



**Sociology PhD  
Programme**

**SUMMARY OF THE PHD THESIS**

on

**Nation – Law– Identity**

**The Sociological Aspects of the Enforcement of the Status Law**

by

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**Supervisor:**

**Prof. Dr. Miklós Tomka**

Budapest, 2009.

**Institute of Sociology and Social Policy**

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## **I. Research Context and Rationale**

The last couple of years registered an increasing research interest in topics related to nation, national belonging, national identity and national minorities. The current dissertation seeks to contribute to the research on national minorities and national identities in at least two distinct forms. First, it critically reviews the currently dominant sociological and legal discourses on the above mentioned topics; second, it analyses one segment of the national identity which, gaining visibility in an environment structured by legal frameworks, can be measured and empirically tested. The study of the Act LXII of 2001 on Hungarians Living in Neighbouring Countries, also known as the Status Law or the Benefit Law, contributes hence to the theoretical understanding of national minorities – and related to this, to issues encountered when defining nations – as well as of the nature of benefits and assistance which can be granted to national minorities.<sup>1</sup>

The grounding question of the Status Law – i.e., who is Hungarian? – leads us to questions related to the nation, national identity and national minorities. An essential element of this perspective is the assumption of the existence of a system of criteria based on which some groups (i.e., nations, national minorities) can be recognised and delimited from other groups, and that the criteria of group belonging can be identified. The proponents of the two perspectives of nationalism-research, the modernists and the ethnosymbolists agree in this regard, and place the rise of nations in the modern times. The debate is not about the existence of a system of criteria; rather, it is about the existence of an ethnic core which serves as the base for the appearance of subsequent nations. Anthony D. Smith, representing the ethnosymbolist view, defines the nation as real based on those historical processes which, building on an ethnic core, led to the formation of modern nations. Ernest Gellner, on the other hand, ties the appearance of nations to a process of social change i.e., to the industrialisation. In his view the rise of nations is a product of an ideology i.e., nationalism.

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<sup>1</sup> On the various aspects of legal frameworks see, for instance, Ieda et al (eds.) 2006; Kántor (ed.) 2002; Kántor et al (eds.) 2004; Örkény (ed.) 2003.

In the definition of the nation, and tightly related to it, of the *ethnie* one can find both objective and subjective characteristics. The former refer mostly to language, religion, territory; the later refer generally to emotions, attitudes and group consciousness. In this dissertation I define the related yet different concepts of national and ethnic minorities by their objective distinctness, relying first on Anthony D. Smith's system of criteria used for defining nation and *ethnie*, and second, on the conceptual framework of international law. National minorities cannot be seen similar to those linguistically and religiously distinct "new minorities" which appeared in countries as results of immigration. National minorities are "autochthonous" i.e., innate minorities whose minority status is a product of their integration into the frameworks of a different state or of the modification of the geographical boundaries between states.<sup>2</sup> Furthermore, it is important to note that the international literature refers to immigrants as "ethnic minorities". National minorities are characterised by a common habitat and a common national identity which is not always the case with ethnic minorities. Geographical bonding is not typical to ethnic minorities and their group consciousness is a product of multigenerational kinship ties, processes of self-organisation, common culture and religion rather than identity. Another objective identifier of national minorities is the possession of the citizenship of the state where they are residing.

Based on this categorisation, in my dissertation I focus on the following population groups: Hungarians of Romania as national minorities and Hungarians of Austria as ethnic minorities (within which I address separately the Hungarians of Burgenland who are bilingual, dominantly German-speaking historic minorities with a distinct ethnic group identity).<sup>3</sup>

National minorities feel that they belong to *some* nations. This leads to a rather complex system of relations. Various stakeholders such as the state whose citizens these individuals are, the parent state, the minorities themselves or international organisations have different understanding of the national identity of these minorities. International organisations, for instance, often represent a standpoint on how minority groups *should* define their national

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<sup>2</sup> Malloy 2005: 21.

<sup>3</sup> Szarka 2004.

identity independently on whether the minorities themselves agree with this. These diverse viewpoints are present in the debates around the Status Law.

The creation of the Status or Benefits Law had an initial double rationale. First, it meant to create a standardised and integral system of benefits granted to Hungarian communities outside Hungary. Second, it sought to legally regularise the status of minorities, a response to the Hungarian communities' requests towards Hungary. This latter goal relates to the potential introduction of the Schengen borders between Hungary and its neighbouring countries, and it was one of the most important, directly defining factors of the processes leading to constitution of the Status Law.

Two answers seemed to emerge to the fears related to the Schengen borders. One was the extension of the Hungarian citizenship to all Hungarians living abroad. The other was the development of the concept of a status law, which was supposed to settle the “legal status in Hungary” of the Hungarians living abroad.

Regarding its goal, the law sought to be a response-collage to the various issues and problems described above. The law-makers defined its symbolic message in the preamble as follows: the Hungarian Parliament created this law “in order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country”. The central element of the Status Law is delivering a response to the question “Who is Hungarian?”, that is, who are the subjects of the law. This is primarily important for simple, pragmatic reasons. The law defines certain benefits and assistance for the recourse to which one needs to be in a possession of a Hungarian Certificate or a Hungarian Dependent Certificate.<sup>4</sup> Being entitled to apply for one of these certificates assumes the fulfilment of objective and subjective criteria. By law, the certificate can be issued if the person considers him-/herself Hungarian, and he/she is in the possession of a recommendation which is issued by a recommending organisation representing the Hungarian national community in the neighbouring country concerned.

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<sup>4</sup> The Hungarian Dependent Certificate can be requested by a close relative of a person having a Hungarian Certificate.

Surveys administered before the creation of the Status Law among Hungarians living abroad suggested that future beneficiaries were highly interested in the planned law and the benefits arising from it. The majority of the respondents planned to live with the opportunities created by the Status Law. The empirical evidence suggests, however, that the applications for a Hungarian Certificate or a Hungarian Dependent Certificate – with the exception of Ukraine – remained significantly below initial expectations.

The processes of developing the Status Law as well as its content and the instructions for its execution have been significantly influenced by international and domestic organisations and institutions. From a legal perspective, the international outlook is not accidental: while the Status Law does not refer to the concept of national minorities, the content of the preamble repeatedly has drawn readers' attention to a legal hiatus. International minority protection treaties, declarations, including those referring to national minorities in many cases do not include the very definition of the group concerned; nor do they refer to the concept of *kin-state*, concept which has been taken into the mainstream literature after the report published by the Venice Commission.

The post-1989 national minority rights discourse is represented by a number of political approaches, at both domestic and international levels. These approaches fall into three major areas: security, democratisation and the processes of European integration.<sup>5</sup> The Organization for Security and Cooperation in Europe (OSCE) was the main advocate of the aspect of security policy of the Status Law.<sup>6</sup> The Council of Europe (Parliamentary Assembly) represents the national minority rights from a democratisation aspect. The key conclusion of the Venice Commission, the body which reported on the Status Law, was that in order to protect minorities the kin-state can also play a role – primary granting benefits which strengthen people's linguistic and cultural identity, if it respects the following principles: (1) *pacta sunt servanda* (compliance with obligations in good faith); (2) friendly relations

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<sup>5</sup> Malloy 2005: 2.

<sup>6</sup> The security policy aspects of national minority rights are also represented by the UN Security Council, and to a lesser extent, by NATO.

between states; (3) territorial sovereignty of states; (4) respect of human rights and fundamental freedoms, especially the prohibition of discrimination.

As part of the EU integration processes the Council of Europe evaluated the Status Law in its 2001 and 2002 Regular Reports on Hungary's Progress towards Accession. The most important legal and political proceeds of the Status Law is the 1735<sup>th</sup> recommendation of the Council of Europe *The Concept of Nation*, adopted in 2006.



## **II. Research Methods**

According to the two main research directions outlined above the dissertation presents the results of combined, that is, quantitative and qualitative investigations.

1. The quantitative part of my research consists of the statistical analysis of a database-extract from the Hungarian Ministry for Internal Affairs, Department for Hungarian Certificate. This database contains information on persons applying for Hungarian Certificate or Hungarian Dependent Certificate, allowing me to analyse the profile of the applicants in all countries where the Status Law is applied, from the data of entry into force of the Law (1<sup>st</sup> January 2002) until 31<sup>st</sup> December 2005. Beyond the major distributions I present in the study, my dissertation focuses on the analysis of the data from Romania, especially from Transylvania and the country of Bacău/Bákó. Altogether I analyse the data from 17 Romanian counties.

For the analysis of the profile of the applicants from Romania I was relying on two distinct data sources. I was analysing the above mentioned database, which contains data from nearly 500,000 applicants from Romania, at two levels: at individual and at settlement levels. In order to be able to carry out the settlement-level analyses, I had to connect the settlement-level data on Hungarian Certificate applications with township-level census data. I also had to develop an institutional cadastre, valid for all settlements under analysis. Yet, for this I had to clean my initial database and identify all settlements by assigning a unique Local Administrative Unit (LAU) second level code to each of them. The administrative classification of the settlements could follow only after this. First, I delimited 1) municipalities, 2) cities and towns, and 3) townships; during the analyses I combined these three categories into two, that is, into cities and townships.

Following this, based on the 2002 Census township-level data I created various indicators: the number of ethnic Hungarians and their ratio within the population in the settlement under analysis; the ratio of ethnic Hungarian men and women within their age-groups in a given

settlement. During the analyses I was also using an indicator suitable to characterise the ethnic geo-composition of settlements: the weighted ratio of ethnic Hungarians within each county. I calculated this indicator for each county by “multiplying the number of ethnic Hungarians living in each settlement (i.e., not administrative units) with their ratio within the population; the sum of all these multiplications I divided with the total number of the ethnic Hungarians”.<sup>7</sup>

Next to generating insight on the applicants’ demographic characteristics I also sought to investigate the effect of religious and educational institutions, civil organisations and political representations on the extent of applications for Hungarian Certificate. For that reason, I linked to the settlement-data the following:

- Educational institutions: those nurseries, kindergartens, elementary, secondary and/or high schools which provide education in Hungarian language – altogether 2,305 institutions;
- Settlement-level data of five churches (Baptist, Lutheran, Reformed, Roman Catholic, Unitarian), altogether 2,131 congregations;
- Cultural organisations in each settlement, altogether 1,937;
- For the examination of political representation I used the 2000 local elections results, that is, the number of votes obtained by the RMDSZ (DAHR, Democratic Alliance of Hungarians in Romania) and the number of seats that the RMDSZ obtained.

For the analysis of trends over the years I was relying on another database which contains the weekly numbers of Hungarian Certificate applications in Romania, the ratio of children/adult applications, the distribution of adult applications by type of eligibility. In the examined period the Romanian information offices produced altogether 2,903 weekly reports from which I developed a database concerning the entire Transylvania.

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<sup>7</sup> Szilágyi N. 2004: 185. The formula: „ $P_s = \Sigma(p_i \times P_i)/P_{tot}$ , where  $p_i$  – the ratio of Hungarians in given settlement;  $P_i$  – the number of Hungarians in a given settlement;  $P_{tot}$  – the number of the ethnic Hungarian population.” (Csata–Kiss 2007: 37.)

2. The dominantly qualitative part of my research aimed to obtain insight into the factors explaining the exclusion of Austria from the list of countries where the Status Law can be applied, and the attitudes of Hungarians of Austria relative to the Law. I conducted my fieldwork between August and September 2006, and I completed this part of my study with a survey in October 2006.<sup>8</sup> My fieldwork concerned Vienna and the following settlements from Burgenland: Alsóőr (*Untervart*), Felsőőr (*Oberwart*), Felsőpulya (*Oberpullendorf*), Vasjobbágyi (*Jabing*), Pinkafő (*Pinkafeld*). During the two waves of research I conducted 20 interviews; the language of the interviews was mainly Hungarian.

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<sup>8</sup> This research has been supported by the PhD-Network scholarship of the Austro-Hungarian ACTION Foundation. The title of the project was: *Das Ungarische Statusgesetz: Recht und Identität*. Project leader: Dr. Miklós Tomka and Dr. Joseph Marko. The second project participant was Piroska Vargha, PhD-student at the University of Graz, Faculty of Law.

### III. Research Results

Through my dissertation I was seeking to contribute to the empirical investigations on issues related to nation, national minorities and national identity. For doing so, on the one hand I analysed the profile of the applicants for Hungarian Certificate or Hungarian Dependent Certificate; on the other hand, I wanted to understand the reasons behind as well as individuals' perceptions about leaving Austria out of the scope of the Status Law. The aims of my research made necessary an interdisciplinary approach to the study; hence my research results are also on the boundaries of political studies, sociology and law.

1. The review of the modernist and ethnosymbolist approaches to nationalism led to several important conclusions:

1. a. On the one hand, the Status Law and related to this, the analysis of topics related to the Hungarian Certificate can be interpreted only through the lens of the culture-based nation-approach. Only through this approach is one able to understand the reasons behind Hungary creating this law, and the reasons of other countries' citizens feeling strong about requesting a document which, among others, functions as a means of expression of their national identity.

1. b. This leads to another fundamental question of nation-research: how can the criteria for belonging to the Hungarian nation as well as to the Hungarian national minority be defined? Next to the criterion of free identity-choice, the literature refers to objective indicators such as language and/or religious belonging. Most debates around the Status Law were induced by the definition of the Hungarian nation as well as the criteria for belonging to the Hungarian nation. The initial scope of the Law was to cover all those individuals who live in countries neighbouring Hungary and who declare themselves Hungarian. Furthermore, the Hungarian Certificate was the symbolic expression of the belonging to the "single Hungarian nation", grounding itself in the culture-based nation-approach. The central questions of all

legal and political debates about the Status Law were linked to and/or questioned the justified application of this very culture-based nation-approach.

The first evaluation report on the Status Law, published by the Venice Committee, uses the concepts of *kin-state* and *kin-minority*. This signals the importance of recognising that beyond citizenship ties individual identities could contain elements which give priority to kinship ties to other states with which individuals have no citizenship ties. Thus, the longstanding debate among social scientists which meant to decide which of the two nation-approaches should have precedence – debate which at theoretical level still continues – has arrived to an important milestone. The milestone is marked by the variety of EU reports, documents and regulations which have been adopted after the entry into force of the Status Law. The report on the concept of nation adopted in 2006 recognises the political and cultural approaches to nation as equal. Related to this, mapping in fact the position of social sciences, the concept of national minorities has been defined, distinguishing it from that of ethnic minorities. The initial Status Law eligibility criterion of free identity choice was supplemented by other objective indicators such as Hungarian language knowledge, membership in a Hungarian religious congregation or civil organisation as results of the report published by the Venice Committee. One needs to have this contextual knowledge to understand the group characteristics of Hungarian Certificate applicants, i.e., groups defined as Hungarian national minorities living in neighbouring states to Hungary.

2. The research on the demographic characteristics of more than 800,000 individuals who applied for Hungarian Certificate or Hungarian Dependent Certificate between 1<sup>st</sup> January 2002 and 31<sup>st</sup> December 2005 in countries where the Status Law has come into force (Croatia, Romania, Serbia, Slovakia, Slovenia and Ukraine) is an exploratory research since there were no information available on this population. One of the main concluding results of my dissertation is deriving some basic indicators, valid for the overall population of Hungarian Certificate applicants such as their age-group and their eligibility characteristics. For instance, I have found that with the exception of Romania, in all countries more than 90% of

individuals handed in their application using the objective eligibility criterion of Hungarian language knowledge. Only a very small share of applicants, 2.35% (7,838 persons) applied for Hungarian Dependent Certificate.

3. Following the cleanup of my initial database and the addition of some new variables I was able to conduct more detailed analyses on the Romanian applicants' dataset, at both individual level as well as using settlement-level aggregated data.

3. a. Looking at the trend data one can observe that in the analysed period the number of individual applicants continuously decreased from initial tens of thousands monthly to 500 a month in December 2005.

3. b. Comparing the Hungarian Certificate applicants' data with those derived from the 2002 Census, at county level, one can observe significant differences between regions and counties. Relative to the ratio of Hungarians of Romania, the overall ratio of Hungarian Certificate applications at country level is 35.68%. The highest proportion is in Zalău/Szilágy county (47.57%), the lowest proportion is in Timiș/Temes county (16.22%). When analysing regions, I was using the division of Transylvania into five regions, following Árpád E. Varga: Banat/Bánság (Arad/Arad, Caraș-Severin/Krassó-Szörény and Timiș/Temes counties), South-Transylvania/Dél-Erdély (Brașov/Brassó, Alba/Fehér, Hunedoara/Hunyad and Sibiu/Szeben counties), North-Transylvania/Észak-Erdély (Bistrița/Beszterce, Cluj/Kolozs and Zalău/Szilágy counties), Partium (Bihar/Bihar, Maramureș/Máramaros and Satu Mare/Szatmár counties), and Szeklerland/Székelyföld (Harghita/Hargita, Covasna/Kovácsna and Mureș/Maros counties).<sup>9</sup> Compared to the data of 2002 Census, the initially similar ratio of applicants per region has decreased in different ways in different regions, and the difference among regions seems to stabilise. The order of sequence, in decreasing order, is: Szeklerland, North-Transylvania, Partium, South-Transylvania and Banat/Bánság. The overall finding is that the higher the ratio of Hungarians in the ethnic geo-composition of a region,

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<sup>9</sup> Varga E. 1998–2002, I–V.

the higher the number of applicants relative to the Hungarian population of the region concerned.

3. c. The age-group analysis of the applicants showed that Romanian applicants' average age is in all counties significantly lower than the average age of the Hungarian population of the given county. In six counties the ratio of children (i.e., persons younger than 18 years) among all applicants corresponds to the ratio of children within the Hungarian population as measured in the 2002 Census. In all other Transylvanian counties the ratio of applicants younger than 18 years old are significantly higher than what the Census data would suggest. With the exception of Bacău/Bákó country, in all those six counties where the share of children applicants corresponds to the Census data the weighted share of Hungarians is less than 20% of the population. It is only Braşov/Brassó county where relative to the dispersed Hungarian population (weighted ratio is 16.79%) the ratio of children applicants is higher than that measured in the Census.

3. d. In Romania, where the objective criteria of eligibility were tied to written documents, two thirds (62.68%) of adult applicants proved their eligibility through membership in a religious congregation, one fourth (26.49%) through membership in RMDSZ (DAHR), 9.87% by a document proving their Hungarian language knowledge and a neglectable percent, 0.97% as membership in a civil organisation.

3. e. It is difficult to formulate generic conclusions based on applicants' residence data. In some counties these data are different from those observed in the Census, in other counties they are similar to it. While the linear regression of all applicants' data shows a relatively higher ratio of applications in cities, controlling for the number of Hungarians the effect of the type of settlement disappears from influencing the ratio of applicants.

3. f. The ratio of Hungarian Certificate applicants relative to the Hungarian population in a given county was significantly influenced by both institutional factors as well as the ethnic characteristics of the settlements concerned. The variables related to religious and educational institutions, cultural organisations and political representations were all significantly influencing the ratio of Hungarian Certificate applications. The hypothesis based

on which these institutions work only as confounding variables and the ratio of Hungarians in the population have the direct relation to the ratio of applications was only partly confirmed by the data. The effect of religious institutions and political representation still showed significant influence even after controlling for the variable of ethnic composition.

For the analysis of the effect of ethnic composition I have been dividing all settlements into three categories: 1) settlements in regions of sporadic Hungarian presence, 2) settlements in interethnic regions, and 3) overwhelmingly Hungarian settlements. I have found that the ethnic composition of a settlement has an effect on Hungarian Certificate applications: the higher the Hungarian concentration in a settlement, the higher the ratio of applicants to the Hungarian population. The results of the logistic regression show that compared to Hungarians living in regions of sporadic Hungarian presence, those living in interethnic regions have a four-times higher chance and those living in overwhelmingly Hungarian settlements have a seven-times higher chance for applying for a Hungarian Certificate.

4. Regarding my results on Austria, I have found that:

4. a. The exclusion of the country from the Status Law can be reduced to two broad factors. The first factor can be explained by the pressure exercised with reference to the European Union's principle of prohibition of discrimination. The other factor is that among the two Hungarian communities living in Burgenland and around Vienna, having dissimilar historical development, an integration process has already started which would have been broken by the Status Law which would have been applicable only to the Hungarians living in Burgenland.

4. b. There are other important research results deriving from the Austrian case study. The interviews among potential beneficiaries of the Status Law revealed that the introduction of the law has not become a topic in the everyday life of Hungarians of Austria. In the case of Romania we have seen that the role of various institutions in transferring national belonging into individual identity had a positive correlation with Hungarian Certificate applications. Nevertheless, one of the main conclusions of my research carried out in Austria was that the



very existence of a system of minority institutions does not lead to the subjective, emotional perceptions of belonging to the Hungarian nation. Despite the existence of various minority institutions in Austria, most of my interviewees defined themselves as Hungarian-speaking Austrians. On the one hand, the objective and subjective criteria of belonging to a nation should be thus distinguished from each other. If we accept the principle of free identity choice, based on the subjective criteria of belonging we could define those persons belonging to the Hungarian nation who, for instance, do not speak Hungarian, do not have Hungarian antecedents, and do not live in Hungary. It is for this reason that the objective criteria of national belonging do not represent sufficient conditions for defining an individual's national identity. On the other hand, similar to the findings in the literature on Hungarians of Austria, I have also found that the group can be defined as ethnic minority. Further research is needed to find out which were those processes which led the communities of Hungarians of Burgenland and those around Vienna to change from national to ethnic minorities.

The current research can be carried forward in many directions. The two most important routes I see are the following. First, cleaning the database containing information on all non-Romanian applicants and tying it to other variables would offer interesting insight into the characteristics of the region, at both individual and settlement levels. Second, a qualitative investigation would help us disclose those motivational, emotional composites, which played an important role in Hungarian Certificate applicants' decision-making.

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