

Chapter 19

Legislative Aspects and Political Excuses¹: Hungarian-Romanian Disagreements on the ‘Act on Hungarians Living in Neighbouring Countries’

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The twentieth century produced an international community of states, especially in Central and South-Eastern Europe, in which some states were unable to develop organically or achieve lasting integration, either domestically or in their relations with other states. One of the main reasons for this was that a significant number of the new states established as a result of peace treaties following the two world wars possessed neither an independent historical past stretching back several centuries, nor modern state political traditions. In addition, in many cases their populations did not have a common language and culture, and sometimes there were economic and religious differences as well, while at the same time they failed to create effective apparatuses for the exercise of state power. The so-called unitary nation states, whose borders were drawn on the basis of more of prejudice than of facts or any real national unity, displayed considerable variety in their ethnic make-up and heterogeneity in levels of culture and value systems, and were socially and economically divided. Such circumstances can enrich the societies in question, but if diverse groups and interests are not integrated organically on a firm basis of shared social and political values, then they weaken society and make it vulnerable.

In the region under consideration, state existence does not correspond to national existence. One result of this is that in these countries ethnically biased policies of different kinds came into operation, either openly or by stealth. It can thus be said that ‘[w]hether or not they admit it, all states practise some kind of “nation policy”’. The nation state of the twentieth century, which seeks to uphold an image of ethnocultural neutrality, aims in practice to effectuate the real or perceived interests of one or another ethnic or national group’.² The existence of strategic nationalities policies, or simply

1 *The author had finished the paper before the Status Law was modified in June 2003. [editor’s note]*

2 Zoltán Kántor, ‘A magyar nemzetpolitika és a státustörvény’ in Nándor Bárdi and Gábor Lagzi, eds., *Politika és nemzeti identitás Közép-Európában* (Budapest, 2001), pp. 57-77,

minority policies, cannot legitimise the nation state, which by now has become an anachronistic, misleading and false historical category. Rather, it confirms the *raison d'être* and importance of nations above states. Nations transcend state borders and sometimes 'survive' them, and have the capacity to play an organic part in (broadly) national and pan-European processes of political integration.

The legislative intention of the Hungarian government and the Hungarian Parliament, embodied in the 'Act on Hungarians Living in Neighbouring Countries', relates to the above concept. The act can be regarded as a legal and normative instrument for realising the idea of national unity without the modification of borders and the political-moral-historic adjustments that that would require. It can be stated without exaggeration that the act is unique in its content, and it stands without any significant precedent in the history of Hungarian legislation. However, in the international context it can no longer be considered either unique or a Hungarian invention. In recent years similar acts have been adopted in Austria (1979), Italy (1991), Slovenia (1996), Slovakia (1997), Greece (1998), Russia (1999) and Bulgaria (2000).³ Consequently, we can justifiably speak of legislative precedents on an international level, which could well develop into an epochal process potentially affecting international standards on minority protection. The following analysis covers certain political and legal aspects of the Hungarian legislation first, and then the primarily legal objections to the act.

I. Conceptual Framework

The analysis outlined above needs to be clarified in terms of some basic concepts associated with the legal character of the act. In my opinion the expression 'Status Law' used by the public and in everyday speech misrepresents its content, since the act 'confers preferential treatment and benefits'.⁴ It is essential to point out that benefits (on the one hand) and status (a legal category) (on the other) are normally treated rather differently in law, since, while benefits generally have less legal force than the guarantee of an entitlement, in this case there are conditions that strengthen their standing. The act represents an independent system of entitlements, and within that system it

here p. 57. A version of Kántor's article is reprinted in the present volume.

3 European Commission for Democracy through Law (Venice Commission). '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) (hereafter Venice Commission Report). The full text is reprinted in this volume.

4 János Martonyi, 'A szomszédos államokban élő magyarokról szóló törvényjavaslat általános vitája', 19 April 2001, in Zoltán Kántor, ed., *A státustörvény: dokumentumok, tanulmányok, publicisztika* (Budapest, 2002), pp. 74-80.

establishes a ‘more intimate’ relationship between those entitled to the status and the Hungarian state which provides the status.

In terms of legal and juridical practice, the rights deriving from a legally defined status have the character of individual rights, that is, their implementation is not subject to any particular decision of the authorities or to political expediency. In the case of benefits, their practical application naturally depends on the assessment of individual circumstances, political or administrative discretion, and the availability of resources. In my interpretation, measures establishing status ensure a greater degree of stability through the operation of certain automatic legal mechanisms, whereas benefits will always be subject to changes in political and economic conditions, policy objectives and the authorities’ judgement of individual cases.

This distinction cannot be ignored, as is shown by the fact that Minister of Foreign Affairs János Martonyi referred to the issue in his introduction when submitting the draft act, though the terms he used differed somewhat from the ones used above. According to him, ‘a clear distinction must be made’ between benefits and grants. ‘The draft uses the word benefit to mean an allowance which is conferred on the entitled person without any prior deliberation, such as, for example, a travel allowance or allowances granted to people who hold student cards or teacher’s cards. [...] Unlike benefits which are regarded as support, are never provided automatically, and have to be applied for individually’.⁵ Here, ‘benefits’ includes entitlements, and thus the term comes very close to the notion of status, since the examples given (student’s card, teacher’s card) really tie the benefits to the entitled person’s legal status. It could be said that the benefit thus creates a status for its recipients.

Also relevant here is the question of whether the Hungarian and similar other ‘status laws’ can be regarded as minority protection in the sense in which the term has historically been understood in international law. International law and related international agreements and regulations with the force of law entrust the country where the members of national minorities are citizens with responsibility for the legislative and judicial implementation of minority protection. In contrast with that, or rather supplementing it, ‘kin-States [...] have shown their wish to intervene more significantly and directly, i.e. in parallel with the fora provided in the framework of international co-operation in this field, in favour of their kin minorities’.⁶ It is a fact that the subjects of the regulation are national minorities, whether they are in the kin-state or in the home-state, and thus the Status Law can be regarded as a legal measure protecting minorities.

5 *Ibid.*

6 Venice Commission Report.

In my opinion, the motivation and the legal effect of a measure passed in the kin-state referring to the citizens of their home-state are different from those of a minority protection measure passed in the country where the national minorities are citizens. In an ideal case the legislative institutions of the latter state adopt minority protection measures in order to realise the principle of equal rights and opportunities; in an optimum case they will do so in the interests of honouring the relevant international standards and in the hope of better international standing and acceptance. In the case of the kin-state, supporting national minorities living outside its borders is a duty self-consciously assumed, whose observation is not enforceable in international law. The country in question nevertheless considers it important in the interests of preserving, expressing and developing the common language, culture and identity. We could say that minority protection regulations of this kind adopted in the mother state are outside international legal norms at present. The mother state cannot be called to account for them and these regulations do not play a role when a country is judged on its human rights record. However, the report of the Venice Commission stipulated that ‘there is no stability and peace without providing adequate protection for national minorities’.

This expert report thus makes it clear that not only international, but also domestic regulation can have as its aim the protection of national minorities, and this of course can involve the use of legal instruments which may be different or innovative in their content and character. This clearly confirms that minority protection laws adopted in the mother state are *sui generis*. This may all seem like over-speculative legal reasoning of questionable practical value. But international experience and the legislative initiatives of certain countries show that this issue must be addressed within European institutions; the routine approach must be reconsidered and, if necessary, revised in some cases.

II. Aspects of the Hungarian Legislation

Among the possible legislative considerations and approaches, I would distinguish between the issues of principle and policy and the specifically legal ones.

1. Principle and Policy Aspects

The Status Law can be described as a measure which in its content promotes the preservation, expression and development of the national identity of Hungarians living outside Hungary’s borders, while honouring the conditions laid down by international institutions. In its form it creates the organisational, institutional and legal framework for a connection between Hungary and Hungarians living outside its borders.

a) The hope of creating a national identity without changing borders is the principal motivation behind the legislation. Obviously this reflects the idea of a cultural nation, characterised by a shared organic identity, language, cultural and historic memory and vision of traditional community. It contrasts with the concept of a political nation (less characteristic of the states in this region), which, at least in theory, rests on the assumption that the moral basis of a nation's existence is civic allegiance consciously and voluntarily chosen.⁷ The vision of national unity without border modifications, or of national identity and solidarity transcending borders, can to some extent be expressed in legal and constitutional forms. The aspiration of states in this direction is reflected in the circumstances on which the report of the Venice Commission commented: 'In the 1990s, subsequent to the end of the Cold War and the collapse of communism, the issue of the protection of minorities became a prominent one, and the wishes of the countries of Central and Eastern Europe to play a decisive role in the protection of their kin minorities became even more apparent'. This aim is stated in the constitutions of many countries: 'The Hungarian Republic bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary' (Article 6); the Romanian 'state shall support the strengthening of links with Romanians living abroad [...]' (Article 7); 'Slovenia shall maintain concern for [...] and shall foster [...]' (Article 5); 'the Republic of Croatia feels special responsibility [...] and shall ensure special protection [...]' (Article 10); 'Ukraine shall support [...]' (Article 12); 'the Republic of Poland shall provide assistance [...]' (Article 6); 'the Republic of Slovakia shall support [...]' (Article 7). These propositions articulated at the constitutional level express the view that, without questioning the existing borders, measures must be effected to protect and support, as parts of the nation, national minorities living in other countries. Explicitly or by implication, they express the intention of creating national unity across the borders, as well as the idea that limitations created by the legal existence of borders should not block the possibility of another type of unity, namely national unity. In this sense, the Status Law is nothing more nor less than the concrete legislative application and implementation of Article 6 of the Hungarian Constitution.

b) The legislators' other fundamental principle is that the law should assist people to remain in their country of birth, and not promote emigration. At the moment it is impossible to determine which of these is taking place.⁸ This does not detract from the codifiers' intentions, since the law aims to ensure that fewer people decide to leave their country of birth precisely by providing benefits and grants and unhindered contacts with the kin-state.

7 Miklós Bakk, 'Egy törvény és jövőképei', *Provincia* 2:5 (2001), p. 1.

8 Kántor, 'A magyar nemzetpolitika', p. 62.

Among other aspects, this approach corresponds with the principle regarded as crucial by the Transylvanian Romanian Hungarians, according to which a legal measure is needed which, in addition to good will and the provision of preferential treatment, assists people to remain in the country of their birth. Obviously the law cannot contain guarantees and it might well turn out to be a 'law of temptation' for reasons beyond its control.⁹ However, this basically depends on the existing conditions in the 'neighbouring countries' and how they develop, since in several countries there are a variety of factors making people leave their home-state.

c) Finally, I would mention an essential aspect of principle: The law does not seek to (nor could it) replace or pre-empt any legal measures of minority protection which already exist or may be adopted in the home-states. This reflects the awareness that in both pragmatic and legal terms the sovereignty of the respective states and their legislative authority over their own citizens must be respected. Furthermore, this principled position is completely in accord with the relevant statement of the Venice Commission, which says that 'beyond a few general principles of international common law, the related international agreements delegate the task to the home-states of ensuring the practice of fundamental human rights, including minority rights for everyone living within their borders'.¹⁰ At the same time, it is obvious that the country providing preferences and benefits has only limited legal means and legislative powers to modify the quality of life and living conditions of its kin minorities in their home-states.

2. Legal Aspects

Beyond these policy considerations, which are undoubtedly significant, the act raises several legal problems. In my opinion, the Hungarian codification has managed to resolve them.

2-1. Scope of Application *Ratione Personae*

Stipulating the group of people to whom the law applies has been a key issue. The codification managed to avoid the trap of defining the concept of nation or belonging to a nation. Obviously, the law did not have to answer the question of who was Hungarian, but only of who was to be entitled to certain benefits and grants. I do not think that legal measures are suitable for defining who or who does not belong to a nation, just as the existence of a nation does not depend on legal measures.

Two factors are decisive in the law's definition of *ratione personae*: First, a free choice of identity determines whether a person is to fall within the

9 Csaba Tabajdi's words, quoted *ibid*.

10 András László Pap, 'Státus és identitás', *Élet és Irodalom*, 1 June 2001, p. 5.

scope of application, and, secondly, the law is to be applied in an inclusive rather than a restrictive manner. Through the implementation of the principle of free choice of identity, identity itself, its recognition, preservation, declaration and promotion become recognised in customary law. It is true that history (including legal history) shows that where legislators are applying negative judgements or policies of exclusion to a group presumed to have a common identity, the definition of persons falling within the scope of the law is not necessarily problematic, especially for the legislator. However, where national or ethnic identity involves entitlement to extra rights and benefits, delimiting the relevant group may become a problem. Nevertheless, it is a fact, that ‘on the one hand, belonging to a minority is closely connected to a disadvantaged social position, while, on the other, identity of this nature is a very important part of personality, thus an organic component of human dignity [...]’¹¹ Consequently, measures of minority protection or distinctions that entail benefits should define those eligible for protection or benefits in terms of the free choice of identity.

Another important aspect of the law’s scope in respect of its effect on individuals is the insistence on its inclusive character. Apart from the emotional aspect of the issue, the authors of the act recognised that administrative measures could not be relied on to prevent abuse or violation of the law. There were accordingly two ways of approaching the matter: They could tighten the conditions, introducing elements that would limit the opportunities for abuse, and thereby risk damaging some fundamental principles (such as the right of free choice of identity) and making the law restrictive. The alternative solution derives from the basic principle of codification: The possibility that a norm may be violated is not in itself a reason not to legislate. With respect to the consequences, the Hungarian lawmakers chose the latter and included a minimum system of criteria, which made the law and its application inclusive in character. It is also inclusive in the sense that an exception is made when stipulating the *ratione personae*, i.e. a non-Hungarian spouse also comes within the scope of the act.

2-2. Territorial Scope of Application

It is clear from the point of view of the Hungarian codifiers that Hungary is the location for the application of benefits and various entitlements, and the law was drafted accordingly. Where the benefits are partially implemented in the home-state of the persons in question, this in itself does not create an extraterritorial condition, since those who are entitled are not exempt from the jurisdiction of their home-state. Also, benefits and grants provided by a kin-state for national minorities living outside its borders are not unknown in

11 *Ibid.*

international and comparative legal practice. In many cases, the constitutional articles already mentioned provide the legal basis, although in the absence of such provisions states may still exercise their sovereignty in this way, as long as they do not violate either the jurisdiction of other states or international norms. I discuss the allegation of extraterritoriality below.

2-3. Legal-technical Comments

In legislative-technical terms, what the Hungarian Parliament chose to adopt was a comprehensive skeleton law, an act which would ensure unified, comprehensive regulation. A skeleton law was also indicated by the fact that up to the adoption of the act about 150 legal measures were in place at various levels. The sheer number of regulations made the law in this field hard to understand and open to challenge. The intention behind adopting the skeleton law was not only to 'create order' in the mass of already existing regulations but to establish in law a clear-cut, unitary national policy in a form that was internally coherent and could ensure efficient application and implementation. A possible alternative to this legal editorial technique might have been a detailed code regulating the situation of Hungarians living abroad in every detail. Justifying such intricate legislation, and ensuring its effectiveness, would have been a very demanding task requiring detailed attention, but it should not be discarded *ab initio* and *a priori* as a potential alternative.

III. Romanian Legal Objections Concerning the Act

In response to the adoption of the act, the official political circles in Romania mounted a fierce and passionate attack. Their objections often went beyond well-meaning criticism and sometimes even rationality. Inasmuch as Romanian political arguments about the Status Law exceeded meaningful comment on its original content and framework a long time ago, it is clear that they serve political aims which are difficult to define and are in some cases unprincipled. (We can only speculate about these aims: maintaining tension in Hungarian-Romanian inter-governmental relations by promoting the image of Hungary as an enemy, inciting an anti-Hungarian atmosphere, perhaps with a view to practical measures, distracting attention from real social and economic problems, etc.) What follows does not include any systematic analysis of political events or motivation. I refer, rather, to objections which claim the status of rational arguments and which enjoy some internal consistency.

1. Legal Objections

1-1. Extraterritoriality

The most frequently used argument against the Status Law is that it contains extraterritorial elements, i.e. that the effects of the law extend to another

state's territory in ways that its sovereignty.¹² Let us examine what extraterritoriality means. This is an international legal category, according to which a law enacted in one state is applied in the territory of another state. (It is accepted practice in international law in the case of foreign representations of states at various levels.) However, in a negative sense extraterritoriality means the extension of one state's jurisdiction to persons, citizens or organisations in another state in such a way that the jurisdiction of the other state over the persons and organisation in question and their activity ceases to be effective. International law qualifies this as incompatible with international customary law and its written norms, i.e. an irregular procedure. This definition shows that two conditions must exist simultaneously in order for a situation of extraterritoriality to arise. On the one hand, there must be a law which applies to persons, organisations and perhaps authorities in another state, while, on the other, the jurisdiction of this latter state over the related persons, organisations or authorities and their activity must cease. Extraterritoriality can be assumed where both conditions exist simultaneously.

In our case it is true that the personal effect of the law relates to non-Hungarian citizens of Hungarian ethnic origin living in neighbouring countries in the sense that they may be granted certain benefits and grants on Hungarian territory, but this does not diminish the primary authority of the Romanian state at all, and the relevant persons remain under its jurisdiction. The Hungarian law does not violate any Romanian legal regulations, and does not contain measures of compulsion over non-Hungarian citizens, organisations or authorities. The law achieves its legal effect only if those who are entitled, expressing their free will, wish to accept and use the entitlements offered, and in no way by eliminating or suspending the jurisdiction of the Romanian state. Of course, the possibility of imprecise or ambiguous stipulations in the text of the law cannot be excluded, and there may be procedural aspects of its implementation that need to be checked with the Romanian authorities. However, if all parties are well-intentioned in their approach, none of this need lead to such violent criticism.

1-2. Discrimination

Another frequently raised objection is that the law is discriminatory inasmuch as it makes a distinction among Romanian citizens, in this case on an ethnic basis. It is well known and generally accepted in international law that the situation of minorities tends to be characterised by a certain degree of disadvantage; this may suggest the need for measures that are discriminatory

12 See the Report of the Meeting of the Working Group of the Commission with Representatives of the Romanian and Hungarian Governments respectively, Paris, 18 September 2001, <http://venice.coe.int/site/interface/english.htm>.

in their character, do not apply to others and promote better circumstances in the interest of creating equal opportunities. If we accept that measures of this type are justified and look at the constitutions of both Hungary and Romania, i.e. the statements that they are responsible and must ‘care’ for their national minorities living outside their borders, it is difficult to understand how measures which comply with the constitution can be discriminatory, or how discrimination can be asserted. Furthermore, the law does not discriminate prejudicially, in the sense that it does not create a disadvantaged position for some but offers benefits and grants in order to create equal opportunities to reduce the disadvantages that already exist.

In another context the ‘accusation’ of discrimination arose from a (deliberate or accidental) mistranslation, since ‘facilities’ was translated as ‘preferences’ and it was accordingly argued that the law violates the 1965 international *Agreement on the Prohibition of All Forms of Racial Discrimination*, which was also signed by Hungary. Similarly, the Romanian government interpreted the law as contradicting the 1995 *Framework Convention for the Protection of National Minorities* and also the 1992 United Nations *Declaration on National Minorities*. The relevant government statement overlooks certain contradictions; it only declares that the Hungarian act provides benefits for certain people, which (the statement claims) is discriminatory and violates the above-mentioned international agreements. However, the exact Romanian translation of ‘benefits’ is ‘*facilități*’, and international legal documents do not question their *raison d’être* and do not characterise them as discriminatory at all.

The deployment of ‘extraterritoriality’ and ‘discrimination’ is difficult to interpret. Both notions have very precise meanings in law and political science. Consequently, it is hardly possible that where the same set of regulations is concerned, one state would fail to recognise an extraterritorial or discriminatory aspect of its own legislation, while others would insist on it. These notions are clear and substantial enough that it should be possible to find them in the act itself (if they are really there), rather than reading them into the text on the basis of speculation about people’s sentiments or intentions. Extraterritoriality and discrimination do not exist because someone feels they exist or interprets them in that way; either they can be demonstrated or they can’t.

2. Specific Concrete Objections

2-1. Rejection of the Idea of National Unity without Border Modification

The Romanian Minister of Foreign Affairs, Mircea Geoană, made the following statement: ‘The Venice Commission underlined that the formation of political ties should be avoided between the kin minorities and the kin-state.

Thus it rejected any measure that would tend to use minority protection as a point of reference for uniting the part of a nation outside the border [with the home nation]'.¹³ The first sentence of the statement may reflect a misunderstanding, since the Commission made this proposition as a general principle, and was not specifically referring to the Hungarian act. The second sentence is the Minister's conclusion and not that of the Commission. Neither the act nor the political idea of national unity without border modification implies the creation of political ties between the kin-state and its kin minorities. The codification consciously left political rights outside the scope of the law and did not seek to introduce any entitlements regarding elections, the right to vote or any other matters that touch on political relations. The system of stipulated benefits and grants can in no way be qualified as political ties. Against the view of the Romanian Minister of International Affairs, we can quote the 21 June press statement by the Romanian Prime Minister, in which he remarks: 'Naturally we feel uneasy about the fact that certain ethnic relations are encouraged by offering all sorts of sweets, economic and social goodies and a variety of benefits'.¹⁴ Can these be the components of political ties? National unity (and not unification) is essentially an emotional and psychological condition and not a legal category. National unity can exist among members of a community who live in different countries and may be absent within a nation living in one state. It is a fact that the act does not create any legal relations of a political kind with the kin minorities.

2-2. Objection to Benefits Going beyond Educational and Cultural Support

As mentioned previously, minority protection focuses on identity – national, ethnic, cultural and religious self-consciousness. Measures to protect minorities, after all, actively encourage the preservation, expression and development of identity. The components of identity go beyond the narrowly cultural and educational. On the one hand identity is associated with religion, tradition, consciousness, behavioural factors, attitudes, intellectual and material culture, objects of history and art, etc. On the other, the preservation, expression and development of identity depend on a supportive economic and social context. If the former make up the target system of identity, the latter provide the means. Besides, we cannot talk about national, linguistic and cultural survival if the members of the community have basic problems earning a living. Thus benefits and grants which help people to make a living, indirectly contribute to preserving and developing identity and may constitute a part of effective minority protection.

13 Mircea Geoană, 'Túl a státustörvényen', *Magyar Hírlap*, 9 November 2001, p. 7.

14 Press release by Adrian Năstase, the Romanian Prime Minister, *Mediafax*, 21 June 2001.

2-3. Criticism of the Entitlements of Non-Hungarian Spouses

The Romanian government objected to that part of the act which extends entitlements to non-Hungarian spouses and minors in a mixed marriage. Criticism of this measure can only be based on an utterly malicious and hostile interpretation. As mentioned before, a fundamental principle of the law is its inclusive character, which means that the Hungarian legislators did not intend to divide people in existing relationships (e.g. marital status) according to ethnicity. If the act had made this distinction, i.e. by excluding the non-Hungarian spouse, the Romanian state would have been justified in raising the issue of discrimination.

The Romanian criticism goes further and expresses an objection to minors in mixed marriages being covered by the act. This is altogether unacceptable, since it is based on the mistaken presumption that a child's national identity is defined by the state. But the state or the public authorities have no role here. What concerns them is an individual's citizenship. The Romanian constitution and jurisprudence make a clear distinction between citizenship and national identity.

2-4. The Issue of the Hungarian Certificate

This is the most contentious aspect from the Romanian viewpoint. It makes up a disproportionately large part of the criticism, either consciously or through ignorance of the act, inasmuch as some speak cynically about the 'Act of the Hungarian Certificate', rather than using the (anyway erroneous) term 'Status Law'. In fact, this is to invert the relationship between ends and means envisaged in the act. The Hungarian Certificate instituted by the act is no more than an administrative instrument for applying and implementing the law. Therefore, the Hungarian Certificate does not appear in the act as an objective in its own right but as an item of procedure. The only valid criticism of the expression 'Hungarian Certificate' might be that it could be misleading, since it is not a document certifying and proving Hungarian national identity. It does not mean that only those who possess the certificates can be Hungarians, but it is a document whose owner is entitled to certain benefits in Hungary. In Romania, the certificate is of no use in the eyes of the Romanian authorities; on the contrary, authorities there do their best to make it an excuse to discriminate against Hungarians.

2-5. A Legislative Counter-initiative

At the legislative level, Romanian hostility is embodied in the draft law on regulating the effect of the 'Act on Hungarians Living in Neighbouring Countries' on Romanian territory, put forward to the House of Representatives

by the Greater Romania Party.¹⁵ The draft, consisting of only five articles, is without any legal or constitutional basis, and can be regarded as an expression of vulgar nationalist sentiment. The proposal of this extremist party would mean that those who are entitled to benefits and grants under the Hungarian law, holders of the Hungarian Certificate, would automatically be regarded as dual citizens and thus, under Romanian law, would be disqualified for public office. In the atmosphere of heightened political emotions, they are planning to propose next that such people be regarded as citizens of a foreign state in respect of the exercise of civic rights, with all its consequences. With regard to institutions, the idea is that any organisation which makes a recommendation in this context should be dissolved with immediate effect. Finally, there could be a prohibition on the making of such recommendations, to which both natural and legal persons would be subject, and any individual or body doing so could be legally punished. This activity would be regarded as near treason in criminal law.

The draft is a shoddy piece of work and would not deserve any attention if it had not been duly submitted as a legislative proposal by a parliamentary party. It was overruled in committee on the grounds that it fails to meet basic legal and constitutional requirements. The Romanian constitution and statute law stipulate that dual citizenship cannot be acquired collectively or as a result of a legal measure. Dual citizens (who have Romanian citizenship) cannot be deprived of their Romanian citizenship since it is granted on the basis of blood ancestry. In addition, a person cannot be regarded as a dual citizen and at the same time a foreigner, an alien. Finally, the constitutional principle of freedom of association provides a framework for the rights of legal persons, which cannot be arbitrarily defined or limited.

IV. A Few Conclusions and Questions

In summarising the above analysis, we can draw a few basic conclusions:

a) The Status Law cannot be regarded as either an extraordinary or a unique regulation, since similar legal measures, sometimes providing even broader entitlements, can be found in other countries.

b) Minority protection is fundamentally the task of the state where national minorities live and whose citizens they are. At the same time, it should be understood not as an exclusive power accruing to the state itself from a narrowly interpreted sovereignty, but as a duty which is taken on and for which a state is accountable in the forum of the international community.

15 Propunerea legislativă privind reglementarea efectelor ‘Legii privind maghiarii care trăiesc în statele învecinate’, pe teritoriul României, Parlamentul României, Camera Deputaţilor 359/21.06.2001.

c) Kin-states have the right to support their kin minorities through domestic legislation. Such legislation can be regarded as legitimate even in cases when the protection of a national minority is exemplary in their home-state, since measures by the kin-state may sometimes put a brake to natural assimilation; this is regarded as constituting legitimate care and conforms to international regulations on minority protection.

d) Unilateral measures of a kin-state cannot replace measures on minority protection and appropriate judicial practice enacted and adopted in the home-state.

e) International minority protection standards are often invoked cynically and as an excuse to defer appropriate measures which are legitimately requested by the national minorities in question. But it is a mistake to regard these standards as maxima which cannot be exceeded without the danger of contradiction or violation. In reality, international regulations on human rights, which can be considered as standards, provide a common denominator among the adopting states when each state agrees to implement that standard as a minimum (where necessary). That does not mean, however, that benefits, grants or entitlements which exceed this standard may not be offered, provided they do not contradict the spirit of the regulations. A growing international tendency in the field of minority protection, currently manifest in the recognition of the legitimacy of unilateral measures taken by kin-states, supports this interpretation.¹⁶

Amid all the objections, the Status Law will be implemented and take effect. Its virtues and deficiencies will be visible in its execution and application. Further questions will be answered, such as: How well does the act fit into the Hungarian constitutional legislative order? What procedural gaps and loopholes does it contain, and how will these affect its application? And, last but not least, how will Hungarian society accept the act? These questions, and even more the answers, will decide whether the Status Law remains a singular legislative episode with measurable positive effects for all Hungarians, including those living outside the borders, or whether it forms part of a rational and long-term strategy in nationalities policy, which has the potential to enrich the present framework of international minority protection with a new attitude and new solutions.

(Translated by Bob Dent)

16 In detail see László Sólyom, 'Kiállta a próbát a státustörvény', *Heti Válasz*, 26 October 2001, pp. 9-10.