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“TWO SOULS TO STRUGGLE WITH . . .”: THE FAILING IMPLEMENTATION OF HUNGARY’S NEW MINORITIES LAW AND DISCRIMINATION AGAINST GYPSIES

Timothy William Waters\*  
Rachel Guglielmo\*\*

In 1993, Hungary passed Act LXXVII on the Rights of National and Ethnic Minorities.<sup>1</sup> The law as drafted contains some of the most sweeping and extensive provisions for the protection of minorities found in domestic European law. Moreover, the law provides a legal and philosophical rationale for the protection and integration of minorities that is extraordinarily progressive, embodying not only the basic principles of human rights law, but an expanded conception of the range of safeguards needed to ensure human rights for national minorities. The Act codifies a broad and inventive set of minority rights that are both individual and collective. Minority autonomy is enshrined as both a collective right of national minorities and an integral element in constituting the State.

On paper, the law offers a model that could go far in bridging the gap between the minority, majority and State in multi-ethnic States. However, the Hungarian government’s failure to effectively implement the ambitious terms of LXXVII/1993 has made the law’s promise an empty one for Hungary’s minorities.

The Hungarian government has allowed the implementation of LXXVII/1993 to founder by viewing the law primarily as an instrument of foreign policy rather than a vehicle for domestic reform. In passing the law, the Hungarian government sought to pressure Hungary’s neighbors to improve the treatment of their substantial Hungarian minorities.<sup>2</sup> The Hungarian government hoped its new and generous policy on minorities would serve as a model for countries with

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This piece is based on more than 150 interviews conducted in 1995 in 40 towns and villages throughout Hungary with elected representatives of Gypsy self-governments at both local and national levels; ethnic Hungarian local officials; human rights activists; journalists; and private citizens of Hungarian and Gypsy extraction.

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1. See Act LXXVII/1993 on the Rights of National and Ethnic Minorities [LXXVII/1993] (1993) (Hung.).

2. Michael R. Geroe & Thomas K. Gump, *Hungary and a New Paradigm for the Protection of Ethnic Minorities in Central and Eastern Europe*, 32 COLUM. J. TRANSNAT’L L. 673, 687–88 (1995).

ethnic Hungarian minorities and saw the law as having "great importance and influence beyond Hungary's borders and [contributing to] the development of legal guarantees based on the most noble European values."<sup>3</sup>

This Comment begins by examining collectivism and liberal individualism, the two principal approaches to minority rights legislation. It then discusses the potential represented by the sweeping and novel terms of Hungary's LXXVII/1993 and describes the barriers that have impeded implementation. The note concludes with an analysis of the implications of the law for future efforts to expand protection for minorities in Hungary and elsewhere.

Throughout, the Comment focuses on the impact of the law on Hungary's Gypsies, the country's largest minority group.<sup>4</sup> Hungary's Gypsies<sup>5</sup> are despised by and isolated from mainstream Hungarian society.<sup>6</sup> Gypsies constitute five percent of Hungary's population,<sup>7</sup> but are almost entirely absent from middle and higher education,<sup>8</sup> the professions, and the dominant political, social, and cultural life. The crime rate among Gypsies is twice the national average.<sup>9</sup> The unemployment rate among Gypsy men is more than twice the unemployment rate of non-Gypsy men.<sup>10</sup>

LXXVII/1993 has proven an empty promise for Hungary's Gypsies. Not only have the Hungarian State and its local governments often disregarded the provisions of the law, they have continued to discrimi-

3. MAGYAR HÍRLAP, July 9, 1993, quoted in Edith Oltay, *Hungary Passes Law on Minority Rights*, RFE/RL RESEARCH REPORT, Aug. 20, 1993, at 57, 60.

4. KISEBBSÉGI ÉRTESÍTŐ [THE BULLETIN OF THE NATIONAL AND ETHNIC MINORITIES IN HUNGARY], INTRODUCTION TO LXXVII/1993, at V, IX (1993); LXXVII/1993 § 45(2); Geroc & Gump, *supra* note 2, at 687.

5. In keeping with the preference of most Gypsies in Hungary—who refer to themselves as "cigány" ("Gypsy")—we have chosen to use the term "Gypsy," rather than "Roma."

6. See Gábor Havas et al., *The Statistics of Deprivation*, 36 HUNGARIAN Q. 67 (1995); see also Judit N. Kosa, *Újratermelődtetnek a cigánytelepek (Gypsy Ghettos/Settlements May be Forming Again)*, NÉPSZABADSÁG, Aug. 30, 1994, at III.

7. Estimates place the number of Gypsies in Hungary at 500,000. See Mitya New, *Hungary: Hungary Gypsy School Offers Escape from Poverty Trap*, Reuters News Service—CIS and Eastern Europe, Apr. 16, 1996, available in LEXIS, News Library, Curnws File.

From shortly after their arrival in Europe, Gypsy populations were subjected to forced assimilation, persecutions, and pogroms. During the Second World War, the Nazis selected Gypsies for extermination, although there is still no consensus about how many Gypsies actually perished. Following World War II, the Hungarian Communist Party instituted an assimilation policy that broke down Gypsy ghettos and brought Gypsies into the labor force, without affording them opportunities for educational, professional, or socio-economic advancement. GYÖRGY FEHÉR, HUMAN RIGHTS WATCH/HELSINKI, STRUGGLING FOR ETHNIC IDENTITY: THE GYPSIES OF HUNGARY 4–10 (1993).

8. An estimated 95% of adult Gypsies in Hungary have not completed secondary school. Oltay, *supra* note 3, at 60.

9. FEHÉR, *supra* note 7, at 30.

10. Havas et al., *supra* note 6, at 70.

nate against Gypsies in violation of international legal norms and have denied Gypsies many of the basic rights that Hungarian law accords to all its citizens. Full and uncompromised implementation of LXXVII/1993 would significantly improve the human rights situation of Hungary's Gypsies.

## I. LIBERAL INDIVIDUALISM AND COLLECTIVISM

*I can well imagine a person who belongs to a minority . . . and who takes a very active role in his minority community, but at the same time he is a member of a Liberal party in the given country. I think this figure would be an East-Central European Faust, who has two souls to struggle with.*<sup>11</sup>

Many countries in the West and in the former socialist bloc appear to offer adequate protection for the human rights of their citizens.<sup>12</sup> Political killings are extremely rare or nonexistent, courts function, the rule of law prevails, and human rights groups operate without harassment.<sup>13</sup>

This seeming normalcy masks a deeper and more pervasive level of human rights violations. Entire peoples and classes may be marginalized in the social, political, cultural, and economic life of the State. This marginalization violates the fundamental human right of all people to participate fully in their societies and cultures.<sup>14</sup>

Liberal individualism offers at best a partial solution to this problem. In practice, liberalism's insistence on absolute nondiscrimination means only that each citizen is free to be a member of the majority nation: the majority's language is the State language, its holidays are the State holidays, and its history is taught in State schools. Under a system of liberal governance, it is nearly inevitable that, given no alternative political structure, the majority nation will come to identify its interests with those of the people and the State.

The modern collectivist model seeks to supplement liberalism's protection of individual human rights with rights aimed not only at people but at ethnic or cultural groups. The collectivist framework recognizes that individuals express their identity through groups. By providing continuity between individual, community, and the State,

11. László Végel, *Liberalism and Autonomy*, in *AUTONOMY: CHALLENGE AND/OR SOLUTION 50* (Vilmos Ágoston ed., 1994).

12. See U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994, at xiii-xx (1995).

13. *Id.* at 840-41.

14. International Covenant on Civil and Political Rights, Mar. 23, 1976, art. 1, 27, 999 U.N.T.S. 171.

the collectivist paradigm fills the gaps left by the individualist approach.

By focusing on the importance of collective rights for minorities, Hungary's LXXVII/1993 represents a move toward rhetorical recognition of rights for minorities that goes beyond the model of the autonomous individual that has dominated thinking about rights since World War II.<sup>15</sup> At a Council of Europe meeting in November 1993, then Foreign Minister Géza Jeszenszky responded to Western concerns about Hungary's new approach to minority rights, saying that

[i]n Hungary's interpretation, discrimination and xenophobia are not directed against individuals. On the contrary, individuals suffer because they belong to a given group or community. Such collective discrimination can only be acted against in a collective way.<sup>16</sup>

By adopting this collectivist rhetoric, the Hungarian government has radically advanced the debate on minority rights.<sup>17</sup>

At the same time, the law does not threaten the functional integrity of the State because ultimate sovereignty over the territory remains with the State. The law defines national minorities as constituent elements of the State.<sup>18</sup> Their existence is a distinct element of popular sovereignty<sup>19</sup> and as such cannot threaten the State.

Hungarian politicians may have adopted LXXVII/1993 for foreign policy reasons, but this radical fusion of civic liberalism and the principle of the nation remains on the books. The foreign policy considerations of the law's drafters did not alter fundamentally the wording of the text. Hungary's leaders saw their foreign policy objectives linked to a reworking and a rethinking of the ideas of citizenship, democratic participation, and nationalism.<sup>20</sup> The Hungarian formulation is thus a fusion of the classical liberal definition of citizenship and an acknowledgement of the idea of the nation. Moreover, LXXVII/1993 expresses both of these principles at home, in domestic law.

15. See I.C.C.P.R., *supra* note 14, art. 27; Universal Declaration on Human Rights, Dec. 10, 1948, art. 15, UN Doc. A/810. See also Geroe & Gump, *supra* note 2, at 676-79; KISEBBSÉGI ÉRTESÍTŐ, *supra* note 4, at II. (referring to the Council of Europe's opinion that the law's provisions are "highly progressive achievements.")

16. *Hungarian FM Speaks on Minority Rights Frame Agreement at CE Meeting*, MTI Hungarian News Agency, Nov. 4, 1993, available in LEXIS, News Library, Arcnws File.

17. Geroe & Gump, *supra* note 2, at 704.

18. LXXVII/1993 § (1).

19. *Id.*; see also A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [HUNG. CONST.], Art. 68(1).

20. LXXVII/1993, Preamble.

## II. THE PROMISE OF INTEGRATED MINORITY RIGHTS: HUNGARY'S LAW LXXVII/1993

*I am first and foremost Hungarian. Only second do I want to live in my identity; for this I need the right to do so.*<sup>21</sup>

Unlike many other instruments aimed at protecting minorities, LXXVII/1993 does not simply declare all people equal and ban discrimination based on race, religion, or ethnicity.<sup>22</sup> Instead, membership in a national or ethnic group is "a basic human right to which individuals and communities are equally entitled."<sup>23</sup> The introduction to the law notes that "minority rights cannot be fully guaranteed within the bounds of individual civil rights, thus, they are also to be formulated as rights of particular groups of the society."<sup>24</sup>

The law states its intention to "identify and create conditions under which the assimilation process of national and ethnic minorities can be halted and made reversible."<sup>25</sup> The legal recognition of the existence of minorities represents a first step toward reversing the modern State's tendency to assimilate minorities. The law covers citizens who identify themselves as belonging to a recognized ethnicity,<sup>26</sup> establishing criteria for eligible ethnic groups<sup>27</sup> and also identifying thirteen groups as *de jure* national or ethnic minorities.<sup>28</sup> The law does not require that citizens declare nationality or ethnicity.<sup>29</sup>

Provisions affirming traditional collective rights of minorities include those concerning minority languages. Reflecting the principle that no one may be forced to adopt a particular national identity, the law guarantees instruction in a minority language, subject "to local possibilities and demands."<sup>30</sup> Virtually all citizens of Hungary know Hungarian and so are able to conduct their public business in that language. Even so, the law enables minorities to assert not only a negative right of protection from encroachment by the majority culture, but also the right to express their identity through language, and national culture.

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21. Interview with János Kozák, Vice-President of the National Gypsy Self-Government, in Pápa, Veszprém County (July 11, 1995).

22. LXXVII/1993 § 5.

23. *Id.* at § 3(2).

24. KISEBBSÉGI ÉRTESITŐ, *supra* note 4, at VI.

25. *Id.* at IV.

26. LXXVII/1993 §§ 1(1), 1(2).

27. *Id.* at § 1(2).

28. *Id.* at § 63(4); *see also* KISEBBSÉGI ÉRTESITŐ, *supra* note 4, at V.

29. LXXVII/1993 § 7(1).

30. *Id.* at §§ 43(2), 43(3).

The law contains several specific provisions relating to language. At the national level, the law requires the government to provide teacher training for minority language classes, to "support the employment of visiting professors from the respective mother or language countries,"<sup>31</sup> and to support minority study abroad "in courses . . . offered by foreign institutions aimed at fostering the given culture."<sup>32</sup> The law further requires that all civil servants be competent in the language of the community they serve.<sup>33</sup> In addition, it recognizes the right of minorities to maintain "wide-ranging and direct international relations" with members of their ethnic groups in neighboring countries.<sup>34</sup> In sum, the Act offers concessions to the principle of *Heimatrecht*—the right to contact with the motherland—seldom seen in Eastern Europe.<sup>35</sup>

By creating a system of minority self-governments, however, LXXVII/1993 goes far beyond these traditional approaches to minority rights. Local minority self-governments function within the same district boundaries as existing Hungarian local councils, creating a dual system of governance.<sup>36</sup> LXXVII/1993 does not provide minorities with territorial autonomy per se. Instead, it grants collective rights within a fully integrated State. The system is conceived as a territorial expression of cultural autonomy; all rights and responsibilities are expressed through territorially based election districts.

Local minority governments may be formed in two ways. Most commonly, minority members of a community directly elect representatives to the self-governments.<sup>37</sup> These elections parallel those for the local councils that represent the majority population. In regions where minority groups form the majority of the local population, the local council may itself serve as a minority self-government.<sup>38</sup>

In addition to the system of local minority self-governments, the law provides for the establishment of one national self-government for each of Hungary's minorities.<sup>39</sup> The national minority self-governments operate according to their own electoral cycles.<sup>40</sup> Under the same rules that govern local municipal elections, the national self-governments are constituted by a vote of local minority self-government representatives who serve as electors.<sup>41</sup>

31. *Id.* at § 46(4).

32. *Id.* at § 46(2-5).

33. *Id.* at § 54.

34. *Id.* at § 19.

35. See *id.* at § 3(4). See also Geroe & Gump, *supra* note 2, at 689-701, for a discussion of the practices of other countries in the region.

36. LXXVII/1993 §§ 21, 22.

37. *Id.* at § 23.

38. *Id.* at § 22(1).

39. KISEBBSÉGI ÉRTESITŐ, *supra* note 4, at VIII; LXXVII/1993 § 33(3).

40. LXXVII/1993 §§ 32, 33.

41. *Id.* at §§ 34, 31(2).

Although the law does not make national and local minority self-governments responsible for providing basic social services to their constituents, it grants them control over cultural and educational matters affecting minority populations.<sup>42</sup> Local minority self-governments have the right to establish educational institutions and scholarships, and to take over the administration of schools with predominantly minority student populations.<sup>43</sup> Local minority self-governments must approve the appointment of school principals and administrators.<sup>44</sup> The national self-governments for each minority group are given the authority to print newspapers, operate electronic media, and to establish enterprises, foundations, and cultural institutes, including theaters, libraries, and museums.<sup>45</sup> The law requires that the government media allocate air time to each minority in Hungary and permits national self-governments to determine how this time is used.<sup>46</sup>

Financial constraints written into the law significantly limit the power of the minority self-governments. This is potentially the most damaging loophole in the entire law, since funding cuts could gut the law's substantive provisions. In particular, the law does not permit local self-governments to tax their constituents. Instead, LXXVII/1993 requires Hungarian local councils to ensure the operations of the self-governments and to fund their programs where possible.<sup>47</sup> While allowing the minority self-government to establish schools, print and electronic media, enterprises, and foundations, LXXVII/1993 specifies that these rights are to be exercised "within the limits of its [the Hungarian local government's] resources available."<sup>48</sup> Further, the law states that transfers of funds to minority self-governments "must not prevent the local government from carrying out its normal duties."<sup>49</sup>

The funding provisions of LXXVII/1993 make the law a promise, not a guarantee. In practice, as a result of these fiscal constraints, the minority self-governments enjoy only limited authority. In general, their activities are confined to consultation over and review of actions undertaken by other authorities.<sup>50</sup> Even where they do have the right to act independently, their actions may not infringe upon the rights of ethnic Hungarians or other ethnic groups.<sup>51</sup> The legal language that would make the substantive provisions truly substantive is missing. The theoretical construct of two autonomous and equal governments

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42. *Id.* at §§ 27, 37.

43. *Id.* at §§ 47, 27(4), 27(5).

44. *Id.* at § 29.

45. *Id.* at §§ 27(4), 27(5).

46. *Id.* at § 37.

47. *Id.* at § 59(1).

48. *Id.* at §§ 27(4), 27(5).

49. *Id.* at § 59(1).

50. *Id.* at §§ 26, 38.

51. *Id.* at § 25(2).



occupying the same territory is founded only upon the promised cooperative goodwill of the local councils, which retain the power of financial control.

### III. THE LEGAL SITUATION OF GYPSIES: ABUSES UNDER THE NEW MINORITY LAW

*In Eastern Europe, the minority question is a national security question.*<sup>52</sup>

The promises and provisions of LXXVII/1993 have been undermined, ignored, and contravened by the Hungarian government and its officials at the national and local levels, especially with respect to Hungary's Gypsy population. Through interference with self-government elections, denials of funding, and refusals to cede control over educational and cultural institutions, the government has derailed the implementation of the law's guarantees. The ease with which LXXVII/1993 has been subverted reveals that the loopholes are the real substance of the law.

The Hungarian government interfered in the April 9, 1995 elections to establish the Gypsies' national minority self-government.<sup>53</sup> Through fiscal and other measures, the government helped Lungo Drom, a national Gypsy coalition party with traditionally close ties to the ruling parties, win all fifty-three seats in the national self-government.<sup>54</sup> The organization and conduct of the elections revealed a pattern of irregularities that included both neglect and active interference. According to one attorney, "the elections were a loyalty contest to the government," in which the government gave partisan support to its favorites.<sup>55</sup> The resulting body is "a rock-solid corporative government, not a self-government."<sup>56</sup>

Before the elections, the government used fiscal and other measures to strengthen Lungo Drom at the expense of other Gypsy political parties.<sup>57</sup> Over a three-year period, Lungo Drom received 21.43 million Forints (approximately \$172,000) in government aid, while the next largest recipient received 12.6 million Forints (\$100,800). Lungo

52. Interview with Dr. Gábor Noszkai, Attorney, in Budapest (June 22, 1995).

53. *Gypsy Organizations Question Results of Minority Elections*, BBC Summary of World Broadcasts, Apr. 13, 1995, available in LEXIS, News Library, Curnws File.

54. Sándor Révész, *Hosszú útról visszatérni . . .* (Returning from a Long Journey . . .), *BESZÉLŐ*, APR. 13, 1995, AT 7.

55. Noszkai, *supra* note 53.

56. *Id.*

57. Ágnes Daróczi, quoted in Éva Blénesi, *Nem tudom, mi vár ránk* (I Don't Know What Awaits Us), *MAGYAR NARANCS*, July 13, 1995, at 9.

Drom's rival in the April 1995 elections received only 9.5 million Forints (\$76,000) over the same period.

In formulating rules for the minority questions, the Hungarian Government ensured that its favored candidate would face minimal opposition. The National Elections Board permitted individual electors to vote for as many candidates as there were seats, and by doing so virtually ensured that a winning majority bloc would control the resulting self-government.

The April 1995 Gypsy elections were held in Szolnok, a provincial town that is the headquarters of Lungo Drom. By contrast, all other minority elections held in terms of LXXVII/1993 took place in Budapest, the transport hub of the entire country. Transportation to Szolnok is less accessible than to Budapest, making attendance at the vote difficult for electors from distant parts of the country.<sup>58</sup> An article in the journal *Beszélő* suggested that the choice of Szolnok was a calculated decision intended to assure the election of a controllable self-government:

[T]his election . . . , was taken out of the capital, which has the best communications, the greatest number of reception halls and the most hotel space, and was put in Szolnok, the seat of Lungo Drom . . . , the only large Roma organization not run from the capital.

The National Elections Board, with the comic excuse that they couldn't find a single available venue in the capital, took Lungo Drom's suggestion that the elections be held at their home base in the municipal Sport Hall and made it their own.<sup>59</sup>

The elections themselves were characterized by irregularities that suggested the government's intention to undermine the Gypsy self-government system and to reaffirm widespread opinions about the disorganized state of Gypsy politics. Once the elections got underway, only six booths were available for over 1600 electors, each of whom had to vote for 53 separate names from a list of 278 candidates. Electors received as many as five ballots each, voted with both hands during the preliminary nominating procedure, and filled out ballots jointly.<sup>60</sup> "The National Election Board had created conditions that

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58. György Kerényi, *Fegyelmezett többség {Disciplined Majority}*, MAGYAR NARANCS, Apr. 13, 1995, at 19.

59. Révész, *supra* note 55, at 6.

60. Unaired footage shot by *Patrin Gigány Magazin*, the weekly Gypsy news and culture magazine of Magyar Televízió (viewed by authors in Magyar Televízió studios, Budapest, June 20, 1995).

made it impossible for the election to be conducted in a lawful manner," a local journalist said.<sup>61</sup>

Despite an official protest by the losing parties, journalists, and several human rights activists, both the National Elections Board and the Supreme Court of the Hungarian Republic certified the results of the election. The Supreme Court acknowledged that violations had occurred, but said:

It is . . . true that before the secret ballot began one elector was able to receive several ballots if he showed several stamped registration cards. The videotape proves without doubt that several ballots were distributed in this manner. However, neither the plaintiffs nor the videotape proved that the ballots received by the elector in question were actually filled out by that same elector . . . .

The plaintiffs also alleged that the elections committee failed to ensure the conditions necessary for a secret ballot. Without a doubt, the circumstances were not unobjectionable, but if we consider the number of electors and polling booths, there was in theory the opportunity for the electors to cast their ballots in the booths. The videotape shows that some electors violated the rules of secret ballot, but the plaintiffs have been able to prove only a few such instances; the election committees cannot be found responsible because of the electors' own undisciplined behavior.<sup>62</sup>

The court's disregard for such abuses was particularly surprising in light of its decision, only eleven days before it certified the Szolnok results, to invalidate a municipal election in which a single candidate's name was misspelled.<sup>63</sup> The court's permissive treatment of serious electoral abuses reflected disregard for the right of Gypsies to enjoy the correct forms and procedures of a democratic election, as provided for in the minorities law. These irregularities suggest the government's desire to coopt and control the elections, and thus the self-governments, compromising LXXVII/1993's reforms.

At the local level, local councils have adopted other measures that frustrate the law's implementation. In contrast to the interference on the national level, local councils have allowed self-government to form. Four hundred thirty-six Gypsy local self-governments were established following elections held in December 1994.<sup>64</sup> Due to lack of funding,

61. Daróczy, *supra* note 58, at 9.

62. Judgement of Apr. 19, 1995, Supreme Court, Kfv.I.27.392/1995/5, at 4-5 (Hung.).

63. Otilia Solt, *Nyerőviszonyok*, in *BESZÉLŐ*, May 11, 1995, at 29 (referring to Judgement of Apr. 7, 1995, Supreme Court, Kfv. III. 27.366/1995/3 (Hung.) and to Judgement of Mar. 29, 1995, City Court, 4.kpk.32917/1995/2 (Hung.).

64. Sixty-one more Gypsy local self-governments were formed in a second round of voting in

however, many of the new minority entities are effectively moribund, and thirteen have already been dissolved.

Reports submitted to the national Gypsy self-government by local Gypsy self-governments from around the country show that local councils have generally failed to provide sufficient funding to their Gypsy counterparts.<sup>65</sup> The Hungarian Parliament authorized a one-time grant of 114,000 Forints (\$910) to each self-government, regardless of the size of the settlement it served. For all but the smallest settlements, this level of funding has proven insufficient to establish and maintain an office, let alone fund any programs.<sup>66</sup> "We are in a dependent relationship . . .," a self-government representative from western Hungary said. "[The budget] is in their hands; this is not a law, it's a game—a game with the minorities."<sup>67</sup>

Local officials have on occasion committed outright violations of the formal provisions of the minorities law. In Fonó, a small southwestern village, the now-defunct Gypsy self-government was never made aware that Parliament had authorized funds to support the self-government bodies. József Orsós, the former president of the self-government, described the Hungarian local council's resistance to the establishment of the Gypsy governing structures:

I only found out that we had a budget of 114,000 [\$910] Forints by mistake; after I tried to gain access to the money, I was told I would have to go through the registrar to get it. With the registrar, though, I always had to beg for the money . . . and when I asked the mayor for help in setting up our own budget, he told me "it's impossible. It's too complicated, and it shouldn't be done that way." Instead they suggested that they control the money, and I [buy things with my own money and] bring them the bills.<sup>68</sup>

In a few areas, however, local Gypsy self-governments have received adequate funding. In most cases, these self-governments enjoy close ties to the Hungarian local councils and thus may not be the truly autonomous bodies envisioned by the law. In Barcs, a town on the

November 1995. Interview by György Fehér, Attorney, with a journalist, in Budapest (Mar. 12, 1996) (received by authors via electronic mail, Mar. 12, 1996).

65. Though the central government earmarked a budget for the Gypsy national self-government, no funds had been disbursed as of Aug. 1995. Interview with Flórián Farkas, President of National Minority Self-Government, in Szolnok, Jász-Nagykun-Szolnok County (July 18, 1995).

66. Interview with Ernő Kala, Local Self-Government President in Miskolc, Borsod-Abaúj-Zemplén County (July 21, 1995); interview with Aladár Kotai & András Györi, Members of Self-Government, in Ózd, Borsod-Abaúj-Zemplén County (July 23, 1995).

67. Interview with János Kozák, Vice President, National Self-Government and Pápa Self-Government Member, in Pápa, Veszprém County (July 11, 1995).

68. Interview with József Orsós, Former President of Fonó Self-Government (now defunct), in Fonó, Somogy County (July 30, 1995).

Croatian border with a sizable Gypsy population, the local council has allocated one million Forints (\$8,000) for the Gypsy minority self-government. However, the president of the self-government is also a local councillor, representing a heavily Gypsy district. His ability to secure funding for the self-government is principally due to his status on the council, rather than to any independent authority vested in him by the new law.

The situation in Barcs is rather unusual; there are few Gypsies on local councils, even in areas with sizable Gypsy populations. The case of the Barcs self-government illustrates the emptiness of the law's provisions for truly independent and operational minority self-governments. To operate successfully, a self-government must be closely linked to the fiscal power of the local councils. Consequently, most Gypsy self-governments are only marginally funded and nominally operational, if at all.

In many areas, Hungarian local councils have prevented minority self-governments from exercising their rights to cultural autonomy. Not a single school or theater has been opened by or transferred to any Gypsy self-government.<sup>69</sup> Although signs in other minority languages are commonplace, almost no towns have put up signs in Gypsy languages.<sup>70</sup> In a more positive development, the Hungarian national government allocated two million Forints in February 1996 to establish a Gypsy museum in the town of Pécs.

Likewise, implementation of the law's provisions regarding collective cultural, educational, and linguistic rights has foundered. Beash, a Gypsy language, is taught in just one private school in the country,<sup>71</sup> and there is no program for teaching the Gypsy language, as there is for other minority languages.<sup>72</sup> There is no teacher training for Gypsy educators as required by the law, and there is virtually no mention of Gypsy culture, history, language or even of the existence of Gypsies in Hungarian schoolbooks.<sup>73</sup> Very few supplementary Gypsy language or cultural classes are taught, even though all schools receive a per-student allowance from the State for every minority student in the school, including Gypsies.<sup>74</sup>

69. Interview with Dr. György Mohay, Budapest City Government Liaison with the Minority Government, in Budapest (June 20, 1995); *see also* interview with Péter Radó, Head of Department of Minorities at the Ministry of Culture and Education, in Budapest (July 12, 1995).

70. Interview by György Fehér, Attorney, with Gábor Noszkai, Attorney, in Budapest (Mar. 11, 1996) (received by authors via electronic mail, Mar. 12, 1996). Passing through more than 200 towns and villages, the authors found only one sign in a Gypsy language at Alsószentmárton, although signs in other minority languages were common.

71. Interview by György Fehér, Attorney, with Maria Neményi, Sociologist and Gypsy Researcher, in Budapest (Mar. 13, 1996) (received by authors via electronic mail, Mar. 12, 1996).

72. *Id.*

73. *Id.*

74. *MAGYAR KÖZLÖNY*, 1994/#130, at 4807-08, 4809-10.

Many Hungarian educators have argued that, regardless of the law's provisions, there has been neither need nor demand for Gypsy cultural or language training.<sup>75</sup> However, many Gypsies expressed a strong desire to have their children learn their own language.<sup>76</sup> "We would like to have education in the Gypsy language," one self-government representative said, "but we don't have any money, and without money we can't get a program off the ground."<sup>77</sup>

One of the most disturbing forms of official Hungarian abuse of the self-government scheme has been the attempt by some local councils to transfer responsibility for social services to the Gypsy self-governments. As noted above, the law limits the self-governments' mandate and funding to cultural, media-related, linguistic, and educational initiatives.<sup>78</sup> Despite this, many Gypsies reported that Hungarian council representatives referred them to the new self-governments when they inquired about welfare assistance and other services that the councils themselves are responsible to provide.

The Hungarian mayor of Fonó was reported to have attempted to relieve his local government of its obligation to provide social assistance to the town's Gypsy population. "He suggested that we take over the distribution of all social services for Gypsies, but I knew that that wasn't our job, and I turned it down," the self-government president said.<sup>79</sup> In the eastern village of Tarpa, the minority self-government president gave a similar report:

The atmosphere here is getting progressively worse, because we can't offer anything to the Gypsies here. And ever since the minority council was established, the local council has been refusing to help Gypsies—they're not getting social assistance.<sup>80</sup>

Some Gypsies have reported similar responses at banks that have sought to shift responsibility to the self-governments for matters that fall well outside their mandate. One woman stated that when a friend

75. Interview with "Zsuzsa," Principal, in Vizvár, Somogy County (July 4, 1995). See also interview with "Péter," Teacher, in Szedres, Tolna County (Aug. 1, 1995).

76. Interview with Ibolya Mihalovics, Gypsy Group Coordinator, in Mohács, Baranya County (June 30, 1995); interview with Tibor Szegedi, Parent and President of Local Gypsy Minority Self-Government and Tibor Szegedi, his Son, in Barcs, Somogy County (July 3, 1995); interview with József Bogdán, Parent and President of Local Gypsy Minority Self-Government, in Kölked, Baranya County (June 30, 1995); interview with Parent, in Pálfa, Tolna County (Aug. 8, 1995) (name withheld on request) (on file with the *Harvard Human Rights Journal*).

77. Interview with József Kosztics, Member of Minority Self-Government, in Siklónagyfalu, Baranya County (July 31, 1995).

78. LXXVII/1993 § 27(4).

79. Orsós, *supra* note 71.

80. Report of the Gypsy Self-Government from Tarpa, Sabalocs-Szatmár County, to the National Gypsy Self-Government (unpublished, on file with the *Harvard Human Rights Journal*).

of hers sought a loan from a bank in southern Somogy County, the bank officers told her to ask the new Gypsy minority self-government for credit.<sup>81</sup>

The self-governments are put into an untenable position when their Gypsy constituents make demands upon them for social services which they have no mandate or funding to provide. When open sewers in a Gypsy settlement in Ózd were left unrepaired throughout the summer of 1995, residents blamed the Gypsy self-governments. When, often at the behest of Hungarian councils, Gypsy communities turn to their self-governments for help that they cannot provide, the representative-constituent relationship that LXXVII/1993 was supposed to foster is undermined.<sup>82</sup>

In the future, Gypsy communities may be adversely affected by the system of minority self-governments, which have raised expectations without providing the means to fulfill them.<sup>83</sup> As a member of a minority self-government described the practical effects of this "Catch-22" situation, "Our relations with the local council are very good—of course, we haven't asked them for anything yet."<sup>84</sup>

In addition to denying funding and infrastructure support, many of the local councils members view the existence of a rival governmental authority on the same territory as a threat, or at least an annoyance. According to a member of a minority self-government in Fonó:

The local council absolutely did not want a minority self-government to be established here . . . . They never invited us to the council meetings; we didn't even know when they were. I went to one uninvited, but they never asked me for my opinion about anything.<sup>85</sup>

The president of the self-government in the large northeastern city of Miskolc said he had experienced prejudice at council meetings:

They don't treat us as equal partners. At a meeting of the city council I overheard one council member talking with another in the hallway. He said, "How is it that Gypsies can come here to do business?" I was sitting only three meters away.<sup>86</sup>

81. Interview in Somogy County (Aug. 1995) (name withheld on request) (on file with the *Harvard Human Rights Journal*).

82. Interview with member of a minority self-government, in Somogy County, (Aug. 7, 1995) (name withheld on request) (on file with the *Harvard Human Rights Journal*).

83. Interview with member of a minority self-government, in Somogy County, (Aug. 7, 1995) (name withheld on request) (on file with the *Harvard Human Rights Journal*).

84. *Id.*

85. Orsós, *supra* note 71.

86. Kala, *supra* note 69.

Resistance to local self-governments and to the implementation of LXXVII/1993 extends beyond the councils and into the constituencies that elect them and to which they are accountable.<sup>87</sup> Expressing a sentiment typical of many Hungarians interviewed, a school principal commented, "Everyone would be better off if they [the Gypsies] would just assimilate. We Hungarians will be a minority in our own country soon enough, so it is important to assimilate them now."<sup>88</sup> There is effectively no constituency among ethnic Hungarians which supports, even indirectly, a policy of creating full and meaningful civil or ethnic rights for Gypsies. Disdain for Gypsies permeates Hungarian society.<sup>89</sup> Hungarian politicians have responded to this resounding silence through their failure to implement LXXVII/1993.<sup>90</sup>

An incident from the drafting of the law shows the limits of the Hungarian political establishment's commitment to the ideals they have espoused: the first major draft of the law did not include Gypsies on the list of protected minorities. The draft was revised only after vociferous protests from Gypsy groups and the international community.<sup>91</sup>

#### EPILOGUE AND PROLOGUE: FUTURE DIRECTIONS FOR MINORITY LAW

*Before the law we played music. Now we have a law that says we can play music.*<sup>92</sup>

The Hungarian political system's resistance to the implementation of LXXVII/1993 has rendered it an empty promise. By all indications Gypsies remain as marginalized as ever in Hungarian society. The law is effectively a lie.

87. See Louis Henkin, *International Law: Politics, Values and Functions*, in *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 350, 351 (Henry J. Steiner & Philip Alston eds., 1996), for a discussion of the important role of domestic political opinion in catalyzing human rights reforms.

88. "Zsuzsa," *supra* note 78.

89. *Poll Shows Hungarians Despise Gypsies*, Reuters News Service—CIS and Eastern Europe, Aug. 24, 1995, available in LEXIS, News Library, Curtnws File.

90. Even the Alliance of Free Democrats (SzDSz), early on identified as a liberal party with a Western orientation and an active Gypsy policy, has reassessed this effort because the policy was damaging the party. Interview with Former Member of Parliament, in Budapest (July 14, 1995) (name withheld on request) (on file with the *Harvard Human Rights Journal*).

91. The first draft retained the Communist-era distinction between "national" and "ethnic" minorities, which gave far more extensive protections to the former category, and practically none to the latter. Gypsies were the only one of the thirteen minorities classified in the draft law as "ethnic." The final version still uses the two terms, but declares them to be equivalent—which seems to perpetuate, at least rhetorically, the distinction between Gypsies and other minorities.

92. Interview with János Balogh, Musician and Director of Amalipe Cultural Group, in Budapest (Aug. 16, 1995).



The Hungarian government failed to implement LXXVII/1993 because it intended the law from the outset to be an instrument of foreign policy rather than an impetus for domestic change. On paper, the law sets out a new standard for the treatment of ethnic and national minorities that the Hungarian government hoped would encourage neighboring countries to improve the status of their Hungarian minorities. By adopting the outward appearance of reform, the Hungarian government also hoped that the law would earn the approbation of Western governments. The government thus adopted a strategy of apparent reform by drafting the law, while blocking true change by refusing to implement it.

Despite this pessimistic assessment of the effects of the law to date, it is possible that it may offer Hungary's Gypsies a way to assert their rights over the long term. Although the law is a lie, it is a different lie than its drafters would have made fifty, or even fifteen, years ago. The letter of the law espouses an innovative approach to minority protection through its emphasis on collective rights.

Regardless of the intentions of its drafters, LXXVII/1993 places a rhetorical tool in the hands of Hungary's minorities. The law embodies a shift in human rights rhetoric from its traditional focus on the autonomous individual toward a new emphasis on the nation and the collective. Just as the non-binding framework of the Helsinki Accords legitimized human rights discourse in Eastern Europe during the 1970s and 80s,<sup>93</sup> over time LXXVII/1993's new rhetoric of collective rights may win added legitimacy. Furthermore, the self-governments will continue to seek to justify their own existence and to create an expanded role for themselves in representing the social and political goals of their Gypsy constituents. As elected bodies, the self-governments could claim to express the authentic voice of the minorities, although this may have been of little concern to the law's drafters.

The essential challenge for a system of cultural autonomy is to institutionalize the rights and roles of each nation in a way that ensures that no nation threatens the others, or undermines the cohesion of the State. To succeed, a system must draw from both sources of authority, the nation and the State. As the experience of Hungary's Gypsies reveals, a successful minorities law must provide: (1) specific funding for each minority self-government; (2) independent monitoring of minority elections; (3) investment of some independent taxation authority in the self-government; (4) a transparent drafting process for the law completed in cooperation with the minorities; (5) timetables for the transfer of institutions, such as theaters and schools, that specify which

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93. INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 578 (Henry J. Steiner & Phillip Alston eds., 1996).

bodies will be handed over; (6) clear rules regulating the relationship between self-governments and other government bodies; and (7) an independent administrative body empowered to ensure compliance with the law.

Fully and meaningfully implemented, such a law could achieve what neither Hungary nor any other country in the region has achieved. It would radically restructure the relationship between minority and majority; redefine the duties of the State toward its citizens; and reconstitute the divided soul of the State itself, deriving its authority from the people and the peoples.

