REVIEWS

ANDRÁS L. PAP

The Status Law Syndrome

Review of Zoltán Kántor, Balázs Majtényi, Osamu Ieda, Balázs Vizi, Iván Halász (eds.) *The Hungarian Status Law: Nation Building and/or Minority Protection*. 21st Century COE Program, Slavic Eurasian Studies No. 4, Slavic Research Center, Hokkaido University, Sapporo 2004.*

In early 2005, one could hardly think of a more timely topic than a thorough, carefully edited investigation of issues involving nation-building, kin minorities, and the acceptable norms regulating minority and Diaspora politics in the post-communist region. Only a few months have passed since the European Union was significantly expanded, thereby introducing into the European political discourse the concepts of kin minorities, kin state and home states. (The very creation of this terminology is due to the Venice Commission.) The fierce legal, political and academic debates on ethno-cultural aspirations, Diaspora state policies and ethnicity-based dual citizenship, as well as a constitutionally recognized right for minority identity are now European issues, adding a new angle of scrutiny to questions that are already familiar.

For the Hungarian readership, this in-depth, multidimensional and multifaceted analysis of the Hungarian Status Law could not be timelier, as both the Hungarian Diaspora and politicians from the entire Hungarian political spectrum are in the process of recovering from the trauma of an unsuccessful referendum that proved to be damaging for all political platforms. Held on December 5, 2004, this referendum posed the question of providing dual citizenship for kin minorities.

* http://src-h.slav.hokudai.ac.jp/coe21/publish/no4_ses/contents.html

The selection of academic essays from authors with a diverse geographical background (Central-Eastern Europe, Western Europe, the US, East-Asia) also represents a wide range of disciplines (legal, historic, social scientific), providing a unique assessment of a very symptomatic social phenomenon: the Status Law-syndrome.

The book consists of nineteen essays by prominent scholars, followed by a fascinating and thorough chronology of the Hungarian Status Law's saga, and an exceptionally useful bibliography. The extensive selection of original documents included in the volume is also invaluable. As readers, we are ushered through the various stages of the Hungarian Status Law's legislative history, and find statements, declarations and other documents produced by an altogether unique Diaspora institution: the Hungarian Standing Conference. Also included are a number of bilateral instruments (memoranda of understanding, agreements), reports from international organizations—the Venice Commission, the Parliamentary Assembly of the Council of Europe, the OSCE, and various European Union organs—as well as texts of the Slovak, Slovene and Romanian status laws (or similar legislations).

The volume's greatest strength is its diverse range of essays. This also involves a slight shortcoming, one that is an inherent weakness of the essay-collection genre: due to the diversity of approaches and the authors' uncoordinated analyses, the descriptions on legislative and political history strike the reader as somewhat repetitive if the papers are read consecutively. This is nonetheless a is a price that is definitely worth paying, given the distinctive originality of the various contributors.

The book groups the essays by discipline, with a section each for history, social sciences, and legal studies. I will follow this tripartite division schema.

Approaches from history

The first section opens with a long essay by one of the editors, *Osamu Ieda,* a Professor of History at the Hokkaido University (Sapporo, Japan), entitled "Post-communist Nation Building and the Status Law Syndrome in Hungary". Professor Ieda gives a detailed description of the legislative history as well as a thorough analysis of the Act. On a theoretical note, he regards the status law syndrome –nation building across state borders and integrating the kin minorities abroad through legislation – as a clear symptom of the failure of mega-area nation state systems (such as the Soviet empire), and also as an institutional necessity for national re-conceiving and re-adjusting in the post-communist environment of European integration. He claims

"status laws were not simple reflexes of ethno-national concerns, but also reflected the requirements of the supranational process of regional integration in Europe." (p. 4.) The status law is thus a phenomenon generated by three interactive factors: the communist and Soviet imperial heritage; the emerging new national consciousness; and the eastward extension of European integration.

In his subsequent analysis, in addition to Rogers Brubaker's classic triadic interaction concept (of kin minority, kin-state and home state), Professor Ieda suggests a fourth factor, the external integrating power of the European Union. On the whole, he sees the Status Law as going hand in hand with ongoing EU integration, as an attempt for national unification where concern for the kin minority is to be transferred from the home state to the kin state as part of the latter's domestic affairs. This idea seriously challenged the conventional concept of state sovereignty and was ultimately defeated by it.

The second essay by *Nándor Bárdi*, research fellow at the Hungarian Teleki László Research Institute focuses on policy considerations behind the birth of the Status Law. The author covers the historical background through a detailed description of various post-1990 government policies concerning minority and Diaspora politics and provides a comprehensive assessment of Hungarian Diaspora politics throughout the 20th century, with special emphasis on the political transition of 1989, and subsequent bilateral (so-called basic) agreements between Hungary and its neighbors.

Social scientific approaches

Written by *George Schöpflin* of University College London, "Citizenship and Ethnicity" opens the social sciences section with an assessment (and defense) of the Status Law-concept. The author investigates the Hungarian legislation in the context of two opposing post-Cold War polarities that exist in reciprocal potentiation: universalism and particularism. He claims that ethnicity and the ethnic dimension of the nation has been the particularism that attracted the greatest attention and disapprobation, since in the past decades democracy was understood as dependent on universalism.

Following 1989, Professor Schöpflin claims, Europe "has lived in a complex struggle, that is best interpreted as a contest between universalistic discourses and the policies based on them (human rights normativity, the acquis commonautaire, multi-culturalism, minority rights) and particularistic ones (diversity, localism, particularistic forms of knowledge)." (p. 90.) Although it

is practically impossible to be European without an ethnic identity, he claims that Western Europe is in denial about its ethnic identities and "[i]t is only when it comes to Central and South-Eastern Europe that ethnicity is seen everywhere. Indeed, in the current popular, journalistic and political imagination, these regions are quintessentially characterized as being ethnic and only ethnic." (p. 92.)

The author points out that the citizenship legislation of all pre-enlargement EU member states contain ethnic elements (to do otherwise and stick to a pure ius soli principle would create chaos and absurdity, given the rising number of parents who work abroad when their children are born). He considers it a fact of life that the very existence of the Hungarian state generates some sort of relationship between Hungary and the kin minorities—just as the mere fact that the same philological language is spoken by the Francophone in Switzerland, Belgium and France makes them have "more in common then not and this necessarily means defining a relationship with France." (p. 94.) Given this, Professor Schöpflin is perplexed as to why the West became indignant when Hungary tried to regulate its ethnic problems overtly, legibly and transparently. All the Status Law does, according to him, is recognize and regulate ethnic problems, because "it is not possible to decouple culture from political power and political power is, at some level, necessarily vested in the state." (p. 94.)

The author concludes that the FIDESZ-government was ahead of its time with its belief that the shared sovereignty-principle of European integration could be applied to Diaspora policies; the Western answer consisted in a resounding "no" to ethnicity and the pooling of sovereignty was to be limited to the European Union. But this leaves the Hungarian government with very little choice according to Professor Schöpflin: no alternative but to opt for dual citizenship.

This otherwise fascinating analysis calls for a further, independent remark. The reader might wonder what Professor Schöpflin—now a member of the European Parliament for Hungary, representing FIDESZ—actually meant to suggest in one of his concluding passages:

> … Budapest is ... struggling against one of the strongest currents in Europe—the denial of the validity and legitimacy of ethnicity on the part of the hegemonic elites, not to mention their universal allies in Hungary itself. For these elites, the simplest and cleanest outcome would be for all ethnic Hungarians to disappear, to sink below the horizon of political concern."… (p. 103.)

The next essay entitled "Status Law and 'Nation Policy'" was written by one of the volume's editors, *Zoltán Kántor* (Hungarian Teleki László Research Institute). Throughout the book, on many occasions, he is referred to as a leading expert and theoretician in the field. He scrutinizes one important aspect of the Status Law controversy: difficulties in defining the nation, membership in the national community and possible approaches to understanding what the concepts of cultural and political nation might mean. Besides providing a sharp, extensive analysis of the legislative history, he gives detailed descriptions of theories that oppose the concept of the status law (expressed by Hungarian opposition liberals and representatives of international organizations like Günther Verheugen and Eric Jürgens).

The central theme is the juxtaposition of the ethnocultural and the political conception of nationhood. Although the author does not refrain from showing moderate sympathy for the law, he manages to provide a well-balanced and thorough analysis of a number questions:

- How can one determine objective and/or subjective criteria for membership in the nation?
- What is the relationship between domestic minority rights and aspirations of the kin-state nationalism?
- How are we to understand constitutional languages (found in the Hungarian constitution, for example) like "minorities are nation-constituting elements"?
- If an ethno-national minority joins a government coalition, does that automatically make them a member of the home state's political nation?
- How are we to perceive multiple identities of, for example, the Roma, Jews or Germans living in neighboring countries if they also identify themselves as Hungarians?

In the next essay entitled "The Hungarian Status Law: A New European Form of Transnational Politics," the anthropologist *Michael Steward* (University College London) provides an especially thorough and deep historical and anthropological background (dating back to the 19th century), rebutting the suggestion that the Hungarian Status Law would be a post-modern bypassing of the nation state. He shows that the paradoxical insistence to keep the kin minority in the host states is, in fact, an expression of residual territorial revisionism. He thereby dismisses arguments that see the Status Law as an envisioning of new, multiple and overlapping identities and affiliations,

that is, as a step beyond the territorial state and the modernist notion of a single, exclusive citizenship. He claims that the Status Law is in fact only a "transformation of an older set of concerns to recreate … a homology of democratic distribution and 'nation', … an attempt to give this kind of soft revisionism a new content." (p. 122.)

The paper also links the Hungarian case to the broader transnational literature—on Haitians, Filipinos or Dominicans in the United States. His inquiry centers on the role of the state as promoter and sustainer of transnational social fields. Using the distinction between "traditional" Diaspora (people living in some sort of an exile) and the new form of "deterritorialized nation" (people may live anywhere, but will always 'bring the state with them'), he argues that the Hungarian Status Law is "no more than an attempt to turn a 'traditional' Diaspora into a 'new' transnational nation. And in the very possibility of this simple shift much of the novelty of 'transnationalism' dissolves." (p. 147.) Also "… transnational links to the home-state that are constructed by Hungarians, like Haitians, are framed in deeply 'conservative' terms of ethno-national relatedness. There is, in this sense, precious little post-modern about the attempt to construct 'deterritorialized nation-states." (p. 148.)

What the author finds particularly interesting is that in the Hungarian case, the mobilizing home state is not a weak, post-colonial one (as would be the case with Haiti for example). The situation is quite the opposite: compared to many of its neighbors, Hungary is richer, better connected and more powerful (NATO and EU-member). In the "(t)ransnationalist studies of countries that send migrants and then try, by various means, not to loose these citizens (and access to their wealth) tend to concern poor and weak states, confronted with the might and wealth of recipient countries. In the Carpathian basin the situation is reversed." (p. 149.)This has interesting consequences:

> …whereas the United States barely acknowledges the 'home-ties' of immigrant populations, … the host states like Romania tend to exaggerate (at times grotesquely) the 'home-ties' of the Hungarians. For some Romanians, indeed, the Hungarian minority is a fifth column undermining the integrity of the state. Conversely, the Hungarian state, too, tends to be blind to the ways in which the Hungarians beyond the borders are not just Hungarians and have a distinctive regional identity, interests and goals. … So while both the Haitian and the Hungarian state tend to ignore the incorporation of their co-ethnics

> into the countries in which they live, the Hungarian state is far more able than its Third World counterparts to pass this off as a fair and plausible representation of the way things really are. (p. 150.)

János Kis, probably the most influential Hungarian political philosopher, is the author the next essay entitled "The Status Law: Hungary at Crossroads". He follows a traditional jurisprudential method of analysis in showing how and why the Status Law was a mistake.

First, he scrutinizes the notion of preferential status as provided for kin Hungarians in the neighboring countries. Second, he identifies the aims that the preferential status is supposed to achieve. Third, he considers whether those aims can be justified. He asks a further pair of questions: Is preferential status an effective means towards the aim? And assuming that it is, does it not violate others' legitimate interests or Hungary's international obligations? These last two questions receive less attention because the third question, according to Professor Kis, already runs into fundamental problems.

First, about preferential status. Professor Kis notes that by making the entitlement for the Hungarian Certificate a right, the law actually created a fundamental status, a new, unique and constitutionally unauthorized type of constitutional subject. The Hungarian constitution only recognized two such types of constitutional subjects: 'Hungarian citizens' and 'everybody'. The Status Law creates an additional category within the jurisdiction of the Hungarian state, held by citizens of other states who reside and intend to reside in the territories of those states.

Second, about the aims of having a preferential status. The author begins with a simple characterization: the aim is the prosperity of minority Hungarians. He then points out that this is actually ambiguous between two readings: the benefits of the law can be individual or collectivity-oriented, in other words, the law can benefit individual members of the Hungarian minority community or the unitary Hungarian nation. Professor Kis identifies the individualistic approach with liberalism and the collectivistic one with nationalism. In the Hungarian case, it was clearly the latter, nationalistic reading that the Status Law was intended to target, the essay therefore focuses on this reading.

On a side note, the author points out that nothing prevents liberals from being open to recognizing the nationalist reading's target community—the Hungarian minority, say. After all, a minority position may have inherent disadvantages that cannot always be counterbalanced by rights established for

the individual. International law is therefore not hostile to the idea of collective rights; still, de collective does not become an ultimate bearer of the rights. The community of democratic states does not recognize collective rights as non-derivative principles, a reasoning based on the well being of supra-individual collectives.

According to the nationalistic reading, the aim implicit in the Status Law is that of political nation unification. (p. 162.) Professor Kis considers such an aim problematic for several reasons. For example, it would be preposterous to think of the cultural nation as a collectivity of persons whose ancestors used to form a cultural nation at one point; it would be like arguing that present-day Austrians belong to the 'unitary German nation'. (p. 164.) Also, a "cultural nation does not have a center, its members living in different countries do not necessarily connect themselves via the capital of a particular country. The centre of the Hungarian nation conceived as a political entity is Budapest, and the Hungarian state is its organizational focus." (p. 162.)

Third, about justifying nationalism as an aim. Professor Kis points out that there is no need to justify political aims for those who already agree with them. Instead, justifications are needed elsewhere: they should be directed at those groups that (rightly or wrongly) (p. 158.) believe that the aims are contrary to their fundamental interests. These groups include, according to the author, the Hungarian taxpaying majority, majority citizens of the neighboring states, and the international community. At this stage, justification already founders. With respect to Hungarian citizens, formulating demands on behalf of the 'unitary Hungarian nation as a whole' violates the principle of political neutrality and the principle of freedom of identity (choice). The violation holds at least in a negative sense, as no Hungarian has any duty whatsoever to identify with any particular community, or to endorse a particular shape of the community they happen to identify themselves with. With respect to the neighboring countries (majorities), the author sees no reason why they should recognize or accept the Hungarian nation's right to be unified across borders. Even the Hungarian government is offering a deal, where the borders remain intact, and this 'unity over the borders' takes a more humble form (of entitlements given to kin minorities).

About the effectiveness of preferential status as a means. The author clearly states that sovereignty is not 'one and indivisible'. He mentions the voluntary self-limitation in favor of either another state, or a broader community of states, or a supra-state political institution. Examples involve of Northern Ireland, the EU or the International Criminal Court. However it is impossible to "divide and restrict it by a unilateral decision from abroad." (p. 169.)

In his conclusion, Professor Kis remarks that in general, even though collective minority rights can be recognized, the improvement of the minority situation should not begin with collective rights, because their recognition raises difficulties for the majority. Those rights should be demanded first which the majority can accept relatively easily, that is, classical individual rights. More specifically, the Status Law should support minority organizations and institutions, but not the creation of new constitutional subjects and status.

Brigid Fowler (University of Birmingham) is another author to whom a number of other contributions refer, some approvingly, others critically. In her essay ("Fuzzing Citizenship, Nationalising Political Space: A Framework for Interpreting the Hungarian 'Status Law' as a New Form of Kin-state Policy in Central and Eastern Europe") the author sets forth a sympathetic assessment of the Hungarian Status Law, seeing it as a possible model for a post-modern, post-national step beyond the traditional modernist notion of statehood, which is based on absolute territorial sovereignty, singular national identities, and exclusive citizenship as the only possible legal and political relationship between states and individuals. She argues that the Status Law polemics bring academic and political attention to notions of citizenship, or quasi-citizenship beyond the nation state. These post-modern conceptions of kin-state relations challenge the archetypical 'modern' norms of citizenship and territoriality. The Status Law goes even beyond the relatively new EU-practices and institutionalizes relationships between states and individuals who are neither citizens nor residents. "Inasmuch as Status Law-type legislation creates rights claimable by particular individuals against specific states, it creates a form of citizenship; but it is a 'fuzzy citizenship', since it is not full citizenship, it does not coincide with any existing legal relationship between states and individuals, and its terms are often unclear." (p. 183–184.)

Bridgid Fowler's paper first outlines the most important challenges to the modernist approach and norms of citizenship (such as the growth of international regimes of law, an emergence of a variety of rights that are conferred by international institutions and not the state of citizenship, increased international migration, dual citizenship, political bodies of expatriates and other nations of deterritorialized nation state, etc.)

Following these assessments, the author turns to the analysis of Central and Eastern Europe, where the notions of nation, state and citizenship have, for historical reasons, been separated, and thus a unique, sui generis kin-state relationship has evolved, which challenges the norms of territoriality and

citizenship and moves toward a new model of attenuated sovereignty and multiple identities.[1] This 'fuzzy citizenship', as she describes it, is a rather peculiar phenomenon: it is not full citizenship (similarly to emigrant citizens', post-imperial citizens', or re-naturalized, but not resettled immigrants' status), but is not (or not necessarily) residency either. What makes it extraordinary is that it is not defined by the legal construction of state citizenship, but membership in the cultural nation. Thus, while in the case of post-imperial citizenship (such as with Brazilians in Portugal or Commonwealth and Irish citizens in the UK) the fundamental bond is the common (constitutional) past that can be traced back to citizenship, in case of the East European Status Laws the relationships are created on the basis of a present connection between one state and some of the citizenry of another—and this will entitle these citizens to state services in the kin state. (p. 206.)

In addition, Brigid Fowler provides a detailed and thorough comparison of the various Status Law-like legislations in the CEE region (Slovakia, Poland, Romania), paying special attention to the Hungarian model. She also presents some of the modernist arguments that oppose the Status Law approach (as expressed by the Hungarian opposition in 1998, the Venice Commission and the EU).

In her concluding remarks, the author contrasts the Romanian and the Hungarian concepts, identifying the former as a representative of the 'modern' approach, one which adheres to the French style, state-led conception of equal citizenship rights built on a singular national identity and homogenous political community. Although her analysis is well-developed, we might have doubts about this classification; for example, Romania's sui generis minority parliamentary representation is hardly compatible with the French model.

According to the article, Hungary is supposed to represent the 'post-modern' conception. Unlike Romania, Hungary is viewed as embracing alternative principles of statehood, where the conceptual separation of state and nation implicitly opens the way to kin-state relationships that challenge modernist principles and make way for attenuated sovereignty and differential treatment to members of a single citizenry.

Brigid Fowler brings attention to another interesting feature that both "camps" appeal to: 'Europe' and the European Union as a savior and an arbi-

[1] After all, there are 1,5–2 million Poles and 7 million Romanians in the former Soviet Union, and 2,7–3,3 million Hungarians in the neighboring countries. Western Diaspora totals 12 million Poles, 3 million Romanians, 2,5 million Hungarians, and 2 million Slovaks. p. 194.

ter. The 'modern' approach envisages Europe as a place where differences of national identity are superseded by a culturally neutral, equal European citizenship which leaves existing state-based arrangement intact, while for the right-wing Hungarian government that advocated the Status Law, the European Union is the community of communities; a construction where different national identities are protected, cherished and can even supersede the territorial state.

It so happened that the Venice Commission and the EU Commission seemed to favor the modernist approach.

Constantin Iordachi (Central European University) employs a double comparative perspective in his essay entitled "Dual Citizenship and Policies toward Kin-minorities in East-Central Europe: A Comparison between Hungary, Romania and the Republic of Moldova". First it contrasts the Hungarian Status Law with Romania's legislation on dual citizenship and its impact on Romania's relationship with Moldova. Furthermore, it situates the Status Law within the overall patterns of ideological conflict between Romania and Hungary. The author looks at the various legislations: the Hungarian Status Law, the Romanian laws (1971, 1991 and 2003) and the Moldavian laws (1991 and 2000) on citizenship as attempts at reconstructing the national 'imagined communities' against the background of radical post-communist socio-political and territorial reorganization. (p. 240.)

Regarding the Hungarian Status Law, the author argues that it is in fact a substitute, or a veiled form of dual citizenship, providing a peculiar combination of ethnic, territorial and statist principles. He evaluates the 1991 Romanian citizenship law as an instrument for unifying ethnic Romanians into a single political community that will pave the road for a future reunification with Moldova.[2] By way of an insight into the complexity of the region's Diaspora politics, we also find here a valuable (and rare) analysis of the Moldovan citizenship legislation and policy.[3]

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2 Between 1991 and 2000 alone, Romania granted citizenship to some 300,000 Moldovan citizens.

3 Moldova granted full citizenship rights to all its permanent residents (who were former Soviet citizens). It means that Romania's offer for citizenship would only have applied to ethnic Romanian citizens of Moldova—who constitute only about two thirds of the latter's population. Also, the Moldovan legislation did not recognize dual citizenship. In light of all this, it is no wonder that no overwhelming political will has been formed to unify the two states…

Professor Iordachi argues that all these legislations are atypical, the Romanian citizenship law differs from classic repatriation laws, as it does not require former citizens to relocate in the country. The Hungarian Status Law, too, goes well beyond a law on minority protection. Furthermore, both employ a 'statist' perspective, by targeting former citizens who lost their citizenship as a result of border changes. The author notes that there is a difference here: while the Romanian law includes all former citizens, the Status Law introduces an "ethnic" filter. Nevertheless, this compensatory attitude towards involuntary loss of citizenship, according to Professor Iordachi, will create the suspicion of irredentism for both countries. Another similarity is that both the Hungarian and the Romanian laws clash with the internal legislation of the neighboring states (Romania and Slovakia, and Moldova and Ukraine respectively). Also, neither legislation seems to have served their political purpose, given that inter-state relations have become more tense…

The fascinating historical and political analysis provides witty descriptions of ironic occurrences. Consider the case of Ilie Ilașcu, whose case will be remembered in parliamentary history as the political prisoner in the Separatist Transistrian region, who was, during his imprisonment, simultaneously elected deputy of both the Romanian and the Moldovan Parliament, and a member of the Parliamentary Assembly of the Council of Europe. (p. 251–2.)

The author thoroughly explores the dual citizenship-phenomenon. The question is: how should it be perceived? As a legal anomaly "comparable to the moral sin of polygamy in the Christian moral order" (p. 240.), or as a form of trans-national globalization? Constantin Iordachi argues that in contrast with the Western European and North American practice of motivating the expansion of dual citizenship by the desire to integrate internal permanent residents, in Central and Eastern Europe, policies of dual citizenship have been related to the revival of national and ethnic policies of post-communist states, addressing the need for more effective minority protection provided for external compact kin populations. Thus in the former regions, the expansion of dual citizenship was part of (liberalizing) naturalization laws, whereas in the latter regions, dual citizenship remained in the sphere of Diaspora politics and has left internal naturalization regulations intact. Professor Iordachi sees the proliferation of such Diaspora politics as a reaction to novel socio-political stimuli in the post-Cold war and post-Maastricht era.

James Goldgeier and *Zsuzsa Csergő* (both at George Washington University) scrutinize the interplay between the two aspects mentioned in the title of their paper: nationalist strategies and European Integration.

They start with the (somewhat daring) claim that nationalism has been "the most powerful common characteristic of post-communist transitions, overshadowing alternative social and individual organizing principles, such as liberal democracy, universalism, non-national forms of regionalism and pan-Europeanism." (p. 270.) To prove their argument, they bring up the fate of communist federations (the Soviet Union, Yugoslavia and Czechoslovakia) all of which fell apart along ethnic lines.[4] Although there are occasional oversimplifications in the first few pages (e.g. "most contemporary scholars assume that nationalism is a potentially dangerous, destabilizing political activity" – p. 271.) the authors' project is definitely an intriguing one, and they provide a well-established theoretical framework for their analysis.

They offer a typology that distinguishes four models of nationalism, each with a separate set of strategies and institutional logic, as well as a vision of what kind of alliance the EU ought to be.

The first model is that of 'traditional nationalism', a political strategy aimed at ensuring the convergence of political and cultural boundaries. This envisions a territorially sovereign, culturally homogenous nation-state. The authors bring the examples of Northern Irish Catholics, Basques, Croatia, Estonia, Latvia, Lithuania, Macedonia, Serbia, Slovakia, Bulgaria and Romania. Not surprisingly, for this model, the European Union is ideally an alliance of nation states.

The second model of 'substate nationalism' describes those groups that consider themselves rightful owners of a homeland that they do not have. These historical, genuine minorities (as differentiated from relatively recent migrants) do not seek independent statehood (and thus are different from the secessionist movements that characterize the previous group), their aim is only secure existence for their community and strong political representation vis-ŕ-vis the state. According to the authors, Bavaria, Catalonia, North Rhine-Westphalia, Salzburg, Scotland, Wallonia, and Flanders belong to this group. For this model, the European Union ought to be an alliance of nations.

The third model is that of 'transsovereign' nationalism, in which nations do reach beyond state boundaries, but for various reasons abandon the idea of border-changes. These states (like Austria towards South Tyrol, Russia towards Lat-

[4] These cases are particularly interesting given the fact that it is a commonly held view that federalism and autonomy were the only form of constitutional arrangements that communist legal systems took seriously. See for example, Rumyana Kolarova and Dimitr Dimitrov, Electoral Law in Eastern Europe: Bulgaria, *EECR*, Vol. 3 No. 2, Spring 1994. 52.

via or Ukraine, Romania towards Moldova) create institutions to link the nation with the kin minority across state boundaries. For this model, too, the European Union is ideally an alliance of nations. The authors see Hungary's nation-building strategies as particularly vivid examples of this model.

Finally, in the case of the last model of 'protectionist nationalism', the priority is the preservation of traditional national culture in the face of immigration and social change. This way, for countries like Austria, Belgium, France and Germany, the EU should also be an alliance of nation states—but, again, for a different set of reasons.

The authors' most important claim is that nationalism and integration are two inter-related and dynamic processes, and the fact that a particular state chooses a particular form of nationalism-model, does not set it into stone. The European Union not only 'pools and shares sovereignty', they claim, but members also pool and share different varieties of nationalism. Furthermore, EU-developments themselves may affect nationalism-strategies. If, for example, the European Union moves in the direction of an alliance of states, rather than an institutional framework that de-emphasizes boundaries, sub-state nationalists may decide to shift to secessionism as a way for better interest-representation.

Also, the authors claim that in contrast with the opinion widely held among scholars, nationalism is not necessarily anti-integrationist. Some projects—like Hungarian trans-sovereignty—fit well within the European Union's endeavors. What is more, some groups will see the EU as a vehicle for achieving long-sought goals through non-traditional and non-violent means. (p. 296.)

What is really important, the authors conclude, is that European integration may serve as a flexible tool for all these aspirations. President De Gaulle may have thought of the EU as a union of states, Chancellor Kohl could have imagined the EU as the Europe of regions, and Hungarian Prime Minster Orbán would have envisioned the European Union as a community of communities. (p. 287.)

Closing the social sciences section is a wisp of an essay by *Miroslav Kusy* (Komensky University, Slovakia), "The Status Law in the Hungarian-Slovakian Context", tuned to play in a reconciliatory key. The author starts off by claiming that both countries' Status Laws are necessarily discriminatory and that Slovakia's ethnic Hungarian taxpayers might legitimately ask why their tax money is being spent on Slovaks' kin minorities and not allocated to

the Hungarians' kin minorities abroad. Thus, he concludes, both laws may prove to be questionable as instances of public law.

The author draws attention to the fact that the Status Law dispute is not between two hostile states, but between two good neighbors, who otherwise co-operate intensively (for example in the framework of the Visegrád process, the Council of Europe, the OSCE, and recently in the European Union.) The solution should therefore consist in the use of discreet diplomatic language and a mutual search for consensus.

The author makes the remarkable point of comparing the case of ethnic Hungarians with that of Czechs, and offering the solution of dual citizenship, which worked perfectly well with ex-Czechoslovakian citizens, as the Czech Republic offered citizenship to all Czechs living in Slovakia. "They are just as at home in Prague as in Bratislava and they are registered both as Czech citizens living abroad and as members of the Czech minority holding Slovak citizenship." (p. 307.) The Hungarians could have listed historic and material arguments similar to the Czechs, Kusy concludes. "Their common state was similarly divided and through no fault of their own they found themselves on the other side of the border twice. … If the Czechs could make these arguments on the basis of a seventy-year-long past, the Hungarians could present as past of more than a thousand years." (p. 307.)

Legal approaches

The last section contains shorter, and occasionally quite technical legal essays. It is worth noting the degree of concurrence characterizing this section. Unlike the previous sections, which presented side-by-side defenders and witty critics of the Status Law-phenomenon, all of the legal approaches conclude that Status Law legislations are apparently permissible by international legal or constitutional standards. The reason for this seems to be the legal approach as such. A passage from Renate Weber's analysis (see below) demonstrates this rather characteristically: "…It has been said that it is ridiculous to hold and carry a document attesting one's membership of a national group. It may be. But what is ridiculous is not illegitimate as long as it is not used in order to discriminate against the holder…" (p. 357–8.)

Herbert Küpper's (Institute for East European Law, Germany) essay describes the political, constitutional and legislative background, as well as the foreign policy and international law implications of the Status Law ("Hungary's Controversial Status Law"). The author draws a parallel between the

attitudes of the Hungarian legislator and German public opinion, in that both have reservations about the mass-influx and immigration of their kin (in the German case the Spätaussiedler).

The vast majority of the author's analysis is dedicated to the poor legislative standards and technical shortcomings of the law. He criticizes its 'skeleton law' nature, which means that most pertinent legal matters are referred to special legislation. He also draws attention to the undesirability of using legal concepts that exist in European law (like the free movement of persons) with different meaning in the Status Law. Also, he points to the fact that varied phraseology has been employed for the same phenomenon in the domestic context and in the case of neighboring countries. For example, the domestic Act on Minorities uses the term "national and ethnic minorities", while the Status Law, referring to the kin minority, operates with "Hungarian national communities." The author also emphasizes that 'programmatic phrases', norms without regulative content (which should ideally be limited to preambles of Acts) are detrimental to the force of 'genuine' legal norms, because they serve to blur the difference between meaningful legal norms and propaganda. Another objectionable feature mentioned by Herbert Küpper is the all too frequent use of vague legal terms like "public educational institutions", "cultural goods", "Hungarian national traditions", "Hungarian cultural heritage", etc.

Three of the volume's editors co-authored the next essay: *Iván Halász, Balázs Majtényi and Balázs Vizi*. All are international lawyers and researchers at the Hungarian Academy of Sciences.

In "A New Regime of Minority Protection? Preferential Treatment of Kin-minorities under National and International Law", the authors' aim is to assess centrally recurring debates on the Hungarian Status Law. They focus on the question of whether or not the law violates the principle of equality by discriminating among citizens of foreign states on the basis of ethnic origin.

They begin by dismissing the claim that all differential treatment would amount to impermissible behavior. They invoke the standards of the Aristotelian concept of 'equality as justice'. This doctrine is based on the idea that not everybody should be treated in the same way, but only those who are in the same situation, thus one can act justly by treating similar cases similarly and different cases differently.

The authors then turn to the question of whether a positive distinction provided by a kin-state to its national minorities living in other countries can be seen as an acceptable practice under international and European law. By citing numerous international and European documents (such as the Report of the Venice Commission, the International Covenant on Civil and Political Rights, the Framework Convention for the Protection of National Minorities, the European Commission's Regular Reports, the Treaty on the European Union, the EU's Race Directive), as well as the case law of the European Court of Justice, the authors come to the conclusion that from the standpoint of international and community law, such practices are permitted and are in fact exercised by a number of states (even though the question remains unanswered by the provisions of the acquis).

Having found that positive distinctions are not discriminatory, the analysis turns to the question of whether the fact that the preferences are provided for citizens of other states would make such practices impermissible on the grounds that it would clash with the principle of state sovereignty. According to the authors, the problem of infringing the sovereignty of other states seems to be a more relevant and central issue of compliance with international law, and not that of discrimination. In addressing this, the authors first provide thorough analyses of national constitutions (of Russia, Romania, Slovakia, Poland, Ukraine, Portugal and the original German Basic Law[5]), then consider Status Law-like legislations across Europe (in Slovakia, Romania, Slovenia, Russia, Bulgaria, Greece, etc.), finding that this practice also appears to be in line with international customary law.

The authors conclude that the shortcomings of the Status Law have less to do with its objectives, rather than with the way it was drafted and the political terms in which it was presented.

Renate Weber (Open Society Foundation, Romania) is the author of the next essay entitled "The Kin-State and Its Minorities: Which European Standards?". Her claim is that even though Hungary's neighbors clearly overreacted and their response has gone far beyond any normal substantive critique of the law, their sensitivity should have been foreseen by the Hungarian government. Therefore, she concludes, not consulting neighbors on a number

[5] Which, in its preamble, had specific references to Germans who had lived in the Soviet occupation zone and were removed after reunification. Section 116 still has explicit references to Germans from the Volga region and Transylvania).

of the Law's details and the procedure of implementation appears to be a deliberate mistake.

Renate Weber aims to look beyond the rhetoric and evaluate the law from the standards of international law. All in all, her conclusions concur with that of the previous essay. First, she argues that there are no minority rights that could be affected by the Status Law at all, because the legal obligation to uphold minority rights should be clearly distinguished from the option of providing preferential treatment.

Second, she claims that no provisions of the law can be considered discriminatory against the majority or other minority populations in neighboring countries. She clearly dismisses that, for example, Romanian citizens of Romanian origin would be discriminated against on the basis of their ethnicity if another country provided benefits and privileges to its kin minority. Even if those privileges go beyond the human and minority rights recognized by international or community law, their application would not deprive "other" Romanian citizens of their universal human rights. (Whether such conduct may result in tension within the home country, she adds, is another issue entirely.)

The author argues that there are only two prima facie concerns that may hold water: one relating to a general principle of international law, namely that of friendly relations between states, and another, human rights protection for those who are potential beneficiaries of the law themselves. In her conclusions, Renate Weber dismisses the latter concern, while admitting a certain degree of culpability with respect to the first one.

Former president of the Hungarian Constitutional Court *László Sólyom* was also the most charismatic among the Court's presidents. As a member of the Venice Convention, in his essay entitled "What Did the Venice Convention Actually Say?", he takes on the duty of clarifying certain conclusions of the Convention's lengthy and often misinterpreted report on the Hungarian Status Law. Such an explanation is timely, the author claims, as there are indeed difficulties about the terminology (translation), and even Günther Verheugen, Commissioner for Enlargement of the EU, referred to the report incorrectly in a legal assessment sent to the Hungarian Prime Minister.

László Sólyom makes the following major points: The Commission declares that a new and original form of minority protection is emerging; the Hungarian Law is a part of this process. Although the appearance of such preferential measures is a positive phenomenon, they are too recent to account

for the legal concept of customary international law. Such unilateral acts are therefore acceptable only if they meet the following four conditions:

a) there is respect for the territorial sovereignty of states
b) respect for treaties,
c) respect for friendly relations between states, and
d) respect for human rights and fundamental freedoms – with special emphasis on the prohibition of discrimination.

In his conclusions, Professor Sólyom stresses the Commission's recommendations that the system of bilateral and multilateral agreements should remain the main tool for minority protection.

The next essay entitled "Connections of Kin minorities to the Kin-state in the Extended Schengen Zone" is written by *Judit Tóth*, professor of constitutional law (University of Szeged and the Hungarian Academy of Sciences), one of the field's leading experts.

Her article scrutinizes certain aspects of the Schengen regime and its ramifications with respect to Diaspora policy—thereby providing a unique angle and framework for the legal analysis of the Hungarian Status Law.

The author draws attention to the fact that although all candidate states have Diaspora and minority communities, these topics have not been included in the European Union-accession talks, nor were representatives of kin minorities or ethnic groups involved in the negotiations.

She describes in detail the European Union's approach to minority protection, and concludes that the EU prefers an 'indirect' approach: it tends to target contribution to cultural diversity, anti-discrimination, welfare, employment, regional development. Alternatively, the EU mentions minority protection vaguely as one of the political criteria for enlargement. With the European Constitution not yet in force, and with the resulting absence of proper regulatory mandate for EU institutions, the protection of minorities remains an internal matter for the member states—which are not necessarily members to relevant Council of Europe documents in the field.

According to Professor Tőth, the problem has to do with the following: the introduction and gradual enforcement of Schengen and migration acquis has had a fundamental impact on the strategic relation of new members with kin minorities outside the Union. Thus, while candidate countries were doing their best preparing to reconstruct their visa regime and border

control-policies, they felt obliged to adopt compensatory measures, such as unilateral acts on kin minorities or bilateral agreements.

This therefore is an additional important context in which the Status Law should be considered.

Fernand de Varennes's (Murdoch University School of Law) essay follows the classic tradition of legal argumentation by trying to answer the challenges that have been brought against the Hungarian Status Law. His paper ("An Analysis of the 'Act on Hungarians Living in Neighbouring Countries' and the Validity of Measures Protecting and Promoting the Culture and Identity of Minorities Outside Hungary") asks whether from the perspective of international legal obligations and minority rights, the statue would be extraterritorial, or alternatively, discriminatory. For the author, the underlying question concerns benefits provided for minorities, more precisely, whether or not states can provide these beyond their borders, and whether or not states can actually ban their citizens from seeking or accepting these.

The first issue concerns extraterritoriality: the claim that the application of a Hungarian law intended to provide benefits for kin minority, should not be applied outside the territory of Hungary. By such a claim, argues the author, one would suggest that individuals (in this case, members of a linguistic or a cultural minority) must not receive any benefit, prize, reward, grant or recognition from sovereign governments, unless public authorities in the country of their citizenship authorize them. According to the author's findings, such an argument is entirely devoid of validity under international law. It would make all government fellowships for university study abroad programs illegal—a clearly bizarre outcome.

Can NGOs assist in the selection of the eligible individuals? This is a different issue. According to the author, even if we were to accept that these NGOs are acting as agents of the Hungarian government (this is far from obvious), it would be farfetched to claim that such a recommendation would be an extraterritorial fifth column of Hungarian state power, since no law or power is being exercised by these NGOs. As an evidence for widespread international practice, the author brings Canadian and British examples for similar techniques applied in issuing academic fellowships and research grants.

The second question relates to the issue of discriminativity. Following an in-depth analysis of international law (the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the Universal Declaration of Human Rights) and the case law of the ICJ (South

West Africa Case), the ECHR (Belgian Linguistic Case), the ECJ (Groener vs Minister), the Inter-American Court of Human Rights (Cost Rica Naturalisation Case), and the Human Rights Committee (Balantyne, Davidson and McIntyre vs Canada), the author comes to the following conclusion: "The basic principle, then, is that distinctions based on language, culture or nationality may be used by a state in determining who will have access to and receive the most benefit … but only when the specific context or object of regulation makes the preference a balanced and reasonable requirement." (p. 421.) Therefore, differences of treatment based on language, culture or ethnic origin will not be discriminatory if they are in pursuit of a legitimate aim and are reasonable (objective or justified) in the light of this aim. In the words of the European Court of Human Rights: if there is a "reasonable relationship of proportionality between the means employed and the aim sought to be realized".

As for the first element of the balancing-test, the author claims that it is generally considered a legitimate objective to seek the protection of minority identity; on a different level, burdening the home states, it even appears as an international obligation. The Status Law's aim is thus undoubtedly legitimate. The next question pertains to whether or not the provided benefits are related to the state aim, and thirdly, whether or not there is a reasonable relationship of proportionality between the means employed and the aims sought. The author concludes that considering the relatively small values of the benefits and the way it is administered, all questions can and should be answered affirmatively.

Along with Professor de Varennes' essay, we find two detailed, sometimes perhaps somewhat overly descriptive assessments of the Hungarian Status Law and its international and conceptual environment.

Kinga Gál (Hungarian Academy of Sciences) documents the legislative and diplomatic history of the Status Law, placing it in a demographic and an international legal context ("the Hungarian Legislation on Hungarians Living in Neighbouring Countries).

Enikő Felföldi (University of Szeged), another Hungarian academic, employs a somewhat similar approach in her essay ("The Characteristics of Cultural Minority Rights in International Law—With Special Reference to the Hungarian Status Law"). In her minority rights-oriented project, she first addresses the social and legal definitions for identity and culture—concepts that are corollary to minority policies. Following, she gathers applicable international legal materials (hard and soft law alike), as

well as case law pertaining to cultural and educational rights. She then weights these findings in the context of the Hungarian law.

Both essays provide useful additions to the international legal assessment of the Hungarian Status law.

The volume's closing essay, written by *Attila Varga* (Associate Professor of Babes-Bolyai University and Member of the Romanian Parliament), entitled "Leigslative Aspects and Political Excuses: Hungarian-Romanian Disagreements on the 'Act on Hungarians Living in Neighbouring Countries'", begins with a thorough analysis of various policies and legislative aspects of the Hungarian Law. The author carefully discusses the most often cited criticisms of the Law. Many of these objections (extraterritoriality, discrimination, the idea of national unity without border modification, the questionable nature of benefits going beyond educational and cultural support, the entitlement of non-ethnic Hungarian spouses, the issue of the Hungarian certificate) are already familiar for the readers and Varga's conclusions are also in line with those of previous authors.

The essay gives an illuminating account of the legislative counter-initiative that was prepared by the extremist Greater Romania Party, which would have regarded all Hungarian Certificate-holders as dual citizens and on those grounds would have disqualified them from holding any public office.

We can confidently say that the editors and the authors have produced a volume that is a unique, comprehensive and fascinating collection of wide-ranging analyses, approaches, and methodology. The book's value, and no doubt, its success, resides in its outstanding diversity of angles—its exploration of the conceptual and practical interdependence of identity, politics, minority rights, and Diaspora politics, as well as its travels beyond, towards other social, political and legal tribulations, ails and symptoms behind the Status Law-syndrome.