

## Chapter 12

# **A New Regime of Minority Protection? Preferential Treatment of Kin minorities under Na- tional and International Law**

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### **I. The Principle of Positive Distinction and Non-discrimination**

A recurrent argument in the debates on the so-called Hungarian Status Law<sup>1</sup> has been that this law violates the principle of equality and it is discriminatory, because it differentiates on the basis of ethnic origin between the citizens of foreign states. But those who voiced their criticism on this point did not seem to be conscious of the fact that this argument reflects a long-standing and recurring debate over the interpretation of minority rights, though this time formulated in a new and very different context. In fact, the idea of granting specific rights for minorities has often been rejected with the argument that even the possibility of assuring such rights is excluded by national and international provisions prohibiting all forms of discrimination. Indeed specific minority rights which go beyond the equal enjoyment of fundamental rights may be seen formally, if not substantively, as a violation of the equality principle. Opponents of specific minority rights build their arguments on this – in our opinion purely formal – principle and appear before the public in the clothes of intrepid defenders of equality. The opponents of a right cannot find a better argument for their position than the defence of another right.

In substance, however, there need not be a collision between the norms prohibiting discrimination against minorities and the norms granting their protection. Measures taken to eliminate disadvantage fit the Aristotelian concept of ‘equality as justice’, which is based on the idea that not everybody should be treated in the same way, but only those who are in the same situa-

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1 ‘Act 62/2001 on Hungarians Living in Neighbouring Countries’, text reprinted in this volume. Hereafter the term ‘status law’ refers to all domestic legal instruments which provide preferential treatment for ethnic co-nationals (kin minorities) living in other countries. Expressions like ‘Hungarian law’ or ‘Slovak law’ also refer to the same legal instruments in an abbreviated form.

tion. In this view, one can act justly by treating similar cases similarly and different cases differently. Those who defend the necessity of providing specific rights for minorities are in fact showing a commitment to this concept, when they call for positive distinction to combat the disadvantages arising from being in minority position.<sup>2</sup>

But the question remains: Is positive distinction provided by a kin-state to its co-national minorities living in other countries an accepted practice under international and European law?<sup>3</sup> As a result of the unprecedented political upheaval provoked by the adoption of the Hungarian law especially in Romania and Slovakia, various international institutions and representatives of the international community have formulated a position on the matter. The European Commission for Democracy through Law of the Council of Europe (Venice Commission) issued the most consistently elaborated analytical legal report on the question in October 2001, and this has since become the most cited document on the issue.<sup>4</sup> Although the Venice Commission Report is not a legally binding document, it has been considered as establishing the basic legal guidelines both for governments and for the representatives of international organisations addressing the legal and political questions related to the Hungarian Status Law (What is more, the Hungarian

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2 See Will Kymlicka, *Multicultural Citizenship* (Oxford, 1995), pp. 107-130; András Sajó, *Jogosultságok [Entitlements]* (Budapest, 1996), pp. 177-202.

3 It is worth mentioning here that in Slovakia, where the government was particularly concerned about the discriminatory character of the Hungarian law, the Constitution does not recognise any form of positive distinction. Paragraph 2 of Art. 12 of the Slovak Constitution states: 'Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against *or favoured* on any of these grounds. [emphasis added]' But Slovak legislation is not consistent in the application of this regulation, as for example the Slovak Status Law demonstrates.

4 *Report on the Preferential Treatment of National Minorities by their Kin-State* adopted by the Venice Commission at its 48th Plenary Meeting (Venice, 19-20 October 2001) CDL-INF 2001 (19) (hereafter Venice Commission Report), reprinted in this volume. Indeed the Venice Commission started its work on the basis of requests coming from the Romanian and the Hungarian governments. On 21 June 2001, Romanian Prime Minister Adrian Năstase asked the Venice Commission to examine the compatibility of the Hungarian Status Law with European standards and the norms and principles of contemporary public international law. Soon after, on 2 July 2001, the Hungarian Minister of Foreign Affairs János Martonyi asked the Venice Commission to carry out a comparative study of the recent tendencies of legislation in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship. At its plenary session of 6-7 July 2001, the Venice Commission decided to undertake a study, based on the legislation and practice of certain member states of the Council of Europe, on the preferential treatment by a state of its kin minorities abroad. The aim of the study was defined as an attempt 'to establish whether such treatment could be said to be compatible with standards of the Council of Europe and with the principles of international law'.

Parliament amended the law on 23 June 2003 in conformity with the opinion of Venice Commission).<sup>5</sup>

As regards the problem of non-discrimination, the Venice Commission Report, referring to previous international human rights case-law<sup>6</sup> reaffirmed that ‘different treatment of persons in similar situations is not always forbidden’ and emphasised that benefits related especially to the support of minority education and culture should not be considered as creating discrimination between the citizens of the home-state. Nevertheless, outside the cultural and educational sphere, in the opinion of the Commission, preferential treatment ‘might be granted only in exceptional cases’.

Considering the issue in the light of international standards on minority protection, in fact, there seems to be a good reason to see all provisions establishing specific rights for minorities as being in principle ‘discriminatory’. Most legal norms on minority protection indeed grant specific rights to persons belonging to minorities which go beyond the classic set of citizen rights and which are exclusively granted to a limited number of citizens, i.e. to those persons who actually belong to minorities.<sup>7</sup> In this regard it can be said that since 1966 when the *International Covenant on Civil and Political Rights* was adopted (including a specific provision on the rights of persons belonging to minorities under Art. 27), differentiation between individuals seems to be an acknowledged principle when such differential treatment is aimed at changing the disadvantaged situation of groups or persons in a society.<sup>8</sup> Art. 27 was

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5 Act 57/2003.

6 Specifically to the ‘Belgian Linguistic Case’ at the European Court of Human Rights (judgement of 9 February 1967, Series A No. 6)

7 As the Council of Europe *Framework Convention for the Protection of National Minorities* (hereafter *Framework Convention*) formulated under Art 4, ‘(1) The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited. (2) The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. (3) *The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.* [emphasis added]’

8 Cf. United Nations Human Rights Committee General Comment No. 18 (Article 26) (37th Session, 1989), U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994). para. 13, stating that ‘the Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant’. Art. 27 of the same *Covenant* expressly defines the protection of minorities as such a legitimate purpose, when it declares, ‘In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own lan-

included in the *Covenant* despite the fact that Art. 2 and Art. 26 of the same *Covenant* endorse the general non-discrimination clause, while there is nothing in the document that acknowledges the possibility of making positive distinctions. We might conclude from this that *positive* distinction is accepted in each field where international documents otherwise prohibit any form of discrimination, e.g. even in the area of social rights covered by Art. 2 the *International Covenant on Economic, Social and Cultural Rights* adopted in 1966. Similarly, read in this light, the preamble of the *European Social Charter* adopted in 1961 may not in principle prohibit positive distinction.

Indeed, in the light of the relevant provisions of the *Framework Convention for the Protection of National Minorities*, the legal opinion of the Venice Commission appears to be adopting a restrictive interpretation, inasmuch it regards preferential treatment of minorities as acceptable only in the cultural and educational spheres, while Art. 27 of the *Framework Convention* states that adequate measures aimed at promoting full and effective equality between persons belonging to a national minority and those belonging to the majority shall not be regarded as being discriminatory, ‘in all areas of economic, social, political and cultural life’. But such divergent readings are quite normal in interpreting international documents, as minority rights have not received yet a consensual interpretation under international law.<sup>9</sup>

The problem of discrimination was also raised by other international organisations, though articulated in a less tolerant tone: The Commission of the European Union, in its 2001 *Regular Report* evaluating the progress of Hungary towards EU membership, expressed its concerns on the compliance of Hungarian Status Law with European standards and especially with the *acquis* on various points.<sup>10</sup> Referring explicitly to the Venice Commission Report, the European Commission found the Status Law to be in breach of specific articles of the Treaty on the European Union (TEU – the Report referred to Art. 6, 7, 12 and 13 of the TEU) which relate to equal treatment of, and prohibition of discrimination among, EU citizens in member states. Although the

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guage’. See also Patrick Thornberry, *International Law and the Rights of Minorities* (Oxford, 1991), pp. 141-241.

9 The Court observed in its judgement in the case *Chapman vs. United Kingdom* (ECHR appl. n. 27238/95) that ‘there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (see paragraphs 55-59 above, in particular the *Framework Convention for the Protection of National Minorities*), not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community. However, the Court is not persuaded that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation’. Paras. 93-94.

10 2001 *Regular Report on Hungary’s Progress Towards Accession*, p. 91. Extracts from this text are reprinted in this volume.

2001 *Regular Report* did not specify which regulations of the Hungarian Status Law were found to be incompatible with the *acquis*, Günther Verheugen, the European Commissioner for Enlargement, in a letter addressed to Hungarian Prime Minister Péter Medgyessy on 5 December 2002, specifically called attention to the need to annul all provisions of the Hungarian Law ‘which would give rise to discrimination between nationals of EU Member States and on the basis of ethnic origin’, and specified Articles 4, 8, 9, 11, 12, and 14 of the Hungarian law as discriminatory, because ‘the benefits thereby provided for, are in fact restricted to the nationals of certain member states and/or given on the basis of ethnic origin’. The arguments propounded by the Commission in its *Regular Report* and in the letter of Commissioner Verheugen however take no notice of the permissive approach of international law discussed above, and likewise seem to ignore existing practices in some current member states (e.g. Austria, Germany, Italy) and recent legal developments within the EU assessing the relation between discrimination and the protection of minorities. The European Court of Justice, in line with the above mentioned international provisions on minority protection, declared in its judgement on the Bickel/Franz case that ‘of course, the protection of such a minority may constitute a legitimate aim’ of state action.<sup>11</sup> The ECJ presumably did not intend to acknowledge such state action irrespective of the citizenship ties between the state and the right-holders, but this is already a problem of sovereignty and not of discrimination. In a similar manner, the so-called Race Directive (2000/43EC) adopted by the European Council in June 2000, while it strongly prohibits any form of direct or indirect discrimination based on racial or ethnic origin, actually promotes positive distinction, stating that the principle of equal treatment ‘shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin’ (Article 5). Nonetheless, the question of whether a kin-state is entitled to promote specific rights for its kin minorities remains unanswered under the provisions of the *acquis*. But in the light of the reticence of the *acquis* on the matter, and considering the more permissive position of the Venice Commission, the bold statement of the European Commission seems to be more a political than a legal opinion. In fact one of the main political concerns that emerged in relation to the application of Hungarian law in non-member countries was that the Commission viewed a possibility of opening a breach in the strict Schengen border regime of the Union, by eventually providing preferential entrance for persons holding the Hungarian Certificate to Hungary and thus to the territory of the EU.

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11 Case C-274/96 judgement issued on 24 November 1998: [www.curia.eu.int/jurisp/cgi-bin/form.pl?lang=en](http://www.curia.eu.int/jurisp/cgi-bin/form.pl?lang=en). For comment see Bruno de Witte, ‘Free Movement of Persons and Language Legislation of the Member States of the EU’, *Academia* 18 (1999), p.1.

These fears however seem to be baseless, in the light of similar practices on the part of Greece which give preferential residence and travel opportunities to certain co-national groups who are citizens of non-member states.<sup>12</sup>

From a legal point of view, it may be argued that providing support on a preferential basis to members of minorities in fields related to their right to preserve and maintain their minority identity cannot be in any way regarded as discriminatory either under public international law or under the relevant provisions of community law. The main quandary in this regard is obviously not whether such a differentiation is discriminatory, but much more whether a kin-state is entitled under international or community law to provide preferential treatment to people who are not its citizens. Indeed, in the justification of kin-state support provided for the citizens of other states, the problem of infringing the sovereignty of other states seems to be much more relevant to the question of compliance with international law than the question whether such a support is discriminatory or not.

## II. National Responsibility Clauses in the Constitutions

It is an established practice in Europe that the various national legal systems offer preferences to their co-nationals living outside the borders as compared to other foreigners. Following political transition in Central and Eastern Europe, the regulation of support for these ethnic groups has become a characteristic feature of constitutional legislation.

After the Russian Federation, Hungary has the largest kin minority communities living outside its borders (about 3.5 million persons).<sup>13</sup> It is understandable that looking after the Hungarians living beyond the borders not only constitutes one of the pillars of Hungarian foreign policy in the 1990s, but concern about their fate was already apparent in the 'new' Constitution of 1989.<sup>14</sup> According to Article 6 (3) of the Constitution, 'the Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary'.

However, Hungary is not the only state in the region which formulated a 'national responsibility clause' of this type. Article 7 of the Romanian Constitution adopted in 1991, which is entitled 'Romanians Abroad' provides that 'the State shall support the strengthening of links with the Romanians living abroad and shall act accordingly for the preservation, development, and ex-

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12 See Ministerial Decree No. 4000/3/10/1998 about prerequisites, duration and procedures of providing the right to stay and work to Albanian citizens of Greek origin.

13 The term 'kin minorities' is used here to denote persons belonging to a national community of a state (kin-state), who are citizens of other countries ('home-state') and reside abroad.

14 Act 20/1949 was fundamentally modified in 1989, introducing a democratic constitution for Hungary, by Act 31/1989.

pression of their ethnic, cultural, linguistic, and religious identity under observance of the legislation of the State of which they are citizens.’ This provision is longer and more specific than the Hungarian ‘responsibility clause’ but, at the same time, more limited, for the ‘fate of the Hungarians living outside the borders’ is a wider concept than the ‘preservation of ethnic, cultural, linguistic, and religious identity’.

We can also cite the Slovenian Constitution, which includes a similar clause. Its Article 5 declares:

Within its own territory, Slovenia shall protect human rights and fundamental freedoms. It shall uphold and guarantee the right of the autochthonous Italian and Hungarian ethnic communities. It shall attend to the welfare of the Slovenian minorities in neighbouring countries and of Slovenian emigrants and migrant workers abroad and shall promote their contacts with their homeland. It shall assist the preservation of the natural and cultural heritage of Slovenia in harmony with the creation of opportunities for the development of civilised society and cultural life in Slovenia. Slovenians not holding Slovenian citizenship shall enjoy special rights and privileges in Slovenia. The nature and extent of those rights and privileges shall be determined by statute.

Thus, the Slovenian members of parliament framing the Constitution raised the idea of a future status law<sup>15</sup> already in the Constitution. The Slovenian constitutional provision went further than those of other states in one more respect by declaring ‘promoting the contacts with the homeland’ to be the constitutional right of the autochthonous Italian and Hungarian ethnic communities.<sup>16</sup> The only defect of the provision is that the Constitution believes this right to be applicable exclusively with regard to the two named ‘autochthonous’ minorities even though Roma, Serbs, Croats, and other minorities also live on the territory of the country.

Article 7 (a) of the Slovak Constitution states that ‘the Slovak Republic shall support national awareness and cultural identity of Slovaks living abroad and their institutions for achieving these goals as well as their relationships with their homeland’. Article 10 of the 1990 Croatian Constitution contains a provision on Croats living outside the borders. First, it declares that the Republic of Croatia protects the rights and interests of its citizens living or staying abroad, and promotes their links with the homeland (This is connected presumably to the fact that until recently Croatia applied the legal institution

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15 The term ‘status law’ here refers to all domestic legal regulations aiming at the preferential treatment of kin minorities irrespective of whether such regulations took the form of statute law, parliamentary resolution, or any other form of legislative act.

16 This provision is from Article 64 of the Slovenian Constitution, which deals with the separate rights of the autochthonous Italian and Hungarian ethnic communities.

of dual citizenship extensively in the case of Croatians living abroad). After this, the article does not continue the provision by talking about citizens but says that ‘parts of the Croatian nation in other States are guaranteed special concern and protection by the Republic of Croatia’ (This provision is perhaps the most similar to the ‘responsibility clause’ of the Hungarian Constitution).

Beyond the countries mentioned above, the constitutions of Poland and Ukraine also contain provisions with regard to those living outside the borders.<sup>17</sup> However, this explicit attention to persons of the same mother tongue and culture is not a peculiar feature of Central and East Europe. It was well before the introduction of these constitutions that some Western European constitutions and statutes formulated provisions which gave preference to their co-nationals living abroad. The best known of these examples is perhaps the German regulation, which traditionally supports Germans outside the borders and greatly facilitates their acquisition of German citizenship. According to the preamble of the 1949 German Basic Law, the constituent power acted also in the interest of those Germans who were ‘denied’ participation in the reconstruction of the German state. The preamble referred specifically to Germans living in the Soviet occupation zone. Following German reunification, this provision was removed from the preamble. Currently, Article 116 § 1 of the Basic Law applies to ethnic Germans and their spouses living outside the borders and it undertakes no less than defining who can be considered German.<sup>18</sup> Germans arriving from the Volga region, from Transylvania, and from other territories can claim German citizenship.

But the measures introduced by Portugal, a former colonial power, are also of interest. Article 15 (3) of the 1976 Portuguese Constitution declares that ‘citizens of Portuguese-speaking countries may, by international convention and subject to reciprocity, be granted rights not otherwise conferred on aliens, except the right of access to membership of the organs of supreme authority and the organs of self-government of the autonomous regions, service in the armed forces, and access to the diplomatic service.’ The origin and spirit of this provision are certainly different from those that inform legislation in Central and East European countries. Nonetheless, discrimination in favour of foreigners of the same mother tongue and culture as against other foreigners can be seen here as well.

On the basis of the constitutional provisions outlined above, several countries adopted so-called status laws, which filled the relevant responsibil-

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17 According to Article 6 (2) of the 1997 Polish Constitution, ‘the Republic of Poland shall provide grants to Poles living abroad to maintain their links with the national cultural heritage’. According to Article 12 of the 1996 Ukrainian Constitution, ‘Ukraine provides for the satisfaction of national and cultural, and linguistic needs of Ukrainians residing beyond the borders of the State’.

18 See Article 116 of the German Basic Law.



ity provisions of their constitutions with content. Among Hungary's neighbours, Slovenia, Slovakia, and Romania have already passed specific laws on the preferential treatment of kin minorities.<sup>19</sup> So far, however, none of these laws have aroused such a fervent debate as the Hungarian legislation, adopted in 2001.

### III. Comparison of the Hungarian Status Law and the Legislation of the Neighbouring Countries

It was Miklós Duray, vice-president of the Hungarian Coalition Party in Slovakia, who wrote about the draft of the Status Law that 'we would have a law we have never had before'. This statement refers to the fact that there has never been a similar law in Hungarian legal history.<sup>20</sup> This may help to explain why the adoption of the act was preceded by sharp political debates and exaggerated expectations. Even the title of the Hungarian law was uncertain for a long time; 'Status Law' was softened to 'benefit law', and in the end Parliament voted on the 'Act on Hungarians Living in Neighbouring Countries'. Parliament adopted the act on 19 June 2001. The broad political consensus of the time when the new law was framed is indicated by the fact that the legislature passed it with a majority of 92.4%. Notwithstanding the official title, the act was called 'Status Law' by the general public from the moment of its inception.

In adopting the act, the legislators relied heavily on the status laws adopted previously in the neighbouring states. At the same time, it provided a uniform legal framework and amended existing provisions relative to the Hungarians living beyond the borders; before the Status Law, there were some lower level legal norms on the status of kin minorities in effect. In the following pages, we will make a comparison between the principles and certain specific provisions contained in the Hungarian Status Law and the similar laws of neighbouring countries. However, we have to point out that where the provisions of the Hungarian Law coincide with those in force in the surrounding states, this in itself means neither that these provisions are just nor that they conform to the rules of international law.

When we examine the most commonly cited status laws enacted in the region, we can see that the Romanian and the Slovenian laws can be regarded

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19 The 1997 Slovak law appeared in No. 30 of *Zbierka zákonov*. Resolution No. 2280 of the Slovenian Parliament, passed on 27 June 1996, was published in the *Uradni list* of 5 July 1996. (Although the Slovenian law is referred to as 'Status Law', it was passed by the Parliament only as a resolution.) The Romanian law was published in the *Monitorul Oficial* of 16 July 1998. The texts of all three are reprinted in this volume.

20 See Miklós Duray, 'Sosemvolt törvényünk lesz!' [We would have a law, we have never had before!] *Beszélő*, May 2001, pp. 29-31.

much more as support and benefit laws than status laws (in the strict sense of regulating the *legal status* of their addressees). Furthermore, these two status laws differ from other similar regulations inasmuch they focus on supporting communities, while (e.g.) the Slovak and Hungarian laws take an individualistic approach. But the Hungarian law is more of a benefit law as well, since its core is constituted by the benefits and grants which it provides to the persons to whom it applies. By contrast, the Slovak act essentially regulates the legal status of those living outside its borders. That is, it has the real character of a status law; it regards it as its primary task to regulate the status, rights, and obligations of Slovaks who are foreign citizens (For that matter, only one obligation of the Slovaks abroad is named in it, namely, the observance of Slovak laws).

As we analyse the status laws of the neighbouring countries, it is a conspicuous feature of the Slovenian regulation that it declaredly treats the regulation of the status of persons living outside the borders as part of the international protection of minorities. This attitude is revealed by the article of the Slovenian Constitution quoted above, which also appears in the country's status law and declares that 'Slovenia, as a member of the international community shall attend to protecting the autochthonous ethnic communities'.<sup>21</sup> Thus, the provision of the preamble of the Hungarian Status Law which asserts that Parliament had regard to the basic principles espoused by international organisations on the protection of minority rights, cannot be considered unprecedented.

Another special feature of the Slovenian law is that it refers to the unity of the nation understood in a cultural sense (Article 1 [1]): 'Those regions of the neighbouring countries where autochthonous Slovenian minorities live, form a common cultural area with the Republic of Slovenia.' Presumably, the Hungarian legislation also had its origin in the concept of the cultural nation. The closing document of the Second Meeting of the Hungarian Standing Conference held in 1999 concluded that although 'the historical cataclysms of the Twentieth Century tore the Hungarian nation into several pieces, [...] the nation remained united throughout in the spiritual realm.'<sup>22</sup> The preamble of the law as adopted declares that one of its aims is to ensure that Hungarians living in neighbouring countries form part of the unitary Hungarian nation. There are interpretations which take this to mean that the law makes Hungary the centre of all Hungarians and, at the same time, regulates the conditions of their communication with the centre.<sup>23</sup> However, it is more likely that the

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21 See Chapter III of the Slovenian 'Status Law'.

22 Closing Document of the Second Meeting of the Hungarian Standing Conference, Budapest, 11 November 1999, reprinted in this volume.

23 See Traian Ștef, 'Magyar igazolvány', [Hungarian Certificate] *Provincia* 2:5 (2001), p. 4.

original aim of the lawmakers was to equalize to some extent – where necessary – the chances of ethnic Hungarians identifying with the majority culture and with that of the minority. They sought, that is, to even up the opportunities provided by one nation state and offset it with the opportunities provided by the other state.<sup>24</sup>

The Hungarian law was presumably intended to refer to the concept of ‘cultural nation’, and its preamble indeed declares as one of the law’s primary goals ensuring that the Hungarian minorities living abroad form part of the unitary Hungarian nation, though without specifying how the term ‘unitary Hungarian nation’ should be understood. In this regard particular concerns have been repeatedly formulated by Council of Europe’s Parliamentary Assembly Rapporteur Erik Jürgens in his draft reports evaluating the Hungarian law presented to the Committee of Legal Affairs and Human Rights in August 2002 and in February 2003. Rapporteur Jürgens claims that the concept of ‘nation’ applied in the preamble of the Hungarian law confuses cultural and political ties, and as public international law and the traditions of the Council of Europe are both based on the concept of ‘state’ and ‘citizenship’, they cannot accommodate the concept of ‘nation’.<sup>25</sup> As János Kis noted, this ambiguous formulation is rather unfortunate: ‘Either the reference to the “unitary Hungarian nation” must be deleted, or it must be replaced with the wording “Hungarian cultural nation”’.<sup>26</sup> The ambiguity of the term ‘nation’ was also reflected in the final version of the Resolution adopted by the CoE Parliamentary Assembly in June 2003, when the Resolution stated that ‘[t]he Assembly notes that up until now there is no common European legal definition of the concept of “nation”’.<sup>27</sup> Indeed in order to avoid potential contradictory interpretations, the amended law refrained from using ‘the unitary Hungarian nation’, and formulated it in terms of sharing a ‘Hungarian cultural heritage’. Nonetheless it seems quite clear that even this previous formulation was not intended to refer to the political sense of the term ‘nation’.

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24 See Gusztáv Molnár, ‘A státustörvény és az erdélyi kontextus’, [The Status Law and the Transylvanian context] *Provincia* 2:5 (2001), pp. 8-9.

25 Cf. *Draft Report on the 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 (‘Magyars’)* (second draft), Council of Europe’s Parliamentary Assembly Committee on Legal Affairs and Human Rights, *AS/Jur (2003) 06 rev 2*

26 János Kis, ‘Státustörvény. Magyarország válaszüton’, [Status Law. Hungary at the cross-roads.] *Beszélő*, March 2002, pp. 42-56, reprinted in translation in this volume.

27 CoE Parliamentary Assembly ‘Resolution 1335 (2003) on the Preferential treatment of national minorities by the kin-state: the case of the Hungarian Law on Hungarians Living in Neighbouring Countries (‘Magyars’) of 19 June 2001’, adopted by the Assembly on 25 June 2003. pt.10.

#### IV. The Question of Personal Application

One of the cardinal points of the Hungarian Status Law is the question of personal application. The problem of the Hungarian Certificate, which serves as a basis for the benefits and grants enumerated in the law, is closely connected to this question. The amended act applies to persons declaring themselves to be of Hungarian ethnic origin who are not Hungarian citizens and who have their residence in the Republic of Croatia, Serbia and Montenegro, Romania, the Republic of Slovenia, the Slovak Republic or Ukraine, and who have lost their Hungarian citizenship for reasons other than voluntary renunciation, whose Hungarian citizenship has not been revoked because it was obtained under fraudulent circumstances and who are not in possession of a permit for permanent stay in Hungary.<sup>28</sup> At the same time, the text contains no trace of the lawmakers' intention that the law should apply to the descendants of the persons who fall within the scope of the act.

The original intention of the legislators was to make the Hungarian law applicable only to those persons who were deprived of their Hungarian citizenship subsequent to the 1946 Peace Treaty of Paris, and to their descendants (However, in view of this it can be considered problematic that the provisions of the Status Law as adopted do not apply to Hungarians and their descendants living in the Czech Republic even though the Peace Treaty affected them too).

The Hungarian legislation is similar to the Slovenian Status Law, which is applicable in those regions of neighbouring countries where autochthonous Slovenian minorities live. The Slovenian law specifically enumerates these territories: Carinthia and Styria in Austria, Friuli-Venezia Giulia Province in Italy, the Rába region in Hungary, territories of Croatia along the common border but especially Istria, Gorski Kotar (Muraszombat), and the area of Međimurje (Muraköz). By contrast, the Slovak Status Law covers every non-citizen foreign Slovak. The Romanian law closely resembles the Slovak one in this respect when it grants support to the 'Romanian communities from all over the world'. In general, the Romanian law talks about Romanians living abroad and their communities. Thus, it follows from the text of the Romanian law that it treats the Romanian communities beyond the borders as subjects of the collective rights provided to them by the status law. The status laws adopted by the other countries concentrate on individuals rather

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28 At the last moment, the Hungarians living in Austria were excluded from the scope of the law – and the negative opinion of the European Union also had a role in this. Prime Minister Viktor Orbán declared in a TV interview that according to the EU, it was not possible to make a distinction among the citizens of the Union, so that the Hungarians living in Austria could not be treated more favourably than the citizens of the other states of the Union. See István Riba, 'A végek dicsérete', [The laudation of borderlands] *HVG*, 23 June 2001, p. 7.

than communities: The Bulgarian regulation on Bulgarians living outside Bulgaria refers to persons of ‘Bulgarian origin’, in a relatively broad sense of the term – a ‘person of Bulgarian origin is a person of whom at least one of the ascending is Bulgarian’<sup>29</sup>; similarly the Greek regulation states that ‘Albanian citizens of Greek origin residing in Greece, [are] given a special *homoghenis* identity card’, and like the Hungarian law, the Greek legal provisions acknowledge the right of close relatives to hold the ‘same identity card [...]’, as it states it shall be ‘given to husbands, wives and children of *homoghenis*, independently of ethnic origin’.<sup>30</sup> The quality of *homoghenis* is accorded only to those persons who can document their Greek origin before the competent Greek consular authority. The details of what official documentation is required are not specified by law.<sup>31</sup>

Among the legal regulations adopted on the position of co-nationals living abroad, the Russian Federation’s Act 2670/1999 on policy towards ‘compatriots’ living abroad takes a particular position. The legal regulation adopted here differs in two respects from other similar legislation; first, the term ‘compatriots’ encompasses Russian citizens living abroad temporarily, and on the other hand it extends not only to ‘compatriots’ of Russian origin, but also to those who belong to the other autochthonous nations of the Russian Federation. Implicitly this approach is reflected in the definition of ‘compatriots’ and the regulations concerning cultural and educational supports and grants. Furthermore this approach resonates with the preamble of the Russian Constitution, referring to the multiethnic people of the Russian Federation as the final source of power. This reflects much more a state-centric rather than a nation-centric approach in providing support for co-nationals.<sup>32</sup>

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29 Art. 41 of the Law for the Bulgarian Citizenship, SG 136 1998; Amend. and suppl. SG 41 2001.

30 Ministerial Decree No. 4000/3/10/1998 about prerequisites, duration and procedures of providing the right to stay and work to Albanian citizens of Greek origin.

31 *Ibid.*

32 See the ‘Federal Law on the State Policy of the Russian Federation in Relation to the Compatriots Abroad’, adopted on 24 May 1999. For a concise legal analysis see Stanislav Chernichenko, ‘Protection of Kin minorities, International Standards and Russian Legislation’, in: *The Protection of National Minorities by their Kin-State* (Strasbourg, 2002), pp. 261-271. For political and historical reasons, the Russian lawmakers did not introduce a direct ethnic or national link between Russia and its compatriots living abroad, but it rather applied a state-centric approach, extending the supports provided by the Russian Federation to ‘a) citizens of the Russian Federation permanently residing abroad; b) persons who previously were citizens of the USSR and now are living in the states which were parts of the USSR, who acquired the citizenship of these states or became stateless persons; c) emigrants from Russia, the RSFSR, the USSR and the Russian Federation who had respective citizenship and who became citizens of a foreign state or got a residence permit, or who became stateless persons; d) descendants of the aforesaid persons with the exception of descendants of persons belonging to titular nations of foreign states’: Chernichenko, ‘Protection of Kin minorities’, p. 265.

## V. The Question of the Hungarian Certificate

The issuing of documents similar to the Hungarian Certificate created by the Hungarian Status Law is not without precedents in the various national regulations. One example is provided by the aforementioned Greek ministerial decree on the preferential identity card issued for Albanian citizens of Greek origin residing in Greece. These persons, when on Greek territory, are entitled to receive a specific '*Homoghenis* Identity Card', which constitutes a work permit and permit of residence for a period of three years, subject to revalidation for an equal period of time. The Greek *Homoghenis* Identity Card is issued by police authorities in Greece and is valid only on the territory of Greece.<sup>33</sup>

From this point of view, it is worthwhile examining the Slovak legislation – adopted in the Mečiar era – which preceded the Hungarian Status Law by almost four years. The 'Act on Slovaks Abroad' adopted in 1997 makes the enjoyment of the benefits it offers dependent upon taking out an 'Expatriate Card'. The difference in the regulations of the two countries lies in the fact that while under Slovak law taking out the card is necessary if the applicant wants to make use of benefits in respect of travel, education, employment, residence, and the purchase of property on the territory of Slovakia, according to the Hungarian law, possession of the Certificate entitles the holder to enjoy the (primarily individual) benefits either in the homeland or in the native country (Thus, for example, a Hungarian student living outside the borders benefits indirectly from the grant provided by the Hungarian state to the school in which that student is studying). Moreover, it is an undisclosed aim of both the Hungarian and Slovak acts to prepare a register of those in possession of the document, which could foreshadow some kind of a national survey. It has to be emphasised, though, that one can be recorded in this register only by application and of one's own free will.

The documents can be issued in both countries by the central administrative authorities of the relevant country. The Hungarian Status Law did not specify this but in the light of existing practice this authority was intended to be the Ministry of the Interior in Hungary, while in Slovakia the documents are issued by the Slovak Ministry of Foreign Affairs. The two laws declare completely different principles on who is entitled to this document. The Slovak law entrusts the Ministry of Foreign Affairs with deciding whether or not to issue the card if an applicant meets the conditions set out in the act. In the original 2001 text of the Hungarian law, the basis for issuing the Hungarian Certificate is the statement issued by a recommending organisation that

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33 Ministerial Decree No. 4000/3/10/1998 about prerequisites, duration and procedures of providing the right to stay and work to Albanian citizens of Greek origin. Art. 1.

certifies that the applicant is of Hungarian ethnic origin. In theory, if the conditions specified in the act are met, the Hungarian authorities have to issue the certificate to any applicant in possession of a recommendation.<sup>34</sup> In the amended law, no reference was made to the ‘recommending organisations’ and the diplomatic and consular delegations of Hungary were officially involved in the issuing of the certificates (Article 19).

A further difference is that the Slovak law provides clear criteria for assessing one’s Slovak origin. According to this, the applicant has to be of Slovak ethnicity or has to prove his/her Slovak language and cultural awareness.<sup>35</sup> In order to obtain the Expatriate Card, the applicant has to certify this with formal documents or the written testimony of a Slovak organisation abroad or the testimony of at least two fellow Slovaks living abroad. The Slovak law considers a person to be of Slovak ethnic origin if among his/her direct ancestors there was a Slovak (up to the third generation). However, these are, at the same time, rather subjective criteria, which increase the discretionary powers of the Slovak authorities.

The Hungarian law before its 2003 amendment did not specify the criteria for assessing an applicant’s Hungarian origin. The Venice Commission indeed suggested that there should be legislative measures to define the criteria for belonging to a (in this case the Hungarian) nation. But the Hungarian Status Law intentionally did not want to apply any definition of what constitutes membership of a nation, as it would not really be possible to formulate universally applicable and objective criteria. In the original draft of the law, the Hungarian lawmakers entrusted the organisations representing the Hungarian ethnic communities in the neighbouring countries with the task of issuing the necessary recommendations, and they could only examine one aspect, the applicant’s national background.<sup>36</sup> The Venice Commission objected to the use of these organisations on the grounds that they would be carrying out quasi-official functions in foreign countries. The Hungarian Status Law declares that the applicant has to submit a declaration of his/her Hungarian identity, as this is a requirement for the issuing of the ‘Hungarian Certificate’. According to the 2003 modification, those individuals are entitled to

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34 The conditions include the stipulation that the applicants lost their Hungarian citizenship for reasons other than voluntary renunciation, they are not in possession of a permit for permanent stay in Hungary, that no criminal proceedings have been instituted against them, etc.

35 The law requires at least a passive knowledge of the Slovak language and a basic knowledge of Slovak culture. However, all this can be substituted by the active participation of the applicant in the life of the ethnic Slovak community.

36 These organisations, which have to operate in compliance with the regulations of the home-state, must be representative and also have organisational structures and staff appropriate to the work of processing applications for recommendation. However, the Hungarian Law cannot regulate their structure because they are foreign organisations.

Hungarian Certificate who are proficient in the Hungarian language, or are registered by their state of residence as persons declaring themselves to be of Hungarian ethnic origin, or are registered members of an organisation uniting persons of Hungarian ethnic origin and operating on the territory of their state of residence, or are registered by a church operating on the territory of their state of residence as persons of Hungarian ethnic origin. According to the amendments, if the applicant meets any of the conditions the Hungarian diplomatic mission or consulate has to provide him or her with a certificate. If, however, the applicant cannot produce relevant official documents on one or another of the criteria, the diplomatic mission or consulate is entitled to request information from non-governmental organisations established by ethnic Hungarian communities in the home-state. The amended law – in accordance with the Venice Commission’s expectations – stood for the objectification of the process of issuing the certificate, but it preserved a role for the recommending organisations deployed by the original law. Thus, the Hungarian Status Law starts out from the freedom to choose one’s identity. However, it also believes that this can be applied only within certain limits. The Hungarian legislators were probably influenced by the negative experiences arising from the implementation of Act 1993/77 on the rights of national and ethnic minorities and the infamous phenomenon known as ‘ethnobusiness’.<sup>37</sup>

The principle of freedom to choose one’s identity is infringed by the provision of the law which e.g. denies the certificate to those who have committed a deliberate criminal offence. The Slovak law too refuses to issue the Expatriate Card to a person guilty of committing a deliberate criminal offence. But belonging to a nation and committing a criminal act are completely different categories. For example, even a Slovenian mafioso can be of Hungarian ethnic origin. When the Hungarian law was amended, this provision was in fact cancelled as being contrary to the spirit and logic of the law. With regard to the Slovak Status Law, we might also mention the openly discriminatory regulation which declares that the Slovak Expatriate Card cannot be issued to persons suffering from certain infectious diseases even if the applicant has met the criteria specified in the law.

A further difference between the Hungarian Certificate and the Slovak Card is that the Slovak authority issues the card for an indefinite period of time (and thus certifies the Slovak identity of the bearer forever), while the Hungarian authority generally establishes a specific time frame (five years).

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37 This expression refers to the infamous practice according to which on various occasions the subsidies provided by law for members of minorities occasionally went to people who did not belong to any minority because the Hungarian Minority Act did not specify the criteria for minority membership.



However, both the Hungarian and Slovak laws mention the possibility of withdrawing the document, e.g. if the bearer has committed a deliberate criminal offence in the territory of the kin-state and has been expelled from there because of it. Under the original version of the Hungarian law, the certificate was withdrawn even if criminal proceedings had been instituted against the bearer in Hungary, notwithstanding the fact that this provision violated the universal legal principle of presumption of innocence. In fact when the law was amended this reference, too, was removed from the text.

These provisions of the Slovak and Hungarian laws result basically from the fact that elements of *sui generis* law and measures on immigration and naturalisation are mixed in the status laws. Though the amendments to the Hungarian law excluded the aforementioned provisions from its text, it still contains elements of immigration law. According to Section 19 applicants are not entitled to a Hungarian Certificate if they are subject to restrictions on their entry into or stay in, or to expulsion from, the territory of Hungary.

It is an important difference between the legislation of the two countries that Hungary, taking the principle of the unity of the family as its point of departure, issues the Hungarian Certificate not only to persons of Hungarian ethnic origin but also to their spouses and minor children even if these persons are not of Hungarian ethnic origin. This latter ('Certificate for Relatives of Persons of Hungarian ethnic origin' or Hungarian Relative's Certificate) provides essentially the same rights, benefits and grants as the Certificate of Hungarian ethnic origin (here also referred to as Hungarian Certificate). In connection with this, the view has arisen in the neighbouring countries that the law might start a 'Hungarian re-assimilation' process. According to this point of view, the consequence of the Status Law will be to increase the Hungarian 'birth rate' by creating 'Hungarians born by law', thus incurring the danger of Magyarisation.<sup>38</sup> However, there are other opinions too, which call the Hungarian law 'the law on the most favoured minority'.<sup>39</sup> In response mainly to the Romanian objections, under the 2003 amendment of the Hungarian law a Hungarian Relative's Certificate can be applied for unless international treaties preclude it.

## VI. Benefits and Grants

The core of the Hungarian Status Law is constituted by the benefits and grants provided to persons of Hungarian ethnic origin – and their family members – living outside the borders and possessing the Hungarian Certifi-

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38 See Alexandru Cistelean, 'Magyar törvény román bonyodalmakkal', [Hungarian law with Romanian knots] *Provincia* 2:5 (2001), p. 8.

39 See Ștef, 'Magyar igazolvány'. *Supra* n. 23.

cate. The basis of the distinction between benefits and grants is that while individuals are entitled to the benefits, the grants have to be applied for (The financial backing for the grants is to be provided by non-governmental organisations created for this purpose and funded by the central state budget). The Status Law pronounces that the provisions regarding the benefits and grants should be applied without prejudice to the obligations undertaken by Hungary in the context of international agreements (The legislators were perhaps seeking to calm the anxious politicians in the surrounding countries with this provision).

Extraterritorial benefits are commonly seen as infringing the principle of territorial sovereignty of states, i.e. violating one of the fundamental principles of international law. As a matter of fact, there seems to be a collision between the intention of the Hungarian law, aimed at promoting a legitimate goal under international law (i.e. the protection of minorities) and the way in which this aim is realised (through a unilateral instrument partly providing support outside the jurisdiction of Hungary, on the territory of another state). To what extent are such measures acceptable under international law? This question calls for a delicate approach in legal terms, since it is related to the general problem that basic principles of international law may in fact be interpreted as contradictory and colliding norms is not a new feature. To give an example, under the existing practice in international relations *both* the primacy of peoples' and nations' right to self-determination over the principle of inviolability of territorial sovereignty of states *and* its converse are equally acceptable. The contradictory application of these two principles has not yet been unambiguously clarified under international law. In this sense neither international legal documents, nor international customary law based on existing practices can give us a consistent and definitive answer on evaluating the relationship between these two basic principles of international law.<sup>40</sup>

The ambiguities of particular principles of international law, therefore, may open a space for divergent, even opposite interpretations of the same question. Indeed, in regard to the problem raised by the application of Hungarian Status Law on the territory of other states, the Venice Commission articulated a relatively open position in its report. It stated that '[t]he mere fact that the addressees of a piece of legislation act are foreign citizens does not, in the Commission's opinion, constitute an infringement of the principle of territorial sovereignty.' Nonetheless, the Commission specifically called

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40 As has been argued in regard to national minorities' right to self-determination, 'international law neither sanctions nor prohibits secession within a particular state. Ethnic self-determination is simply a political act which occurs outside the jurisdiction of international law and is not governed by its principles': Thomas Musgrave, *Self-Determination and National Minorities* (Oxford, 1997), p. 258.

attention to the exceptional nature of the implementation of such practices on the territory of other countries, as it stated ‘[i]n the absence of a permissive rule to the contrary – either an international custom or a convention – a State cannot exercise its powers, in any form, on the territory of other States.’ Evaluating the existence of an international custom is rather problematic. However, in this regard it could be argued that the supports provided by the Hungarian law outside the territory of Hungary do not violate the sovereignty of other states, as the support of kin minorities by their kin-states on the territory of the country where these minorities live is apparently an accepted practice of various Central and Eastern European countries, and could therefore be seen as being fully in line with an emergent norm under customary international law. Nevertheless, considering the ambiguity and unclarity of individual norms established solely by existing custom, the similar practice of other states in one region does not seem to be a strong enough reason to establish any norm under customary international law. Despite the fact that the non-compliance of extraterritorial minority protection measures introduced by the Hungarian law with the accepted principles of customary international law may raise considerable doubts, it should be acknowledged that the only absolutely defensible position on such practices is likely to be established exclusively through bilateral or multilateral international agreements, accepted also by the country in which the supports and benefits are provided.

Part of the grants provided for by the Hungarian law can be claimed not only in Hungary but also in the person’s home-state; today, this is frequently criticised for being a violation of these states’ national sovereignty. However, this criticism is unfounded, given that grants provided by the mother country to the educational and cultural institutions of persons living outside the borders have become customary in the past decade, and not only in this area but also in Western Europe.

Among the laws of the neighbouring countries, the Slovak law provides only for benefits claimable on the territory of Slovakia.<sup>41</sup> However, it is a common feature of the Romanian and Slovenian laws that they also provide for grants made outside their borders in the assisted person’s home-state. Although this is less apparent in the succinct Romanian law, Article 1 (1) makes the situation unambiguous when it declares, ‘A Fund available to the prime minister is constituted, in order to ensure the financing of the activities supporting the Romanian communities on the territory of other states.’ Thus, according the law, it is possible to draw on appropriations from the central budget to assist, e.g., Romanian schools beyond the borders and various cul-

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41 This does not mean that Slovakia does not assist the Slovaks living outside its borders in their home-states.

tural and artistic activities. Another point in which the Romanian law is similar to the Hungarian legislation is that it wishes to provide access to health services in the kin-state for persons living outside the borders. The whole paragraph on health care benefits was removed from the Hungarian act when it was amended in 2003 (In addition, the Romanian law pays close attention to the higher education of young people arriving from outside its borders). The Romanian law, on the other hand, gives a relatively detailed description of the institutional arrangements for administering the grants. In this respect it is different from the Hungarian law, which, as a piece of framework legislation, is more concerned with describing and explaining the various benefits and grants. The law differs from the previous Hungarian practice – according to which the grants provided by non-governmental and public funds were mainly directed at schools and institutions – only in that in the future grants can be applied for not only by institutions but also by individual parents whose children attend an educational institution where they receive training or tuition in Hungarian. However, no one is entitled to the educational grants set forth in the Status Law; one has to submit an application *via* the non-governmental organisation established for this purpose.

The original law's provisions on employment also constitute a novelty as compared to the previous practice in Hungary. Originally the Status Law made it possible for the bearers of the Hungarian Certificate to work on the territory of Hungary with a permit which could be issued for a maximum of three months per calendar year, while stipulating that subsequent legislation might extend the maximum period of validity. The provisions of the Status Law on employment do not break with the principle of work permits for Hungarians living outside the borders, for the bearers of the Hungarian Certificate can be employed on the territory of Hungary only if they are in possession of a work permit. The whole paragraph on employment benefits was deleted from the act when it was amended. Like the original Hungarian law, the Slovak and Slovenian laws contain provisions on the employment of persons living beyond the borders. The Slovenian law promises 'special support' for the employment of members of an autochthonous Slovenian minority in Slovenian economic enterprises. Moreover, it declares that this applies to those cases when minority enterprises operate in the Republic of Slovenia until Slovenia joins the European Union. Originally, the draft version of the Hungarian Status Law contained the provision that the Republic of Hungary would assist the establishment and operation of commercial enterprises in the surrounding countries which would promote the aims of ethnic Hungarian communities living in the neighbouring countries. However, according to the EU, this provision would have violated the principle of fair competition and thus the law as adopted does not include the provision on economic strengthening of the Hungarian communities living beyond the border. At

the same time, Chapter II of the Slovenian law declares that it is a lasting and strategic interest of the Republic of Slovenia to strengthen the economic status of the autochthonous minorities and especially so in their autochthonous regions. Beyond this, the chapter also includes the statement that Slovenia will create a separate fund for the promotion of economic co-operation with the Slovenian autochthonous minorities.

The most disputed element of the Hungarian Status Law was the grants which were to be allocated in the state of residence. The allocations were particularly objected to by Slovakia on the grounds of extraterritoriality. In accordance with various international documents and recommendations the amendments of 2003 tried to settle the question by weakening the focus on the individual and strengthening the skeleton character of the law. The amendment notably made it possible that, subject to a specific international agreement, the recipients of such grants could include parents or teachers' associations operating alongside the institutions of education. Moreover, the recipients of such support – in addition to those who possess a Hungarian Certificate – may include students of non-Hungarian ethnic origin attending an institution where the language of instruction is Hungarian. This resolution reduced the extent to which grants were conditional on ethnicity.

The various status laws have different attitudes with respect to the question of immigration. The Slovak law seeks to make the residence of the bearers of the Expatriate Card easier in every respect, even if it is a long-term residence. Thus, the possession of the Slovak Expatriate Card constitutes an advantage in the process of evaluation of a citizenship application. By contrast, the Hungarian law wants to promote individual success and prosperity in the home-state. Given this, most of its key provisions do not encourage the persons favoured by the law to stay in Hungary for extended periods. Also the Slovenian law intends to promote the stay in one's home-state, while the Romanian law does not discuss this issue. Nonetheless, it may be mentioned that Romania facilitates the acquisition of citizenship by people arriving from Moldova.

By amending the Hungarian law, the Hungarian Parliament intended to implement the views of the Venice Commission, which only acknowledged benefits provided in the field of education and culture as acceptable. In the course of amendment, therefore, benefits in the fields of health care and employment were cancelled, along with supports for organisations dealing with rural tourism or with the improvement of communication networks with Hungary. In other so-called status laws, however, similar subsidies are to be found, and indeed international norms do not unequivocally reject such practices.

In the 1990s, following Western precedents, there emerged in Central and Eastern Europe a new 'trend' in minority protection: support for minorities

living abroad. The widely debated Hungarian Status Law is relatively late example of this process. Provisions of the Hungarian law had already appeared in other pieces of legislation in other countries (individual-centred supports, official identity document, etc.). Tensions arising around the adoption of the Hungarian law were much more closely related to geo-political concerns about the large Hungarian minorities living in neighbouring countries, and to the peculiarly delicate historical identities of Central European states.

The shortcomings of the Hungarian Status Law have less to do with its objectives, i.e. support for Hungarian minorities, than with the way it was drafted and the political terms in which it was presented. Nevertheless, the theoretical debates provoked by the Hungarian Status Law in academia may well be fruitful in provoking new conceptual approaches and new theoretical reflection on the protection of minorities among lawyers and politicians alike.