

“Suspension of Citizenship” in the Hungarian Constitution: On Statelessness, Bull**** and Authoritarian Lawmaking

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By Péter Szigeti

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An ancient and beloved Hungarian folktale is the story of King Matthias and the Clever Girl. According to the story, King Matthias the Just, who often wandered about Hungary in disguise to see how the plain folk were living, was insulted by a village alderman. Matthias, upon his return to court, decreed that the alderman should be hanged. The alderman’s daughter begged the King to reconsider: Matthias then decreed that he would pardon the alderman, if the daughter could perform a number of impossible tasks. The final task that the King set for the girl was to visit him at the Royal Court – but not in any ordinary way. King Matthias decreed that the girl must not travel on foot, neither riding an animal, nor riding a carriage; that she should be dressed up but at the same time come naked; and that she should bring a gift, but also not bring any gift at the same time.

Seemingly, the Hungarian government has been taking inspiration from this ancient folktale when deciding to amend the Fundamental Law of Hungary for the fifteenth time in as many years. The proposed new provisions include some new homophobic declarations, some modifications on declaring and sustaining a state of emergency, and one new provision creating a constitutional right to pay with cash. One of the new

provisions, however, creates an entirely new but almost paradoxical concept in citizenship law: *the suspension of citizenship*. Article G, paragraph (3) of the Fundamental Law will read as follows:

Nobody can be deprived of Hungarian citizenship if it was attained through birth or through lawful naturalization. A Hungarian citizen who is also a citizen of another state – with the exception of states whose citizens have the freedom of entry and residence [in Hungary] – may have their citizenship suspended for a definite period of time in accordance with the provisions of a cardinal law. Group suspension shall not be permitted.

As a matter of legal doctrine, the suspension of citizenship is both unprecedented and barely intelligible. Even the policy goals of the amendment are hazy: suspicions are that the objective is to deport or otherwise remove from Hungary certain anti-Fidesz politicians, ahead of the 2026 elections, who happen to be Hungarian-Canadian dual citizens. The spokesperson for the government has denied these allegations. The amendments are couched in a larger campaign against “intrusions into Hungarian sovereignty” that has been ongoing for more than two years now. Opposition parties and media outlets that have accepted foreign funding (including from USAID) are in the crosshairs of the government in particular.

Exact doctrinal details, for the moment, are unavailable because the cardinal law that will actually regulate the suspension of citizenship in Hungary does not yet exist and has not yet been proposed. (Cardinal laws, under Article T, paragraph 4 the Fundamental Law of Hungary, are laws that can only be modified by a two-thirds majority in Parliament; accordingly, they can be called part of the “extended constitution” of Hungary.) Even without having any details on the imposition and implementation of the suspension of citizenship, some jurisprudential and international legal comments are warranted.

The exception of “states whose citizens have the freedom of entry and stay” from suspension – basically meaning EU and EEA states and their (dual) nationals – is doubtless intended to limit clashes with EU law on this matter. Such clashes will nevertheless appear: to begin with, other EU member states, and eventually the CJEU, have to decide whether a Hungarian citizen “under suspension” still enjoys all the rights of EU citizens in other states.

From the perspective of the law of nationality, it is worthwhile to consider the suspension of citizenship in the context of the creation of statelessness. As Neha Jain has argued, statelessness is generally not the result of mistakes in registering newborn children or technical inconsistencies between different countries’ nationality laws. Instead, statelessness is *manufactured* on purpose, by creating nationality laws that deliberately exclude certain minorities. One of the most prevalent techniques for this manufacturing, nicknamed “Schrödinger’s Citizenship” both by Bronwen Manby

and by myself, and “Ghost Citizenship” by Jamie Chai Yun Liew, is for State A to insist that a person is the citizen of State B, while State B insists that the person is the citizen of State A.

The suspension of citizenship seems to be another technique for the manufacture of (de facto) statelessness. The notion of suspension is essentially an in-between, yes-and-no, depends-for-certain-purposes status, which allows Hungary both to strip rights from certain individuals and to deny that these people have thereby become stateless or rightless. It is reminiscent of the “legal black hole” of the Guantanamo Bay Naval Base, where the ostensible difference between U.S. jurisdiction and Cuban sovereignty was played off against one another, to leave prisoners in the prison camp there without any recourse under either U.S. law or international law (until *Boumediene v. Bush*, at least).

Does the proposed suspension of citizenship infringe the 1961 Convention on the Reduction of Statelessness? Probably not: only Articles 8 and 9 of the Convention apply to the loss of citizenship, and these articles only set two obstacles to the revocation of citizenship. Article 8 prohibits the deprivation of nationality, if that would result in a person becoming stateless – but the provisions of the Fundamental Law on suspension apply exclusively to dual nationals, thereby averting any discussion on whether the suspension of citizenship is equivalent to a form of statelessness. Article 9 prohibits the deprivation of citizenship “on racial, ethnic, religious or political grounds,” and here, eventual practice may prove to violate the Convention on the Reduction of Statelessness. But Hungary is also a party to the European Convention on Nationality, which only allows the deprivation of citizenship, at the initiative of a state party, for “conduct seriously prejudicial to the vital interests of the State Party” (Art. 7 (1) (d)). Infractions of both international law and European law seem inevitable.

Of course, speculation about the unlawfulness of this new gambit under international law is quite spurious, without knowing any details about the contents and procedural safeguards of imposing the suspension of citizenship. But perhaps this is the point. There are two reasons to think so: one of them tied to statelessness as a legal category, and the other one tied to the nature of authoritarian politics.

Citizenship is a status that may or may not mean access to rights – as Dimitry Kochenov, Kristin Surak (11-12) and Alison Kesby (31-38) have reminded us, almost every human being is a national of one state or another, yet nationality does not necessarily mean access to meaningful rights (as any Sudanese, Afghani or North Korean citizen could testify). On the one end of the spectrum, a non-citizen could have access to basically every right that a citizen has, except for the right to vote and be elected to office (e.g. as permanent residents do in Canada, following *Andrews v. Law Society of British Columbia*). At the other end of the spectrum, lack of citizenship may come close to outlaw or *homo sacer* status, where one has no rights whatsoever

(described with striking force by Hannah Arendt, at 290-302). Without details on what the suspension of citizenship means, we cannot know which one of these the new Hungarian regulation is going to be.

This leads us to the second point: perhaps it is not going to be anything. As Adam Tooze has recently reminded us:

MAGA is full of ****. If you don't know this yet you have not been paying attention. They say and do stupid things that gesture towards a nationalist populist strategy in a flailing way. But most of their utterances are incoherent word salad masquerading as policy.

What is true of MAGA, is *a fortiori* true of the Hungarian regime, the Ur-MAGA. In many cases, legislation brought by an extreme right-wing populist regime is not law in the sense that it is designed to bring about changes to human behaviour in an orderly manner, in the pursuance of rational policy goals. Instead, legislation itself can be a form of “flooding the zone”, of bull**** in the philosophical sense, of propaganda and misinformation. Unintelligible or overly vague legislation can reap political dividends, as Michael Albertus showed in the context of “property without rights” in Latin America, and Daniel Ghezlbash demonstrated with regard to the implementation of refugee law. The notion of suspended citizenship currently seems like such legislative bull****: perhaps only lying around as a distraction, without an implementation mechanism; perhaps waiting to be implemented in more dictatorial times.

(Epilogue: For those wondering how the folktale ends, here is how the clever girl overcame the impossible conditions and outsmarted the King. She came to the Court riding a billy-goat with her feet touching the ground. Therefore, she traveled neither by foot, nor riding an animal. She came wearing only a fishing net, so was both naked and dressed at the same time. And she brought a dove in a cage with her, which she released when meeting the King: so she both brought a gift with her and didn't bring any gift at the same time.)

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Eric Fripp says

March 31, 2025

Dear Dr Szigeti- Thank you very much for a very interesting post regarding proposed amendment of the Fundamental Law of Hungary to allow for the State to bring about 'suspension' of the Hungarian citizenship of dual citizen(s) chosen for this.

I am weak on folklore, and perhaps for this reason the proposed change to the Fundamental Law made me think not of any folk tale, but of the character Baldrick in the British television comedy, 'Blackadder'. Baldrick has limited intelligence but also a fertile imagination and readiness to look for solutions to difficult challenges. He is associated with the phrase 'I have a cunning plan' and the amusement and sometime tragedy is that these plans tend not to be objectively very cunning, however promising they seem to him.

On the proposed change if the motivation is indeed to prevent dual citizens- or specified dual citizens- from playing a part in future elections, then one can imagine Baldrick finding potential inspiration in the line of Australian caselaw about dual citizens, 'allegiance to a foreign power' per section 44(1) of the Constitution of Australia, and eligibility for public office, which most notably includes *Sykes v Cleary* [1992] HCA 60; (1992) 176 CLR 77 and *Re Canavan*; *Re Ludlam*; *Re Waters*; *Re Roberts* [No 2]; *Re Joyce*; *Re Nash*; *Re Xenophon* [2017] HCA 45; (2017) 263 CLR 284.

The 'cunning plan' seems to foresee the prospect of statelessness as an obstacle and to avoid it, by applying only to those with at least one other citizenship beyond Hungarian. Having dual nationality and losing one (or having it 'suspended') after all leaves the other. And invocation of 'suspension' rather than deprivation of citizenship may be an attempt, taking this term in its ordinary meaning, to bring about a de facto deprivation of Hungarian whilst shying away from making a de jure change.

However, just to posit the possibility of there being some serious legal obstacles for the 'cunning plan', I hope I may note the following:

First, at the level of international human rights law, article 12(4) of the 1966 International Covenant on Civil and Political Rights (ICCPR) provides that 'No one shall be arbitrarily deprived of the right to enter his own country'. Among English

commentators, Paul Weis concluded in 1979 that developments in international law including ICCPR meant that, 'considering that the principle of non-discrimination may now be regarded as a rule of international law or as a general principle of law, prohibition of discriminatory denationalisation may be regarded as a rule of present-day international law' (Weis, *Nationality and Statelessness in International Law* (2nd edn, Brill, 1979, p125)). Sir Richard Plender in 1988, referring to article 12(4) ICCPR and its travaux préparatoires as rendering it 'clear that this provision is so framed as to exclude the permissibility of an act of denaturalization directed against an ethnic group or dissident individual or minority' had had a 'profound effect' on the development of international law so that the evidence 'suggests that in current international law a State cannot always release itself of its obligation to admit certain of its own nationals to its territory by promulgating a decree which deprives such a person of their nationality' (Plender, *International Migration Law* (2nd edn, Nijhoff, 1988, p 147)). Baldrick's attempted cunning insertion of the novel 'suspension' concept, in place of outright denationalisation, seems a transparent attempt to evade article 12(4) ICCPR (and perhaps also any domestic law restraints on deprivation of nationality). It is however hard, with all respect to Baldrick, to believe the intended evasion would if brought into force prove effective.

If he were to read this, Baldrick might by this point have thought 'article 12(4) is just about entry, and I can allow my suspended citizens to come in, but not to do politics.' However that would be to forget article 25 ICCPR, by which 'every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions... to take part in the conduct of public affairs, directly or through freely chosen representatives... to vote and to be elected... to have access, on general terms of equality, to public service in his country'. So a change in civil status imposing restriction on political activity would seem to run into this, in addition to or in place of article 12(4).

Secondly, Baldrick might also think that the UN Human Rights Committee is quite far away and that a promising gambit is worth chancing. But closer at hand is the European Court of Human Rights, responsible for applying the European Convention on Human Rights and Fundamental Freedoms ('ECHR'). By article 6(3) Treaty on European Union, fundamental rights, as guaranteed by ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. The rights secured by ECHR are among the rights guaranteed by the Charter of Fundamental Rights of the European Union.

ECHR provides little specific protection for nationality. But a substantial jurisprudence now applies the article 8 ECHR right to respect for family and private life to the effects or potential effects of actions or decisions of states concerning nationality or civil status. In *Genovese v Malta* - 53124/09 [2011] ECHR 1590; (2014) 58 EHRR 25 the Court's 4th Section reiterated (§30) that though respect for a person's private life... did not guarantee any right to a particular nationality, 'the concept of "private

life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person [and can] embrace multiple aspects of the person’s physical and social identity.’ The Grand Chamber of the European Court of Human Rights cited this (§1031) in deciding the interstate case before it concerning Russian activities in relation to its occupation of Crimea, *Ukraine v Russia (Re Crimea)*- appns 20958/14 and 38334/18 [2024] ECHR 569, finding a breach of article 8 in the arbitrariness attached to imposition of Russian nationality in the cases cited to it. In *Huseynov v Azerbaijan (No 2)* [2023] ECHR 591 the Court’s 1st section found a breach of article 8 ECHR in the stripping of nationality from an Azerbaijani journalist. In *Ahmadov v Azerbaijan – appn 32538/10* [2020] ECHR 96 the 5th Section, found that denial of an identity card (without explicit deprivation or denial of nationality) breached article 8. In the last named case the Court attached no weight to the distinction between denial of an identity document and denial of citizenship itself, a possible parallel to Baldrick’s cunning plan for Hungarian law (at §45): ‘in these circumstances, the Court does not find that the qualification of the procedure under domestic law is of crucial importance in the present case, and considers that the above-mentioned principles in respect of the revocation of citizenship are also applicable in the instant case (compare *Alpeyeva and Dzhahalagoniya v Russia* [nos. 7549/09 and 33330/11 [2018] ECHR 478, §109].’

Accordingly there seem some legal obstacles to the current ‘cunning plan’. Further, and with all respect to her, the *Clever Girl*’s various measures seem to me glib and unconvincing. In the folktale they appear to succeed, but perhaps King Matthias actually decided he risked acting tyrannously and needed a way out. In any event, I suggest the author of the immediate ‘cunning plan’ should not take solace from folktales.