungarian nation conceived as a political entity is Budapest, and the Hungarian state is its organisational focus. I would define the aim of setting up such a structure as the aim of political nation unification.

The legislators failed to make unambiguously clear their intention regarding the alternative interpretations, either in the text of the Status Law or in the debate about it. When the Romanian Prime Minister in his letter demanded of Viktor Orbán that the reference to the ‘unitary Hungarian nation’ should, among others, be deleted from the preamble, the answer was that it was unnecessary since the law was based on a cultural concept of ‘nation’, and Hungarians living in the neighbouring countries considered themselves connected to the Hungarian language and culture without this involving a political bond with the kin-country.<sup>10</sup> However, when the same Viktor Orbán presented the law to the domestic public he expressed himself in a completely different spirit: ‘We have been waiting for eighty years for a bond, in a legal sense as well, to be formed between the parts of the Hungarian nation torn from each other, so that links may emerge that go beyond the existing spiritual ties’.<sup>11</sup>

The aim of cultural nation maintenance can be translated into the language of individuals’ interests; it can also be interpreted as a means to serve the benefit of individuals in a minority position. If several minority Hungarian identities were to replace the one single Hungarian national identity, then each minority would probably find it harder to resist the assimilatory pressure, and that would encumber the position of those who wish to live as Hungarians in their country. This was touched upon earlier, but I have not yet mentioned another type of individual interest related to this problem. For many, it is important in itself that the community they identify with is not limited to the local Hungarian population but embraces the whole population of Hungarians with the same language and culture. Unlike the aims which have been reviewed so far, this may reflect the interest of people who themselves are not in a minority position, i.e. the citizens of the Hungarian state. They may also wish that the Hungarian cultural nation be extended to encompass the entire Hungarian-speaking population of the region, so that they can see themselves as members of a community extending across the present borders of the Hungarian state in every direction.

There is nothing disreputable in the desire to identify with the ‘unitary Hungarian nation’; people who expect the Hungarian state to help them achieve this aim are not looking for something impossible or unacceptable. But there is a great difference between their interest and the interest of someone who suffers a disadvantage due to his minority condition. For the person chooses to see the Hungarian-speaking communities originating from a formerly unitary Hungarian nation as parts of a surviving larger community, it is

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10 ‘Bukarestben egyelőre nem kommentálják Orbán Viktor válaszelevelét’, *Magyar Hírlap*, 30 November 2001.

11 Kossuth Rádió, *Reggeli Krónika* [Morning Chronicle], 9 January 2002.

undoubtedly a burden and a loss if his nation is divided and shrinks. If his state makes efforts to ensure that all those with whom he wishes to identify really do make up one nation with him, it will be acting in his interest. But it cannot be said that it would be protecting his rights. We do not have the right to have all those whose ancestors used to form a cultural nation with our ancestors wishing to form one cultural nation with us (any more than those dedicated to the pan-German idea have the right to have present-day Austrians feeling that they belong the ‘unitary German nation’). Interests that are important enough to demand protection in terms of a right provide the aims related to them with a strong justification; a mere interest not protected by a right gives only a weak justification to the goals related to them, and so these goals are easily overridden by conflicting aims.

So much for confirming the aim of cultural nation maintenance. Can the aim of political nation unification be justified? Undoubtedly, if each Hungarian is bound to the Hungarian state with legal and political ties, then it is easier for everyone to preserve their sense of Hungarian identity. Forming legal and political ties, however, presumes more than preserving the cultural nation. The latter is possible without impinging upon the sovereignty of the neighbouring countries in any way. That cannot be said for the programme of political nation unification.

The Hungarian state cannot establish a legal tie with people living and having citizenship in a neighbouring country without affecting that state’s sovereign authority. Therefore, such ties cannot be legitimately made without asking for the consent of that state. Should this nevertheless happen, it inevitably raises the suspicion that the legislating state’s aim is not to help the individual beneficiaries of the newly created bonds, because that would not call for unilateral action, but to change its own position.

I wrote earlier that many people would like to belong to the entire Hungarian cultural nation, and that that is a respectable desire. There must also be many who would by choice belong to a politically unified Hungarian nation. Their wish is also legitimate, provided such ‘political nation unification’ is carried out with the consent of the neighbouring states where the minority Hungarians live. However, if they want to see the ‘political reunification of the nation’ as a matter internal to the Hungarian state that does not concern any third party beyond it and the individual Hungarians with whom it establishes a special relationship, then the response must be that this desire does not provide a weak justification of the Status Law – it provides no justification at all.

Oh yes – but there is no state in our vicinity which would voluntarily consent to the ‘political reunification of the Hungarian nation’. I agree. But there are two ways to respond to this fact. One possible response could be: This is the aim, and balancing the possible means against each other we

conclude that creating a *fait accompli* is the only way to achieve it. The other response holds that the aim of political nation unification should not have been put on the agenda in the first place. Before engaging in a more detailed justification of this statement, let us examine whether the creation of the status is a legitimate means for the other aims.

#### **IV. The Means: Advantages and Disadvantages**

Should the aims of a legal institution be legitimate, the institution itself is legitimate provided that it effectively serves its aims and, in so doing, it does not damage other interests which the state has an obligation to respect. Let us see, then, whether the creation of a new status involving a Hungarian Certificate is an effective means of the aims discussed above.

A minority group can receive governmental support in two different ways. First, the aid might be channelled towards non-governmental organisations (cultural associations, educational institutions, foundations, etc.) and then either distributed or directly used by them. Or, second, the aid might directly reach the ultimate beneficiaries, who themselves are individual persons (or their families). Any serious minority support policy must unavoidably make use of the first, indirect method, since there are minority interests which can only be promoted by coordinated group action, and cannot be served by providing benefits directly to individuals. However, there may be a need for support whose direct recipients are individuals or their families. Unless the support goes directly to the ultimate beneficiaries, the interests that are meant to be furthered suffer a serious setback. Many people are impossible to reach through intermediary organisations. And those who are reached do not receive the benefits as a matter of right and, therefore, the distributors might have an enormous leeway to give and withhold preferences arbitrarily. These are well-known and serious problems; an obvious way to avoid them is for the state to provide support directly to the individual who is treated as a bearer of right.

The above considerations apply equally to the support aimed at compensating for disadvantages and at preserving identity. A further consideration is specifically related to the latter. Those who become uncertain as to their ethnic identity (and even those who have a firm sense of belonging) need symbolic confirmation. The creation of the status is not only a technical means for channelling support to the target person but also a symbolic gesture. Those who ask for and receive a Hungarian Certificate do not simply make themselves recipients of entitlements; this act directly strengthens the bond between them and the community of the Hungarians. If so, then, provided that the policy is successful, the issuance of Hungarian Certificates contributes to enhancing the sense of community among the Hungarians living in the Carpathian Basin.

So much for the possible advantages. But here are the possible disadvantages. The status does not tie its bearer to the Hungarian cultural community as such but to the Hungarian state, and the bonds it creates are not merely ‘spiritual’ but legal. As Zsolt Németh, the State Secretary of Foreign Affairs of the Orbán government once said, the Hungarian Certificate is an ‘authentic legal document, its issuance means that the Hungarian state acknowledges a bond with a Hungarian outside Hungary. With him or her, personally. Personally, just like with its own citizens’.<sup>12</sup> This, however, inevitably causes qualms in the majority citizens and political leaders of the country whose minority citizens the law affects. Concerns, suspicions and doubts threaten to produce a number of undesirable side-effects. Mistrust against the minority may strengthen in every day life. Anti-Hungarian feeling may be stirred up by right-wing political groups. Hungarian organisations may be forced onto the defensive, and their room for manoeuvre may narrow.

The position of the Hungarian state may also deteriorate. Since the transition to democracy, Hungarian governments of all stripes have been promoting the prosperity of Hungarian minorities living over the border by financial support and symbolic gestures. However, I would hazard that this is not their chief means. The key to the social and economic health of a minority is not in the hands of the Hungarian state but in those of the state on whose territory the minority lives. The Hungarian government can help primarily by persuading the neighbouring states to respect minority rights, to confine nationalist rhetoric, and to treat minority individuals as equal citizens and minority organisations as partners. This aim can be facilitated in two ways: directly, by engaging in partner relations with its neighbours, concluding bilateral agreements and ensuring in this way that minority rights are recognised and respected; and indirectly, by putting the cause of minority protection on the agenda at international forums, contributing to the further development of the relevant legal principles, and ensuring that the democratic community of states, primarily that of Europe, really holds countries to account for these principles, in particular those countries where Hungarians live.

In the 1990s Hungarian governments achieved significant results in both areas. What they managed to achieve is far from what is needed to secure the prosperity of the minorities, but it is much more than what Hungarians have enjoyed at any previous time since the conclusion of World War I. The Status Law worsened the position of the Hungarian state in both respects. It provoked a very negative reaction on the part of the European Union. It disturbed Hungary’s relationship with the two neighbouring states, Romania and Slovakia, in which most minority Hungarians live. The Hungarian govern-

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12 ‘Bontsuk le a nemzetet megosztó korlátokat’, *Magyar Nemzet*, 4 January 2001.

ment was put on the defensive and had to make *post hoc* concessions, some of which go beyond simply the withdrawal of certain legal provisions. For example, the Orbán-Năstase statement of agreement declares that the Republic of Hungary will provide support to Hungarian organisations in Romania in the future only after the advance notification and agreement of the Romanian authorities.<sup>13</sup> There had been no precedent for such a measure since 1989. Also, the position of the Hungarian state was weakened with regard to European institutions. Between 1990 and 2001 Hungary was the initiating party in minorities policy and its neighbours were under continuous pressure; it was they who had to give explanations and make concessions. Now it is the Hungarian government.

It is against these negative implications of the Status Law that its possible advantages have to be assessed. In this light, the expected benefit from support tied to the Hungarian Certificate does not seem very significant. Some of the benefits (privileges with respect to work permit, medical care, etc.) do not help promote the mother tongue, culture or the connection with Hungary, nor are they particularly meaningful in themselves. If we put these aside, what remains is free use of libraries, museum visits at a reduced rate, discount fares in Hungary and some financial assistance to families with children attending Hungarian schools in their mother country. Rather modest assets. A more serious advantage would be the identity-strengthening effect of simply owning the certificate, provided many of the 'hesitants' take them out. But in the poisoned atmosphere that is exactly what becomes highly unlikely. Under conditions of suspicion and hostility, the applicant for a certificate may feel that he runs a serious risk, and most probably those with a fading ethnic identity would be more inclined to believe the risk is high. It is quite possible that, rather than helping to reduce the schism in the minority community, the Hungarian Certificate will strengthen and symbolically manifest it; those who defiantly proclaim their Hungarian identity will have certificates, while for others the choice between asking and not asking for the certificate will offer yet another opportunity to avoid taking the side of the community of Hungarians.

All things considered, the balance does not look very promising. And we have not yet examined the story closely enough. We have seen that the law expressed a tactless disregard for the sensitivities of Hungary's neighbours. But we have not yet addressed the question of whether it runs up against interests protected by international law.

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13 See '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' (Budapest, 22 December 2001, reprinted in this volume), point 10.

The official position of the Orbán government is that the Status Law respects the legitimate interests of the neighbouring countries. It has no extra-territorial effect. The Hungarian state provides benefits to Hungarians living in neighbouring countries in its own territory; and so this is a Hungarian domestic affair, and is not the concern of other states.<sup>14</sup> Unfortunately, this is not correct.

## **V. The Status Law and the Sovereignty of Neighbouring States**

Some of the benefits promised by the law can be drawn on by the owner of the Hungarian Certificate in her place of residence.<sup>15</sup> Further, with reference to the procedure for issuing the certificates, the law stipulates that the government of the Republic of Hungary recognises as validating agencies the organisations ‘representing the Hungarian national community’ in the country where the applicant lives.<sup>16</sup> For the state under the jurisdiction of which the validating organisation works, it is a body pertaining to the domain of private law, but for the Hungarian state, it is a public authority.

However, let us suppose that these provisions are dropped from the law. Even then it cannot be stated in good faith that the law does not in any way affect the jurisdiction of the neighbouring states. It defines a subset within the totality of their citizens, those of Hungarian ethnic origin and their relatives, who simply by virtue of those characteristics are entitled to a status in Hungary and, once they have obtained it, to draw on various benefits. It permits the Hungarian authorities to gather and store data on residents of neighbouring countries, namely on those who apply for the status. It rules on issuing a certificate suitable for personal identification. These measures require the consent of the affected countries.<sup>17</sup>

One possible argument here is that no state can rule in matters which belong to the jurisdiction of another state. Such a step is regarded as the viola-

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14 ‘In a legal sense ... it is Hungary’s exclusively domestic affair what benefits it grants to anybody within the territory of Hungary’. Reply of Foreign Office Secretary Zsolt Németh to a question at the 19 February 2002 meeting of Parliament.

15 See sub-sections ‘Education supports granted in the mother-country’ (text of the 2001 Status Law reprinted in this volume).

16 See sub-sections ‘Hungarian Certificate’ and ‘Hungarian Relative’s Certificate’, *ibid.*

17 See European Commission on Democracy Through Law, ‘Report on the Preferential Treatment of National Minorities by their Kin-State’, (Venice Commission Report) October 2001, reprinted in this volume. The report clearly states that granting entitlements to members of a minority as individuals and the issue of a certificate would have required the preliminary approval of the states in question. It does not mention data collection, which was cited in the 23 November 2001 letter of the Prime Minister of Romania, Adrian Năstase, to Viktor Orbán: MTI (Hungarian News Agency), 24 November 2001.

tion of sovereignty, which is prohibited by international law. The Status Law has attempted something which is impermissible as a matter of principle.

There is another way of looking at it, though. No state may unilaterally introduce regulations on matters which belong to the jurisdiction of another state. However, any state can authorise any other state to take measures in matters under its own jurisdiction. The sovereignty of a state cannot be restricted by another state.<sup>18</sup> But any state can restrict its own sovereignty in favour of either a broader community of states, a supra-state political institution, or another state. Accession to the European Union is a good example of self-limitation of the first type. For the second, recognition of the jurisdiction of the International Criminal Court can serve as an example. The third is exemplified by the agreement which provided for a shared supervision over the internal order of Northern Ireland by the United Kingdom and the Republic of Ireland.

One of the most striking characteristics of post World War II history is the spectacular rise of supra-state institutions established through the voluntary transfer of parts of their sovereignty by nation states. Although, in principle, any such transfer can be unilaterally withdrawn at any time, the trend is practically irreversible. The more we become partners with our neighbours in international organisations, the greater the chance for us to become disposed to mutually restrict our sovereignties in bilateral relations, too.

Thus sovereignty is not 'one and indivisible'. It is impossible, however, to divide and restrict it by a unilateral decision from abroad. The Parliament in Budapest may not change the legal status of Hungarians living in neighbouring countries, unless the law adopted by it includes articles in an inter-state treaty or is made with the authorisation from the affected party.

In the spring of 2001, well before the explosion of the Hungarian-Romanian and the Hungarian-Slovak debates and well before the somewhat negative country evaluation of the EU, I wrote that if the Status Law were to come about with the prior consent of the neighbouring states, it would calm our neighbours. It would reinforce the message of the basic treaties, according to which Hungary has accepted the *status quo* without qualifications. But if the law is adopted in the absence of negotiations with the governments of neighbouring countries, it will act as a provocation. Its message will be that whatever is included in the basic treaties, Hungary is not resigned to having lost its former territories.

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18 The exceptions to this are extreme situations, when the state violates human rights *en masse* and outrageously on its own territory, begins genocide or ethnic cleansing, or when it threatens the security of other states, or when it collapses or in another way becomes unable to protect the lives and security of its citizens. Even in these cases, international law requires the authorisation of the UN Security Council before intervention can take place.

The Hungarian state is standing at a crossroads. If it continues down the path marked out by the Status Law it will completely isolate itself in the region and potentially threaten the country's accession to the European Union. If it does not want that, we must return to the road indicated by the basic treaties.

All this is evident for Hungarian liberals. In principle, it is not difficult for the Socialists to accept it, although their party voted for the Status Law, while sharply attacking the Orbán-Năstase agreement and expressing its loyalty to the law itself.<sup>19</sup> But I would go further. In my opinion, even sensible nationalists should come to the same conclusion. Probably, this will not happen before the elections or immediately after them. Time is needed for the nationalist right to absorb the bitter experience of the Status Law. It is not certain it will do so. But it has good reason to.

## VI. Cooperation or Isolation

Post-1989 Hungarian foreign policy has had two firm axioms. The first says that after the collapse of the Soviet world system Hungary has no alternative but to join the community of democratic states. The second follows from the first. Our new allies do not want to hear about any revision of Hungary's borders. Before the eruption of the Yugoslav war, the right convinced itself for some time that the disintegration of some of the neighbouring countries might be a starting point for a new, comprehensive peace treaty. Since 1992, nobody can believe that. Every Hungarian government should start from the assumption that the existing state borders are incontestable.

Unless the international situation changes radically, such that another power centre able to counter-balance the influence of Western democracies appears, or that the EU closes its doors to Hungary, Hungary cannot have a government which speaks the language of territorial revisionism.

From a liberal perspective this development seems highly favourable. Liberals do not believe that a change of the borders which have existing for

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19 It is well known that the MSZP focused on the section of the statement which stipulates that not only Romanian Hungarians, but any Romanian citizen without ethnic distinction, may take on seasonal work in Hungary for three months without restriction. At the same time it clearly said that it had no problem with the law itself. This, however, is a viewpoint that is difficult to maintain. Orbán compromised on employment because the Venice Commission qualified any distinctions on an ethnic basis in respect of eligibility for benefits as discriminatory. Thus employment provisions which do not directly serve the purpose of caring for the minority's language, culture and connection with the kin-country are also discriminatory, and this qualification was also adopted by the country report of the European Union. It is impossible to condemn the concession made to the Romanian government, stand by the Status Law and approve of the EU standpoint at the same time; unless the MSZP changes its posture it will find itself in controversy with the EU. See Tamás Bauer: 'Kelletlen kérdés az MSZP-hez', *Magyar Hírlap*, 17 January 2002.

eight decades (more or less) would lead to a stable arrangement. Directly after the 1920 Peace Treaty it could still make sense to think in terms of a more just re-drawing of borders. But any such possibility was ruined by the fact that Nazi Germany became the engine of revisionism; Hungary acquired parts of its lost territories from Hitler, and this made the country Hitler's satellite in the war that following. According to the liberal standpoint today, eighty years after the borders were drawn up, we can only hope for a fair solution to the Hungarian question on the basis of accepting the *status quo* honestly and seriously. What follows from this is not only that we give up the dream of re-annexing the lost territories, and not only that we acknowledge the sovereign jurisdiction of the neighbouring states over these territories, but also that we regard Hungarians living there as not only Hungarians, and to that extent belonging to us, but for example, Romanian citizens, and to that extent belonging to the community of citizens of that country. If that is so, the situation of Hungarians under the jurisdiction of the neighbouring states can be settled in one way which is lasting and just: that they, preserving their ethnic and national distinctness, become equal participants in the community of citizens in their own countries. That is what the liberal concept of resolving 'the Hungarian question' involves. This view sees the key to solving the problem in dialogue with the majority and persistent trust-building.

I am aware that it is not easy to identify with this view emotionally. The present problems of minority Hungarians originate from an unjust peace treaty. In the inter-war period the minority Hungarians were neglected in all the neighbouring countries and they suffered disadvantages in nearly all fields of life. In the decades of communism they fell victim to a systematic policy of forced assimilation. Following the collapse of the Soviet world system, huge opportunities opened for their self-organisation, their parties becoming political factors and members of government coalitions in many places on the one hand, while, on the other, militant nationalism, which had the Hungarian minority as a natural target in its sights, nearly everywhere filled the ideological vacuum appearing after the disappearance of communism. No wonder that many cannot easily accept a policy of dialogue with the majority. Such people represent the natural public of Hungarian nationalist thinking.

According to the nationalist picture of the future, the minority organises itself as a separate body within the state; it does not form alliances with organisations of the majority and especially does seek representation in any government; it responds to grievances by drawing its lines tighter; it does not look for a political motherland where it lives but tries to find its way back to the virtual Hungarian homeland. Those who reject the policy of dialogue are entertaining a vision of isolation instead of cooperation, of enclosure in the Hungarian minority community and the reintegration of the inward-looking minority community into the historical Hungarian nation.

It is obvious that closing inward and isolation reproduce the tensions between the majority and the minority. But those who find creating mutual trust hopeless and gaining rights on the basis of cooperation impossible will not necessarily accept that the survival of ethnic hostility is a problem. Their assumption is that Hungarians can achieve results only by fighting; the majority state will only relent if it is faced with an emergency situation. Confrontation is the right tactic, and so sacrifices must be assumed. The Status Law is seen, by the nationalists as a step in this direction – a right step.

However, the Status Law proved to be a political failure even before coming into effect. Its vagaries spectacularly show that the policy of closing inward and isolation cannot be successfully pursued under the present circumstances. The Orbán government demonstratively ignored its neighbours, but in the end it was obliged to negotiate with them. At the price of haphazardly adopted concessions it may be able to purchase approval for the nominal maintenance of the Status Law. Taking advantage of the appearance of success, it can go on to suggest to Hungarian public opinion that the European Union approves of the law, and that it is only the accursed Romanian and Slovak nationalists who agitate against it. Supporters of the law in Hungary and outside may flatter themselves with the thought that, even if concessions had to be made here and there, the Hungarian government came out victorious from the battle. It succeeded in upholding the status, and this is what ultimately matters; the benefits attached to the status can be extended in the future.<sup>20</sup> But this is a misreading of the situation. The government may be able to make people forget its humiliating foreign policy defeat, but it cannot itself forget for a minute that since the Orbán-Năstase agreement its hands are tied. It cannot make any new attempts to establish rules pertaining to foreign nationals by a unilateral decision, if the neighbouring governments raise the objection that these rules have extraterritorial effect. Should it make even the smallest move in this direction, the Romanian and Slovak governments will protest loudly and the European Union will not be slow in taking sides.

The attempt to close in and isolate is unsustainable on the level of the everyday life of minorities, too. In vain does the minority isolate itself, it will still not lead its life in the virtual Hungarian homeland but in its home country, among its majority neighbours. They are the ones who have to be persuaded. It is them that it has to persuade to accept bilingual street names and the practice of bilingual offices. It is their taxes that have to be channelled towards Hungarian schools, colleges, university faculties or perhaps whole universities. In an atmosphere of open hostility, concessions are hard

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20 See Krisztián Orbán, 'Aki mer az nyer', *Magyar Nemzet*, 26 December 2001; Örs Tihanyi, 'Medgyessy és a szülőföld', *Magyar Nemzet*, 14 January 2002; Árpád Csekő, 'Státustörvény, az alapkö', *Magyar Hírlap*, 7 February 2002.

to win, and even if won on paper, they remain empty. The assimilatory pressure on the members of the minority will not relent. Under such circumstances, the polarisation of the minorities into a 'hard core' and a 'softening shell' will necessarily continue; the self-conscious part of the minority will increasingly talk to itself, as melting away accelerates at the edges. If one seriously believes that the state borders are going to remain unchanged, then the policy of isolation is irrational from the nationalist point of view, too.

The Status Law policy cannot be continued. What remains of it is a game of illusions played between the government and a minority within the Hungarian minority, a ritual display of imagined political togetherness. Meanwhile the relationship between the majority and the minority will be shaped in different areas, in arenas where the status ceremonies cannot enter. Not only has the Hungarian state arrived at a crossroads, so has Hungarian nationalism. Should it wish to continue with the adventure of the Status Law, it must turn against the aim of Hungary becoming a full and equal member of the European Union. In the present geopolitical situation this is difficult to carry out without the whole of the nationalist right being compromised and drifting to the margins. If nationalists aspiring to a position at the political centre want to avoid marginalisation, then they themselves have to draw the lessons of failure.

When the nationalist right got into government first in 1990, and then in 1998, on the one hand it warmed up many distasteful traditions; it made a cult of the Horthy era, dusted down the musty décor and costumes of Hungarian neo-Baroque and, what is the biggest problem, it did not distance itself from extreme, irredentist and anti-Semite nationalism, either emotionally or politically. Thus the adventure of the Status Law did not happen by chance. But on the other hand, the right has learnt a lot since 1989. It has learnt that the community of democratic states does not tolerate the open expression of territorial revisionism but that it can be mobilised more or less successfully for the protection of minority rights. It has learnt that it is a good idea to present the cause of Hungarians outside Hungary in terms of individual and collective rights. It has set off on the path which leads to the neighbourly policy of dialogue and cooperation. Liberals should acknowledge and appreciate this progress, even if they should also point to setbacks and inconsistencies in the nationalist position.<sup>21</sup>

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21 I have reviewed the development of Hungarian political nationalism in my essay 'Nation building and Beyond', in Will Kymlicka and Magda Opalski, eds., *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford, 2002), pp. 220-242. It was written in November 2000 and does not refer to the issue of the Status Law.

The adventure of the Status Law represents the gravest in a series of setbacks. But it would be a big mistake to presume that the Orbán government's conscious aim was to provoke the EU. If it had been prepared for a clash with the Union it might as well have introduced Hungarian citizenship for Hungarians outside the country; we know that the World Federation of Hungarians demanded this. However, the government refused that and instead granted the Hungarian Certificate, providing far less. It did so in the belief that it had found a solution satisfying its own constituency while also meeting the requirements of international law. It correctly felt that the future lies with legal institutions limiting and criss-crossing national sovereignty. However, it was gravely mistaken in believing that the establishment of such institutions can proceed through a unilateral move by a state establishing a legal status within its jurisdiction for individuals under the jurisdiction of another state.

Will it be able to correct its mistake? For the time being it stubbornly marches along on the road to isolation. As I write these lines Hungary has already been left on its own, even among the Visegrád Four. The adventure of the Status Law is pushing the right in government towards the position of the extreme right. However it is not in the interest of the community of Hungarian citizens and the broader Hungarian community that the right should exclude itself from the possibility of governing for a long time. The Hungarian national interest is for the left and the right to alternate in power, and for the state to follow the policy of basic treaties from government to government, without detours.

## **VII. What Is to Be Done?**

The most important tasks can be briefly summarised. The Status Law has to be revised thoroughly. According to the legal standpoint of the European Union, discrimination on ethnic grounds is forbidden except where it is designed to help the beneficiary group to protect its language and culture and its mother-tongue education and to keep in contact with the kin-country. Therefore privileges which do not serve these aims, must be deleted from the law. Once this has happened, the stipulations of the Orbán-Năstase agreement regarding such measures as the one which might extend the employment and health care entitlements to every Romanian citizen will become empty.

As soon as entitlements have been narrowed to those in which the Hungarians living in the neighbouring states have an interest in as Hungarians (and not as employees, patients or receivers of social care), the problem of testing the applicant's Hungarianness loses its relevance. This problem is so confusing because whatever criteria the law establishes to check the definition

of being Hungarian it will always confront the principle of the free choice of identity.<sup>22</sup> But if the Hungarian Certificate entitles its owner to benefits which present an advantage for people exclusively in their participation in Hungarian language education and acquiring Hungarian culture, then it will be unnecessary to monitor the ethnic identity of the applicant. Two further difficulties are also eliminated in this way. The Hungarian Relative's Certificate, against which the Romanian government fiercely protested, becomes unnecessary. Furthermore, the so-called validating organisations will lose their function, which the government has had to abandon in any case. The applicant's identity and the data in the application will only have to be authenticated, but this can be done by any public notary who speaks Hungarian.

The ambiguity in the preamble must also be done away with. Either the reference to the 'unitary Hungarian nation' must be deleted, or it must be replaced with the wording 'Hungarian cultural nation'. The preamble also makes a special mention of the Hungarian Standing Conference as the initiator of the legislative process. The governments of the affected countries must also be included. The law has to stipulate that its amended text will be submitted to Parliament with the agreement of the respective neighbouring governments.

What would happen then? A detailed discussion is not within the scope of this article. However, I would propose a general tactical consideration. In 1996, I devoted a lengthy paper to the thesis that liberal individualism is not in conflict with the idea of collective minority rights. The reasoning was that individuals living in a minority situation have interests which deserve to be protected legally by the state, but legal regulations for their protection cannot always be specified in terms of the individuals themselves. So I proposed that Hungarian liberals include the concept of collective minority rights in their vocabulary. However, I added that the improvement of the minority situation cannot begin with collective rights, since their recognition raises special difficulties for the majority. Those rights may be demanded first which the majority, or at least that part of it which is receptive to the ideal of liberty and equality, will relatively easily accept, these being the classical individual rights. Only when their practice has properly prepared the way it is reasonable to come forward with the demand for collective rights.<sup>23</sup>

I would now suggest a similar tactical approach to the Status Law. It is easier to make our neighbours accept that we provide support to Hungarian minority organisations and institutions, and that such support cannot be claimed as of right, than to make Hungarian-speaking citizens individually

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22 See László Öllös, 'Hová tartozhatunk?', *Fundamentum* 3 (2000) pp. 97-102.

23 János Kis, 'Túl a nemzetállamon', I-II, *Beszélő*, March 1996, April 1996. An expanded version of this study appeared in my *The Neutrality of the State* (Budapest, 1997).

entitled to benefits from the Hungarian state. A Hungarian government, of any complexion, can still do a lot for minority Hungarians before the necessity for supporting individuals through legislation should be seriously raised.<sup>24</sup> Much trust needs to be built, cooperation between Hungary and its neighbours must make much progress before we can begin to consider whether the time has come to develop the Status Law further.

The trouble with the Status Law is not only that it was introduced by unilateral action; if the Orbán government had initiated inter-state agreements for creating the cross-border Hungarian status, even then its initiative would have come too early. Now that Parliament has adopted it, thereby creating the rights and the entitlements, its outright withdrawal would be impracticable. But it is clear that once it has been adjusted to European law and the legitimate interests of neighbouring states, it must be left to lie dormant for a long, long time.

(Translated by Bob Dent)

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24 Gáspár Miklós Tamás has correctly argued that what the Hungarian government should primarily provide today should not necessarily involve direct allocations to individuals (which is impossible in most cases anyway). See his article 'A magyar külpolitika csődje', *Népszabadság*, 30 June 2001.