

III. Legal Approaches

Chapter 11

Hungary's Controversial Status Law¹

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Referred to as ‘the Status Law’ since the beginning of the protracted and heated political discussion that preceded its adoption, the ‘Act on Hungarians Living in Neighbouring Countries’ was approved by the Hungarian Parliament on 16 June 2001, with 306 votes for, 17 against and eight abstentions.²

I. The Political Background

The above voting results suggest the image of a political unanimity which never existed in Hungary and which did not exist at the time when the votes were cast. The votes for the act came not only from the conservative governing coalition spearheaded by FIDESZ (Alliance of Young Democrats) and – as could be expected – the rank and file of the right wing radical opposition party MIÉP (Party of Hungarian Life and Justice) but also from MSZP (Hungarian Socialist Party), another party in opposition, despite the fierce criticisms it had directed at the fundamental principles of the bill as well as at its technical details. The only party to vote unanimously against the bill was the left-liberal SZDSZ (Alliance of Free Democrats). In view of the stormy debates raging throughout the last few months before the vote and the heated atmosphere surrounding the question of Hungarians living abroad, the Socialists were reluctant to expose themselves to the charge of being ‘traitors to the national cause’ by rejecting the bill, and they could not have prevented its adoption in any case because MPs expected to vote for the bill formed the majority in Parliament. SZDSZ did not have to worry about an unfavourable backlash against its negative vote from its potential voters – predominantly members of the urban intelligentsia – in the parliamentary elections the following year. But the Socialists, a party aiming for broad popular appeal, had real grounds for anxiety on that score.

At the same time, the approaching elections were also the reason why the largest party in the governing coalition, Prime Minister Viktor Orbán's FI-

1 In this paper the author reflects on the 2001 version of the Hungarian Status Law. The Hungarian Parliament amended this Act in 2003.

2 ‘Act 2001: LXII on Hungarians Living in Neighbouring Countries’, *Magyar Közlöny* 2001/5637, reprinted in this volume. On the parliamentary debate preceding adoption see ‘Elsőprő többség a státustörvénynek’, *Népszabadság*, 20 June 2001, pp. 1, 2, 4.

DESZ, forced the bill through Parliament in defiance of partly justified criticisms of the legislative technicalities involved and of signs of disapproval from Brussels. The aim was to win nationalist-minded voters, and this had become all the more important because of the situation in the Smallholders' Party, until then the coalition party with special appeal to nationalist and conservative sentiments. The party was in such a severe crisis that the chances of its return to Parliament after the elections were extremely slim and the prospects of its long-term recovery were also questionable. In the event, the parliamentary elections of 2002 ended with the party's demise. In throwing its weight behind the cause of the Status Law, FIDESZ was thus targeting the potential vote 'released' by the anticipated disintegration of the Smallholders' Party and was even ready to pay the price of low legislative standards³ and tensions in foreign policy.

As far as the matter under regulation was concerned, there was hardly a serious pressure of time weighing on the legislators; the concept underlying the Status Law anticipates the situation after Hungary's accession to the European Union. It is a response to the scenario in which Hungary is a member of the European Union while some of its neighbours are not. There are millions of ethnic Hungarians living in these neighbouring countries who have so far enjoyed fairly close contacts with their mother country and who would be cut off from it with Hungary's accession and the concomitant introduction of Schengen regulations. Under the Schengen regulations an outer border is expected to come down between Hungary and (primarily) Serbia and Ukraine, while the prospects for Slovenia and Slovakia to join the Union look rather good. Croatia and Romania also stand a good chance of becoming members sooner or later, but certainly much later than Hungary. It is to the Hungarians who live in these countries that the Status Law is meant to apply, while the ethnic Hungarians in neighbouring Austria, an EU member state, were left out of the scope of the Act (Article 1, Section 1),⁴ primarily in order to avoid collision with EU law when Hungary joins the Union. If Slovenia and Slovakia, too, are to become members, these countries will also have to be deleted from the list of countries targeted in the Status Law. This would not mean a deterioration of the position of Hungarian minorities in these countries, because as citizens of the European Union they would have extensive entitlements in the member state Hungary. The idea underlying the conferral of a special status and the easing of access is to enable Hungarians

3 The ruptured coherence between the sentences in items (a) and (b) of Article 14 is a case in point. This is only the most palpable – namely grammatical – shortcoming. There are also a number of weaknesses in legislative technique which could have been avoided through more attentive jurisprudential effort in the preparatory phase.

4 References to articles without an indication of the act in which they occur refer throughout to the Status Law.

living in countries outside the European Union to preserve their contacts with the mother country over the Schengen outer borders, as far as possible at the present level.

II. The Constitutional Background

The Act is based on Article 6 Section (3) of the Constitution, according to which the Republic of Hungary feels responsible for Hungarians living outside Hungarian state borders and promotes the cultivation of their relations with Hungary.⁵ This constitutional norm is no mere figment of wishful thinking cast in constitutional terms; it is anchored in the greater part of the Hungarian polity, appealing to a section of political opinion far greater than that which defines itself in nationalist terms. The great majority of the population supports the idea of a certain measure of effort in the interest of co-nationals in neighbouring countries, although the 'how' and especially the 'how much' are subject to debate. There is majority agreement on one point, namely that it is not desirable that Hungarians living in the neighbouring countries should immigrate into Hungary. While the massive emigration of ethnic Hungarians to Hungary in the wake of the opening of the borders in 1989/90 was at first accepted by the Hungarian population, majority attitudes changed in view of the enormous problems of integration involved in the process. Since then, the Hungarian population has approved of the idea of providing certain kinds of financial aid for Hungarian minorities but by no means of measures which could facilitate emigration to Hungary – an attitude which is strikingly similar to the German majority view of the problem of German emigrants from Eastern Europe (*Spätaussiedler*) and ethnic Germans resident in Russia.

These attitudes are reflected in the Status Law: Ethnic Hungarians, their spouses and children in neighbouring countries are secured benefits and grants as long as they retain their residence abroad. Privileged access to the Hungarian labour market is provided for fixed periods only (Article 15). As soon as they are granted a residence permit for Hungary in accordance with the general provisions on immigration law or asylum law, or are granted Hungar-

5 For more details on this constitutional clause see László Szarka, 'Die ungarischen Minderheiten in den Nachbarländern', in Georg Brunner and Hans Lemberg, eds., *Volksgruppen in Ostmittel- und Südosteuropa* (Baden-Baden, 1994), pp. 163-170; Herbert Küpper, *Das neue Minderheitenrecht in Ungarn* (München, 1998), pp. 121-126; *idem.*, 'Völkerecht, Verfassung und Aussenpolitik in Ungarn', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 58 (1998), pp. 239-290, here pp. 255-56; István Kukorelli, 'A "felelősségi klauzula" [Alkotmány 6. § (3) bekezdés] értelmezési lehetőségei', in Judit Tóth, ed., *Schengen. A magyar-magyar kapcsolatok az uniós vízumrendszer árnyékában* (Budapest, 2000), pp. 175-179; Wolfgang Zellner and Pál Dunay, *Ungarns Aussenpolitik 1990-97* (Baden-Baden, 1998), pp. 205-371.

ian citizenship, their entitlement to benefits and grants under the Status Law ceases (Article 1, Section [1], Article 21, Section [3] [b-d]).

III. A Skeleton Law

Like the Minorities Act,⁶ the Status Law was conceived as a skeleton law. This means that rather than being fully and finally regulated in the act, most pertinent legal matters are referred to relevant special legislation. This regulatory technique is motivated by the nature of the subject matter, which inevitably involves the need to address questions belonging to various areas of law. For instance, it is appropriate when regulating university studies to refer to the Act on Higher Education and to incorporate into the Status Law only a number of special rules specifically tailored to the position of Hungarians resident abroad. The other circumstance which explains the use of this legislative technique is the great haste mentioned above, which was motivated by political considerations and has no logical connection with the nature of the legal task itself. For instance, it would be hard to adduce a legal ground for the Status Law to go into great detail in regulating access to libraries (Article 4, Section [2]) while leaving the question of access to museums to be dealt with by regulations which are yet to be laid down (Article 4, Section [3]).

As a further result of this haste, several benefits were merely promised to Hungarians living abroad and details were left to be regulated by subsequent rules on implementation. Examples of this include most forms of financial support along with the agencies for their distribution, which are yet to be created, access to Hungarian social security services by Hungarians from other countries working on temporary jobs in Hungary (Article 7, Section [1]), and the financing of medical treatment in Hungary (Article 7, Section [2]). The last few examples clearly show how complex and time-consuming the tasks of effectively harmonising the promises made in the Status Law with the existing system of social security are. Since the Status Law is essentially conceived for some future time in any case, it is perfectly possible to turn many of its normative promises into rights which are to be put into effect through implementation regulations and the construction of an administrative infrastructure in time for accession to the European Union.

Legislation in the fields of labour law, social security and health care law has not yet been adapted to the requirements of the Status Law. This means that the benefits of this kind envisaged in the act have not yet become real. By contrast, in some areas where the provision of allowances under the law can be secured through administrative normative measures as opposed to acts

6 'Act 1993/LXXVII on the Rights of National and Ethnic Minorities', *Magyar Közlöny*, 1993/5273.

of Parliament, the relevant regulations have been introduced. These include elements such as access to museums and libraries,⁷ or equal treatment of Hungarians from other countries with Hungarian citizens in the fields of university studies, of further training for teachers, or of financial support for promoting the teaching of the Hungarian language in minority regions in neighbouring countries.⁸ Certain other implementation decrees envisaged in Articles 28 and 29 have not yet been issued.

The creation of the administrative infrastructure was less of a problem than the incorporation of rights to material benefits for Hungarians living abroad into the specialised legal instruments. The governmental and ministerial decrees required for the implementation of the act were issued mostly in December 2001, partly also in 2002. Administrative competences and procedures have been determined which will allow the act to be executed. The central register, which is kept in accordance with Article 26 for the purpose of preventing abuses in the allocation of all forms of support, was assigned to the Office of Hungarians Living Abroad.⁹

IV. Privileges, Benefits and Grants

Ethnic Hungarians living abroad are given privileges in several areas including education, culture, travel expenses, access to health care services and the labour market, and financial support. This occurs through a range of different kinds of regulation. At the lowest level there are objective obligations of the state without corresponding subjective rights. Cases in point are the provision of most favourable conditions of entry into Hungary (Article 3), the granting of awards and scholarships (Article 6), support for teaching in the vernacular in neighbouring countries through Hungarian and local agencies (Article 13), and the officially stated task of the Hungarian public radio station to provide for Hungarians in neighbouring countries (Article 17).¹⁰ In a second step, Hungarians living abroad are given equal rights with Hungarian

7 Decree 23/2001. (XII. 29.) of the Minister of National Cultural Heritage on the Cultural Privileges Available to Persons Falling Within the Scope of Act 2001: LXII on Hungarians Living in Neighbouring countries, replaced by Decree 14/2002. (IV. 26.) of the Minister of the National Cultural Heritage, of the same name, *Magyar Közlöny*, 2002/3305.

8 Decree 47/2001. (XII. 29.) of the Minister of Education on the Implementation of the Provisions of Act 2001: XLII on Hungarians Living in Neighbouring Countries, *Magyar Közlöny*, 2001/1237.

9 Article 3 of Government Decree 92/2002. (IV. 26.) on the Central Register of Support Funds Defined in Act 2001: LXII on Hungarians Living in Neighbouring Countries, *Magyar Közlöny*, 2002/3501.

10 On the long-standing provision of Hungarians abroad with a full-time programme through Duna TV see Herbert Küpper, 'Die Sicherung der Rundfunkfreiheit im ungarischen Medienrecht', in Mahulena Hoffmann and Herbert Küpper, eds., *Kontinuität und Neubeginn, Festschrift für Georg Brunner* (Baden-Baden, 2001), pp. 451-470, here pp. 453, 463.

citizens in certain areas, i.e. they have access to certain services on the same conditions as apply to Hungarian citizens. Examples include cultural rights (Article 4, Section [1]) and access to higher education (Article 9, Section [1]), though still without effective rules on the recognition or equivalence of school-leaving qualifications from the countries of residence. In addition, Hungarians resident in neighbouring countries also have equal rights of access to student grants (Article 9, Section [2]) and to the same privileges as are enjoyed by the holder of a student's card (Article 10, Section [1])¹¹ or a teacher's card (Article 12, Section [2]). In some areas the Status Law confers subjective rights to services which go beyond equal treatment. More substantial kinds of financial support may be provided on the basis of applications, i.e. following an invitation to tender for restricted resources without a legal title to further support after the resources have been exhausted (medical therapy in Hungary: Article 7, Section [2]; support for private studies: Article 9, Section [4]); support for foreign higher education institutions: Article 13, Section [2], Sentence 2; support for studies in the country of residence: Article 14, Section [4]; support for applications: Article 16, Section [1]; support for foreign organisations: Article 18). Laying down maximum numbers of applicants for higher education entitled to support (Article 9, Section [3]) and of teachers applying for further training (Article 11, Section [1]) has the same effect. In other cases, the act confers unrestricted legal claims e.g. for access to state-run libraries (Article 4, Section [2]), access at reduced prices to public transport (Article 8, Sections [2-3]), support for school attendance in the country of residence (Article 14, Sections [1-3]). Similarly, legal claims are envisaged, subject to future implementation rules, relating to access to museums (Article 4, Section [3]), access to Hungarian social security (Article 7, Section [1]) and the coverage of further training expenses for Hungarian teachers living abroad by the Hungarian state (Article 11, Section [2]).

The administrative basis for using these services is the 'Hungarian Identity Card', which ethnic Hungarians can obtain from the Hungarian government on the basis of a recommendation acquired from Hungarian minority organisations in their countries of citizenship (Article 19). By leaving the authentication of the ethnic background of the applicants to associations in the countries of residence, the Hungarian state saves itself some effort, but on the other hand it creates opportunities for abuse, even if the act itself makes the determination of national identity conditional simply on the applicants' own

11 The procedure for issuing a document certifying that its holder has such an entitlement is regulated in Government Decree 319/2001. (XII. 29.) on student allowances for persons falling within the scope of Act 2001: XLII on Hungarians living in neighbouring countries, *Magyar Közlöny*, 2001/12349.

declaration (Article 20, Section [1], item [a]).¹² The possible evasion of legal scrutiny through the delegation of the procedure to foreign organisations is some cause for concern: The applicant is entitled to appeal and, consequently, to sue in Hungary in response to the refusal to issue a certificate (Article 22, Section [2]). At the same time neither the appellate authority nor the court is expressly empowered to set aside the recommendation, which is described as a prerequisite in Article 19, Section (1). The guarantee of effective legal protection indicated in Article 57, Sections (1) and (5) of the Constitution is provided only if the appellate authorities and courts embrace a broad interpretation of their powers in the legal protection procedures and undertake, if need be, their own authentication in accordance with Article 20, Section (1). This would make it possible to create the preconditions for granting a certificate without the participation of the foreign minority organisation – which is not within the jurisdiction of the issuing authority and Hungarian courts anyway. The organisations need to have themselves recognised by the Hungarian government as being entitled to provide evaluations (Article 20, Section [3]); this recognition process, and the resulting supervision of the organisations' compliance with the conditions of recognition, gives rise to a standing relationship between Hungarian minority organisations and the Hungarian state, which raises ill feelings in several neighbouring countries.

V. The Question of Legislative Standards

Reference has already been made to the fact that the politically motivated haste in the adoption of the act led to poor legislative standards and to a number of technical shortcomings. One aspect of poor legislative technique has already been highlighted: issuing mere skeleton regulations on matters which would allow of, and indeed call for, regulation in the act itself. The Status Law holds out the prospect of a number of benefits while putting off the realisation of those promises for future legislation. This technique makes sense in the case of legal instruments regulating areas which are already subject to norms enunciated in other acts, such as higher education. However, the Status Law employs this technique in areas where the object of the legislation does not warrant it, e.g. in the handling of access to museums. That matters of this nature could, and should, be regulated in the Status Law is

12 Details are regulated in Government Decree 318/2001. (XII. 29.) on the Procedure to be Applied in Issuing Identity Cards of Hungarian Nationality and Identity Cards for Dependents of Persons of Hungarian Nationality, *Magyar Közlöny* 2001/12345, and joint Decree 49/2001. (XII. 29.) of the Minister of the Interior and of the Foreign Minister on the Requirements of Form and Content to be met by Identity Cards for Persons Falling Within the Scope of Act 2001: LXII on Hungarians Living in Neighbouring Countries, *Magyar Közlöny*, 2001/12360.

shown by the rules on the use of libraries, which do regulate the matter to the extent to which it calls for regulation by statute. In its in-depth regulation of some privileges and the mere promise of future regulation in the case of others, the Status Law resembles a patchwork quilt.

In Article 3 item (d) the act speaks of ‘the free movement of persons’. This is a legal concept known to and employed by European community law. In European law, however, the concept of the free movement of persons is restricted to citizens of the European Union, while in the Status Law the idea of the free movement of persons for alien Hungarians applies exclusively to citizens of states which are not member states of the European Union. Although EU member states are not prohibited from employing legal concepts and terms in their national legal systems in ways that differ from their use in European law, such conceptual and terminological confusions regularly lead to problems and should, if possible, be avoided by a careful legislator. This applies not only to legislators of member states but equally to states which are about to accede to the European Union.

We should also not ignore the differences between the phraseology employed in the Status Law and that employed in other Hungarian laws. The Minorities Act employs the term ‘national and ethnic minorities’ to refer to minorities in Hungary. Speaking of the same phenomenon with reference to territories outside Hungary, the Status Law describes Hungarians living abroad as ‘Hungarian national communities’. This lack of consistency in the parlance employed has no legal argument to support it. It is rather to be explained by political shifts of emphasis between the two acts and is intended to give expression to different political conceptions. We will return to this last point in the context of our discussion of problems in foreign relations and international law. As far as legislative standards are concerned, it should be made clear that political signals of this kind should not be allowed to call into question established legal terminology as such a move can only lead to the law being unsafe in the long run.

In some places the act contains completely pointless norms such as Article 6, Section (1), according to which the Republic of Hungary guarantees the eligibility of Hungarians living abroad for the award of certain distinctions and prizes awarded by the state. Decisions about distinctions are to be governed by existing legislation on awards,¹³ but Article 6, Section (1) makes no changes to that legislation or to other norms relating to orders and distinctions. Consequently, this Article establishes neither rights nor duties and is therefore superfluous. At most, it might be understood as a unilateral undertaking on the part of Parliament of the duty to create and maintain a legal situation

13 ‘Act 1991/XXXI on Distinctions Awarded by the Republic of Hungary’, *Magyar Közlöny*, 1991/1767, and several decrees by the government and particular ministers.

which allows distinctions to be awarded to Hungarians living abroad. However, Parliament would do more good to the beneficiaries by simply going ahead with its plans rather than by turning questionable declarations of future intent into law. The same holds true for the second sentence in Article 13, Section (1). It goes without saying that the state's financial contributions must be anchored in the budget act, and it is up to budget legislation to distribute financial resources. Also, while the second sentence in Article 13, Section (1) prescribes that financial resources shall be set out as 'targeted appropriations', in fact it is impossible on constitutional grounds for the resulting norm to bind future budget legislation.¹⁴ In setting the annual budget, Parliament enjoys complete freedom to depart from the provisions of the Status Law. As a result, the second sentence of Article 13, Section (1) enunciates a norm without regulative content, a declaration of intent for an uncertain future. Such 'programmatic phrases' without normative content are detrimental to the force of 'genuine' legal norms because they serve to blur the difference between genuine legal norms and 'propaganda'.¹⁵ In Hungarian legal culture, the preamble to an act is usually the place for legislative 'propaganda', which may be perfectly legitimate, while the act itself is usually reserved for the act's normative content. A careful legislator ought to respect this traditional demarcation of realms.

As a final objectionable feature, I would like to mention the frequent use of vague legal terms such as 'public educational institutions' and 'cultural goods' (Article 4, Section [1]), or 'Hungarian national traditions' and 'Hungarian cultural heritage' (Article 18). While one may concede to the Hungarian legislators that many of these vague legal concepts are unavoidable, they do open up an unusually broad field of interpretative discretion to the implementing authorities and reduce the binding influence of the laws on the executive to a minimum, and this raises serious concerns with respect to the rule of law. At this point the drafters might have employed some legal definitions to enhance the law's binding force on the executive authorities, and could have thereby enhanced its safety. Parliament has applied this instrument very successfully in many other acts. So we can safely say that the absence of a list of legal definitions is a serious, and striking, failure of legislative standards in the Status Law.

14 The act on the annual budget, being an act of Parliament, is a legal instrument of the same kind as the Status Law and, generally speaking, when a later act deviates from the contents of an earlier act, the later act prevails in accordance with the *lex posterior* rule. As a consequence, no act may make binding arrangements for what a later act must contain.

15 On the question of state propaganda cast into a legal mould see Herbert Küpper, "Personenkult" in der ungarischen Gesetzesgebung? *Osteuropa* 47 (1997), pp. 684-696.

VI. Problems from the Point of View of Foreign Policy and International Law

The aforementioned resentment on the part of neighbour states about the inclusion of Hungarian minority organisations in the scope of the administrative aims of the Hungarian state is an important foreign policy problem but not the only one which Hungary incurred as a result of the Status Law. It is especially Hungary's relations to Romania and Slovakia that have turned sour as a result of the act, because the governments concerned felt that they had not been appropriately consulted, although the Hungarian government claims to have informed the countries in question in good time. It is certainly true that it is precisely in these two countries that the act has provided a welcome occasion for anti-Hungarian rhetoric and one that can be exploited, if it appears opportune, for the purposes of domestic politicking. The exaggerated tone of statements by Romanian politicians suggests, at best, that their criticism is not directed at the actual regulations of the Status Law and, at worst, that they are completely ignorant of its regulations. Indeed, a charge of hypocrisy would not be too far from the truth as far as Slovakia and Romania (and some other neighbouring countries) are concerned; in these countries, too, there are constitutional and statutory arrangements in favour of co-national minorities abroad, and it must be admitted that Hungary has never expressed any misgivings about such measures affecting Hungarian citizens. For instance, Hungarian citizens of Slovak ethnic origin can enjoy the advantages of the Slovak 'Status Law' without the slightest chance of thereby incurring any problems at home.¹⁶

It remains a fact, however, that relations with Romania and Slovakia in particular suffered great political damage, which the Hungarian government has been trying to remedy or alleviate through intensive travel diplomacy.

16 An act comparable to the Hungarian Status Law can only be found in Slovakia ('Act on Slovaks Abroad and on the Modification and Supplementation of Certain Acts of 14.2.1997', *Zbierka zákonov Slovenskej republiky 1997*, No. 30. pos. 70) and – outside Hungary's immediate neighbourhood – in Bulgaria ('Act on Bulgarians Living outside the Republic of Bulgaria of 5.4.2000', *Džržen vestnik*, 2000, No. 30). The Romanian 'Act Nr. 150 on the Provision of Support for Romanian Communities Around the World (of 15 July 1998)', *Monitorul oficial al României*, 1998, No. 265, is more low-key than the aforementioned acts, empowering the government only to make payments while not conferring any subjective rights on foreign citizens of Romanian ethnicity. The resolution of the Slovenian Parliament 'on the Situation of Autochthonous Slovenian Minorities in Neighbouring States and the Resultant Tasks of State and Other Actors of the Republic of Slovenia of 27.6.1996', *Uradni list Republike Slovenije*, 1996, No. 35, pos. 2280, contains only a programme of action which holds out the prospect of further measures – including the conferral of subjective rights on members of Slovenian minorities – for the future. For more detail see Iván Halász and Balázs Majtényi, 'A magyar és a szomszédos államok "státustörvényei"', *Kisebbségkutatás* 10:3 (2001), pp. 470-479.

At the same time certain signs of resentment even from other countries affected by the Status Law, which in general take a rather relaxed attitude towards it, show that Hungarian diplomacy may have treated the consultation process a bit too lightly and thereby aroused some ill feeling even in benevolent states. The Orbán government had no time left to sort out these mistakes. Since FIDESZ lost the elections in April 2002 and became the opposition, Socialist Prime Minister Péter Medgyessy has been trying to improve relations with neighbouring states and to move especially Romania and Slovakia to adopt the minimum level of cooperation which is an absolute precondition for making the Status Law effective beyond the Hungarian borders. He seems to have achieved a few successes, possibly as a result of his much less nationalistic rhetoric and his tendency to negotiate rather than start with unilateral demands.

But the sour atmosphere in the region is the result not only of inadequate diplomacy in the lead-up to and during the legislative process. A further occasion for criticism on the part of some neighbouring countries is the fact that the Status Law makes a marked distinction between citizens of these states, a distinction which is based on ethnic differences. Thus ethnic Hungarians may receive social assistance directly from Hungary as a kind of 'reward' for sending their children to Hungarian-speaking schools (Article 14), and ethnic Hungarian organisations may receive support directly from Hungary (Articles 18, 25). This gives rise to fears that the loyalty to their state of residence and nationality of those receiving payments from Hungary may be weakened. In addition, it cannot be ruled out at least that Hungary may be seen as violating international law in subsidising foreign citizens and organisations against the will of their states of nationality or residence. It is a matter of principle that every state is free to determine the kinds and amount of foreign payments that may be made into and within its territory (territorial sovereignty) and the foreign institutions and states from which its citizens may receive payments (personal sovereignty). Admittedly, circumstances have changed since the end of World War II, the time when these principles – of territorial sovereignty and personal sovereignty – were being put forward with a tacit claim to absolute validity. This change in attitudes notwithstanding, both principles continue to have significance in the modern conception of international law, and at least the personal sovereignty of a state over its citizens is probably still held to exclude a state from making payments (especially regular payments) to the subjects of another state resident in that state without the approval of the state in question. The claim that a breach of international law has been committed can only be dismissed if the other state approves of the payments to its citizens. In its limited dealings with the neighbouring states Hungarian diplomacy certainly did not solicit or receive such approval from the neighbouring states. The fact that, in making the

Status Law, the Hungarian state has simply decided to overlook the rights of the neighbouring states breeds ill feelings and awakens historic anxieties in some neighbour states.

These anxieties, and the problems of international law mentioned above, are hardly alleviated by the fact that the payments are to be delivered not directly by the Hungarian state, but through a chain of non-profit organisations founded for this purpose in Hungary and the states concerned (Article 25). This is at bottom an indirect form of public administration undertaken by the Hungarian state. The distributing agencies can be strongly influenced by the Hungarian state despite their private law status. The foreign partner organisation itself can neither make decisions about allocations nor contract for payment with the recipients (Article 25, Sections [3-4]); thanks to its financial dependence on the Hungarian state, if for no other reason, it will not enjoy the actual independence which would be able to dispel accusations of its being 'the extended arm of Hungarian policy'. Moreover, the conferral of Hungarian administrative powers on foreign organisations which make them, so to speak, Hungary's notaries in performing their tasks of authenticating applicants' declarations (Article 20 Section [1] item [a]) and signatures (Article 20, Section [1], item [b]) is strongly objectionable in international law in the absence of the other state's approval, because it interferes with that state's sovereign rights, rights especially of personal but to some extent also of territorial sovereignty. After all, the principle (a long-standing one in the international law tradition) that no state has the right to execute administrative acts in the territory of another state without the latter's approval continues to be valid. And the question of whether or not an administrative act has been carried out will not be decided by considering whether the actor is an agent in public law or in private law, but by considering the nature of the legal act itself. The implementation of an act such as the Status Law certainly counts as an administrative act even if it is carried out by private associations. Consequently, the Hungarian partner organisations in the neighbouring countries are carrying out acts which are, materially speaking, official Hungarian administrative acts, and they are doing so in the territory of other states such as Romania and Slovakia. This, as has been seen, is permissible only if the states concerned approve of it.¹⁷

The 'Identity Card of Hungarian Nationality'¹⁸ is the concrete, palpable symbol of these ethnic distinctions. Countries which have no prospect of

17 It is for this reason that the Slovak act on Slovaks living in foreign countries provides that most relevant legal acts are carried out on the territory of the Republic of Slovakia. In this way the act avoids the execution of official Slovak administrative acts on the territory of other states.

18 Only Slovak law contains something comparable to the 'Identity Card of Hungarian Nationality': Article 4 of the 'Act on Slovaks Abroad' (fn. 16.) envisages a comparable certificate

acceding to the European Union in the foreseeable future look askance at this distinction; most of their citizens will have to endure a lengthy visa procedure before they can enter Hungary, while their fellow citizens of Hungarian ethnic origin will be able to skip this inconvenient stage with the help of their identity cards. Although this vision of the future is not *eo ipso* correct, it will certainly be possible to favour the bearer of an 'Identity Card of Hungarian Nationality' within the framework set by Schengen regulations, e.g. through granting long-term visas or visas valid for several entries (Article 3). Finally, the 'Identity Card of Hungarian Nationality' is also a symbol of fear to the neighbouring countries, namely of the fear that Hungary might in the end confer Hungarian citizenship on its co-national minorities 'through the back door'. Such fears are kept alive by the extreme and politically isolated but all the louder voices coming from the hyper-nationalist political camp, which would like to see all Hungarians in the neighbouring countries collectively turned into Hungarian citizens on the one hand, and by the strongly ethno-nationalist tone of the Status Law itself, on the other. Whereas the Minorities Act describes minorities in Hungary as 'national and ethnic minorities', the Status Law refers to Hungarians abroad as 'Hungarian national communities', in this respect following the terminology of Yugoslavia and its successor states. It is true that the Hungarian adjective for the English 'national' (*nemzeti*) has stronger linguistic links than either its German or English counterpart not only with the noun 'nation' (*nemzet*) but also with the noun 'nationality' (*nemzetiség*), which is almost synonymous in Hungarian with 'minority'. Yet, the language of the Status Law as a whole can easily be read by neighbours haunted by anxieties of irredentism as a prelude to turning Hungarian minorities into tools of the Hungarian state, or their conversion into a 'fifth column'. The reference the preamble makes to 'the unitary Hungarian nation', in their sense of belonging to which Hungarian minorities are to feel confirmed by the Status Law, is certainly not the appropriate means to allay fears of this kind. It might have been a better idea to refrain from giving the proof of Hungarian ethnic identity a concrete embodiment in the 'identity card', which will (and perhaps was intended to) invoke the associations of a passport and thus comes close to a symbol of citizenship. In an area as strongly permeated by symbols as minorities policy, mere symbols and questions of style can become very effective, and when the effect is of a negative nature the minorities concerned, as the weakest link in the chain, are the first to suffer.

(*preukaz* in Slovakian) for proving one's identity as an ethnic Slovak. To avoid complications in international law, this certificate is designed for use on the territory of Slovakia only and can be issued only by Slovak authorities, i.e. it avoids the direct legal effect on other countries that is characteristic of the Hungarian document.

The Status Law has given cause for concern not only in neighbouring countries but also in Brussels. The primary fear in Brussels is linked with the possibility of leaks in the Schengen outer borders system.¹⁹ Although Hungary sent the text of the promulgated act to the European Union for comment, this gesture had no influence on the act's coming into effect.

Even if the fears that the Status Law might lead to loopholes in the Schengen regime are baseless, because Hungary's international (treaty) obligations and the terms of European integration (Article 2, Section [2], Article 3, Article 27 Section [2]) take precedence, Brussels is certainly taken aback by the act's ethno-nationalist tone and the mentality behind it. It gave indications that the problems of foreign policy in relations with Romania that could be expected to arise from the act's promulgation were in no way conducive to Hungary's acceptance into the European Union, and that Hungary would be made at least partly responsible for these problems.²⁰ Prime Minister Medgyessy's 'politics of reconciliation' and its first successes in Hungary's relations with its neighbours have certainly contributed to restoring peace of mind in Brussels. Yet, it cannot be denied that there remains a certain measure of distrust in the European Union towards Hungary, heretofore an exemplary applicant for membership.

VII. Further Prospects

The governing coalition of Socialists (MSZP) and Liberals (SZDSZ) is prepared to uphold the Status Law, which the Socialists, if not all out of conviction, supported with their votes at the time. At the same time, the government recognises a need for some reform and is prepared to change the act in certain respects. The main outlines of these changes are already emerging into view.²¹ The emphasis in supporting Hungarians living abroad will continue to lie in the fields of culture and education, and attendance at Hungarian educational establishments in neighbouring countries is to continue to receive subsidies from Hungary. The government is also prepared to continue to uphold the 'Identity Card of Hungarian Nationality', while these documents will be issued for spouses of non-Hungarian ethnic origin only if the state of which they are citizens approves. The identity card of Hungarian nationality continues not to create a public law relationship between its bearer and the Republic of Hungary and thus does not involve aspects of constitutional or citizenship law. Finally, subjects of EU member states are to be excluded

19 On this point see Herbert Küpper, 'Kisebbségek, kapcsolattartás és a nyugati integráció', *Kisebbségkutatás* 9:1 (2000), pp. 59-77, and the contributions in Tóth, *Schengen* (fn. 5).

20 *Népszabadság*, 11 July 2001, pp. 1, 3.

21 Government decision 2395/2002. (XII.27.) on the Fundamental Principles of Modifying Act 2001: LXII on Hungarians Living Abroad, *Határozatok tára*, 2002, No. 58.

from the purview of the act. The government is ready to discuss future modifications with all parties represented in Parliament, with the relevant associations, with the neighbouring states and with the European Union. In this way they hope to achieve, from the beginning, a consensus that the original act could not hope for before or after being issued.

(Translated by Dezső Bánki)