The many faces of ethnic nationalism: Evidence from the post-Communist “status laws”

Oxana Shevel
Tufts University
Department of Political Science
Medford, MA, USA

Email: oxana.shevel@tufts.edu
Tel: 617-627-2658
Fax: 617-627-3660

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1. Introduction

The 2001 report by the European Commission for Democracy through Law of the Council of Europe (Venice Commission) “On Preferential Treatment of National Minorities by their Kin-State” revealed a growing tendency towards the adoption of what can be called diaspora laws in post-Communist region.\(^1\) By 2001, such legislation was adopted in Bulgaria, Hungary, Romania, Russia, Slovakia, and Slovenia. Ukraine followed suite in 2004. A defining feature of diaspora legislation in the post-Communist states is that all of them define the target group in ethnocultural terms – the reality that led one commentator to conclude that “one may clearly observe the institutionalization of ethnocultural nation in CEE in the late 1990s.”\(^2\)

What are the implications of this new trend? Does the emergence of ethnocultural diaspora legislation in the post-Communist region create a threat of ethnic discrimination or other normatively undesirable policies in the region? Do these ethnically-tinted laws violate international standards of non-discrimination? Why are such laws being adopted in the first place? To answer these questions, the first part of this study surveys post-Communist diaspora laws and analyzes their content in light of international legal standards on minority protection and non-discrimination. By examining the evaluations by the European organizations of the post-Communist diaspora laws, in particular of the controversial 2001 Hungarian Status Law, I draw attention to the often neglected fact that international standards allow for some distinctions in treatment based on ethnocultural criteria, and identify provisions of diaspora laws that can and cannot be considered compliant with the international legal standards. The nexus of international law and diaspora legislation highlights the need to recognize the fact that ethnic nationalism has many shades, and that some, but not all ethnically-tinted policies are discriminatory.
The second part of the article focuses on the case of Ukraine, the latest post-Communist state to adopt a diaspora law in March 2004. To date, the law “On the Status of Foreign Ukrainians” received virtually no attention from either scholars of nationalism or of Ukraine. Yet, the Ukrainian law is puzzling in more ways then one. First, the passage of this law can be considered a departure from a civic nation-building project Ukraine has pursued at the official level since independence, since for the first time in post-Soviet Ukraine’s history a legislative act defined Ukrainian nation ethnically and not just territorially. Why has this departure taken place? Second, the passage of the law on Foreign Ukrainians was a surprise in an of itself, given that it previously failed to clear the first reading six times, including after it was designated as priority legislation by the President. What factors enabled the eventual passage of the law? The article situates the Ukrainian case in comparative perspective and compares the content and the politics behind the Ukrainian law to the experience of other post-Communist states. The analysis reveals a qualitative change in the politics of nation-building in Ukraine in recent years associated with the decline of the left, and the primary importance of domestic politics rather than international pressures in Ukraine. The Ukrainian case thus offers an illustration of how a path to internationally compliant policies can originate in domestic political divisions rather than in the pressures from the international actors.

2. “Status laws” in the post-Communist region: new phenomena and its features

Post-Communist “Status laws”: new phenomenon and its defining features

The diaspora laws trend in post-Communist started in the middle of the 1990s. In June 1996, Slovenian parliament adopted a resolution “On the Slovenian minorities in neighboring
countries and the duties of the Slovenian state in this respect.” In February 1997, Slovakia adopted a law on “expatriate Slovaks.” In July 1998 Romania adopted similar law, followed by Russia in March 1999, Bulgaria in April 2000, and Hungary in June 2001. While a number of constitutions of the post-Communist states adopted earlier in the 1990s included provisions to the extent that these states care for their kin-minorities abroad, separate laws on diaspora are a more recent phenomenon.

All of these diaspora laws share certain characteristics. First, all accord those who fall under the definition of diaspora certain rights that are not granted to other non-citizens (most commonly in the areas of education, cultural development, and travel to the homeland state, and at times also in the areas of employment, health care, welfare, and citizenship acquisition). The scope of rights granted by these laws varied significantly from state to state, which led observers to classify diaspora laws into “benefits” and “status” laws, with the former granting a substantial number of tangible benefits (such as Bulgarian, Romanian, Slovenian, and Hungarian laws) and the latter mainly regulating the legal status of those who are to be subject to the law (such as Slovak and Ukrainian laws).

The second characteristic of the post-Communist diaspora laws is their ethno-cultural nature. Virtually all of these laws define their kin in ethno-cultural terms. The Romanian law, for example, refers to “Romanian communities all over the world,” and although it is the only law that does not explicitly establish any ethnocultural criteria for who is to be considered Romanian, it states that budgetary resources for supporting Romanian communities are mainly to be used for education in Romanian and cultural and artistic activities. The 1997 Slovak Act on Expatriate Slovaks rules that to be recognized as an expatriate Slovak one has to have “Slovak nationality or ethnic origin and Slovak cultural and language awareness.” The 2005 Slovak law is more
explicitly ethnic, requiring presence of an ancestor of “Slovak ethnic origin.”\textsuperscript{10} The Bulgarian law “For Bulgarians living outside of the Republic of Bulgaria” defines foreign Bulgarians as someone who has “at least one ancestor of Bulgarian origin” and who has “a Bulgarian national consciousness.”\textsuperscript{11} Slovenian resolution talks about “autochtonous Slovene minorities” in neighboring countries and their belonging to “a common Slovene cultural area.”\textsuperscript{12} The Russian law “On Compatriots” defines compatriots as “those who were born in the same state, who live there or used to live there, and who share a common language, religion, culture, traditions and customs, we well as their direct descendents.”\textsuperscript{13} The Ukrainian law defines foreign Ukrainians as those who do not have citizenship of Ukraine and who “have either Ukrainian ethnic origin or who originates from Ukraine.”\textsuperscript{14} While Russian and Ukrainian laws are the two laws that clearly use territory as an eligibility criteria (Russian law specifically names tsarist Russia, USSR, and Russian Federation as states from where compatriots originate, while Ukrainian law uses origins from the territory of Ukraine), both laws define diasporas not exclusively by territory, but also ethno-culturally since they explicitly use ethnicity (in the case of Ukrainian law) and language and culture (in the case of Russia) as eligibility criteria.

While defining their diasporas in ethno-cultural terms, the post-Communist states struggle to spell out how exactly one’s belonging to the kin is to be documented, in particular how “origin” is to be determined. What exactly does it mean to be of Slovak, Bulgarian, Romanian, and so forth origin? Social scientists are keenly aware of the inherent difficulty in making such a determination, but policymakers in the post-Communist states have to establish some way to determine who is the subject of the diaspora laws if official status is to be bestowed upon individuals by the legislating states.
A survey of state efforts reveals that the post-Communist states are alternating between leaving the question of “origin” to self-identification or spelling and specific objective requirements. As far as objective requirements, diaspora laws include some combination of the following factors: language, culture, identity, origin, religion, and participation in the social life of a given community in the definition.\textsuperscript{15} The Hungarian law, for example, places emphasis on language and membership in a diaspora organization. Proficiency in the Hungarian language, registration by one’s state of residence or church in the state of residence, or membership in a Hungarian organization are requirements for foreign Hungarian status.\textsuperscript{16} The Russian law lists language, religion, culture and tradition among the criteria but neither emphasizes any particular one of these, nor specifies any precise requirements or ways to document that one fulfills these criteria.\textsuperscript{17} The Bulgarian law emphasizes religion rather than language as criteria of Bulgarian origin. The law states that the Bulgarian origin can be verified by the documents issues by the Bulgarian Orthodox church.\textsuperscript{18} To receive an Expatriate Slovak card, one needs to have “Slovak nationality of Slovak ethnic origin” and demonstrate “Slovak cultural and language awareness.”\textsuperscript{19} Under the 1997 law, Slovak nationality or ethnic origin was to be proven by documents confirming one’s (birth, baptism, nationality, or permanent residence in inter-War Czechoslovak Republic, Czechoslovak Socialist Republic, or Czech-Slovak Federal Republic),\textsuperscript{20} and given this list of proofs, origin was apparently understood as either ethnic or territorial origin. The 2005 Slovak law made the definition more ethnic. Slovak expatriate status is now contingent on having “Slovak national awareness” and a “direct ancestor of Slovak ethnic origin.”\textsuperscript{21} Slovak ethnic origin is proven by an “official document” that “contains a record of ethnic origin pursuant to the law of the state whose authority issued the certificate,”\textsuperscript{22} while “Slovak national awareness” is proven by “active demonstration of being part of the Slovak nation and recognition of values
representing the Slovak language, Slovak cultural heritage and traditions,23 which in turn is to be evidenced by the results of the applicant’s activity confirming his/her Slovak national awareness, a written testimony of a compatriots’ organization, or, if there is no such organization, a written testimony of at least two Slovaks in the applicant’s home country.24

Scholars called the Slovak attempt to define origin “in such depth and character rather rare,”25 but the Ukrainian law attempted even more definitional precision. The Ukrainian law explicitly defines the meaning of the term “origin” to mean either family origin from the territory of Ukraine (irrespective of ethnic origin) or Ukrainian ethnic origin defined as “one’s or one’s ancestors’ belonging to the Ukrainian nation (natsi) and one’s recognition of Ukraine as one’s ethnic motherland.”26 Implementing instruction to the Foreign Ukrainians law further specifies that ethnic Ukrainian origin can be proven either by documents such as “birth certificate or other birth records of the person or his/her relatives”, or in the absence of documents, by written certification of at least three Ukrainian citizens or foreign Ukrainians testifying to the person’s ethnic origin. A supporting recommendation of a foreign Ukrainian organization of which one is a member can also be submitted with the application.27

Reliance on self-identification as being of a certain “origin” is an alternative pathway to establishing eligibility criteria under diaspora laws. Instead of spelling out specific requirements, states may chose to make one’s membership in the diaspora of a certain nation contingent of self-identification of the applicant, and to bestow formal status on those who consider themselves to be Russian, Ukrainian, Hungarian, etc. This may seem a very democratic and non-discriminatory way of determining national belonging, but in fact, as the Hungarian case shows, the international actors considered it objectionable by from the standpoint of international law, which brings us to the relationship between diaspora laws and international law.
By their very nature, diaspora laws have a potential to come in conflict with the international law in two ways. First, diaspora laws challenge the principle of state sovereignty because they regulate the status of individuals and groups who reside on the territory of other states and who are neither citizens nor residents of the legislating state. Second, diaspora laws can be construed as being discriminatory on ethnic grounds, and as such contrary to international legal norms on non-discrimination, because they draw distinction between foreigners based on ethnocultural background and then grant whose who are subject to the laws certain rights and benefits not granted to other foreigners. Both of these tensions between diaspora laws and the international law were at the forefront of the international debate about the 2001 Hungarian Status Law, a post-Communist diaspora law which drew the most attention of the European organizations. The outcome of this debate, however, revealed a more nuanced picture than the diaspora laws simply being contrary to the international law for violating principles of state sovereignty and non-discrimination, as we are about to see.

For their attempt to regulate the status of communities outside the borders of the legislating state, diaspora laws, in particular the 2001 Hungarian law, have been called a return to medieval pre-Westphalian world of overlapping authority and multiple loyalties,\textsuperscript{28} a creation of “transsovereign nations”\textsuperscript{29} and of “fuzzy citizenship.”\textsuperscript{30} The international law, however, allows for a more nuanced assessment of the diaspora laws’ impact on the principle of state sovereignty. First, the international law contains both the principles of inviolability of territorial sovereignty and the principle of peoples’ and nations’ right to self-determination, and scholars stress that “the contradictory application of these two principles has not yet been unambiguously clarified under
international law.”31 Secondly, and more to the point, the legal opinion of the Venice Commission on the Hungarian Status Law stated that “a mere fact” that piece of legislation addresses “foreign citizens does not … constitute an infringement of the principle of territorial sovereignty,”32 but only an exercise of state power on the territory of the other state without that state’s consent violates the principle of sovereignty.

The opinions of the European Commission, of the Council of Europe’s Parliamentary Assembly and of the Venice Commission show which specific elements of the diaspora laws can be considered as violating state sovereignty. The first such element is the language of national unity. Both the European Commission and the Council of Europe objected to the reference in the preamble and elsewhere in the law to the “Hungarian nation as a whole.” The EU Commission reasoned that this language “could be understood in such a way that Hungary is striving for establishing special political links, an aim which conflicts with the sovereignty and jurisdiction of the neighboring states. Therefore, such terms should be replaced by more culturally oriented ones.”33 The Council of Europe parliamentary resolution similarly noted that “there is a feeling that in these neighboring countries the definition of the concept of ‘nation’ in the preamble of the law could under certain circumstances be interpreted – through this interpretation is not correct – as non-acceptance of the state borders which divide the members of the ‘nation.’”34

Three other elements in the Hungarian Status Law that the Venice Commission found objectionable on the grounds that they violate state sovereignty were the provision of benefits under the law on the territory of a foreign state without explicit consent of the state in question, the power the law granted to Hungarian organizations in foreign states, and, most surprisingly, reliance on self-identification as the criteria for granting legal status.
The first reservation was most straightforward. The Venice Commission argued that “a State can legitimately issue laws or regulations concerning foreign citizens without seeking the prior consent of the relevant State of citizenship, as long as the effects of these laws or regulations are to take place within its borders only.” They continued, “If the law specifically aims at deploying its effects on foreign citizens in a foreign country,” the Venice Commission continued, “it is not conceivable … that the home-State of the individuals concerned should not have a word to say on these matters.” Thus, not diaspora laws as such, but only provisions of these law that allocated benefits to status holders in their home state (rather than in the legislating state) would infringe on the principle of state sovereignty if the home state has not explicitly consented to these provisions.

The Venice Commission’s reservations about the role of diaspora organizations was more nuanced. The 2001 Hungarian law ruled that official “Certificate of Hungarian Nationality” was to be issued to applicants who were in possession of a recommendation of “an organization representing the Hungarian national community in the neighboring country concerned” (Article 20). The Venice Commission objected to this practice, arguing that it amounts to one state exercising its power on the territory of another state without that state’s consent since the legislating state grants “administrative, quasi-official functions to non-governmental associations registered in another country [which] constitutes an indirect form of state power: as such, it is not permissible unless specifically allowed.” At the same time, the Commission did not argue that all and every role of diaspora associations in the status determination process is inadmissible. In the opinion of the Commission, it was ok for diaspora organizations to “provide information on precise, legally determined facts, in the absence of other supporting documents or materials of if they are only entrusted with giving a non-binding informal recommendation for the consular authorities of the kin-State.”
The Venice Commission’s reservations about reliance on self-identification of applicants as the criterion for granting status seems especially puzzling, given that self-identification is arguably the most democratic way of determining group membership. The 2001 Hungarian Status Law ruled that the law was to apply “to persons declaring themselves to be of Hungarian nationality” (Article 1). The Venice Commission recommend against this provision being the main eligibility criterion for formal status, and in favor of a set of objective markers for status determination, arguing that making self-identification the main basis for status allocation may give the determining state organs “discretionary power that … would risk becoming arbitrary.” The Commission ruled that “it is preferable (even if it is not required by the international law) that the relevant legislation set out the exact criteria that must be employed in the assessment of national background. … In other words, the personal choice of the individual is a necessary but not a sufficient one for entitlement to specific privileged.”

Having identified specific provisions in the diaspora laws that contradict the principle of state sovereignty, let us now examine the second potential tension between diaspora laws and the international law: the question whether diaspora laws that grant privileges on ethnic basis constitute discrimination from the standpoint of international law. It is easy to assume that they do. After all, a number of international and European agreements explicitly prohibit discrimination on the basis of ethnic origin. These include the UN Charter, the Universal Declaration of Human Rights (Article 7), the International Covenant on Civil and Political Rights (Article 26), the Council of Europe Framework Convention for the Protection of National Minorities (Article 4), the European Convention on Human Rights (Articles 1 and 20), and the Strasbourg established case law. At the same time, it is important to realize that the international
law prohibits preferential treatment based on ethnicity not unequivocally, but only if such a
distinction in treatment amount to discrimination.

Thus, as the UN Human Rights Committee commented, differences in treatment that
follow a “legitimate” aim and are based on “reasonable and objective” criteria are non-
discriminatory.  Likewise, the Council of Europe Framework Convention for the Protection of
National Minorities, while prohibiting “any discrimination based on belonging to a national
minority,” in the same article establishes that “adequate measures in order to promote, in all areas
of economic, social, political and cultural life, full and effective equality between persons
belonging to a national minority and those belonging to a majority … shall not be considered to be an act of discrimination.” The international human rights case law likewise establishes that
differences in treatment “can be objectively and reasonably justified,” but that the “existence of a
justification must be accessed in relation to the aim pursued (which much be legitimate) and the
effect that the measure in question causes … (there must be a reasonable relation of proportionality
between the legitimate aim pursued and the means employed to obtain it).”

If under the international law certain positive differences in treatment, in particular those
that seek to combat disadvantages arising from being in minority position, are allowed, the key
issue with diaspora laws becomes what policies targeting co-ethnics abroad can be considered as
pursuing a “legitimate aim” and being “proportional” in their means relative to the aim pursued. In
its opinion on the 2001 Hungarian Status Law, the Venice Commission tried to answer this very
question. The Commission concluded that benefits related to the support of minority education
and culture are permissible since they follow “the legitimate aim of fostering the cultural links of
the targeted population with population of the kin State.” The Commission at the same time
argued that “in order to be acceptable, the preferences accorded must be genuinely linked with the
culture of the state, and proportionate. … for instance, the justification of a grant of educational benefits on the basis of purely ethnic criteria, independent of the nature of studies pursued by the individual in question, would not be straightforward.” 42 When Hungary amended its Status Law in 2003, it revised provisions on educational benefits in line with the Venice Commission’s recommendation. The amended law qualified all students and teachers in Hungarian-language schools, irrespective of their ethnicity, for grants established by the law. In light of the Venice Commission’s ruling that “in fields other than education and culture … preferential treatment might be granted only in exceptional cases,” revised Hungarian law eliminated non-cultural benefits such as access to employment, health insurance, and welfare.43 With these regional patterns and the international legal context in mind, let us now turn to the Ukrainian case and consider how the political and legal debates around the law “On the Legal Status of Foreign Ukrainians” compare with regional patterns discussed above.

3. The Law on the Status of Foreign Ukrainians

A thorny legislative road

On 4 March 2004 the Ukrainian parliament (Verkhovna Rada) overwhelmingly voted to approve the law “On the Legal Status of Foreign Ukrainians.” The approval came after it took over two years from the time the draft was submitted to the Rada for it to be included in the agenda and reach the floor,44 and after on the parliamentary floor between December 2000 and September 2001 the draft was rejected six times in the first reading, including after it was designated “priority legislation” by the president before September 2001 vote (see Table 1).
### Table 1. Vote for the draft law “On the Status of Foreign Ukrainians”
(\% of the left, right, center, and unaffiliated MPs voting in favor, 226 voted needed for law passage)

<table>
<thead>
<tr>
<th>Date</th>
<th>Left (%)</th>
<th>Right (%)</th>
<th>Center (%)</th>
<th>Unaffiliated (%)</th>
<th>Total votes in favor</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 December 2000</td>
<td>7</td>
<td>96</td>
<td>71</td>
<td>7</td>
<td>209</td>
</tr>
<tr>
<td>11 January 2001</td>
<td>5</td>
<td>82</td>
<td>61</td>
<td>9</td>
<td>177</td>
</tr>
<tr>
<td>22 March 2001</td>
<td>6</td>
<td>89</td>
<td>72</td>
<td>16</td>
<td>210</td>
</tr>
<tr>
<td>22 March 2001</td>
<td>8</td>
<td>89</td>
<td>77</td>
<td>11</td>
<td>222</td>
</tr>
<tr>
<td>5 April 2001</td>
<td>5</td>
<td>85</td>
<td>72</td>
<td>11</td>
<td>202</td>
</tr>
<tr>
<td>20 September 2001</td>
<td>7</td>
<td>94</td>
<td>70</td>
<td>23</td>
<td>210</td>
</tr>
<tr>
<td>3 February 2003</td>
<td>3</td>
<td>79</td>
<td>75</td>
<td>48</td>
<td>279</td>
</tr>
<tr>
<td>20 November 2003</td>
<td>3</td>
<td>98</td>
<td>86</td>
<td>52</td>
<td>327</td>
</tr>
<tr>
<td>4 March 2004</td>
<td>24</td>
<td>95</td>
<td>88</td>
<td>50</td>
<td>344</td>
</tr>
</tbody>
</table>

**Source:** Calculated from roll call voting results available at the Ukrainian Parliament’s web site at http://www.rada.gov.ua/plenary.htm. Given the fluidity of political parties in Ukraine, it is a common practice to talk about three main ideological groupings (the left (communists and socialists), the right (national-democrats and nationalists), and the center (so-called parties of power) when analyzing the composition of the Rada (on this point, see, for example, Andrew Wilson, *The Ukrainians: Unexpected Nation* (New Haven,: Yale University Press, 2000). A grouping of parliamentary factions into these three categories was done by the author.

**Note:** Data in the table represents a percent of total fraction members voting in favor (not a percent of those present during the vote voting in favor). Percent of total members in favor is more relevant data because, under the Ukrainian parliament rules, a legislative proposal has to get 226 votes, i.e. more than 50% of the total composition of the Parliament which is 450 MPs, regardless of how many MPs are present during a given vote.

Why was the law so controversial for years, and why was it eventually passed with the constitutional majority in favor? The thorny legislative road of the law is intriguing not least because, at first glance, the law seems to have few practical consequences either domestically or internationally. The fact that, unlike the Hungarian law, the Ukrainian law remained virtually unnoticed internationally can be explained by the fact that unlike the Hungarian law, the Ukrainian law did not affect neighboring states. Unlike the Hungarian law, the Ukrainian law was not specifically aimed at co-ethnics in the neighboring countries, but, like the Slovak, Romania, and Bulgarian laws, applied to “foreign Ukrainians” all over the world.\(^{45}\) Also, unlike the Hungarian law, the Ukrainian was largely symbolic since it provided very few practical benefits to those who were subject to the law and thus did not have a potential to affect either economic interest of the host states\(^{46}\) – or in fact of Ukraine itself, given that the only meaningful privilege the Law on the
Status of Foreign Ukrainians gave to foreign Ukrainians were visa-free travel to Ukraine and the right to immigration to Ukraine outside immigration quotas (Table 2).

Table 2. Rights of foreign Ukrainians

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Visa-free travel to Ukraine for up to 90 days</td>
<td>Visa-free travel to Ukraine for up to 120 days</td>
<td>Same</td>
<td>Omitted</td>
<td>Omitted</td>
</tr>
<tr>
<td>No invitation 3 year visa</td>
<td>Same</td>
<td>Same</td>
<td>No fee and no invitation 5 year visa</td>
<td>Same</td>
</tr>
<tr>
<td>No invitation student visa</td>
<td>Same</td>
<td>Same</td>
<td>Free higher education under special quotas</td>
<td>Omitted</td>
</tr>
<tr>
<td>Immigration to Ukraine outside immigration quotas</td>
<td>Same</td>
<td>Same</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Right to refugee status</td>
<td>Same</td>
<td>Same</td>
<td>Omitted</td>
<td>Omitted</td>
</tr>
</tbody>
</table>

That the source of domestic controversy over the law were not economic costs of the law’s implementation is further evident by the fact that the draft approved by the Rada contained a clause on educational that were likely to lead to more economic costs, and this clause was absent from the earlier rejected drafts.\(^{47}\) After the Ukrainian law came into force, its practical impact was indeed minimal. Very few people took advantage of the law. As of January 2007, just 1,315 people received foreign Ukrainian certificates.\(^{48}\) Being largely symbolic, the Ukrainian law was clearly a “status” rather than a “benefits” law, but this is exactly what made it so politically controversial in Ukraine.

From the records of the debates in the Rada it is evident that the issues that were contested were symbolic rather than practical in nature. The two main parties to the contestation were the
Ukrainian right (nationalists and national-democrats) who supported the law, and the left (Communists and Socialists) who opposed it. Voting patterns depicted in Graph 1 shows that the right supported the law, the left opposed it, while the ideologically amorphous center was generally supportive although not as strongly as the right.

**Graph 1. Rada vote on the draft law “On the Status of Foreign Ukrainians (% in favor)**

If we examine the debate between the right and the left on the floor of the parliament, it becomes evident that the left and the right clashed not so much about the particulars of the law, but about the existence of the law as such. The right saw it “an important political step,” while the Communists called the law a “political project of certain political forces,” and twice tabled draft resolution to reject the law all together as unacceptable in principle. This resolution failed, but
the draft law itself also failed during six voting rounds between December 2000 and September 2001, as Table 1 shows.

That the nationalists and the communists locked horns over this law is not surprising, given that the law defining the boundaries of the Ukrainian nation and the two political camps imagined the nation very differently. For the mainstream right, Ukrainian state independence was paramount, while Ukraine was imagined as a multi-ethnic state where the Ukrainian ethnus was “the core” of the Ukrainian political nation. Ukrainian Communists, embracing the Soviet-era myth of the common origin and continuity of fate of the three East Slavic people (Russians, Ukrainians, Belorussians), favored a joint state with Russia and “imagined” the Ukrainian nation as constituent members of the “Slavic-Orthodox civilization” and/or a component of the single “Soviet people.” The law on foreign Ukrainians had direct implications for nation-building projects favored by the right and the left. Explicit acknowledgment in a law that ethnic Ukrainians outside Ukraine are of special concern to the Ukrainian state served to strengthen the nation-building agenda of the right since it affirmed the right’s “image” of the nation as having an ethnic Ukrainian “core.” In contrast, failure of the law all together served the interests of the Communists: if who is Ukrainian is not explicitly define in the law, the ambiguity makes it easier to keep arguing that Eastern Slavs constitute one nation.

The debate about the existence of the law as such could not be conclusively resolved by legal means. The ambiguity of the international law on the question whether preferential treatment on the basis of ethnicity constitutes discrimination or if it is permissible under certain conditions was mirrored by the Ukrainian Constitution. The opponents of the law argued that the law on foreign Ukrainians was contrary to Article 24 of the Ukrainian Constitution which prohibits privileges and restrictions based on ethnicity, and Article 26 which grants all foreigners legally in
Ukraine equal rights. Supporters of the law also had constitutional arguments, noting that Article 26 allowed for exemptions “established by the Constitution, laws or international treaties of Ukraine,” while Article 12 specifically ruled that Ukraine provides for the satisfaction of national and cultural, and linguistic needs of Ukrainians residing beyond the borders of the State. Without unambiguous solution in the law, the issues of contention had to be solved by political rather than legal means.

Records of the debate in the Rada reveal that, in addition to the very existence of the law as such, key points of contention were the definition of foreign Ukrainian, in particular the questions whether ethnic Ukrainians will be explicitly made subjects of the law; whether knowledge of Ukrainian language will be a requirement for status of foreign Ukrainian; and what role, if any, diaspora organizations will be accorded in determining eligibility for foreign Ukrainian status.

Table 3 shows how the definition of “foreign Ukrainians” evolved in successive drafts of the law. As we can see from Table 3, the initial draft was more “Ukrainian” then the eventually adopted law, inasmuch as it made Ukrainian “linguistic-cultural self identification” a requirement for foreign Ukrainian status.
Table 3. Defining “foreign Ukrainians”

<table>
<thead>
<tr>
<th>Draft Law No. 2214</th>
<th>Draft Law No. 7254</th>
<th>Draft Law No. 1306</th>
<th>Draft Law No. 1306</th>
<th>Law No. 1582-IV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ukrainians who reside abroad constitute an inseparable part of Ukrainian ethnos. Foreign Ukrainian is a person who resides outside Ukraine, has Ukrainian ethnic origin (ukrains’ke etnichne pohodzhennia), preserves Ukrainian cultural-linguistic self-identification (kulturno-movne samousvidomlennia), and is not a citizen of Ukraine</td>
<td>Same</td>
<td>Same</td>
<td>Same</td>
<td>Foreign Ukrainian is a foreign citizen or stateless person who has either Ukrainian ethnic origin or who originates from Ukraine</td>
</tr>
<tr>
<td>Ukrainian ethnic origin is belonging of a person or his/her direct ancestors to the Ukrainian nationality (natsional’nist) and the person’s recognition of Ukraine as the fatherland of his/her ethnic origin (bat’kivshchyna svoho etnichnoho pohodzhennia)</td>
<td>Same</td>
<td>Same</td>
<td>Same</td>
<td>Same</td>
</tr>
</tbody>
</table>

The original draft defined linguistic-cultural self-identification as “one’s knowledge about historical and contemporary attainments (nadbannia) of Ukraine, knowledge of Ukrainian language in the extent sufficient for communication, and also work in a civic or religious organization of Ukrainian diaspora.” One’s work in a diaspora organization was to be certified by a recommendation from a diaspora organization. Subsequent draft no. 7254 no longer
required a recommendation from a diaspora organization to verify one’s Ukrainian linguistic and cultural self-identification (now it was to be verified in an interview with a Foreign Ministry or a consulate/embassy), but language competence continued to be a requirement for status, and the drafts was again rejected in September 2001. After six unsuccessful attempts to clear the first reading the law seemed like a lost cause, but then, unexpectedly, the draft passed in February 2003.

The passage of draft no. 1306 in the first reading on 6 February 2003 was surprising given that the text of the law was identical to the one that was rejected earlier: linguistic-cultural self-identification was still a pre-requisite for status, and foreign Ukrainian continued to be defined ethnically and linguistically. Yet, on 6 February 2003 the Rada voted 279 in favor, well above the needed 226, to support draft no. 1306 in first reading. This brings us to the question how larger politics – domestic as well as international – affected the fortunes of the foreign Ukrainians law.

The law’s evolving content and changing fortunes: domestic or international causes?

Let us begin by considering potential impact of international actors and processes. As discussed above, among the provisions of the Hungarian Status Law that the Venice Commission found objectionable was the power the law gave to diaspora organizations when determining eligibility for foreign Hungarian status. It is tempting to attribute the fact that identical provision was removed from the Ukrainian law to diffusion of international norms, especially given the fact that during the debate of the law authors of the law explicitly referred to diaspora laws in other post-Communist states including Hungary, indicating their awareness of how legislating of the diaspora laws was proceeding in other states. However, a closer look at the timeline and the content of the debate in the Rada shows that the reason provisions on diaspora organizations were
removed had everything to do with domestic politics rather than with the diffusion of the international norm.

The Venice Commission report on the Hungarian law was finished in October 2001, after the Rada failed to adopt the Ukrainian law during three separate readings. The provision on a documented membership in a diaspora organization as a pre-requisite for foreign Ukrainian status was withdrawn from the Ukrainian draft by September 2001, i.e. *before* the Venice Commission report was issued.\(^{58}\) Furthermore, the authors of the draft stated already when presenting daft No. 2241 for discussion in November 2000 that these provisions will be removed.\(^{59}\) Given that opponents of the law from the left strongly objected to the provision on diaspora organization,\(^{60}\) the right may have hoped that this provision, which did not impact the spirit of the law, could be sacrificed to placate the law’s opponents. In sum, while the removal of the provision on the diaspora organizations may have indeed brought the Ukrainian law closer to the international standards as articulated by the Venice Commission, this outcome was not a result of international norms diffusion but of domestic bargaining.

Let us now consider the puzzle of the actual passage of the law. Why did the Rada approved the law in February 2003 in virtually the same wording that it had previously rejected six times? The passage of the draft had everything to do with domestic politics. It can be attributed to an important domestic political change in Ukraine – the changed composition of the Rada following the 2002 parliamentary elections. One of the most important outcomes of March 2002 parliamentary elections was a dramatic decline of the left. As Table 4 illustrates, the left, which has controlled at least 40% of seats in the Rada in the preceding decade, got less than 20% of the parliamentary seats after the 2002 vote.
Table 4. Ukrainian parliament composition since 1990 (percent)

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<td>Left</td>
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<td>Right</td>
<td>27</td>
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<td>Center</td>
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<td>42</td>
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<td>Unaffiliated</td>
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<td>Total</td>
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Note: Composition after initial fraction formation following each parliamentary election.

Analysis of the reasons for this decline of the left is outside the scope of this paper, but they had nothing to do with the foreign Ukrainians law. The law was not an issue in the electoral campaign. In fact, it was an issue debated solely at the elite level that never achieved a public resonance. Nevertheless, the decline of the left had direct consequences for the fortune of the foreign Ukrainians law. These consequences were twofold. First, the decline of the left obviously reduced the opposition to the law in the Rada. Second, the decline of the left has arguably allowed the centrist groups to support the law more forcefully then they were willing to do up until then. Indeed, as both Table 1 and Graph 1 show, during the February 2003 vote, the center produced the second highest vote in favor among the seven rounds of voting on the law that had taken place by then.

I would argue that the reduced parliamentary presence of the left translated into a stronger “yes” vote by the center because the center no longer had to compete with the left for the electorate, which in turn meant that the center could now vote with the right on the national issues without fearing electoral consequences. That the center voted opportunistically is evident in Graph 2 that traces voting pattern of the center by fractions over time. As we can see from Graph 2, the center’s support for the law was highly inconsistent, ranging from less than 40% to 100% among different fractions and fluctuating notable within a given faction.
Graph 2 is a telling illustration of the point made by many scholars of Ukraine: that the ideologically amorphous centrist parties of power did not have a consistent position on the national question.\textsuperscript{62} After the decline of the left following the 2002 elections the political climate became such in which the center could support the diaspora law. Being composed of pro-presidential parties, the center’s support for the law was likely also influenced by the President Kuchma’s support of the law. In March 2001, shortly before the Third World Congress of Ukrainians that took place in August 2001, President Kuchma designated the law on foreign Ukrainians as a priority legislation.\textsuperscript{63} In the Rada, centrist MPs from pro-Presidential camp appealed to their
colleagues to vote for the draft in view of the fact that the 3rd World Congress of Ukrainians will soon be taking place. The center delivered its highest “yes” vote during the March 2001 voting (Table 1).

On 20 November 2003, the Rada passed the law in the second and final reading by constitutional majority (327 in favor). This draft differed substantially from the draft that was passed in the first reading in February 2003 (see Table 3). The draft approved on 20 November 2003 no longer defined foreign Ukrainians linguistically. Cultural-linguistic self-identification and knowledge of Ukrainian language requirements were dropped from the text. Furthermore, in a profound departure from the earlier drafts, draft no. 1306 added self-identification and territorial origin to the list of criteria for defining foreign Ukrainian. Foreign Ukrainian was now to be defined as a foreign citizen or stateless person who self identifies as Ukrainian, and who also has either Ukrainian ethnic origin or who originates from Ukraine (Article 1, emphasis added).

Constitutional majority in support of the draft signified that the Ukrainian elite, in particular the right and the center, found a politically acceptable formula. Making either territorial origin or ethnic origin a pre-requisite for foreign Ukrainian status allowed defining the nation simultaneously ethnically and civically. The presence of ethno-cultural criteria, albeit watered down by the removal of provisions on Ukrainian language knowledge, still conformed to the image of the nation shared by the Ukrainian right where the Ukrainian political nation was envisaged with an ethnic Ukrainian “core.” Making origin from the territory of the state an alternative criteria for foreign Ukrainian status served to legitimize Ukraine’s statehood and also to foster identification with the state of national minorities, not least such politically important minorities as Crimean Tatars who have been politically loyal to Ukraine, but who would not have qualified for official status under the law if ethnicity alone was a criteria.
Given the overwhelming support for this ethno-territorial definition of a foreign Ukrainian in the Rada, President Kuchma’s veto of the law came as a surprise. Yet, on 13 December 2003 Kuchma vetoed the law and sent it back to the Rada with his reservations and recommended changes. The President objected to several provision that were central to the overall spirit of the law, in particular to the wording of the preamble that stated that Ukrainians abroad “constitute an inseparable part of the Ukrainian people (narod),” as well as to self-identification as a Ukrainian as a requirement for status.

Here again the hypothesis about international norms diffusion ought to be evaluated. Kuchma argued that the preamble statement that Ukrainians abroad constitute an inseparable part of the Ukrainian people is contrary to the Ukrainian constitution which defined Ukrainian people as citizens of Ukraine of all ethnicities. This objection was very similar to the objection of the Council of Europe to the preamble of the 2001 Hungarian law that stated that the “Hungarians living in neighboring countries form part of the Hungarian nation as a whole.” Without asking the lawyers who prepared the reasoning for the President’s veto it is impossible to say for certain whether Kuchma’s objection was driven solely by the context of Ukraine’s Constitution, or whether he was also aware of the Venice Commission opinion. But even if the President was aware of it, he did not try to use the authority of the Council of Europe to bring weight to his veto, since nowhere in his reasoning statement justifying his veto did he refer to the Venice Commission ruling on the Hungarian law.

Kuchma’s other objections – to remove self-identification from the list of pre-requisites for foreign Ukrainian status – was also similar to the Venice Commission’s recommendations to Hungary, as discussed above. However, here again Ukraine made its diaspora law more compliant with international standards for purely domestic reasons. As discussed above, the Venice
Commission argued against making self-identification the main basis for status allocation because this could create arbitrariness by giving too much discretionary power to the state organs making formal status determination. Kuchma’s stated reason for removing self-identification requirement from the foreign Ukrainian definition was very different. Kuchma argued that because the law did not specify whether it uses the term Ukrainian: “to denote ethnicity (natsionalnist) or the person’s belonging to the Ukrainian nation (natsia),” self-identification requirement “may violate interests of such indigenous peoples of Ukraine as, for example, Crimean Tatars, who are not of Ukrainian ethnicity (natsionalnist) and who will not be able to obtain a foreign Ukrainian status if it is granted on ethnic (natsionalna) basis.”

Kuchma’s argument in defense of Crimean Tatars is peculiar given that during the debate of the law that he vetoed Crimean Tatar representative in the Rada explicitly supported the law. The President’s assertion that the law does not specify how it uses the term “Ukrainian” is also surprising since the law explicitly state that either territorial or ethnic origin can be grounds for granting foreign Ukrainian status. Regardless of Kuchma’s true motivation and possible misinterpretation of the law, his objections inadvertently brought the Ukrainian law closer to the standards for diaspora laws articulated by the Venice Commission.

The Rada accepted the President’s recommendations and adopted the revised law on 4 March 2004 with 344 votes in favor. This latest round of voting revealed another significant development in Ukrainian domestic politics with implications for the nation-building process: the Ukrainian left split, and the Socialist party changed its position from opposition to support of the law. As graph 3 illustrates, if in previous rounds of voting the percent of Socialists voting in favor never exceeded 18%, in March 2004, 95% of the Socialist faction voted in favor of the law.
The position of the Socialists on the foreign Ukrainian law is indicative of the Ukrainian Socialists’ struggle with the national question, in particular of their attempts to straddle the elusive middle ground between the Ukrainian right and the Communists on the national question. In contrast to Communists who, in their own words, remained “Soviet communists, Soviet people, Soviet patriots,” the Socialists claim to have been “a party of Ukrainian statehood since the day the party was born.” In reality, however, the Socialists’ position on the national question has been profoundly ambiguous, and since the late Soviet period the Socialists have wrestled with the question just how much they support Ukrainian state independence.

Thus, already during the debate of the 1990 Sovereignty Declaration, Socialist leader Oleksandr Moroz, future leaders of the Socialist party, argued that while he supports sovereignty, he does not support Ukraine leaving the USSR. On the eve of December 1991 independence
referendum the Socialist Party called on its supporters to vote for independence, but at the same time advocated adding to the ballot a question on the creation of “the union of sovereign states.”

As late as 1998, the electoral program of the Socialist party, while acknowledging the independence of Ukraine, contained a qualifier that “Ukrainian independence is fully integrated (economically, politically, spiritually, ethnically, militarily, etc.) with other CIS countries,” while Moroz himself affirmed that his party supports the formation of the “Union of Sovereign Socialist Republics (States)” that is to be based on the “Slavic core - unity of Ukraine, Russia, and Belarus.”

The Socialists tried hard to carve a niche for themselves when it came to contested national questions, including the question of the boundaries of the Ukrainian nation. The Socialists proposed a definition of the Ukrainian nation alternative to the right’s definition that saw the Ukrainian nation as a multi-ethnic political community with an ethnic Ukrainian core. A “Draft Domestic and Foreign Policy Conception” approved by the 6th Congress of the Socialist Party in July 1998 proposed “an understanding of the Ukrainian nation as an organic unity of various ethnic, linguistic, cultural and other forms, where prevalence of some forms at the expense of the others is unacceptable and dangerous because they carry a potential threat to the nation as a whole.” This definition left unanswered some key questions such as who, if anyone, would be considered a national minority in Ukraine, and what would the official language of this nation will be.

Just how committed the Socialists were to this definition of the nation is also an open question. Given that they articulated an image of the nation alternative to both the images propagated by both Communist and the right, Socialists could have used their understanding of the nation as a basis of their own legislative proposals. The Socialists could have tabled legislative
proposals on both citizenship and diaspora laws that would have defined the nation as the Socialist party did in the 1998 domestic and foreign policy conception, but they did not. Instead, the Socialists’ strategy on both citizenship and diaspora laws was deeply contradictory. On the citizenship law, the Socialists were identical to the Communists in not having initiated any citizenship legislation and in delaying citizenship law adoption in the early 1990s. At the same time, Socialist party leader Oleksandr Moroz did not support Communist’s drive for dual citizenship and it was under his speakership that the Rada passed the Constitution establishing single citizenship principle. The same ambiguity is evident in the Socialists’ stance on the foreign Ukrainians law. While Communist MPs regularly spoke against the law during the debate, Socialists kept silent. At the end Socialists switch sides and overwhelmingly vote in favor of the law in March 2004. Whether this change is indicative of a permanent evolution of the Socialist on the national question away from the Communists remains to be seen.

4. Conclusion

Analysis of the politics around diaspora laws in the post-Communist region in general and in Ukraine in particular allows drawing the following four conclusions with broader implications. First, the fact that post-Communist states, including those who otherwise pursue civic nation-building policies, rely on ethno-cultural criteria when it comes to defining their diasporas signifies that the nation is indeed often understood differently the “old” and “new” Europe. Hans Kohn’s distinction between a political “Western” nationalism and an ethno-cultural “Eastern” nationalism is supported by the post-Communist states’ experiences with diaspora lawmaking.
At the same time, the post-Communist states’ experience with diaspora lawmaking does not support Kohn’s interpretation of ethnic Eastern nationalism as necessarily anti-democratic, aggressive, or discriminatory. This is the second implication of the research findings of this study. Ethnically-based diaspora laws may be, but do not have to be discriminatory, nor are ethnically-based diaspora laws necessarily contrary to contemporary international legal standards since modern international law allows some room for preferential treatment based on ethnicity.

The third and related implication is that the devil is in the details, and ethnically-bases diaspora laws need to be crafted in such a way that they do not infringe on the sovereignty of neighbors and the principle of non-discrimination. Specifically, as this article discussed, the standards that diaspora laws need to meet are “proportionality” of their means (by limiting the scope of rights they are granting their co-ethnics to educational and cultural rights); reliance on government entities rather than non-governmental organizations for making eligibility determination, and identification of explicit criteria for status rather than reliance only on self-identification (to avoid violating sovereignty of other states).

The importance of international community in insuring that the ethnically-based diaspora laws do not violate international principles of sovereignty and self-determination can be critical, as the Hungarian case showed. However – and this is the fourth larger implication of this study – internationally compliant diaspora legislation can arise for domestic political reason. The Ukrainian case clearly illustrates how this can be the case. At first glance, the fact that Ukraine, the last post-Communist state to adopt diaspora law, ended up modifying the same provisions in its law that the Council of Europe found objectionable in the Hungarian case (on the power of diaspora organizations in status determination procedure; on self-identification rather than objective requirements as the basis for status; and on the preamble wording that diaspora...
constitutes a part of the nation) may lead one to suspect the case of the diffusion of international norms. However, as the evidence presented above clearly shows, Ukrainian policy makers modified these provisions of the foreign Ukrainians law for domestic political reasons, not as a result of pressure from international actors. The Ukrainian case thus shows how, in addition to international norms diffusion, another path towards internationally compliant diaspora legislation may be the presence of substantial domestic divisions on the national issue which forces the elites to compromise. Such compromise solutions may be bound to be just enough ethnically neutral to be compliant with the international standards.

1 The Venice Commission used the term “kin-minorities” when referring to the target groups of these laws. Since different countries use different terms in their legislation, in this article I will use the terms diaspora, kin, and compatriots interchangeably. It should be also noted that while this study focuses on the post-Communist states, laws on diaspora is not a phenomena unique to post-Communist states. Some Western European states such as Germany, Greece, and Italy also have such laws. The Venice Commission’s report lists these laws as well.

2 Zoltán Kántor, "The Concept of Nation in the Central and East European 'Status Laws'," in Beyond Sovereignty: From Status Law to Transnational Citizenship? ed. Osamu Ieda and Balázs Majtényi (Sapporo: Slavic Research Center Hokkaido University, 2006), 41.

3 According to the law, a “foreign Ukrainian” is someone who does not have citizenship of Ukraine and has either Ukrainian ethnic origin or who originates from Ukraine (Article 1 of the Law 1582-IV from 4 March 2004). Until the adoption of this law the only official definition of the Ukrainian nation was contained in the citizenship law, and this definition was purely civic, using territorial origin as the criteria for inclusion in the nation. Under citizenship law, the right to Ukrainian citizenship is extended to those who were born, or had at least one parent or grandparent born on the territory of Ukraine. For detailed discussion of why territorial origin became the main criteria for inclusion in the nation in the Ukrainian citizenship legislation, see Oxana Shevel, "The Politics of Citizenship Policy in New States," Comparative Politics (forthcoming).

4 An amended law no. 474 “On Slovaks Living Abroad” was adopted in September 2005.

In particular, the Venice Commission listed Hungary, Romania, Slovenia, Macedonia, Croatia, Ukraine, Poland, and Slovakia as countries where Constitutions incorporate clauses on state obligations towards its kin minorities abroad. Other countries include provisions aimed at their kin abroad in other legislative acts, such as migration legislation. Thus, in Kazakhstan, for example, the 1997 law “On Migration of Population” established the status of olarman – a foreigner or stateless person who is an ethnic Kazakh – and accorded certain rights and benefits to this group.


Article 2 of the 1998 Romanian law.

Article 1, paragraph 2 of the 1997 Slovak law.

Article 1, Section 2, paragraph 2 of the 2005 Slovak law.

Article 1 part 2 of the 2000 Bulgarian law.

Chapter 1, paragraph 1 of the 1996 Slovenian parliamentary resolution. It is worth noting that while most status law apply to diaspora all over the world, Slovene and Hungarian legislation applies only to in in neighboring countries.

The Russian law defines as compatriots not only those who do not have Russian citizenship, but also Russian citizens who live abroad (Article 1, paragraph 2, of the 1999 law). The 2005 Slovak Law does the same.

Article 1 of the 2004 Ukrainian law.


Articles 1 and 19 of the Hungarian Status Law as revised in 2003.

In fact, the Russian law is the vaguest on the specific requirements. To date there is no official document that lists what one needs to submit with the application for a compatriot status and official compatriot certificates are not issued. The Russian law (Article 3) states that belonging to compatriots is a “matter of free personal choice.” The Foreign
Ministry in a statement on its website titled “On the certificate of a compatriot” confirms that implementing instructions for the Law on Compatriots are not yet adopted, and no compatriot ID cards are issued. To determine if one qualifies for the compatriot status, the Ministry recommends using President Putin’s speech at the October 2001 Congress of Compatriots as a guide. According to Putin’s speech, a compatriot is “a spiritual self-identification.” The Foreign Ministry comments that compatriots are those who are “loyal to Russian language and culture, who feel spiritual connection with their historical Motherland, and associate with its successes and difficulties…”, and that “no ID cards can cement this loyalty and spiritual connection.” Ministry of Foreign Affairs, Directorate of Information and Press, “Ob udostoverenii sootechestvennika,” http://www.ln.mid.ru, 10 March 2006, accessed 20 August 2007 (author’s translation).

18 Article 3 part 3 of the 2000 Bulgarian law. In addition to church, according to the same article of the law, Bulgarian or foreign official state institutions or Bulgarian organizations functioning abroad can also issue documents attesting one’s Bulgarian origin.

19 Slovak Law No. 70/1997, Article 1, paragraph 2.

20 Slovak Law No. 70/1997, Article 1, paragraph 3, part 4 and Fowler (Brigid Fowler, “Fuzzing Citizenship, Nationalizing Political Space: A Framework for Interpreting the Hungarian ‘Status Law’ as a New Form of Kin-State Policy in Central and Eastern Europe,” in The Hungarian Status Law: Nation Building and/or Minority Protection, ed. Zoltán Kántor, et al. (Sapporo: Slavic Research Center Hokkaido University, 2004), 233. In the absence of these documents, a written testimony of Slovak organization was acceptable, and in the absence of testimony from an organization, a testimony of at least two Slovak expatriates living in the same country as the applicant. Slovak Law No. 70/1997, Article 1, paragraph 3, part 5.

21 2005 Slovak Law, Article 1, Section 2, paragraph 2.

22 2005 Slovak law, Article 1, Section 7, paragraph 3.

23 2005 Slovak law, Article 1, Section 2, paragraph 2.

24 2005 Slovak law, Article 1, Section 7, paragraph 4.


26 Article 1 of the 2004 Ukrainian law.

Oleksandr Kabachinsky, Head of the Directorate on the Work with Foreign Ukrainians and on International Cooperation of the State Committee of Ukraine for Nationalities and Religion, confirmed that in practice, when one applies for Foreign Ukrainian status and does not have documents proving either family origin from the territory of Ukraine or Ukrainian ethnic origin, witness testimony or recommendation from a Ukrainian diaspora organization are acceptable. Author’s interview, Kyiv, 20 July 2007.


30 Fowler, "Fuzzing Citizenship."

31 Halász, Majtenyi, and Vizi, "A New Regime of Minority Protection?," 345. The authors conclude that “the ambiguities of particular principles of international law, therefore, may open a space for divergent, even opposite interpretations of the same question.”


35 Venice Commission, "Report on the Preferential Treatment," Section D a-i, emphasis in the original.

36 Venice Commission, "Report on the Preferential Treatment," Section Da-ii. The Venice Commission recommended that, “should a kin-State require any kind of certification in situ, in the Commission’s opinion the natural ‘actors’”
would be the consular authorities: which are duly authorized by the home-State, in conformity with the law, to perform official acts on its territory.”


38 Venice Commission, “Report on the Preferential Treatment,” Section Da-ii. In the revised Hungarian law, instead of self-identification and a recommendation of diaspora organization, the requirements for foreign Hungarian status are self-identification and either proficiency in the Hungarian language or registration by one’s state of residence, church, or diaspora organization as being of ethnic Hungarian origin (Article 19 of the 2003 Hungarian law).

39 The UN Human Rights Committee General Comment No. 18 (Article 26) (37th session, 1989) states that under the 1966 International Covenant on Civil and Political Rights “not every difference of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.” Quoted after Halász, Majtenyi, and Vizi, "A New Regime of Minority Protection?,” 330, n. 8.

40 Article 4, paragraphs 2 and 3 of the Framework Convention.

41 Venice Commission, “Report on the Preferential Treatment,” Section D-d. This was the Commission’s interpretation of the European Court of Human Rights judgment on the “Belgian Linguistic Case” of 9 February 1967.


43 Some commentators argued that the legal opinion of the Venice Commission that only in the educational and cultural spheres preferential treatment of minorities is acceptable was too narrow, given that Article 27 of the Framework Convention states that “adequate measures” aimed at promoting “full and effective equality persons belonging to a national minority and those belonging to the majority” extend to “all areas of economic, social, political, and cultural right.” Halász, Majtenyi, and Vizi, “A New Regime of Minority Protection?,” 331.

44 Draft law was first debated on the floor or the Rada on 20 November 2000, two years after it was submitted to the Rada on 3 November 1998 (according to the history of the draft No. 2214, as presented at http://zakon.gov.ua, accessed 15 December 2000). The work on the law draft began in 1997, after the issue was raised and discussed at the Second World Forum of Ukrainians. A.A. Popok, "Problemy unormuvannia pravovoho statusu zakordonnoho ukraintsia,” Derzhavne upravlinnia: teoriia ta praktyka 1 (2005).
The Hungarian law applied to Hungarians in neighboring states to Hungary except to those in Austria. International and Hungarian actors explain the exclusion differently. According to the Council of Europe Rapporteur on the Hungarian Status Law, Austria as a member of the EU could not accept some of its citizens to be treated differently than others, and Hungary, given its association agreement with the EU, therefore had to exclude Austria’s Hungarians from the scope of its Status Law. Hungarian officials, on the other hand, explained the exclusion of Austria to the Rapporteur by the fact that Hungarian community in Austria is small and most of Austria’s Hungarians preserved Hungarian citizenship. See Council of Europe Parliamentary Assembly, "Explanatory Memorandum to Resolution 1335 by Erik Jürgens," Section C-c.

Hungary’s neighbors, in particular of Slovakia and Romania, were concerned that the Hungarian Status Law, which in its original version granted employment benefits to kin minority, would negatively affect their labor markets.

The law as approved by the Rada in November 2003 allowed the government to set quotas for free education of foreign Ukrainians in Ukraine – a provision that had economic consequences and that was not present in the earlier rejected drafts (Article 4). Although this provision was omitted from the final text of the law after the law was vetoed by President Kuchma (Kuchma argued that this provision violated the law on education which allowed foreigners to receive free education in Ukraine only on the basis of international bilateral agreements signed by the government and ratified by the Rada – see Prezydent Ukrainy, "Propozytsii do Zakonu Ukrainy 'Pro pravovyi status zakordonnykh ukrainstiv'," (13 December 2003)), the fact remains that the Rada was willing to support the law with this clause after rejecting earlier drafts that did not contain this clause.


Communist MP Iurii Solomatin, verbatim report from 18 September 2001 first reading of draft law No. 7254. Ibid.
On 7 December 2000 and 11 January 2001 Communist MP Volodymyr Pustovoitov submitted two draft resolutions to dismiss the law as unacceptable (pro nepryinattia). The resolution was put to the vote and failed both times. On 7 December 2000, it got 124 votes (71% of them communists’), and on 11 January 2001, 109 votes (88% of them communists’). 226 votes are necessary for passage. Voting records at http://www.rada.gov.ua, accessed 1 April 2007.

This understanding of the nation was elaborated by Rukh’s program already in the late Soviet period. See Narodnyi Rukh Ukrainy za Perebudovy, Prohrama. Statut (Kyiv: Smoloskyp, 1989), 18.

For an elaboration of the Ukrainian Communists’ position on the national question, see article on the subject by Petro Symonenko, leader of the Ukrainian Communist Party: “Natsional’na idea: mify i real’nist’,” Holos Ukrainy, 21 March 1996.

Communist MP Volodymyr Pustovoitov repeatedly made this argument during the 28 November 2000 debate.


Article 1 of the the draft law No. 2214.

Article 4 of the draft law No. 2214.

Evident if one compares draft No. 2241 and No. 7254. The latter was discussed in the Rada on 20 September 2001.

MP Ihor Ostash, one of the authors of draft 2241, when presenting the draft for debate on 28 November 2000. Verkhovna Rada Ukrainy, "Zakon Ukrainy pro pravovyi status zakordonnykh ukrainstiv," 28 November 2000.

For example, statement by MP Oleksandr Charodeev during 28 November 2000 debate.

The left and the center in Ukraine have traditionally competed for the Russophone electorate, and the center therefore had to be aware that if they vote with the right on national issues, the left may paint them as “nationalists,” with negative electoral consequences. After the left’s defeat in 2002 elections the center may have abandoned this concern. The same reasoning could be applied to the unaffiliated deputies who for the most part were also centrists.

As Wilson put it, “the center …never had much of an identity of its own, [and] has been occupied by virtual politics, a shifting kaleidoscope of clan groups, shadowy business and old nomenklatura interests.” Andrew Wilson, The Ukrainians: Unexpected Nation (New Haven, London: Yale University Press, 2000), 185.
This was likely done in a hope that the adoption of the law might improve Kuchma’s image tainted by the “tapgate” scandal among the Ukrainian diaspora in the west.


The Crimean Tatar representative, MP Refat Chubarov, spoke in support of the law during the 20 November 2003 debate. Verkhovna Rada Ukrainy, chetverta sessia Verkhovnoi Rady Ukrainy IVgo sklykannia, “Zakon Ukrainy pro pravovyi status zakordonnykh ukrainstiv - druhe chytannia,” 20 November 2003. Available online at http://www.rada.gov.ua/zakon/skl4/4session/STENOGR/4SES/20110304_36.htm, accessed 1 April 2007. During the very first debate of the draft, on 28 November 2000, Chubarov argued that in the Rada committee responsible for the law three points of view emerged: one group (communists) rejected diaspora law in principle; the second group (including the two Crimean Tatar representatives) favored the law but wanted to make not only ethnic Ukrainians “but also representatives of other ethnic groups for whom Ukraine is the territory of their ethnic origin,” in particular Crimean Tatars, Karaims and Krymchaks who do not have homeland states outside Ukraine, fall under the definition of “foreign Ukrainian.” The third position was similar to the second, only it proposed to extend the law to ethnic Ukrainians and “indigenous peoples” (korinni narody) of Ukraine – the term used in the Constitution of Ukraine but not defined in the legislation. Crimean Tatars consider themselves indigenous people rather than a national minority.

For a full list of Kuchma’s objections to the law, Prezydent Ukrainy, "Propozytsii."

Council of Europe Parliamentary Assembly, "Resolution 1335 (2003)."

Prezydent Ukrainy, "Propozytsii."

Self-identification was not totally purged from the law, however, chiefly because Kuchma was inconstant in his objections to it. In his letter to the Rada he recommended self-identification be removed from the definition of foreign Ukrainian in Article 1, but “Ukrainian self-identification” is also listed under conditions for foreign Ukrainian status in Article 3 which enumerates requirements for applying for the status. Kuchma’s veto did not mention Article 3, and self-identification requirement was not removed from this article.

71 Oleksandr Moroz, head of the Socialist party, February 1998 interview, as quoted in Oleksii Haran and Oleksandr Maiboroda, eds., Ukrainski lvi: mizh leninizmom i sotsial-demokratieiu (Kyiv: KM Academia, 2000), 76.

72 See Moroz’s statement during the 1990 Sovereignty Declaration debate in Verkhovna Rada Ukrainy, “Proekt Deklaratsii pro derzhavnu nezalezhnist’ (suverenitet) Ukrainy,” Bulleten’ pershoi sessii Verkhovnoi Rady Ukrainy XIIgo sklykannia 61 (11 July 1990), 55-56.

73 Haran and Maiboroda, eds., Ukrainski lvi, 35.


75 A 1998 statement by Moroz, as quoted in Haran and Maiboroda, eds., Ukrainski lvi, 77.

76 Section IX of the draft Conception, as published in Oleksandr Moroz, Pro suspil’no-politychnu sytuatsiiu v Ukraïni ta cherhovi zavadannya partiinoi roboty: dopovid' holovy Sotsialistychnoï Partii Ukraïny Oleksandra Moroza na zakliuchnomu etapi VI z’izdu SPU 13 chervnia 1998 roku, Novyi kurs Ukraїny (Kyїv: Sostialistychna Partiiia Ukraїny, 1998), 42.


78 Moroz continued to defend single citizenship in subsequent years. During the debate of the 1997 citizenship law, for example, Moroz clashed with his communist colleagues who argued that the 1996 Constitution did not preclude dual citizenship. Moroz argued that it did (see an exchange between Moroz and communist MP Volodymyr Alekseiev in Verkhovna Rada Ukrainy, "Zakon Ukrainy Pro vnesennia zmin i dopovnen' do Zakonu Ukrainy Pro hromadianstvo Ukrainy - druhe chytannia," Bulleten’ siomoi sessii Verkhovnoi Rady Ukrainy XIho sklykannia 21 (27 Februrary1997), 13-15. Moroz also strongly criticized Viktor Yanukovych’s dual citizenship initiative during the 2004 presidential campaign, calling it "a big mistake and a populist move" (see Obkom, 5 October 2004; also Dzerkalo Tyzhnia, 9-15 October 2004).

79 Socialists’ dilemma with the national question is further exacerbated by the fact that the rank and file members of the party remain more orthodox than the party’s leader Oleksandr Moroz. On this point, see Oleksiy Haran, "Can Ukrainian Communists and Socialists Evolve to Social Democracy?" Demokratizatsiya 9 (Fall 2001), 575.

Furthermore, as Haran insightfully observed, even as the party leadership drifts to the right, for the Socialists it is
necessary to use leftist rhetoric to take votes from the Communists as their electorates overlap. Haran, "Can Ukrainian Communists and Socialists Evolve," 583.

80 This is acknowledged by the Council of Europe Parliamentary Assembly in its Resolution on the Hungarian Status Law (Council of Europe Parliamentary Assembly, "Resolution 1335 (2003).".