

Chapter 4

Status Law and ‘Nation Policy’: Theoretical Aspects

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In this paper I examine the situation of those individuals who are subjects of the Status Law in terms of ‘nation policy’.¹ Such a policy implies the need to define, directly or indirectly, *who is Hungarian*. An examination of this problem on the theoretical level involves considering a range of definitions of the nation and of the nature of the individual’s affiliation to the nation.

Whether or not they admit it, all states practise some kind of ‘nation policy’. The nation state of the twentieth century, which seeks to uphold an image of ethnocultural neutrality, aims in practice to effectuate the real or perceived interests of one or another ethnic or national group. During the course of this analysis two forms of nation policy will need to be distinguished. One, which operates within the borders of the nation state itself, is defined – following Rogers Brubaker – as nation building politics, or nationalising state nationalism; the other is directed at extraterritorial persons and defined as kin-state nationalism. On the whole, every state in East-Central Europe aims to homogenise its internal population while supporting its co-nationals living abroad. I use nationalism as a value-free and descriptive concept, in the sense of political and institutional practices based on the nationality principle. In my analysis I shall deal exclusively with kin-state nationalism, i.e. nation policy directed at Hungarians living in the bordering states. This kind of nation policy, in one form or another, implicitly or explicitly targets persons belonging to specific ethnocultural groups.

Laws similar to the Hungarian Status Law rest on two widely shared assumptions: first, the conception of the nation in ethnocultural terms, which assumes that a group of people who have once formed a nation and developed a strong sense of national identity – regardless of the borders that separate them at present – have something meaningful in common; and second, the perception that the home-state (the nationalising state) will not adequately protect and promote the rights of that nation’s kin minorities, and indeed – especially in East-Central Europe – that it usually seeks to assimilate them. This leads to the prevailing view that it is a legitimate right of kin-states to

1 In Hungarian: *nemzetpolitika*: policy regarding Hungarian minorities outside Hungary.

give special attention to their kin minorities and to institutionalise their concern in legislation. While the practices of kin-states differ substantially, the underlying assumptions are the same. The only possible explanation for this is that the ties of nationality (understood in ethnocultural terms) are perceived by both the kin-state and the kin minority as being stronger than other types of allegiance (notably citizenship, or the ‘political nation’).

The process leading to the creation of the Status Law raises two pivotal issues. The first pertains to the question of who is Hungarian and the second to who decides that. I shall begin with the latter.

I. Who Decides Who Is Hungarian?

While there are a number of ways to determine who is Hungarian, it is less clear where responsibility for institutionalising the definition, creating a legal framework and overseeing its implementation lies. Institutionalisation must be legitimate and it must be supported by authority. The state is the sole agent which has the authority to institutionalise a definition of nation. Consequently, it is necessary to give close attention to legislation like the Status Law. The legal system as such is not an appropriate instrument for determining national affiliation. According to Attila Varga:

On the whole, law or statutes are not suitable for defining a person’s national affiliation. The law acts only as a framework for determining – in a given situation – whether a person is a Hungarian citizen or whether a group of individuals are subject to the Hungarian state’s supreme authority. But this does not mean that it is beyond the competence of the law to prescribe Hungarian statutory prerogatives or obligations for citizens of other countries, in particular when these citizens reside in Hungary.²

Judit Tóth also supports this view: ‘[A] person’s affiliation to the Hungarian nation is not definable by law; at most it may offer a vague definition (e.g. the mother tongue is Hungarian or – on the basis of free choice of identity – the person may declare his/her Hungarian nationality)’.³ Although the Status Law does not offer an answer to the question of who is Hungarian, the issues arising with regard to its implementation, in one form or another, inescapably demand that it do so. And in codifying the criteria for entitlement to benefits, the Status Law and the declarations of the Hungarian Standing Conference (HSC) *de facto* define the Hungarian nation in the region in ethnocultural terms. In terms of institutions, the practices of the Hungarian state, the

2 Attila Varga, ‘A jogállástól a kedvezményekig’, *Fundamentum* 2000/3, pp. 103-105, here p. 104.

3 Judit Tóth, ‘Státusmagyarság’, *Mozgó Világ*, 2001/4, pp. 12-19, here p. 14.

HSC (which includes representatives of Hungary's political parties as well as elected political representatives from Hungarian minorities abroad), and Hungarian advisory bodies (informing organisations) in the home-states also tend to enforce an ethnocultural definition of the nation.

The Status Law is a law of the Hungarian state which applies exclusively to particular citizens of the neighbouring states (members of the Hungarian minority and their spouses). The Hungarian Parliament endorsed the law by a 92% majority. The state and all subsequent governments thus have the authority and legitimacy to institutionalise its concept of the nation on Hungarian territory. But the legitimacy and authority of the mother country are not always sufficient to legitimate political decisions which enforce a particular concept of the nation when those decisions target people living in neighbouring countries. In the present case, the HSC is designed to answer this objection, since it was primarily established to involve kin-groups whose political legitimacy in the home-states is demonstrated by their having elected representatives in national or regional government in the drafting of the Status Law. The formal conditions have thus been created for the Hungarian organisations in the Carpathian Basin to participate in the making of decisions with regard to the Hungarian (ethnocultural) nation. The HSC legitimises the decisions the Hungarian state makes with respect to the minorities in bordering countries, and thus – as an institution – plays a key role in defining the Hungarian nation in ethnocultural terms. Along with the informing organisations, it also assumes this role in providing specific advice to the Hungarian government. The Hungarian Parliament endorsed the Status Law at the official request of the HSC. Zsolt Németh made the following statement about the HSC:

Accordingly, the Hungarian nation is not a mere cultural nation but a community with a political dimension. The HSC politically represents and speaks for the 15 million-strong Hungarian nation. This political body comprises more than just political organisations, and political integration is not merely the integration of the political elite; through the Status Law these become an everyday reality for ordinary people.⁴

Finally, the informing organisations and institutions in the neighbouring countries, which collect applications for the Hungarian Certificate, also belong to this category. For an application to be accepted, the individual's

4 Zsolt Németh's speech delivered in the National Assembly on 19 April 2001 during a plenary debate on the draft bill with respect to Hungarians in living in the neighbouring countries: 'A határon túli magyarokról szóló törvényjavaslat parlamenti vitája', in Zoltán Kántor, ed., *A státustörvény: dokumentumok, tanulmányok, publicisztika* (Budapest, 2002), pp. 74-120, here p. 97.

declaration of national affiliation (self-identification) must be accompanied by certification from an educational, church or political organisation. Knowledge of the Hungarian language is also a possible criterion. In practice, the HSC, local bureaus and organisations determine the person's eligibility in accordance with criteria defined by the Hungarian National Assembly, that is, they determine who is Hungarian. László Öllös from Slovakia, searching for possible pitfalls in the law, appropriately observes: 'Those refused the identity card are not recognised as Hungarian'.⁵

Thus far, I have examined the institutions which determine national affiliation; in what follows, I shall deal with issues relating to the criteria applied for defining eligibility.

II. Who Is Hungarian?

Debates in this area have revolved around objective and subjective criteria for defining those persons who fall within the scope of the law. A dichotomy emerged between the subjective principle of freedom of identity and the objective criteria represented by language and affiliation to Hungarian institutions (church, parties or associations). At the theoretical level, the debate on the eligibility of Hungarians in the neighbouring countries essentially focused on the definition of national affiliation. Although the preference law does not raise the question of defining *who is Hungarian*, it is still necessary to clarify which individuals in the neighbouring countries belong to the Hungarian nation in the ethnocultural sense. The law attempts to determine the group which would become subjects of the law by stipulating that *only* those people are eligible who belong to the ethnocultural nation, but *all* persons constituting this category are subjects of it. The aim of the law is defined in the preamble, which asserts that the Hungarian Parliament created the law to promote the affiliation of Hungarians in the neighbouring countries to the unitary Hungarian nation, their well-being in their birthplace, and the preservation of their national identity.

Definitions of the nation can be divided into two groups. One approach asserts that the nation is a product of the modern era, which emerged as a corollary of social change and is strictly bound to the state. The other approach emphasises the ethnic dimension, which existed long before nation states came into being. This approach primarily emphasises language and culture as well as ethno-symbols. The premises and points of reference of different definitions of nation vary, and in some cases they are mutually exclusive. On closer examination, however, it is striking how various political groups adopt the definition most suitable to their political and

5 László Öllös, 'Hova tartozhatunk?' *Fundamentum* 2000/3, pp. 97-102, here p. 101.

ideological interests. Jenő Szűcs aptly points out that during the monarchy the Hungarian political elite identified itself as a cultural nation *vis-à-vis* the German-speaking Austrians and as a political nation *vis-à-vis* the minorities living within the boundaries of the Hungarian Kingdom. This dual mind-set is apparent in every example of nationality politics, so that we can really only speak of politics without any unitary underlying principle. In reality, the term 'political nation' implies no more and no less than the sum of the citizens of a given country. Thus, in my opinion, it is futile to use the concept since it is not helpful for the analysis of 'nation policy'.

Tamás Bauer has raised this issue in earnest at the theoretical level.⁶ Since the Romanian Hungarians are Romanian citizens and participate in Romanian political life, in his opinion, they are members of the Romanian political community. Yet, can they also be construed as members of the Romanian political nation? To answer this question the concepts of cultural and political nation have to be defined: While the former denotes the nation as an ethnocultural entity and emphasises common language and culture, the latter stipulates that the inhabitants of the state comprise the nation. 'Political' is the adjective and 'nation' is the subject. With respect to the cultural nation (in other words the ethnocultural), 'cultural' is the adjective and 'nation' is still the subject. Both concepts insist that there is something distinct and meaningful called a 'nation'. There is a resemblance between this issue and those involved in discussions of the difference between civic and ethnic nationalism.⁷ In Tamás Bauer's conceptualisation, the Hungarian political nation and the body of Hungarian citizens are coterminous entities. According to this logic, Romanian, Slovak, etc., Hungarians are members of the Romanian, Slovak, etc., political nations. This would be true if we were to substitute the political nation for citizenship. But that would make the concept of political nation redundant. From Hungary's point of view it might be appropriate to apply this concept, since the minorities in Hungary actively participated in the modern nation building process of the nineteenth century. Moreover, it can be said of present-day minorities in Hungary that they possess dual identities (including Hungarian). This is not true of the Hungarian minorities in the neighbouring countries. Present-day Hungarian minorities have not participated in the evolution of neighbouring nations; moreover, those processes have been directed against the minorities. Consequently, in their case we cannot speak of dual identity, except in cases of mixed marriages.

The fact that the Romanian Hungarians participate – directly or through their organisations – in Romanian political life, or that the minority parties in

6 Tamás Bauer, 'A hazátlanság tartósítása', *Népszabadság*, 10 January 2001.

7 Zoltán Kántor, 'Polgári nacionalizmus?' *Provincia* 1:6 (2000), p. 2.

Romania, Slovakia and Yugoslavia actively assume a role in government – making them members of the political community of the given country – does not mean that they also belong to the political nation (!). Nation in the political sense, and nation in the cultural sense, are terms calculated first and foremost to denote different processes in the evolution of particular nations or the variety of political and administrative structures instituted on national principles. In no way do they assert facts. In practice, for example, the Romanian state formulates policies on the principle of the political state *vis-à-vis* its territorial minorities on the one hand, and on the principle of cultural nation *vis-à-vis* Romanians in the neighbouring countries (in the Republic of Moldova in particular), on the other. Hungary acted on the principle of the political nation between 1867 and 1918 in the territory of the Kingdom of Hungary and after 1918 it continued this policy on Hungarian territory, while coupling it with policies based on the principle of the cultural nation directed at Hungarians in the neighbouring countries. I cite these examples to illustrate that these terms are contingent, hence the inherent pitfalls in their arbitrary use.

Tamás Bauer, Alliance of Free Democrats parliamentary deputy, who rejected the Status Law outright, offers this reading of the law: ‘Your actual homeland is the Hungarian state and not the one of which you are the citizens [... T]he Hungarian state would gladly grant you [...] all you have vainly expected of the state to which you have been subordinated by Trianon [... D]on’t expect integration into the political community of the state of which you are citizens [... S]ustain your hope in something else even if it were never to materialise’.⁸ According to Bauer, this law is particularly harmful since it will inevitably disrupt the process that has already started, which would ultimately lead the Hungarian minorities to accept the state they live in as their homeland. The Status Law would disrupt this process and create confrontation between the minority and the majority population; consequently it would reinforce the feeling of homelessness within the ranks of the Hungarian minorities in the neighbouring countries.

Naturally, one could cite converse arguments – not more true, and just as conjectural and contentious as the presuppositions reflected in Bauer’s assertions. The author claims that the minority issue is progressing towards a solution since a person’s national affiliation will become irrelevant with the introduction of ‘etherealised’ borders. Hence, the issue remains an issue only until Hungary’s neighbours join the EU. I cannot share this optimistic outlook if I take into account another point of view, admittedly equally contentious but one which I share, namely that the logic entailed either in the concept of the nation state or minority nation building provides no

8 Bauer, ‘A hazátlanság tartósítása’.

justification for the author's assertion. Theoretically, it is possible that the national principle, as a determining factor, might eventually disappear. For the time being, however, there is no evidence to support this assumption, and national rivalry, in my view, will remain a dominant feature. If we set moralistic expectations against actual social processes, it seems clear that the feeling of homelessness will not disappear and that conflicts between the majority and minority population will persist in one form or another.

The approach of Gáspár Miklós Tamás resembles that of Bauer. According to Tamás,

The law – in contradiction to the spirit of our constitution – redefines the concept of 'nation' along ethnic lines, echoing the unsavoury utterances of the extreme right. This concept of the nation targets physical beings according to their descent and cultural affiliation with complete disregard for their citizenship. This implies – with regard to the national minorities in Hungary – that ethnocultural criteria override the equity of dignified citizenship, and it also detaches the political community (the nation of citizens) from the ethnocultural community. While it disfranchises – symbolically, for the time being – the achievements of centuries-long civic emancipation, it is exclusive and gives 'Hungarianness' an ethnocultural-genealogical quality.⁹

Gáspár Miklós Tamás makes two very pertinent observations here. One concerns the ethnic redefinition of the nation; the other concerns the slighting of the minorities in Hungary. Let us examine both of his claims. Tamás is completely right in asserting that the law implies a redefinition of the 'nation'. However, it is by no means certain that it contravenes the spirit of the Constitution. Tamás's text implies that the *ethnic approach*, in conjunction with *exclusiveness* and *ethnocultural-genealogical quality* reflects a view that directly challenges the so-called political and cultural definitions of nation.¹⁰ Tamás's premises are based on the classical Eastern-Western and ethnic-civic typologies.¹¹ In these typologies the cultural nation, the ethnic nation and the Eastern nation are all based on ancestry and genealogy, but the Status Law does not confine eligibility for the identity card to ancestry or genealogy. In fact, the law does not contain any reference to Hungarian ancestry as a precondition for applying for the identity card. Nor does the Status Law contravene the spirit of the Constitution – as claimed by Tamás – since it does

9 Gáspár Miklós Tamás, 'A magyar külpolitika csődje', *Népszabadság*, 30 June 2001.

10 Friedrich Meinecke, *Cosmopolitanism and the Nation State* (Princeton, 1970), pp. 2-22.

11 Cf Hans Kohn, 'Western and Eastern Nationalism', in John Hutchinson and Anthony D. Smith, eds., *Nationalism* (Oxford, 1994), pp. 162-165; John Plamenatz, 'Two types of nationalism', in Eugene Kamenka, ed., *Nationalism: The Nature and Evolution of an Idea* (London, 1973), pp. 22-36.

not define citizens in ethnic or genealogical terms. While Hungary's Constitution, unlike those of several neighbouring countries, does not define the country as national state, by virtue of recognising the rights of the minorities it acknowledges that it is not a homogenous state. In this context the Constitution guarantees rights to minorities living in the country. On the other hand, in the frequently cited Article 6, Paragraph 3, the legislators signalled that the Hungarian state treats the Hungarian minorities in the neighbouring countries as a special group. The Constitution does not define the scope of this responsibility, but the stipulation of a special relationship suggests an ethnocultural concept of nation. Thus, the Status Law does not contravene the spirit of the Constitution and it is not based on the classical ethnic approach.

The second issue is even graver and it is striking that this problem has not attracted more attention thus far. While the Status Law deals exclusively with the Hungarian minorities in the neighbouring countries and does not mention the minorities in Hungary in any form, the redefinition of the nation indirectly affects them. According to paragraph 1 of article 68 in the Hungarian Constitution, '[n]ational and ethnic minorities living in the Republic of Hungary are constituents of the people's authority: nation building entities'. The Status Law offers benefits and assistance exclusively to the Hungarian minorities across the border.¹² Although legally the Status Law does not apply to the minorities in Hungary, it nonetheless raises two theoretical problems:

First, the ethnocultural definition expresses and reinforces a concept of nation in terms of which Hungary is first and foremost a state comprising the Hungarian ethnocultural community. Since the minorities living in Hungary are also nation building factors, the Status Law might have been formulated to take into account the fact that these nation building minorities are also members of other ethnocultural groups living outside the borders of Hungary, and should therefore share in the benefits of the Status Law.

Miklós Bakk's opinion might be construed as an answer to the issues raised by Gáspár Miklós Tamás. In his view,

the Status Law is original in the sense that while it formulates declarative 'nation policy' and minority protection goals, in reality it paves the way for the devolution of the territorial state – the Westphalian paradigm – in our region. The originality of the Status Law entails – in this sense – a paradigm shift, in that it is not striving for the 'completion' of intra-territorial homogeneity on the way to

12 Legislation on the rights of minorities in Hungary is codified in the '1993 LXXVII Law on the rights of ethnic minorities', <http://archiv.meh.hu/nekh/Magyar/6-1-2.htm>.

European integration, but is constructing cultural-symbolic niches outside its borders.¹³

Miklós Bakk places the emphasis on originality and builds on the hypothesis – which I cannot endorse – that a new kind of political practice is evolving, which predicates the weakening of the nation state as one of its core elements. Consequently, a post-nation state era replaces outdated nation state politics, and the concept of the Status Law fits perfectly into this model. 'With the construction of cultural-symbolic niches outside the borders', Béla Biró cannot overlook the ethnocultural concept of nation either. His assertion confirms this:

In the Western sense, the concept of the nation of citizens could not have evolved within the ranks of extraterritorial minorities, since persons of Hungarian mother-tongue and culture have been treated by the relevant states as second-class citizens. For them, attachment to the nation could only mean the cultural nation and – an (imaginary) sense of belonging to its perceived repository – Hungary.¹⁴

Ostensibly, we are faced with politics resting on two diametrically opposed concepts of nation. While one of them mainly sees states when glancing at the map of the region, the other mainly sees nations. The dichotomy between the two cannot be resolved and the literature thus far has not offered an answer.¹⁵ There can be no meaningful debate on the issue if we start from axiomatic premises, and purely speculative and ideological propositions cannot be 'substantiated' by scientific arguments.

The second such issue concerns those Germans, Jews and Roma, etc. in the neighbouring countries who declare themselves to be (also) Hungarian. In theory they may apply for and receive the Hungarian Certificate without complications, but the attitude of advisory body officials towards applicants and their eligibility, in particular Roma, is another question. With respect to eligibility, the Venice Commission proposed a revision of criteria related to the identification of persons belonging to the Hungarian minority. This – ostensibly – prefers the objective approach. In compliance with this spirit, the participants at the HSC meeting held on 15-16 October 2001 determined that persons are eligible to become subjects of the law who declare themselves to be Hungarian, speak Hungarian, and also fulfil one of the following criteria: 1. are registered as members of any officially recognised Hungarian organisation; 2. are registered as Hungarian in a church; 3. are registered as Hungarian on the relevant state's citizenship roll.¹⁶

13 Miklós Bakk, 'Két nemzetképció európai versenye zajlik', *Magyar Nemzet*, 7 June 2001.

14 Béla Biró, 'Itt-hon vagy ott-hon?' *Népszabadság*, 6 January 2001.

15 Tom Nairn, *Faces of Nationalism: Janus Revisited* (London, 1997).

16 Final Statement of the Fourth Session of the Hungarian Standing Conference, Budapest, 26

In conclusion to this section, I would like to point out that both the Hungarian state and Hungarian institutions abroad contribute to the definition of who is Hungarian. This designation is based on both subjective and objective criteria. Following this analysis of the nation issue in the Hungarian context, I turn to the international aspects of the question.

III. International Aspects

The neighbouring states (especially Romania and Slovakia), which also have similar preferential laws regarding their co-nationals, strongly oppose the Hungarian law. Immediately after the ‘Act on Hungarians Living in Neighbouring Countries’ was passed, on 21 June 2001, Romania’s Prime Minister, Adrian Năstase, requested that the Venice Commission examine its compatibility with European standards and the norms and principles of contemporary public international law. As a response, on 2 July 2001 Hungarian Minister of Foreign Affairs, János Martonyi, asked the Venice Commission to carry out a comparative study of recent tendencies in European legislation concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship. At its plenary session of 6-7 July 2001, the Venice Commission decided to undertake a study, based on the legislation and practice of certain member states of the Council of Europe, of the preferential treatment by states of their kin minorities abroad.

The Venice Commission presented its report on the 22 October 2001. The most important conclusions are:

- A state may issue acts concerning foreign citizens inasmuch as the effects of these acts are to take place within its borders.
- Preferential treatment may be granted to persons belonging to kin minorities in the fields of education and culture, insofar as it pursues the legitimate aim of fostering cultural links and is proportionate to that aim.
- Preferential treatment can not be granted in fields other than education and culture, save in exceptional cases and if it is shown to pursue a legitimate aim and to be proportionate to that aim.¹⁷

The Venice Commission recognised the right of kin-states to support their co-nationals living in other states. This is a novelty in international minority protection. While this declaration has become a contentious issue,

October 2001, reprinted in this volume.

17 European Commission for Democracy Through Law (Venice Commission), ‘Report on the Preferential Treatment of National Minorities by their Kin-State’, adopted by the Venice Commission at its 48th Plenary Meeting, (Venice, 19-20 October 2001), reprinted in this volume.

there is now an international recommendation for its consideration. It is also important to note that the Venice Commission ruled that the kin-state may support its minorities in the field of education and culture, but prohibited other types of support, such as preferential treatment in granting work permits. The recommendations prove that the Venice Commission implicitly acknowledges special bonds between a state and its kin minorities. Moreover, they also constitute recognition of the nation conceived in ethnocultural terms.

Rolf Ekeus, OSCE High Commissioner for National Minorities, made a statement a week after the report issued by the Venice Commission. The statement – formulated in general terms – concerns the Hungarian Status Law. The text of the statement highlights the difference between the boundaries of the state and that of the nation, and recognises the ‘interest in persons of the same ethnicity living abroad’:

National and state boundaries seldom overlap; in fact there are few pure ‘nation states’. National groups are therefore often divided by borders. It is a basic principle of international law that the state can act only within its jurisdiction which extends to its territory and citizenry. Although a state with a titular majority population may have an interest in persons of the same ethnicity living abroad, this does not entitle or imply, in any way, a right under international law to exercise jurisdiction over these persons. At the same time it does not preclude a state from granting certain preferences within its jurisdiction, on a non-discriminatory basis. Nor does it preclude persons belonging to a national minority from maintaining unimpeded contacts across frontiers with citizens of other states with whom they share common ethnic or national origins.¹⁸

The report of the Venice Commission was interpreted differently by Romania and Hungary; both parties considered that the Venice Commission supported their point of view. In December 2001, Hungary’s Prime Minister Victor Orbán and Romania’s Prime Minister Adrian Năstase signed the ‘Memorandum of Understanding between the Government of the Republic of Hungary and the Government of Romania concerning the Law on Hungarians Living in Neighbouring Countries and issues of bilateral co-operation’.¹⁹ From the point of view of this study the most important statements in the memorandum include:

18 ‘Sovereignty, Responsibility, and National Minorities’, Statement by Rolf Ekeus, OSCE High Commissioner on National Minorities, in the Hague, 26 October 2001, reprinted in this volume.

19 ‘Memorandum of Understanding between the Government of the Republic of Hungary and the Government of Romania concerning the Law on Hungarians Living in Neighbouring Countries and issues of bilateral co-operation’, Budapest, 22 December 2001, reprinted in this volume.

2. All Romanian citizens, *notwithstanding their ethnic origin*, will enjoy the same conditions and treatment in the field of employment on the basis of a work permit on the territory of the Republic of Hungary.
3. The Romanian citizens of *non-Hungarian ethnic identity* shall not be granted any certificate and shall not be entitled to any benefits set forth by the Law on Hungarians Living in Neighbouring Countries.
5. The Hungarian representative organisations or other entity on the territory of Romania shall not issue any recommendations concerning the *ethnic origin* or other criteria.
7. The certificate shall contain only the strictly necessary personal data and the entitlement to benefits (name, forename, citizenship, country of residence etc.) and shall include *no reference to the ethnic origin/identity* [italics mine].

The memorandum demonstrates the importance placed by the Romanian side on the issue of the nation. Ostensibly, Romania's concern was to dilute the national/ethnic elements of the law. Romania, which defines itself as a unitary nation state, fundamentally opposes Hungary's concern for its kin minorities in Romania, and Romanian politicians have pointed out that the Hungarian Status Law would strengthen the ties between the Hungarian state and the Hungarian minority in Romania.

The European Parliament appointed Eric Jürgens as the rapporteur on the Hungarian Status Law and other similar laws in Europe. Eric Jürgens presented his draft report on the Status Law in 11 June 2002. The report concluded that the Status Law is discriminatory and has extraterritorial implications, and recommended that Hungary should rescind the law. The Hungarian side responded by saying that Eric Jürgens had not fulfilled his assignment, since he was asked to compare similar laws in Europe and not focus only on the Hungarian law. At the same time, the Hungarian side argued that Jürgens used a very one-sided approach to the concept of the nation, interpreting it only in the sense of the *political nation*. Eric Jürgens presented several drafts of the report, which was finally accepted by the Parliamentary Assembly of the Council of Europe on 25 June 2003. The endorsement procedure, with respect to the report, again highlighted the issue of the nation. In the explanatory memorandum Jürgens stated: 'The definition of the concept "nation" in the preamble to the law is too broad and could be interpreted as non-acceptance of the state borders which divide the members of the "nation"' ²⁰.

20 Erik Jürgens, 'Explanatory Memorandum', reprinted in this volume. Cf. Erik Jürgens, 'Preferential treatment of national minorities by their kin-states: the case of the Hungarian Status

Since the report fundamentally rested on the political conception of the nation, it came up with an astonishing distinction between the Hungarians and the Magyars. In the terms of the report, Hungarians are the citizens of Hungary, while the Magyars are Hungarians living abroad.²¹ All Hungarians, in Hungary as well as in the neighbouring states, refer to themselves as 'Magyar'. In the Hungarian language there is no other word to designate those who belong to the Hungarian nation. Hungarian is the term used in English. Romanians use both words: Hungarians (*unguri*) and Magyars (*maghiari*), but there is no systematic distinction between Hungarians living in Hungary and Hungarians living in Romania. In the same logic, German citizens would be *Germans*, while Germans living in other states, i.e. Belgium, Hungary, Romania, etc. would be *Deutsch*. Romanians in Romania would be *Romanians* and Romanians living in Hungary would be *Români*. This is an absurd outcome of applying – correctly, but unilaterally – the concept of political nation. An analytical approach to the issue which also took into account the competing concept of ethnocultural nation could lead to a deeper understanding of the problem and probably could make a solution easier.

The election victory of the socialists and the liberals in Hungary in April 2002 placed the question in a new light. Having opposed, or half-heartily supported the law at the outset, they were more willing to make a series of proposed amendments. The ensuing debates focused on how to modify the Status Law. The Hungarian Status Law brought into the centre of attention the policies of a number of states with regard to their national minorities, and this has shown that the attention that Hungary accords to its kin minorities is not unique in Europe. Consequently, European political bodies will have to find an appropriate solution based on universalistic principles. But this is another story.

During the debate surrounding the Status Law, Günter Verheugen wrote a letter to the Prime Minister of Hungary, Péter Medgyessy, in which he also focused on the issue of the nation:

[T]here is a feeling that the definition of the concept 'nation' in the preamble of the law could under certain circumstances be interpreted – though this interpretation is not correct – as non-acceptance of the state borders which divide the members of the 'nation', notwithstanding the fact that Hungary ratified several multi- and bilateral instruments containing the principle of respect for territorial integrity state,

Law of 19 June 2001', (draft report) Council of Europe Parliamentary Assembly, reprinted in this volume.

21 In the terms of the report Magyars are specifically 'People of Hungarian identity (i.e. citizens of the countries concerned who consider themselves as persons belonging to the Hungarian 'national' cultural and linguistic community)'.

in particular the basic treaties entered into force between Hungary and Romania and Slovakia.²²

Verheugen's letter stated that the phrase 'Hungarian nation as a whole' (translated in the English version of his letter as 'unitary Hungarian nation') could be understood to indicate that Hungary was striving to establish special political links with the minorities in neighbouring states. Therefore, he recommended that this phrase should be replaced with more culturally oriented ones.

After the election victory in May 2002, the new government decided to modify the Status Law. The law was modified in June 2003. Of the major changes made two are relevant to the purposes of this paper. The first regards the use of the term 'nation'. The original law defines its goals as follows: 'to ensure that Hungarians living in neighbouring countries form part of the unitary *Hungarian nation* and to promote and preserve their well-being and awareness of national identity within their home country' [italics mine]. The amended law defines the goal as: 'to ensure the well-being of Hungarians living in neighbouring states in their home-state, to promote their ties to Hungary, to support their Hungarian identity and their *links to the Hungarian cultural heritage as an expression of their belonging to the Hungarian nation*' [italics mine]. The modified law thus refrained from using the 'Hungarian nation as a whole' terminology, and formulated it in terms of sharing the Hungarian cultural heritage.

The other modifications of the law entail entitlements. The modified law puts the emphasis on Hungarian culture, and not on Hungarian individuals. Moreover, it explicitly supports Hungarian culture, and not – as intended by the framers – Hungarian individuals living in the neighbouring states. In practice, virtually the same individuals will benefit from the law, but the underlying philosophy has changed.

Conclusions

Apart from the domestic and international political implications, the Hungarian Status Law has drawn attention to the issue of how a nation is defined. While the framers of the law conceived it on the basis of an ethnocultural definition of the nation, the domestic opposition and, to some extent, international organisations (represented in particular by Günther Verheugen and Eric Jürgens) emphasised the political conception of the nation. The modified law shifted from an ethnocultural to a political conception of the nation.

22 Günther Verheugen's letter to Hungarian Prime Minister Péter Medgyessy, dated 5 December 2002, reprinted in this volume.

The contest between the two conceptions, the ethnocultural and political, or in George Schöpflin's terms, the particularistic and universalistic conceptions, has surfaced on the European agenda as a result of the Hungarian Status Law. It may be hoped that Hungary's proposal with regard to including the protection of national minorities in the European Constitution will again compel politicians to clarify concepts, as well as discourage them from employing unilateral definitions just because these serve their political interests better.