MINORITY RIGHTS AND DIASPORA CLAIMS

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This essay will investigate the conceptual and practical interdependence of minority rights (claims, aspirations) and Diaspora rights (claims, aspirations). I will argue that in certain ethno-political situations (in Central Europe, for example) neither of these can be comprehended without the other. That is, minority rights and the "minority condition" are dependent on ethnic kins' Diaspora-claims and the "Diaspora-condition," and vice versa. I will use the case study of Hungary, where in the light of the European Union accession and subsequent changes in immigration and Diaspora-policies, legislators will need to address fundamental considerations concerning minority rights.

I will claim that the traditional Hungarian approach to ethnic and national minority rights has always been (mostly) defined by subliminal reference to ethnic Hungarians' Diaspora-rights (in the neighboring states). I will also argue that a substantial discrepancy between the two aspirations will have undesirable legal and political consequences.

In my analysis, first I plan to synthetize the diverse set of claims that can be associated with the generic term "minority rights" (i.e., political representation, cultural autonomy, anti-discrimination/equal protection, hate-speech legislation, and, as the other side of the national minority preferential treatment-coin: Diaspora rights). I will then claim that in addition to the traditional frameworks for justifying minority rights and preferential treatment, under certain conditions, there is a third alternative conceptual framework—which sees domestic minority rights as the trade currency for Diaspora claims. That is, minority rights can sometimes be regarded as the price to be paid for the rights of ethnic kins in the Diaspora. This third type of justification will be demonstrated through the case of Hungary.

I. Minority Rights: What Are They?

As a starting point, I find it important to state that the focal point of minority claims and the morphology of the dominant legal instruments will always depend on the historical and political givens of the society in question. Protective measures for racial, ethnic or national minorities, i.e. minority rights in the broad sense can therefore be targeting a number of different things, such as:[1]

- socio-economic equality,
- de facto freedom of religion,
- the protection of potential pogrom victims and the prevention of brutal ethnic conflicts,
- decreasing cultural conflicts between majority and genuine minority or immigrant groups,
- combating racial segregation or apartheid, or
- race-based affirmative measures of compensatory, remedial or transitional justice.

In line with this, minority law, the law of balancing obligations and freedoms pertaining to assimilation and dissimilation may therefore take several forms: from affirmative action and social protection measures, through declarations of religious and political freedom, to setting forth cultural or political autonomy, or controlling political extremists. The context-dependent meaning of minority-protection may refer to a widely diverse set of policies, such as

- equal protection (non-discrimination),
- participatory identity politics: the political participation of identity-based groups in political decision-making,
- cultural identity politics: the recognition of identity-based groups in cultural decision-making by the state,
- the protection of historically rooted identity-based sensitivity, for example the criminalization of hate-speech, holocaust-denial, etc.,
- affirmative action,
- special constitutional constructions form-fitted for the needs of indigenous population, or

[1] For more, see for example András Bragyova: Are There Any Minority Rights? Archiv für Rechts- und Sozialphilosophie, 80/1994.; or András Sajó: Protecting Nation States and National Minorities: A Modest Case for Nationalism in Eastern Europe. Roundtable (Chicago) Special Issue, 1993

- policies recognizing claims which mirror the state's ethnic kin's Diaspora claims abroad, or even
- international security[2].

II. Minority Rights: Why Are They?

Each and every one of the above models for individual and group protection and recognition will have differing institutional and doctrinal implications. In general, minority rights are viewed through two traditional conceptual frameworks. The first set of justifications for minority rights and preferential treatment is rooted in the concept of human dignity. Within this framework (as it can be seen in traditional continental constitutional jurisprudence) minority claims are seen as identity-claims, which constitute an integral part of human personality – worthy of recognition and protection. The second theoretical framework for minority rights (for example, in the equal protection American jurisprudence) is rooted in an equality discourse in which the constitutional recognition of the minority group is justified by equality-based (either synchronic or diachronic justice) arguments.

In the following, I will claim that in addition to the two traditional frameworks, under certain conditions, there is a third alternative framework for justifying minority rights, one which sees minority claims as reciprocate Diaspora claims. That is, minority rights can sometimes be regarded as the price to be paid for the rights of ethnic kins in the Diaspora. Due to spatial and conceptual limitations, instead of expanding on the aforementioned classic frameworks, I will only focus on the latter phenomenon, the interdependence of the Diaspora-condition and minority rights. I will argue that, albeit not universally, under certain socio-political circumstances the political commitment and concern for ethno-national Diaspora will have a formative influence on minority politics.

My argument will be that Diaspora concerns may be a very powerful drive for implementing schemes of minority protection and recognition, if such institutions are likely to serve as potential guarantees for equal freedoms to be granted for the state's ethno-national kins abroad. It can be presumed that the state will be particularly willing to provide for such measures, if its ethno-national kins disproportionately outnumber its minorities. I will argue that this will be particularly prominent if large groups of ethno-national Diaspora reside in, say, neighboring states, whose respective ethno-national minority happens

[2] Let us remember the anecdotic reference made by one of the drafters of the UN Charter, who claimed that it is protection from minorities that the world needs nowadays (1945), not the protection of minorities…

to be present in the state.[3] I argue that Hungarian minority politics have followed precisely this logic, and the generous cultural and political autonomies that are set forth in the 1993 Act on Minorities were in fact drafted in a Janus-faced way to set an example to and provide pressure on the neighboring states with substantial Hungarian minorities.

One could say that there is nothing wrong with such policies—it is just smart and prudent ethno-politics. After all, the state may easily offer something that hardly anyone would use (considering how few members some minority groups have; moreover, some minority groups are merely virtual), thereby providing a legitimate basis to demand reciprocity for its ethno-national kin. The problem arises, however, and I will argue that this is the case with Hungarian minority-politics, when these spectacular ethno-political strategies are in fact used to cover up other more ardent minority problems or when these benevolent instruments prove to be controversial and have undesirable consequences in light of historical and political developments. These strategies also carry dangers: ethno-political considerations are often latent and subconscious, but nevertheless lead to problematic, both conceptual and practical contradictions within the legal and institutional framework.

III. The Hungarian Case Study

In the following, through the case study of Hungary, I will show that the conceptual framework of the 1993 Minority Act (and its recent 2005 amendment) proves unsatisfactory for two reasons.

First, creating a homogenous legislation for national and ethnic minorities may help promoting out-border Hungarians' rights; it will not, however, provide an effective institutional framework to deal with the specific and robust Roma-problem. (Due to the legal ambiguity of ethno-national classification the size of the Roma population is hard to establish. Census and academic estimates range between 200,000 and 600,000[4].) Also, this monolithic minority category is inefficient to serve the needs of all thirteen official minority groups in Hungary, which substantially differ in size and consequent claims and aspirations.

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[3] For more on this subject, also see Mickey, Robert W. – Stein, Jonathan (eds.): Ethnicity Unbound: The Politics of Minority Participation in Postcommunist Europe. IEWS, New York, 2000.

[4] Census data is inaccurate, because many Roma are reluctant to identify themselves as such. Some improvement is noticeable: whereas in the 1991 census 142,683 persons declared themselves Roma, in 2001 this number increased to 190,046. Minority organizations put this number somewhere between 400,000 and 500,000. The most reliable number was provided by a survey in 1993/1994 estimating 456,000. See UNDP Avoiding the Dependency Trap. Bratislava 2002

Second, the European accession and the consequential change in the constitutional and socio-political climate will very likely bring challenges that the anachronistic, pre-accession minded Diaspora-targeting law cannot cope with.

1. The Statutory Framework of Hungarian Minority Law

The 1993 Minority Act defines national and ethnic minorities as groups, which have been present in the territory of Hungary for over 100 years and „(§ 1.) constitute a numerical minority within the population of the country, whose members hold Hungarian citizenship and differ from the rest of the population in terms of their own language, cultures and traditions, and who prove to be aware of the cohesion, national or ethnic, which is to aim at preserving all these and at articulating and safeguarding the interests of their respective historically developed communities." According to the Act, these minorities are: Bulgarian, Roma (Gypsy), Greek, Croat, Polish, German, Armenian, Rumanian, Ruthenian, Serb, Slovak, Slovene, and Ukrainian; and in order to register a new minority group, a popular initiative signed by 1000 citizens has to be submitted to the Speaker of the Parliament.

Without going into an in-depth analysis of the Hungarian statutory model, two controversies – procedural as well as material – need to be pointed out. Both material requirements (100-year presence and 1000 signatures as a special popular initiative) for qualifying as an ethnic or national minority seem problematic. The Act, besides defining the two group constituting requirements, also contains an enumeration of the thirteen minority groups that are recognized by the Act, which means that the Parliament will actually need to pass a formal amendment to these provisions if a new group would qualify as minority. The House (being sovereign), however, is not obliged to vote affirmatively on the question, which is in sharp contradiction with the otherwise clearly defined requirements.[5]

Another set of issues concern the question of who is to verify or question whether the 100-year requirement has been fulfilled, and when is the clock supposed to start ticking. When will the Chinese minority (a considerable population since the political transition) be entitled to seek recognition? What about the Palestinians, who may claim some 600 hundred years of presence if „Ismaelite" merchants are considered?[6]

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[5] A number of Parliamentary and Constitutional Court decisions have been passed on petitions of various ethno-national groups, like the Jews, Aegean Macedons, Russians, the Bunyevac, or Huns seeking recognition.

[6] Both groups have estimated numbers of 10,000. Meanwhile there is some doubt whether certain recognized minorities (such as the Ruthenian for example) have fulfilled the statutory

The other, even more controversial element of the Hungarian framework relates to the lack of satisfying legal guarantees regarding individuals' minority affiliation. Hungarian law allows the handling of data on racial and ethnic origin only with the consent of the person concerned.[7] This gives rise to what is commonly known as "ethno-business" or "ethno-corruption", that is, the utilization and misusage of remedial measures for private means that are contrary to the legislators' intentions.[8] In this model, the exercise of minority rights is

numerical requirements. Doubts were raised regarding the 100-year presence of the Greeks. The legislator is of course free to recognize any group as a national or ethic minority (even lacking the general conditions), yet the statutory language setting forth the requirements therefore seems absolute and general, and is thus somewhat misleading.

7 Act No. LXIII. of 1992 on the protection of personal data and the publicity of public data. This of course does not prohibit the anonymous collection of census data.

8 It needs to be pointed out that the Hungarian approach to ethno-national data collection is problematic for several reasons. Articles 2(2) and 3(2) of Act No. LXIII. of 1992 (the Data Protection Act) prohibit the processing of sensitive data, such as ethnic origin, without the concerned person's explicit permission. Very often, however, this leads to an ironically illegal practice in this area of criminal justice. The Hungarian Criminal Code (Act IV. of 1978) criminalizes four types of behavior that may fall under the racially motivated category. (Racial motivation is implied in the wording of the law.) These are: genocide (Article 155), apartheid (Article 157), violence against members of national, ethnic or racial minorities and religious groups (Article 174/B) and incitement against community (Article 269). Nevertheless, it is safe to say that the first two never, and the latter two only very rarely occur in official statistics. In 2003, for example, no investigation was initiated in connection with apartheid or genocide, whereas 11 instances of "violence against members of national, ethnic or racial minorities and religious groups" and 14 instances of "incitement against community" were registered. In recent years, for example, in the case of "violence against members of national, ethnic or racial minorities and religious groups", the following number of instances had been registered: 1999: 3, 2000: 8, 2001: 12, 2002: 5, 2003: 11. This means that the following number of offenders had been identified and indicted: 1999: 9, 2000: 12, 2001: 9, 2002: 5, and in 2003: 9 identified from which 8 indicted. According to official statistics, in 2003 two people were indicted and two convicted under Article 174/B; in 2004, the numbers were eight and six, respectively. (Source: Unified Police and Prosecution Statistical Database) This should by no means imply that racial crimes and violence are non-existent in Hungary, but rather that law enforcement agents, as well as prosecutors and courts, are very reluctant to recognize racial motivation in violent and non-violent crimes committed against Roma and other minority victims. Although officers and officials habitually claim that it is because of the lack of clear legislative guidelines for the establishment of racial motivation that most of such instances will only qualify as nuisance, assault or mischief. In Hungary, in line with the legally articulated declaration to refrain from any kind of involuntary official classification of ethnicity, no specific legally binding instructions exist for the determination of racially motivated criminal activity. Thus, law enforcement officers, who are the prime decision-makers as to the legal classification of a given offense will follow the easier way, and become very reluctant to classify incidents, conflicts as racially motivated. Although it will always be the prosecutor who will decide on what grounds to indict the defendant, he/she will usually follow the police's determination on the nature of the criminal offense in question. As for the police, officers claim that, in determining whether an offense is racially motivated, they take notice of an internal guidance issued by the Attorney General that di-

not dependent on minimal affiliation requirements. For example, Deets documents how school officials pressure parents of 'Hungarian' students to declare their children 'German': "according to Hungarian government statistics, in 1998, almost 45,000 primary school students were enrolled in German-minority programs, which number, by the latest census, is about 8,000 more than the number of ethnic Germans who live in Hungary."[9]

The 1993 Act establishes a relatively potent form of autonomous minority institution, the 'minority self-government' structure (bodies that co-exist with local municipal administration and on the national level function as a quasi-minority parliament), and prior to 2006 the decision to vote at these elections was left solely to the political culture and conscience of the majority. Thus, in Hungary, citizens, regardless of their ethnic origin, could vote for minority self-government candidates. This enabled members of the majority to take advantage of the various remedial measures. For example, the wife of the mayor of Jászladány – a village notorious for segregating Roma primary school children from non-Roma – held an elected office in the local Roma minority self-government.[10]

Hungarian minority representatives repeatedly claimed that the fact that some candidates ran as 'Gypsies' in one election and then later as Germans in the following term proves the flourishing of local ethno-business.[11] Similarly, both the President of the National Romanian Minority Self-Government[12] in Hun-

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rects prosecutors when considering and qualifying the indictment. This means that the only legal guidance is an internal policy guide, which, needless to say, would not stand very strong against constitutional challenges. The outcome is clear: in order to avoid an uncomfortable and (given the widespread anti-Roma or xenophobic sentiments in Hungarian society) unpopular decision, and lacking any legally binding guidance, officials are reluctant to recognize racial motivation in violent criminal behavior. Referring to data protection regulations, official statistics have no reliable data on the ethnicity of race crime victims, either, which is entirely absurd, given that the existence of racially motivated crimes logically presupposes membership in the given (racial or ethno-national) community. For more on this subject of data collection, see Andrea Krizsán (ed.): Ethnic Data Monitoring and Data Protection. The European Context. CEU Press–INDOK, Budapest, 2002.

9 Deets, Stephen (2002). Reconsidering East European Minority Policy: Liberal Theory and European Norms, *East European Politics and Society* 16:1

10 For a detailed case description see Roma Rights 2003/1-2, pp. 107-108.

11 See the minority-ombudsman's annual parliamentary reports or an interview with Antal Heizler, President of the Office for National and Ethnic Minorities, Népszabadság (the leading Hungarian daily), 2002.07.24.

12 The President did not predict that more then 7 out of the 17 local self-governments running in the 2002 elections in Budapest (and some 30 out of the 48 registered nationally) would be „authentic Romanian." Out of the 13 local Romanian minority self-governments operating between 1998 and 2002, he estimated that only three have "real Romanian blood" running in their veins. See the summary of an interview with Kreszta Trajan, Népszabadság, 2002.08.21.

gary and the (Romanian) Secretary for Romanians Living Outside Romania[13] found it worrisome that the 2002 local elections brought an increasing number of candidates for Romanian minority self-governments, while the number of those identifying themselves as Romanian in the national census is decreasing.[14] In order to demonstrate the fallacies of the legal framework, some Roma politicians publicly decided to run under different labels (in most of the reported 17 cases, Slovak). Also, there are several municipalities where (according to the national census) nobody identified him/herself as a member of any minority group, yet numerous minority candidates were registered.[15] Needless to say, preferential treatment intended to favor minorities is severely impeded and the entire notion of minority self-government is obstructed when voters not belonging to a minority can determine who will represent the group.[16] At one point, even the Parliamentary Commissioner (Ombudsman) for National and Ethnic Minority Rights filed a petition to the Constitutional Court, asking that these provisions of the Minorities Act be declared unconstitutional.[17] The examples of loopholes in the legal regime sometimes result in complete absurdity. In order to express their admiration of German football, for example, a small village's entire football-team registered as German minority-candidates for the elections.[18]

In June 2005 the Hungarian Parliament passed[19] a comprehensive amendment to the Minorities Act. The legislation made it a point to set forth a plan for in-

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13 See the statement of Doru Vasile Ionescu in Népszabadság, 2002.08.15.

14 Only five signatures are needed for the registration of a minority self-government. (For which subsequently everybody, including members of the 'majority', may vote.)

15 See Népszabadság, 2002.08.15.

16 It has to be noted that until a 2002 amendment of the Hungarian Constitution (which was necessitated by Hungary's accession to the EU) there had been a contradiction between its Articles 68(4) and 70(1). While the former said that "[n]ational and ethnic minorities shall have the right to form local and national bodies for self-government", the latter prescribed that "all adult Hungarian citizens have the right to vote […] and the right to be elected." Thus, while Article 68(4), established the right to self-government of the minorities, the latter Article stated the universality of voting rights.

17 See Constitutional Court Decision 45/2005.

18 Interview with Mr. Heizler, Id.

19 The Parliament adopted the Act on the modification of the election of representatives to the minority self-governments, and other acts relating to national and ethnic minorities on 13. June 2005, and before promulgation, it was sent for preliminary review to the Constitutional Court by the President. In its decision 34/2005. (IX. 29.) the Court found that some of its provisions were unconstitutional. On 17. October 2005, the Parliament re-adopted the Act, incorporating the guidelines provided by the Constitutional Court. According to the new regulations everyone has a right to vote (both active and passive) in the election of minority self-governments, who a) belongs to a national or ethnic minority defined in the Act on the rights of national and ethnic minorities, and expresses his affiliation with that specific minority; b) is Hungarian citizen; c) has the right to vote in the election of local authorities and mayors, and d) is listed in the electoral register of minorities.

stitutional reorganization of the minority-protection mechanisms. At the same time, it introduced a somewhat controversial registration procedure for those who decide to take advantage of the various privileges and additional rights set forth by the minority law.[20] The Act thus departs from the preexisting dedication to the free choice of identity and by eliminating the explicit provision allowing for the recognition of multiple identity, sets forth legal requirements for minority political participation. According to the new legislation,[21] both the right to vote for and to run as candidates at the minority elections would require the registration. The first minority self-government elections under the new regulations were held in autumn 2006.[22]

2. Assessing Window-Shopping

As indicated above, it has been my claim that post-1989 Hungarian minority-politics cannot be understood outside the context of the ethnic Hungarian Diaspora. We can even say that, besides classical commitments, one of the primary reasons behind constitutional motivations for providing and recognizing minority rights had been Article 6 (3) of the constitution, which declares that "the Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary." Balázs Majtényi,[23] for example, cites a cheeky example, Governmental Decree 1120. of 1995 (XII.7.) establishing a Coordinating Council on Roma Issues (which is only of historical interest today as it is now defunct), which calls for the Chairman of the Office for Hungarian Minorities Abroad to be its member. Majtényi finds it also revealing that in the course of the parliamentary debate on the Minority Act, politicians often referred to the assumed or real problems of Hungarians living abroad.

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20 It should also be noted that the question of ethno-national identity has been the focus of other socio-political debates, such as the Hungarian status law, a framework legislation that provides for schemes of rights and preferences available for ethnic Hungarians living in Diaspora. During the drafting of this law (Act LXVII. of 2001.), an ardent domestic political debate arose from the various legislative approaches in identifying who would be considered Hungarian (for the purposes of the law.) In fact, the contradiction between the basic liberal tenet of the free choice of identity and the desire to reduce (the legal) options for both politically and financially undesirable misusage was perhaps the most controversial aspect of the law.

21 Act CXIV. of 2005.

22 Surprisingly, the elections brought a further increase in the number of local minority self-governments. Compared to the 1843 local minority self-governments established in 2002, their number grew to 2049 in 2006, despite the fact that fewer votes were cast than before.

23 Balázs Majtényi,What Has Happened to Our Model Child? The Creation and Evolution of the Hungarian Minority Act in European Yearbook of Minority Issues, Vol. 7.(2006/2007). Also see Majtényi Balázs: Special minority rights and interpretations of the nation in the Hungarian Constitution. Regio, 2005/1.

My aim is to show that with Hungary having joined the European Union, this stance can no longer be held and the focal points of both minority and Diaspora law need to be adapted to the new constitutional and political circumstances. After May 1, 2004, a significant part of the Hungarian Diaspora already found itself within a common constitutional and legal framework with its homeland, and by 2007 much, if not most of the remainder part followed suit. As a consequence, however, Hungarian Diaspora politics exists in an economic and political framework that no longer tolerates decisions to be made upon solely Hungarian considerations or to follow exclusive Hungarian national interests. (See the even pre-accession Status Law controversy.)[24] Also, the appearance of European or other migrant workers and immigrants will bring challenges that the existing legal framework may not be able to cope with. Newly arriving groups will easily outnumber small traditional national minorities (such as the Armenian and Ruthenian), while the current legal framework does not have clear guidelines as to how new groups (such as the Chinese) can seek official recognition.

It appears nevertheless quite ambiguous what the conceptual basis for minority identity in Hungary is. As stated above, the traditional Hungarian approach to minority rights is deeply rooted in a constitutionally articulated responsibility for out-border Diaspora-Hungarians. For the general public, minority rights are the mirroring of what is perceived to be fair and just treatment of ethnic kins abroad. Thus, Hungarian minority law is a Janus-faced mixture of sincere internal group-recognition and the legal-political counterbalancing of the Trianon-trauma.

By having become European Union member states, in my opinion, the balance between minority- and Diaspora-politics is no longer existent. Due to spatial and conceptual limitations, I will omit discussing the challenges, limitations and prospects of Hungarian Diaspora politics within the EU and focus on the loss of Diaspora politics as a reference point, and the resulting loss of orientation in Hungarian minority politics.

[24] For more on this see: Kántor, Zoltán – Majtényi, Balázs – Osamu, Ieda – Vizi, Balázs – Halász, Iván (eds.): The Hungarian Status Law: Nation Building and/or Minority Protection. Slavic Research Center, Hokkaido University, Sapporo, 2004, Kovács M. Mária: Standards of self-determination and standards of minority-rights in the post-communist era: a historical perspective", Nations and Nationalism (Blackwell), Vol. 9/3. July 2003., Kántor, Zoltán – Majtényi, Balázs – Osamu, Ieda – Vizi, Balázs – Halász, Iván (eds.): Osamu Idea at al (ed.) Beyond Sovereignty: From Status Law to Transnational Citizenship?, Slavic Research Center, *Hokkaido University*, Slavic Eurasian Studies No. 9., Sapporo, 2006 and Balázs Majtényi: Utilitarianism in Minority Protection? Status Laws and International Organisations. Central European Political Science Review, Vol. 5., No. 16., 2004.

According to the dominant view, minorities are part of the Hungarian nation state. As Article 68. (1) of the Constitution states: national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State. Simply put, bearing in mind the painful example of the Hungarian Diaspora, the conceptual basis for the preferential treatment (i.e. constitutional recognition) of minorities is the acknowledgement of all the historic suffering people in this region of the world were doomed to tolerate. A collective bad consciousness of legislators, a feeling of guilt, or at least sympathy is behind the recognition of ethno-national identity as worthy of protection. Without specifying the historic injustice or responsibility of any particular government/state, the sincere component (by sincere I mean that it is not lead by Diaspora-strategy) of providing minority rights is some sort of a compensatory, or at least sympathetic sentiment for the pain and suffering traditional ethno-national communities (whoever they be) had to go through in the past decades of history.

Although apart from legislative and political slips-of-the-tongue (like those cited by Balázs Majtényi) no explicit constitutional or legal reference is made to any of this, the theory can be also supported by the widely held view that the moral basis for minority rights of newly arrived communities in this region is not regarded as equal to that of the "genuine minorities." Evidence for this can be brought from numerous remarks and statements made by representatives of Romanian or Armenian minorities in Hungary, who claim that those who recently moved from Transylvania are taking over the cultural programs and minority self-governments to such extent, that it is now *theirs* and not that of the "genuine" minority identity that is being represented.[25]

It is my firm conviction that the present (anachronistic and absurdly) selective framework of recognizing only traditional "genuine" minority groups cannot be maintained. Besides being inherently arbitrary, as mentioned above, the measurement of the 100-year-presence is not supported by any legal guideline. Therefore anyone commissioning a historical study showing a century-long presence of any given group can beat the system, and get around the legislator's intent. The only question remaining is: of what use is this humiliating procedure? Even the recently amended legislative framework leaves a fundamental question unanswered: what is it that makes the enumerated ethno-national identities so special and worthy of preferential recognition, which other, e.g. corporate, gender, or, for that matter, the non-enumerated ethno-national identities do not enjoy?

[25] See for example the speech of Traján Kreszta, President of the Romanian Self-Government, delivered on March 23, 2004, at the Parliamentary Commission of Human Rights, Minority and Religious Affairs, discussing the Bill amending the Minority Act.

Thus far, the unspoken rule of thumb for Diaspora-reciprocity could serve as a guideline for answering this crucial question. After all, Hungary has been a country where immigration had been limited, and ethno-demographic conditions had been more or less intact. (Recent, post 1989 immigration is still of relatively small scale and mainly transitory.[26] In fact, immigrants make up only about 1,5 percent of the Hungarian population and approximately two third are ethnic Hungarians from coming from the neighboring states.)

Thus far, the legislator could enjoy the freedom of treating a relatively small number of indigenous (historic) national minorities with a wide spectrum of political and cultural autonomy. Considering the size of most of these groups, it was not demanding for the state. Also, as this could serve as a powerful tool in fulfilling the constitutional responsibility of promoting Hungarian Diaspora claims, its legitimacy was never questioned, and, in general, the benefits of the unique and peculiar Hungarian framework of minority protection vastly outweighed its controversiality. It is my firm conviction that the situation changed.

Legislators and policy makers have a number of options. They can, for example, reinterpret the distinction made by Will Kymlicka[27] and differentiate between the claims and aspirations of "genuine", indigenous minorities, who had been innocent and passive victims of cruel history, and the demands of voluntary migrants who choose their fates and the consequential minority status, and introduce differing constitutional standards for the two. In doing so, however, the legislator will still have to take note of the fact that the decision of immigrants (or refugees) to change their domicile is always a reaction to certain political, economic, etc. conditions and their descendants' (ethnic, national, religious, racial) minority identity or structural inequality will also pose political and constitutional questions worth considering.

Either way, governments, legislators and the entire political class will have to declare (or at least start a meaningful public discussion on the question of) what is the basis for the preferential treatment of minorities: is it still the mir-

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[26] See 2003 UNHCR Statistical Yearbook Country Data Sheet – Hungary.

[27] According to Kymlicka, national minorities and indigenous people will typically demand self-government powers (like federalism and territorial autonomy), while immigrants will try to negotiate – what he called – polyethnic or accommodation rights. See for example Multicultural Citizenship: A Liberal Theory of Minority Rights, Oxford, 1995, pp. 30-31. He claims that national minorities and indigenous people want to reproduce their (societal) culture, while immigrants seek to integrate into the mainstream society by learning the official language and participating in the mainstream economic and political institutions. The latter seek to renegotiate the terms of integration by demanding a more tolerant approach to their integration that would allow them to maintain various aspects of their ethnic heritage (such as customs regarding religious holidays, dress, dietary restrictions, recreation). Also see Rogers Brubacker: Nationhood and the national question in the New Europe. Cambridge University Press, Cambridge, 1999.

roring of the Hungarian minority's Diaspora rights; or a symbolic compensation for Diaspora-independent historic guilt; or is it ethno-cultural identity as an eminent part of human dignity; or the combating of social inequality, where ethno-national attributes serve as operational proxies for structurally underprivileged social strata.

Either way, it needs to be explained clearly what makes ethno-national identity worthy of this special, publicly financed and constitutionally articulated protection that is different from the recognition or protection of other cultural, sexual, gender etc. identity, and why political and cultural organizations of the minorities will enjoy a more privileged status in, say, legislation or public administration than other civil or cultural organizations do.

There is one thing the legislator and the political class should not do: maintain the currently-existing conceptual ambiguity in the foundations of minority and Diaspora politics.

SUMMARY

Minority Rights and Diaspora Claims

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National and ethnic minority rights reflect on the history and social conditions of a country. They can express the effort to ensure economic and social equality, grant freedom of religion, avoid violent ethnic conflicts and pogroms, reduce tensions that derive from the cultural backgrounds of immigrants and their descendants that are perceived as different, and combat racial segregation and apartheid. Furthermore, minority rights are instruments of reparative and/or transitive justice, which seek to compensate for racially based social and economic inequalities.

The author claims that as in Hungary the legal status of the (indigenous but highly variegated) national minorities is inseparable from the sense of responsibility felt for the wellbeing of ethnic Hungarians in the wider region, a considerable section of the Hungarian political class considers the rights of national minorities in Hungary either as a bargaining chip for negotiations about the rights of the Hungarian diaspora in the region or at least their mirror image. It may have been due to the civil liberties goal of the architects of Hungary's transition from an authoritarian regime to a pluralist democracy that they forci-

bly squeezed into the same Minorities Act two disparate sections of society: the national minorities, who seek certain additional rights and subsidies to their cultural activities, and Hungary's only ethnic minority: the Roma, who request opportunities equal to the majority society.

The paper states that in Hungary national and ethnic minorities receive preferential legal treatment mainly because legislators have a bad conscience about, and wish to grant compensation for, past grievances. The author warns that in light of predictions about future waves of immigration into Hungary (there is a sizeable Chinese community in Hungary already), the relevant legal regulations and the popular attitude to these issues need a thorough overhaul.

RESÜMEE

Minderheitenrechte und Diaspora-Befugnisse

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Die Morphologie der Minderheitenrechte entwickelt sich stets in Abhängigkeit von den historischen Eigenheiten und den gesellschaftlichen Spezifika des gegebenen Landes. Dementsprechend kann sie in erster Linie die Zielsetzung der wirtschaftlich-gesellschaftlichen Chancengleichheit; die Gewährleistung der Religionsfreiheit; den Schutz potentieller Opfer von blutigen ethnischen Konflikten und Pogromen; die Lockerung der aus kulturellen Unterschieden resultierenden Spannungen von Einwanderern und deren Nachfahren; den Kampf gegen die Segregation auf Grund der Rasse oder gegen die Apartheid; aber auch die ausgleichenden Maßnahmen bedeuten, die im Namen einer wiedergutmachenden, oder einer Art transitiven Gerechtigkeit – bei gesellschaftlich-wirtschaftlichen Unterschieden auf Rassengrundlage – getroffen werden.

Der Verfasser weist in seiner Studie darauf hin, dass ein bedeutender Teil der politischen Öffentlichkeit die Rechte der Minderheiten in Ungarn als Preis der Minderheitenrechte der ungarischen Diaspora, aber zumindest als deren Spiegelbild interpretiert hat, nachdem die ungarische Auffassung von den Minderheitenrechten nicht von der Verantwortung gegenüber dem Schicksal der ungarischen Diaspora getrennt werden kann. Damit ist es zu erklären, dass der Minderheitenschutz in Ungarn die grundsätzlich auf Chancengleichheit ausgerichteten Ziele der einen ethnischen Minderheit (Sinti und Roma) auf unklare Weise mit denjenigen Rechten der einheimischen nationalen, hinsichtlich ihrer Zahl, ihrer Ansprüche und Aspirationen diffusen und heterogenen Minderhei-

ten vermischt, die im rechtsschützenden Schwung der Wende, aber zum Teil mit einem Augenzwinkern in Richtung des Interessenschutzes der Auslandsungarn geschaffen wurden und grundsätzlich das Rahmensystem der kulturellen Subventionen und Mehrheitsrechte bestimmen.

Die Grundlage der eine präferenzielle öffentlich-rechtliche Behandlung erfahrenden Minderheitenherkunft/-identität in Ungarn ist somit in erster Linie das schlechte Gewissen der Gesetzgeber infolge der historischen Vergangenheit, also die kompensatorische Berufung gegenüber der durch die Stürme der Geschichte gebeutelten einheimischen Minderheit. Dies bedarf dem Verfasser zufolge angesichts der zu prognostizierenden Einwanderungstendenzen (die bezüglich der chinesischen Gemeinschaft bereits begonnen haben) ernsthafter juristischer und Auffassungskorrektionen.