Models of Kin Minority Protection in Central and Eastern Europe

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I. Historical Antecedents

The principle of providing for kin minorities emerged approximately in the same period as the minority issue. Solidarity based on religious community was known as early as the 17th and 18th centuries. It is enough to think about the Peace Treaty of Karlowac, which was signed in 1699 between the Austrian emperor, the Polish king, and the Turkish sultan and was the first international treaty to contain minority protection provisions. According to the treaty, the Austrian emperor and the Polish king became protective powers, entitled to intervene on behalf of the Roman Catholics living under Turkish rule.[1] The other similar treaty was the Peace of Küçük Kajnarci (1774), signed between the Russian and the Ottoman Empires. According to the treaty, Russia undertook a certain type of protective obligation over the minority Christian population living under Ottoman authority.[2] The international protection of the human rights of minorities emerged gradually from the political protection of Christians living under Ottoman rule.[3]

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[1] Sándor Erzsébet Szalayné, *A kisebbségvédelem nemzetközi jogi intézményrendszere a 20. században* (Budapest, 2003), p. 43.

[2] In Article VII of the Peace of Küçük Kajnarc, signed on 21 July 1774, the Turkish party undertook the obligation of protecting Christian religion and Christian churches. At the same time, it gave permission to the Tsar's delegates to take steps in the interests of the new church and clergy in Constantinople. The subsequent articles of the treaty extended the protection of Christian minorities to other Ottoman territories. In connection with that, see: Gábor Súlyok, *A humanitárius intervenció elmélete és gyakorlata* (Budapest, 2004); Manouchehr Ganji, *International Protection of Human Rights* (Geneva, 1962), p. 18.

[3] On the same process, see: Ganji, *op. cit.*, pp. 17–22.

The centuries-old cross-border power of Christian solidarity may be considered the antecedent of the 'transnational national solidarity' born at the turn from the 19th to 20th century. The protection of minority rights, created on the basis of ethnic and national origin, language, and culture, is rather a consequence of the birth of modern nations at the 19th century and the appearance of nationalism. However, at the international level minority rights only appeared after World War I. Nevertheless, between the two world wars, state-centred classical international law was too strong, which to some extent limited the legal and institutional responsibility for kin minorities.

The end of World War II introduced a new and not especially minority-friendly period. The collective rights of minorities fell out of favour, and individual human rights began their triumphal march instead. The sense of responsibility felt for co-nationals living outside the borders, however, did not entirely disappear, at least not in places where the specific international political conditions and bilateral relations made it possible. Such a situation was created between the two defeated states—Italy and Austria—in the case of the German speaking population of South Tyrol. Finally Austria managed to achieve the protective power (*Schutzmacht*) status, although not unilaterally, but on the basis of international treaties.

The next phase in the history of responsibility and provision for kin minorities began parallel to political changes in Central and Eastern Europe. First, it was due to the fact that after the collapse of the Soviet Empire, the region witnessed a renaissance of nations and national emotions (unfortunately including prejudices and phobias), which had previously been reserved or at times even oppressed. In this period, these feelings also regained their political legitimacy. Second, it is important to remember all that happened in a region where ethnic minorities constituted a significant part of the population and where the democratic and constitutional treatment of their problems had been delayed for centuries. Third, the political changes around 1989 were regarded as milestones, not only in the concerned region, but all over the world. Following the collapse of the Soviet Union, the bipolar world system ceased to exist, and the obstacles in the way of the economic, social, and cultural process called globalisation were finally removed. Globalisation and European integration affected legal thinking to a great extent; the previously strictly controlled framework of national states weakened and

new transnational characters appeared. With respect to minorities living outside the borders, it meant that in several states an elite with strong national feelings assumed they were free to create their own legal protective and supporting roles unilaterally, i.e. lacking legal background of international treaties. This aspiration has been enshrined in several constitutions since 1989, and somewhat later the so-called compatriot, benefits or status laws were created.

Thus the formal institutional and legal background to the idea of provision for co-nationals (mainly those without citizenship) living outside the borders proves to be a relatively new phenomenon in law, in spite of the fact that the issue itself, as shown in the above paragraph, is not at all so recent. However, for a long time the responsible, or at least willing, public characters aimed at solving the problem via social organisations and informal relationships in politics or public administration.

Naturally, at the moment it is impossible to speak about a uniform model, since the institutional and legal background of most countries adapts to the individual development of the given country and nation, to the concept of nation dominant in the country, and, last but not least, to international politics and politics in neighbouring states. This adaptation refers both to the definition of 'co-national living outside the borders' and to the administrative and social approaches to dealing with them. The rights and benefits each country grants also differ widely.

II. The Issue of Citizenship and Co-nationals

One fundamental aspect is whether the individual countries wish to protect and support their co-nationals without citizenship, those living abroad permanently who possess citizenship of the kin-state, neither, or both. There are some states who aim to protect and provide for their own citizens living in other countries, which is in accord with classical notions of the nation state. An example is Article 40 of the Swiss Constitution (1999), which refers to Swiss men and women living abroad and clearly intends to mean Swiss citizens.[4] According to Paragraph 1, the Swiss

[4] Fairly similar provisions were contained in the Swiss Constitution of 1874, which was amended several times. See its wording in: István Kovács (ed.), *Nyugat-Európa*

Confederation supports the relationships of Swiss people living abroad, established among themselves, as well as their relations with Switzerland, and, to this end, the state may support organisations with this same purposes.[5] Although Switzerland is among the few western countries where this issue is treated at the constitutional level, other European states also in some way attempt to provide for their citizens permanently living abroad. France,[6] Great Britain,[7] and partly Spain[8] are all examples of this. However, in these cases only the countries' citizens are considered, and therefore their dilemmas only partly touch upon the difficulties of Central and East European regulations.

While the protection of their own citizens belongs to the openly declared or tacit constitutional obligations of most countries, most concerned countries in Central and Eastern Europe wish to foster co-nationals who are not their own citizens.

The law on Hungarians living in the neighbouring countries (i.e. the Hungarian Status Law),[9] which mainly aimed at promoting prosperity in the country of residence, contains provisions regarding non-citizen co-nationals living outside the borders. Settling in Hungary results in falling outside of the law. However, the national responsibility clause of the Hungarian Constitution does not *expressis verbis* exclude expatriate Hungarians from it either. In spite of the legal defects in the constitution's wording and the unexplained object of national policy, the support and provision for Hungarian citizens permanently living abroad may not be entirely neglected on the grounds that the concerned person holds Hungarian citizenship.[10] That would be both illogical and incompatible with the Constitution.

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alkotmányai (Budapest, 1988).

[5] On the basis of the above authorisation, the rights and obligations of Swiss people living abroad are specified by two federal level regulations—the 1973 law on the provision for expatriate Swiss people and the 1975 law on the political rights of expatriate Swiss people. On the same issue, see: Claude Baláž, 'Európania v zahraničí. I', *Dilema* 8 (2002), p. 74.

[6] Gusztáv Kecskés, 'A francia állam gondoskodása külföldön élő polgárairól' in *A kettős állampolgárság Európában: Esettanulmányok* (Budapest, 2004).

[7] András Péterfi, 'Az állampolgárság problémakörének brit megközelítése' in *A kettős állampolgárság Európában*, *op. cit.*

[8] Claude Baláž, 'Európania v zahraničí. IV', *Dilema* 10 (2002), pp. 73–74.

[9] Act LXII on Hungarians living in the neighbouring states.

[10] Attention to these problems was drawn by Judit Tóth. See: Judit Tóth, 'A határon kívül élő magyarokért való felelősség egyes alkotmányjogi összefüggéseiről' in Judit Tóth (ed.),

Similar to the Hungarian Status Law, the law on expatriate Slovaks also refers to persons not holding citizenship but being of Slovak origin or having Slovak affiliation.[11] It is a fact, however, that in the latter case possessing the certificate means an advantage in acquiring citizenship, which is different from the Hungarian regulation. The 1979 Austrian Law to realise the 'emancipation' of Germans and Ladins in certain districts in South Tyrol also referred explicitly to non-Austrian citizens.[12] The decision of the Slovenian Parliament on the situation of the autochthonous Slovenian minority living in the neighbouring countries does not expressly exclude those who have acquired Slovenian citizenship from the autochthonous communities in other countries; more precisely, it does not mention that possibility.[13] Nevertheless when it defines what, or rather who, was to be considered an autochthonous Slovenian minority in a neighbouring country, it declares that 'Slovenians living outside the borders' who were citizens of the neighbouring countries are entitled to all rights and obligations therein.

Contrary to these, the Russian compatriot law is applicable not only to non-Russian citizens, but also to Russian citizens permanently living abroad, Russian ex-citizens who lived within the borders of the ex-Soviet member states, and those who have obtained the citizenship of those states or have remained displaced persons.[14] Additionally, it refers to emigrants from all the legal predecessors of Russia, regardless of their citizenship, as well as their descendants. The law does not, however, cover members of the titular nations of the foreign states, such as Estonians in Estonia or Kazakhs in Kazakhstan.

The law on Bulgarians living outside the Bulgarian Republic does not differentiate between citizen and non-citizen co-nationals.[15] This is

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Schengen. A magyar-magyar kapcsolatok az uniós vízumrendszer árnyékában (Budapest, 2000), p. 132.

[11] Law no. 70 of 1997 on expatriate Slovaks and the amendment and the completion of other laws.

[12] Federal Law, ratified on 25 January 1979, on the emancipation in some administrative fields for the population of South Tyrol with Austrian citizens.

[13] Decision no. 2280 of the Parliament of the Slovenian Republic on the situation of the autochthonous Slovenes living in the neighbouring countries, and the duties of the national and other factors of the Slovenian Republic.

[14] The 1999 Year Federal Law no. 2670 of the Russian Federation on the official policy concerning compatriots living abroad.

[15] Law no. 180 of 2000 on Bulgarians living outside the borders of Bulgaria.

probably a consequence of the Bulgarian diaspora born in the last 150 years, a remarkable part of which originally emigrated temporarily (e.g. the 'Bulgarian gardeners' well-known in Hungary) and have kept contacts with their kin-state. Indeed, from that aspect, discrimination on the basis of holding the citizenship of the kin-state would not be justified. The law on support to the Romanian communities around the world also does not differentiate between citizens and non-citizens.[16] However, the entire law is of a framework character and basically concentrates on communities rather than individuals.

The constitutions of several countries contain national responsibility clauses that openly distinguish between co-nationals outside the borders who hold citizenship and those who do not. This distinction is justified by the fact that communities which are not necessarily composed of the same ethnic group are mentioned; a Hungarian citizen living abroad could be of Serbian or German nationality, and similarly a Macedonian citizen to be protected may be of Albanian or Vlach nationality. Thus the distinction between the two groups results in greater clarity. From this point of view, the 1991 Macedonian Constitution may be considered typical. Article 49 declares:

> The Republic provides for the situation and rights of the members of the Macedonian nation living in the neighbouring countries, as well as for emigrants of Macedonian origin, fosters their cultural development and promotes contacts with them. In the meantime the Republic does not interfere in the sovereign rights and domestic affairs of other states. The Republic provides for the cultural, economic and social rights of its citizens living abroad.

Nevertheless, the 'non-interference' sentence was only included in the Macedonian Constitution in the course of a later amendment, owing to the pressure from its neighbours. From the point of view of this topic, however, the distinction between the two groups to be supported and protected is of high importance. In addition, it is interesting that whereas the kin-state wishes to provide for the vaguely worded 'situation and rights' of non-citizen Macedonians living in the neighbouring countries, in the case of citizens it only focuses on their 'cultural, economic and social

[16] Law no. 150 of 1998 on the support to be rendered to the Romanian communities of the world.

rights'. It is true, however, that Macedonian citizens living abroad usually do not hold valid political rights in their place of residence. Nevertheless, the inclusion of the protection of fundamental human rights in the listing would be worth considering.

The Albanian Constitution of 1998 is of a similar character. Paragraph 1 of Article 8 declares that the Albanian Republic recognises and protects the national rights of Albanians living outside its borders. Paragraph 2 promises state protection to Albanian citizens permanently or temporarily abroad, whereas according to Paragraph 3 the state wishes to offer help to Albanians working or living abroad in maintaining their attachment to their cultural heritage. Thus, here also the two communities of different qualities—expatriate Albanians and Albanian citizens living abroad—appear parallel, but still clearly distinguished.

Finally, the Croatian example seems to be worthy of mention. For a long period, the Constitution granted Croatian citizenship to almost every expatriate Croatian without expecting the applicant to return to Croatia. Although since the beginning of 2000 granting citizenship has ceased to be so liberal, almost 90 per cent of Croatians living within the borders of ex-Yugoslavia (mainly in Bosnia-Hercegovina and Voivodina) have already obtained citizenship. Thus Croatians in Bosnia-Hercegovina, remaining in their homeland and basically being dual citizens of dual attachment, are capable of influencing the political situation in Croatia. This is especially true as the 2003 amendments to the election law reserve a certain number of parliamentary seats, depending on the turnout, for the expatriate Croatians.[17] The Croatian model is also different in that Croatians, particularly in Bosnia-Hercegovina, are living within the borders of another state and are fully-fledged members of that state's constitutional-political system, while at the same time have the same status in the kin-state as well.

In addition, under the heading 'economic bridgehead', they also receive economic support and investment. All of this is connected to the

[17] The peculiarity of the case is that the majority of Croatians in Bosnia-Hercegovina, who are known as the 'national hard line' and tend to vote mainly for the right side in Croatia, especially for the Democratic Community in Croatia (HDZ), received this opportunity in this form from the government coalition led by the left-wing Ivica Racan (Preisdent 2000–2003). See also: Miklós Takács, 'A határon túli nemzettársakról folyó gondoskodás Horvátországban, illetve Szerbia-Montenegróban' in *A kettős állampolgárság Európában*, *op. cit.*, pp. 122–123.

fact that the purpose of the Balkan Wars (1991–1995) for its protagonists—Serbs, Croats and Bosniaks—was to obtain contiguous and relatively homogeneous territories and unify them within their own national states. Most characters failed to accomplish this, partly owing to powerful political pressures, and they became restricted within their own previous borders. Therefore, at the moment they attempt to find such peculiar cross-border, transnational solutions.

III. The Connection between Ethnicity and Territory

The other principal aspect is how the kin-state defines the group of persons to be fostered and protected, i.e. the group of its own 'co-nationals' or 'compatriots'. According to what criteria does the given state try to identify them? Here arises the difficult and dangerous issue of defining belonging to a national or ethnic group. Although this question is not identical with the one about defining in which territories the kin-states wish to deal with the co-nationals, nevertheless there is (or may be) a close connection. Thus it is worth dealing with cases in which a state does not only foster its co-nationals of identical ethnicity, but groups of different mother tongues and culture as well.

Most status and benefit laws are based on the cultural-linguistic concept of the nation,[18] since in places where the concept of the political state-nation dominates (e.g. the USA or France), the entire problem is hardly applicable. The already mentioned Russian example represents a specific transitional approach which encompasses both concepts—the multinational 'imperial' all-Russian state-national one (*rossiiskii*) and the ethnic Russian national one (*russkii*).[19] The problem, however, is that the 'all-Russian' concept also may be of a cultural-linguistic character, but at the same time it is not exclusively an ethnic-original type, since Russian

[18] This topic is dealt with in: Iván Halász, 'A nemzetfogalom nyelvi-kulturális elemei a modern demokratikus alkotmányokban és jogszabályokban', *Állam- és Jogtudomány* 3–4 (2002), pp. 223–243.

[19] The premodern character of Russian nation and the related, complicated issue of the nation state and imperialism are referred to by: András Deák, 'Orosz diaszpórapolitika a posztszovjet térségben' *Regio* (2000), pp. 158–159.

language culture has always been enriched by non-Russian authors, scientists and politicians, etc.

This duality manifests itself in the fact that the compatriot law in Russia does not only refer to ethnic Russians, but the 'compatriots' of the autochthonous minorities living in the Russian Federation (the 'compatriots in Russia'). However, this is only partly the result of the definition of 'compatriot' in the law, which does not mention Russian mother tongue or cultural attachment among the criteria. The idea of 'living in Russia' is clarified rather by the provisions of the compatriot law on cultural and educational support. According to the law, compatriots are persons born in the same state, persons who live there or used to live there, persons who share the tokens of its linguistic, religious, cultural heritage, and traditional community features, and these persons' direct descendants.

Russian legislators were obliged to take into consideration two factors, or rather expectations, when defining this concept. On one hand was the already mentioned ethnic diversity of the country.[20] On the other, there was a high number of Russian-speaking persons with Russian cultural attachment who lived outside the borders of Russia, and while not necessarily of Russian origin and identity, many of them remained without citizenship in the new post-Soviet national states. These heterogeneous, but generally Russian-speaking groups of mainly European origin mostly sought the support of Russia, the biggest successor state. Thus Moscow was supposed to react to the problem of the 'Russian-speaking population'.[21]

The other interesting example is the Austrian 'protecting power' status over the German and Ladin speaking population in South Tyrol and the support given to them. One noteworthy characteristic of the Austrian cross-border policy is the very fact that while Austria does not aim to

[20] In the case of only supporting ethnic Russians the following question would arise: Why are they the only ones supported and not the Bashkirs, Mordvins, and Jakuts, etc., whose homeland has always been Russia, and who lack a titular state?

[21] The press of the kin-state and as well as the local one often covers those living here, and it is not simply about Russians, but about the Russian speaking population. Naturally that does not prevent the concerned persons from searching for their roots and chances for success in other countries. For example, the displaced Poles in Central Asia, who have the opportunity to return to Poland, often strengthen linguistically and politically the 'Russian speaking (European) population' in the region.

foster each Austrian or German Austrian emigrant in the world, it does feel responsibility for the South Tyrol region, which Italy annexed after the 1918 and was exposed to aggressive Italianisation between the two world wars. Thus, this policy has rather strong regional and, more precisely, provincial implications. The Austrian Republic is a federal state in which provinces (Land) play an essential role in the shaping of political life. At the same time provincial consciousness constitutes an important part of the identity of most Austrian inhabitants, which has moved, from the very beginning (or at least in the last two centuries), among three imaginary poles: German cultural and partially national; the Austrian state, which also is partly national; and strong historical-provincial. The mountainous, highly Catholic Tyrol, with its 19th century Tyrolean freedom fighter traditions, is among the provinces where the latter identity is especially powerful.[22] As a consequence, the problem of the German speaking population of South Tyrol, which was almost lost in 1918 and almost regained in 1945/46, has played a fundamental role in the provincial policy of (North) Tyrol and, through that, in the entire Austrian politics up to the present. The Preamble of the Tyrol Provincial Regulations, functioning as the local Constitution, has referred to the spiritual and cultural unity of Tyrol since 1980. Since the 1970s the Austrian and Tyrolean policy has not only concentrated on the rights of the ethnic minorities living in the south, but it is trying to make use of the opportunities for cross-border regional cooperation that are supported by the European Union and the Tyrol Euroregion (officially the Europaregion Tirol—Südtirol/Alto Adige—Trentino).[23]

Thus, the Tyrol provincial identity and multicultural past (German, Ladin, and Italian) are one reason why the Austrian Emancipation Law of 1979 not only concentrated on the German-speaking population in Tyrol,

[22] On the complexity of Austrian identity, see: Vince Paál, 'Ausztria identitásai' in Barna Ábrahám, Ferenc Gereben, and Rita Stekovics (eds.), *Nemzeti és regionális identitás Közép-Európában* (Piliscsaba, 2003), pp. 76–88; Siegfried Mattl and Béla Rásky, 'Az osztrákásról', *Pro Minoritate* (Winter 1999). On the elements of identity in Tyrol, see: Ignaz L. Zangerle, 'Wie steht's mit der tirolischen Identität?', *Das Fenster: Tiroler Kulturzeitschrift* 32 (1983), p. 3150. In this article the author emphasises the multicultural character of ancient Tyrol and its role as a cultural-economic bridge, which allegedly makes the province similar to Switzerland.

[23] Róbert Győri Szabó, 'Tirol Eurorégió genezise', *Pro Minoritate* (Spring 2004), pp. 134–173.

but in addition covered the autochthonous Rumanisch Ladins, who are without a kin-state. It was most probably also due to the fact that Austrians, who after World War II were trying to separate themselves from the German Nazi past and its 'völkisch' focus, must have found it awkward to favour their compatriots of German ethnic and cultural attachment; therefore including Ladins in the law clearly reduced its expressly ethnic aspect. The question then may be raised as to why Austria, while placing a major emphasis on Tyrolian identity to justify its approach, failed to give certain rights to the Italians in South Tyrol or Trentino, who are also to be regarded autochthonous Tyrolians (especially the latter group). It is true, however, that they live in their own nation state; consequently, their disadvantages rooted in their minority situation need not be compensated for with the support of the kin-state. The Austrian policy in South Tyrol indicates how difficult it is to be consistent in complicated questions surrounding of national and cultural identity.

IV. Diaspora Laws and Ethno-Territorial Solutions Supporting Autochthonous Minorities

Most benefit laws in the region aim to support, protect, and favour members of a linguistically and culturally defined 'titular' nation that lives outside the nation's borders, although the laws often have some territorial restrictions. While the Slovak, Romanian, Bulgarian, and Russian regulations refer to national communities in the entire world, the Hungarian, Slovenian, Italian, and above-mentioned Austrian solution focuses on helping communities living in certain regions, generally ones in which the minorities are autochthonous. For example, the Hungarian Status Law wishes to grant a specific legal status and the related benefits only to Hungarians in the neighbouring countries (except Austria), and Italy renders special treatment exclusively to Italians in Croatia and Slovenia. Whereas a 1996 decision of the Slovenian Parliament refers only to cross-border Slovenians living in specified territories of Austria, Hungary, Croatia and Italy, in 2002 the parliament remembered the others,

expressly referring to Slovenians living outside the borders and who do not fall under the authority of the 1996 decision.[24]

The above does not mean that the constitutional 'national responsibility clauses' of the above mentioned countries do not cover others, but only that cross-border communities of two different types have been created by these executive laws and other regulations.[25] That distinction is usually in connection with the different financial and political conditions of the individual co-national communities, and the benefit laws reflect this. One example is the Hungarian and Slovenian regulations' encouragement in the country of birth.[26] Contrary to that, the previously mentioned Bulgarian, Romanian, and Slovak laws can be regarded as 'diaspora laws', which bear in mind the promotion of kin relations and the mutual benefits generated by them. Furthermore, apart from the promotion of relations and the support of the community, the 'protective' nature of the Russian regulations is much stronger.

It must be stated here that from the point of view of territorialism and ethnicity, the Hungarian Status Law is one of the most inconsistent ones. Since it is restricted to persons living in the neighbouring countries (basically to Hungarians living in the Carpathian Basin), according to Zoltán Kántor the Hungarian Status Law realises a type of ethno-territorial nation definition by connecting the ethnocultural and the territorial principle.[27] This is certainly true, although the reasons are not clarified, or are rather inconsistent, as to why this type of territorial restriction took place. If the Hungarian regulation had wished to foster Hungarian communities which had been forced outside the borders against their

[24] Imre Szilágyi, 'A Szlovén Köztársaság és a határain kívül élő szlovénok' in Iván Halász, Balázs Majtényi and László Szarka (eds.), *Ami összeköt? Státustörvények közel s távol* (Budapest, 2004).

[25] Constitutional lawyer, Judit Tóth, pointed that out in respect of Hungary, when claiming that in 2001 the legislator created a sharp difference by distinguishing between Hungarians living in the Carpathian Basin and those living elsewhere. See: Judit Tóth, 'Státusmagyarság' in Zoltán Kántor (ed.), *Státustörvény. Dokumentumok, tanulmányok, publicisztika* (Budapest, 2002), p. 251.

[26] In connection with that, see the preamble of the Hungarian Status Law or part II of Chapter 4 of the Slovenian decision, which wishes to offer economic support 'to give chance' to autochthonous Slovenian communities in their native lands.

[27] Zoltán Kántor, 'A magyar nemzetpolitika és státustörvény' in Kántor (ed.), *op. cit*., p. 300.

will[28] and yet remained in their countries of birth, Austria should not have been omitted from the list of neighbouring countries as Hungarian villages in Burgenland are at least as autochthonous as the ones in Sub-Carpathia or Voivodina. The other inconsistency is the fact that if the authorities strictly interpreted the provisions of the original status law, the law also would not have covered the Csángó-s (Hungarian speaking natives in Moldavia), who have been living in ancient Moldavia for centuries, but have never been Hungarian citizens. That distortion could not have been and most probably was not among the intentions of the legislator. On the other hand, the law does not include Hungarians living in the present Czech Republic, who had not left voluntarily and had not resigned from the Hungarian citizenship after World War I. They were removed from their centuries old domiciles in the deportations.[29]

If in 2001 the Hungarian legislator had accepted the idea that the Status Law was obliged to foster only the neediest (i.e. those in the poorer, more eastern countries), the law should not have been restricted to the neighbouring countries. After all, the Slovenian standard of living, for example, is higher not only than in the kin-state, but than in many countries regarded as western. Furthermore, the majority of Hungarians living in the Central Asian part of the ex-Soviet Union are probably in a less favourable social position than a considerable part of the poorer neighbouring countries. Finally, it is needless to suppose that each member of the Hungarian diaspora outside Europe has a high living standard and does not need any support in maintaining its identity. In conclusion, we may state that neither the principle of fostering the needy, the positive discriminatory intention to fight disadvantages, the consistent consideration of autochthony of Hungarian communities to be supported, nor any other acceptable criteria justify genuinely the wording of the present territorial authority of the Hungarian Status Law.

[28] The legitimacy of this aspect is highly disputable, since in theory emigrants at the end of the 19th century emigrated 'voluntarily'. However, in light of their grave subsistence problems, famines, the lack of prospects and long-term misery forced them to flee. Most 1956 emigrants did not voluntarily leave the country because they hoped for a better life, but rather to escape retaliations and terror. This is true for most 20th century waves of refugees.

[29] On the problems rooted in the inconsistent wording of the law, see: Balázs Majtényi, 'A státustörvény vitás jogi kérdéseiről', *Magyar Kisebbség* 1 (2002).

V. The Role of Language, Religion, and Culture in the Definition of National Affiliation

In almost each of the discussed Eastern and Central European countries, and in a sense Germany can be listed among them, the concept of a linguistic-cultural nation is dominant. This is also true for Austria and Russia with the above-mentioned restrictions. However, it is not irrelevant how the individual countries define the implications and the criteria of their own national identities within this concept.[30] For most benefit or status laws in Central and Eastern Europe, one of the greatest difficulties has been how to determine who can be regarded Hungarian, Slovak, Slovenian, etc. At the same time, the solution to this problem reveals much about the similarities and differences between national concepts dominant in the region. However, it is important to point out that the elite of the individual nations began to designate the cultural-intellectual-spiritual-identity boundaries of their own nations with different levels of responsibility and care.

From this aspect, the Hungarian legislator, aware of the complexity and delicacy of the problem, was characterised by a high level of caution and by aversion towards the legal codification of the so-called objective criteria (paradoxically, the codification was 'forced' by the 2003 amendments to address the 2001 report of the Venice Commission). Moreover, it may be a valid statement that the Hungarian Status Law, acknowledging local peculiarities, basically wished to leave the question of 'Who is (local) Hungarian?' to the local Hungarian communities. Thus the law looked for a 'decentralised local authority' solution instead of the 'central bureaucratic' model. Naturally, that also may have certain disadvantages, such as a certain voluntarism, abuses, or the exposure to the exclusion-games of the local power groups, etc. Nevertheless, this attempt may be considered an interesting one and should be appreciated as an innovative experiment, albeit one that was finally ended by the indirect pressure of international organisations that guided the experimenting Hungarian 'decentralists' back to the structure of the traditional public administration of the kin-state.

[30] On the national identities of the region and their peculiarities see the recently published volume of studies, see: Ábrahám et al. (eds.), *op. cit*., which covers these issues in a complex way.

The Greek model, intended to foster Greeks in Albania, had a similar fate, though owing to different factors. Greece introduced a special identity card for Albanian citizens of Greek origin, which then extended to their non-Greek spouses and family members. A specific visa is necessary for the application of the identity card, and to obtain that a document a certificate of ethnic origin published by the North Ipiros Greek Association is required. In light of abuses, the entire procedure has been changed, and presently Greek origin is examined by the Greek Embassy in Tirana.

Regardless of the initial 'decentralisation' of the Hungarian Status Law, similar to most others it has an ethnocultural base, preferring language among the possible criteria for inclusion. At the same time, the regulation is worded in such a way that both Hungarian-speaking persons and those of Hungarian identity could apply for the Hungarian Status Certificate. This may include members of the Roma minority or other people of multiple or mixed identity in the surrounding countries, like Hungarian speaking Jews or certain segments of the German population. However, this issue is not entirely clarified,[31] and it remains to be decided in practice. After all, individuals may be deprived of their right to declare themselves to be of multiple identity when they are familiar with Hungarian language and culture and play an active part Hungarian organisations.

On the basis of what criteria do the individual regulations try to define the circle of co-nationals living outside the borders? Generally five or six aspects occur in the region's benefit laws—language, culture, identity, origin, religion, and participation in the social life of the given community (and in the relating state or religious registers). These aspects appear in the laws in a complementary and interwoven way. Not all of the regulations, such as the ones in Romania and Slovenia, cover this issue, though.

The Hungarian Status Law of 2001, as amended in 2003, attributes high significance to language knowledge. The law declares that those shall be entitled to the Hungarian certificate who, besides having confirmed their attachment to the Hungarian community (a subjective criterion), prove a good command of Hungarian (an objective criterion). Although the latter condition is an alternative, since it may be exchanged

[31] Kántor, *op. cit.*, p. 304.

for participation in a Hungarian associational public life or being registered as Hungarian in state or religious registers, it is still a fundamental factor. This is probably connected to the 19th century national modernisation process, in the course of which, by getting the minorities to accept Hungarian language and culture, the Hungarian elite tried to create a larger Hungarian nation that dominated in its own state both politically and numerically. The dual aspects of language and culture in the definition of the nation has characterised the significant trends in Hungarian public speech and public thinking up to the present.

The Slovak regulation also attributes a certain importance to language, although in a less direct and powerful way than the Hungarian one. The Expatriate Slovak Card may be received by a person who is not a Slovak citizen, but who is of Slovak national or ethnic origin and proves to have a Slovak cultural identity and a command of Slovak. The law requires at least passive knowledge of Slovak as well as basic level familiarity with Slovak culture. This may be exchanged for other, vaguely specified manifestations of Slovak ethnic community awareness. The Austrian law also covered those who claimed to belong to the German or Ladin language group.

The Bulgarian or Russian regulations do not put so much emphasis on language knowledge. The Russian law does mention language in its compatriot definition as an important community characteristic, but not an exclusive requirement. The fact that it does not name language to be common among Russian compatriots is also of high importance.

The Bulgarian law emphasises Bulgarian national identity and origin rather than language knowledge. The former seems a fairly subjective element, since most often the individuals are free to choose the identity they undertake. However, the other aspect contains more 'objectivity' and 'pre-determination'. Whereas other countries have attempted to define origin as it is involved in some form in the other status and benefit laws, origin is not specified in the Bulgarian regulation, despite the law's strong reliance on the concept.

The Slovak regulation also refers to Slovak national identity and ethnic origin. While it fails to define the former more precisely, it uses the latter to mean that for certificate applicants, one of their direct first, second or third generation ancestors was of Slovak national and ethnic origin. Slovak national or ethnic origin is proven by documents. On the contrary, the above mentioned Slovak cultural-linguistic identity is

justified by work, activity in the Slovak public life, or simply the recommendation of a compatriot organisation or two 'certified' expatriate Slovaks. This is one of the most concrete and problematic references to national or ethnic origin, for it does not clarify the meaning of 'origin'. It must be added that the attempt to define origin in such depth and character seems rather rare even among status and benefit laws, since, although it appears to be objective, it is still a remarkably subjective and misleading category.

This may be the reason why the Russian compatriot law refers to origin itself only in the sense that compatriots are supposed to come from the same state, which in the given case means the present Russian Federation and its predecessors, including the Soviet Union. However, it does not only mean the persons themselves, but also their descendants.

The Hungarian Status Law is also familiar with the notion of national identity, although it does not specify its meaning. It merely demands the applicant be registered as a person of Hungarian national identity in a state or religious register, a rather formal, registrational concept of national and ethnic origin.

The next significant aspect is the role of religious affiliation in the process of defining national identity. This aspect is strongly dependent upon the historical development, since religion and denominational attachments generally play different roles in the individual national movements and the formation of the identities rooted in them. Basically two types may be mentioned in Central and Eastern Europe.[32] The first is nations whose identity is closely linked to one denomination, often one involved the founding of the nation. Such an example was the Orthodox Church for most Balkan Christian peoples. Naturally, the autocephalous character of Greek Catholic Churches should not be forgotten as it greatly influenced the similar, almost coinciding, development of their national and religious organisational structure. This is particularly true about Bulgarians, Serbs, Greeks, and, with some limitation, Romanians also. On the other hand, Roman Catholicism also has become a factor in shaping

[32] The Jewish example in Israel could be mentioned as the third type. In Israel religion is the most decisive and the most determining factor in identifying Jewish identity. That is in connection with the specific history of the Jewish people, at the same time this seemingly unambiguous aspect does not lack problems, either, on this see: András László Pap, 'Etnicitás a jog asztalánál' in Iván Halász and Balázs Majtényi (eds.), *Regisztrálható-e az identitás?* (Budapest, 2003), pp. 147–160.

Croatian identity, which mainly meant separation from Orthodox Serbs and Muslim Bosnians (here the almost identical language could hardly shape an exclusive nation).[33]

For a lengthy period Orthodox affiliation and Russian national identity also coincided. In the 19th century, the idea that those who are Russian belong to the Russian Orthodox Church and those who belong to the Russian Orthodox Church are Russian made it much more complicated to integrate and assimilate religious Jews or, to a lesser extent, German Protestants and Polish, Ukrainian, and Belarusian Catholics into the Russian nation. Nevertheless, to some extent the Polish national movement also had a parallel emphasis on Catholicism and Polish identity, which used to be more powerful, especially during the times of the suppression by the Orthodox Tsar and the Protestant Prussian power. However, a small but effective Polish Protestant community also exists, in addition to other religions in Poland; nevertheless this 'Catholic Polish' concept still has a remarkable influence.[34]

Contrary to all that we can find national concepts and identities which are *ab ovo* multiconfessional. Such examples are the Germans, Hungarians, and Slovaks in the region, for whom it was obvious as early as the 19th century that a national community may have affiliations with several denominations, some of which may have had previous conflicts. This may be the reason why at the end of the 19th century the 'incorporation' of Jews into the Hungarian civil society as the fourth official religion (i.e. the assimilation and emancipation of the Jewish people) happened much more easily and successfully. Since it was already obvious that a Hungarian may be a Catholic, Calvinist, or Lutheran, why could they not be Jewish or members of other denominations? The very beginning of the modern Slovak nation incorporated two religious groups, Catholics and Lutherans, and the ideology shaping the nation was finally created by a compromise between them. This lengthy introduction is important, since the regulations discussed here have some significance to religion in the definition, or rather the identification, of national identity.

[33] The national, regional and partly denominational identities in the region are dealt with in: Ábrahám et al. (eds.), *op. cit*.

[34] In this respect Poland is similar to Ireland in Western Europe and the Southern European states of Spain and Portugal, where the dominant and strong position of Catholicism in the creation of identity was a determining factor.

It does not happen directly in any law (i.e. by involving the criterion of belonging to a certain denomination as a constitutive element), but only indirectly, inserted in the administrative process of the verification of the given nationality.

That appears in the most obvious form in the Bulgarian law, according to which Bulgarian origin can be verified not only by the documents issued by Bulgarian or foreign official state institutions or the certificate of Bulgarian organisations functioning abroad, but also with the certificate issued by the Bulgarian Orthodox Church. The amended Hungarian Status Law also accepts the registration of the applicants as Hungarians in the registers of Churches functioning in the state of residence as a verification of Hungarian nationality. Thus, the Hungarian legislators did not name the church to which this refers. However, practically it is most logical to associate with this the registers of the Catholic and Protestant denominations, although affiliation to the Jewish religious community cannot be excluded either. While defining the concept of compatriot, the compatriot law in Russia refers to religious communities without any further specification.[35] Although the law on Expatriate Slovaks does not refer to religious registers, it still mentions baptismal certificates as an alternative to birth certificates in its list of documents verifying nationality and ethnic origin. The situation is similar in the case of the Polish Repatrialisation Law (since here a separate Polish Status Law has not been accepted), which mentions the religious birth certificates among ones potentially verifying Polish nationality as well as certificates issued by unspecified religious authorities. Thus both the designation of one Church or its omission at least partially reveals the power and the quality of the role of the confessional element in a given national identity.

[35] When issuing the certificate, the basic consideration of the regulation is whether the applicants can prove their citizenship of the former Soviet Union or any other Russian predecessor state, whether they live outside the borders, and in the case of descendants their ability to prove their being related to and descended from persons of the mentioned citizenships.

VI. Peculiarities in the Contents of Laws on Co-nationals Living Abroad

Different names (status law, benefit law, compatriot law and emancipation law) have been accepted in the press and consequently in public usage regarding legal norms relating to co-nationals living abroad. This often reveals the results of debates around the reception of the regulation; or indirectly one may even draw conclusions about what the political elite and the general public find significant in the specific regulation. Such regulations are referred to as status or benefit laws in the Hungarian press, whereas the Slovak or Russian press mentions compatriot laws.

Here the expression 'compatriot' does not refer to citizens belonging to the same political community (like it would in Hungarian), but to people with the same country of origin or kin-state; although, as the provisions of the Russian law show, this is not always the case. One problem lies in the fact that these regulations have different connotations in the individual languages. The other is that these regulations have different contents; for example, not all of them contain provisions on certificates being issued to those living outside the borders (i.e. they do not render a concrete status), and consequently they can hardly be called status laws. In the strictest sense only the Hungarian, Russian, and Slovak laws could be called status laws, but not the 1996 Slovenian law and the Romanian one of 1998. The Bulgarian law of 2000 is in a mid-position. It defines who should be considered to be of Bulgarian origin, but it does not contain provisions on certifying documents. Owing to the above problems and ambiguities, 'benefit law' appears to be the most precise and most comprehensive expression, or common name, since each discussed regulation contains provisions on the benefits to be granted to co-nationals living outside the borders in a concrete or general form.

Regardless of the exact content of the constitutions' responsibility clauses, the majority of benefits and supports aim to preserve the identity and foster the cultural and educational systems of co-nationals living outside the borders as well as maintain their active relations with the kin-state. In light of the Venice Commission report, this purpose was judged to be more supportable and less controversial from the point of view of international law. The regulation of the supports relating to the above-mentioned three fields is especially true for the Hungarian, Bulgarian,

Slovak, Slovenian, Romanian, Austrian and even the Russian laws. For instance, the Hungarian and the Slovenian regulations mainly wish for the support provisions to encourage success in the country of birth. It can be seen from a number of articles of the taciturn Romanian law that the Romanian state intends to ensure the financial background of the institutional activity of the Romanian communities living outside the Romanian state.[36]

The Slovak law, on the contrary, grants rights and benefits principally in Slovakia and does not contain any provisions on support to be given in the country of birth. Thus the Slovak legislator seems to have wanted to strengthen relations with the diaspora and the identity awareness by facilitating their activities and increasing the number of their opportunities in the kin-state. This is most probably explained by the fact that Slovakia, struggling hard for international political 'acceptance' in the course of the creation of the law, intended to find allies in the diaspora and exploit their existing or supposed lobby and investment potential. The Austrian emancipation law also granted benefits within the territory of Austria, but nevertheless its fundamental purpose was to improve the educational and cultural opportunities of Germans and Ladins in South Tyrol. The Bulgarian law may be regarded a mixture. Its objective is to improve the educational and cultural conditions of expatriate Bulgarians in the country of birth. However, in parallel with that it intends to facilitate their residence in Bulgaria as well as their investments and their economic activity there. The supporting articles of the Russian compatriot law share this dual character.

The support of the economic activity of those living outside the borders and the regulation of their employment in the kin-state create serious theoretical and political problems within the field of benefits and contributions. This issue emerged primarily in connection with EU accession, since this would make it difficult for two fundamental EU principles to prevail—the principle of equal competition and the prohibition of discrimination. For instance, economic favours and entrepreneurial contributions to Hungarians abroad in order to promote

[36] On the same topic see: Iván Halász and Balázs Majtényi, 'A magyar státustörvény a kelet-közép-európai jogi szabályozás tükrében' in Nóra Kovács and László Szarka (eds.), *Tér és terep. Tanulmányok az etnicitás és az identitás kérdésköréből* (Budapest, 2002), p. 403.

their success in their country of birth were omitted from the Hungarian Status Law owing to the mentioned two principles. Despite this, the 1996 Slovenian decision and the Russian law of 1999 cover them without any complications.

As far as facilitating employment in the kin-state, Slovakia has proved to be the most generous when it exempted holders of the Slovak Expatriate Card from the obligation of obtaining work permits.[37] However, it is a fact that presently the basic amendments, or even the repeal, of the law are debated, and we cannot exclude the possibility of less liberal treatment in the amended or new regulation, particularly in light of the EU rules. Contrary to the Slovak solution, the Hungarian certificate or Bulgarian origin do not automatically ensure this opportunity, only certain facilitations.

The issue of the legal status of the expatriate co-nationals is mostly emphasised in Hungary and Slovakia, which may be the reason why in Hungary the moniker 'Status Law' has become widely accepted. This concept is an adequate reference to one of the dominant elements of the regulation—the guarantee of the legal status of Hungarian communities living in the neighbouring countries and thus the creation of a type of voluntary national register. The situation in Slovakia is similar, although the interest in the law was much lower among Slovaks living outside the borders. For instance, until 2002 only 8,412 compatriots applied for and received the Expatriate Slovak status, which is insignificant compared to the estimated 2.6 million-member Slovak diaspora.[38]

An expression often occurring in the Hungarian debates was 'benefit law', which refers to another important objective of the regulation—the levelling off and the ending of different disadvantages with the help of benefits and supports. The Hungarian Status Law, however, cannot entirely be considered an authentic compatriot law, since two significant groups are excluded from the law, who could otherwise be involved—members of the Hungarian diaspora outside the Carpathian Basin and all Hungarian citizens living abroad.

[37] At the same time this opportunity did not entitle anyone to unemployment, child care benefits, etc. On the same topic see: Claude Baláž, 'K zákonu o zahraničných Slovákoch', *Dilema* 6 (2002), p. 72.
[38] Ibid. p. 70.

The Hungarian regulation may not be regarded a so-called 'compatriot protector' law, either. Although this element was not emphasised in the debates around the compatriot laws, it should not be forgotten that the individual benefit laws pay considerable attention to this also. It is especially true about the Russian compatriot law and partly the Bulgarian and Slovene regulation, too. The protective character of the Russian law is strengthened by the fact that it is a mixed type legal norm, relating to co-nationals who are either Russian citizens and to those who are non-citizens but holders of the special certificate. The protection of its own citizens is the fundamental duty of each state, especially if the state is powerful. Thus Article 7 of the law declares that the Russian Federation guarantees the extension of its protection and support to its citizens abroad. Consequently this does not only refer to diplomats, employees, and tourists, but compatriot-citizens staying long-term or even permanently abroad. As far as other compatriot categories are concerned (i.e. ex-Soviet citizens and emigrants and their descendants), the law does not contain such categorical statements; nevertheless, even in such cases it affirms the right to react to grievances against them. It is explained by the fact that if a foreign state fails to abide by general norms and international legal regulations concerning fundamental human rights with respect to Russian compatriots, the state organisations of the Russian Federation may insist on taking steps in accordance with international law.

If the foreign state discriminates against Russian citizens on its territory, Russia may reconsider its foreign policy towards the given sate. Apparently these promises and threats are vaguely worded, but in a concrete case they still may serve as the basis for more serious steps. The other compatriot or benefit laws did not dare to involve such unambiguous threats in their provisions. The affirmative Russian attitude was most probably created by the imperial and great power political past of Russia. The importance of the policy intended to protect the compatriots legally is indicated by the fact that supporting the protection of the fundamental civil and human rights of the compatriots is among the very first duties listed in the law. The economic, social, cultural, and informational support are only secondary.[39]

[39] Article 15 dealing with legal protection declares that the compatriots may count on the support of Russia in the following fields: in the protection of civil, as well as political, economic, social, cultural and other rights; in guaranteeing equality before the law; and in

The compatriot protective provisions of the Bulgarian law are naturally more reserved than the Russian ones; nevertheless, they seem rather unambiguous. Paragraph 1 of Article 5 declares that Bulgarians living outside Bulgaria's borders are entitled to protection by Bulgaria, which protects their fundamental rights and legal interests in accordance with the basic principles of international law and international treaties.

The Slovenian Parliamentary Decision of 1996 also contains references to the protection of autochthonous Slovene minorities living abroad. For instance, in Point III of Chapter I, the legislation declares that Slovenia, as a member of the international community, intends to increase the general level of the protection of autochthonous national minorities. Parallel to this, it has the objective to sign new, bilateral contracts which further specify the obligations of the contracting parties towards autochthonous national minorities. Provisions at the beginning of Chapter 4 also refer to the aspiration that in its entire system of relationships, at the multilateral, regional and international level, especially within the framework of regular diplomatic and head of state relations, Slovenia will guarantee the necessary involvement of minority issues. It places a special emphasis on this in its relations with the neighbouring countries.

The role of the Austria as a 'protective power' is well-known in connection with the German and Ladin speaking population in South Tyrol. This role was never regulated by either the Austrian Constitution or any other federal or provincial regulations, but indirectly (in the Austrian interpretation) by the Italian–Austrian bilateral Treaty (1946), which is historically known as the Gruber–De Gasperi Pact. The Austrian (South-Tyrolians) Emancipation law ratified in 1979 did not contain any protective provisions either. Thus, Austria has always treated this issue within the context of bilateral treaties.

Hungary and Slovakia also intend to act with the help of bilateral statutes in favour of their minorities outside the borders instead of in unilateral status laws. Neither the Slovak, nor the Hungarian regulations contain any reference to the protective role in connection with minorities living outside the borders. Most probably this is rooted in the vulnerable

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their reactions to discriminations on different grounds. For the sake of the comfort of foreign countries, the regulation contains a clause according to which Russia will enforce all the above via international legal rules and in accordance with international treaties and the consideration of the legislation of the concerned countries.

international and regional political situation. Nevertheless, regardless of the Status Law, Hungary may act in the interest of the legal protection of Hungarian minorities, both at the international level and in bilateral relations, on the basis of the Constitution's national responsibility clause.