Statelessness, Human Rights and the Doubling of Criminal Law: Hungary's New Law on the "Suspension of Citizenship"

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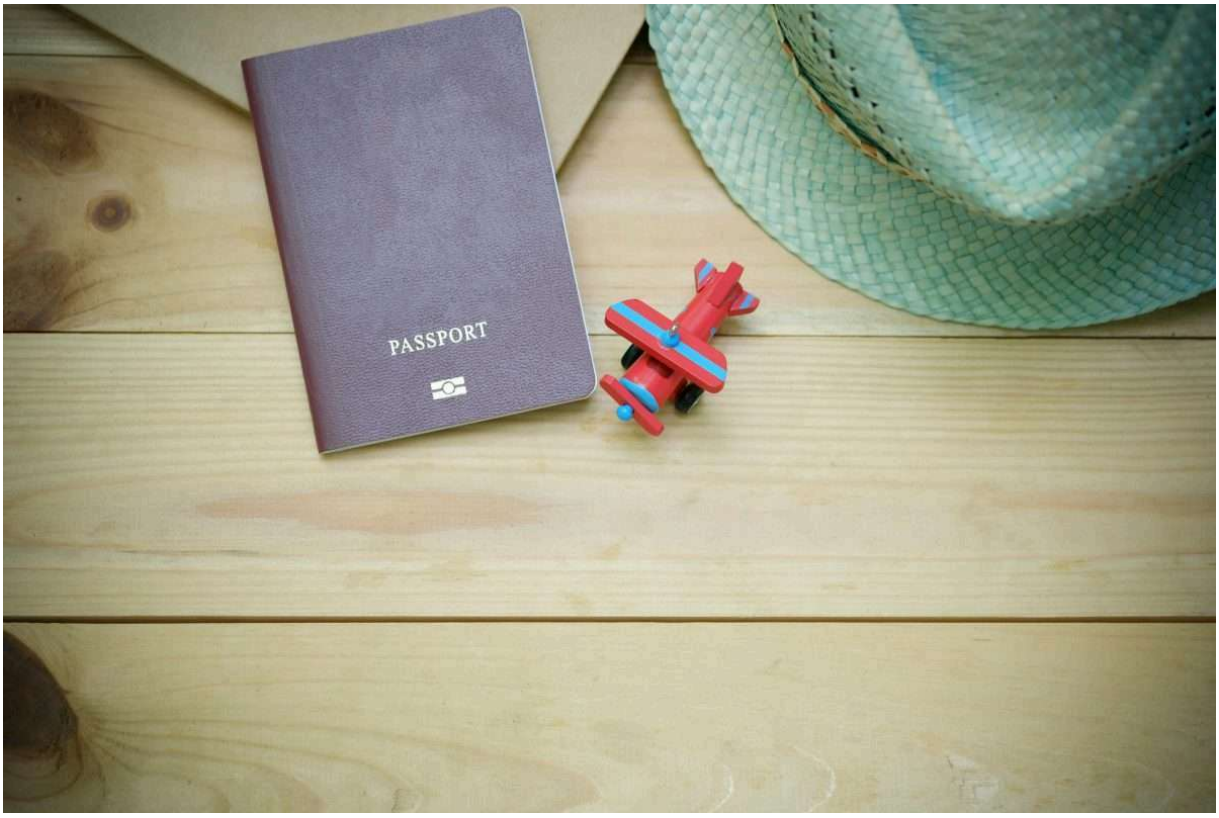
By Péter Szigeti July 30, 2025



On June 11, 2025, the Hungarian Parliament passed Act XLIX of 2025 on the Suspension of Citizenship. In a previous post, reflecting on the constitutional amendment that made way for the present act, I mused about the coherence of the "suspension of citizenship," an entirely new concept in citizenship and nationality law. In essence, I argued that the suspension of citizenship can only be an either/or concept. It is either functionally analogous to statelessness, and should therefor be evaluated as a form of citizenship revocation; or it is basically nothing at all, a form of "bull****" in Harry Frankfurt's terms, that serves to confuse and derail discussions, but has essentially no meaning.

Now we know: the suspension of citizenship is essentially a form of citizenship revocation, with the proviso that the denationalized Hungarian (ex-)citizen can automatically get their status and rights back after a decade. The crucial sanction for the suspension of Hungarian citizenship is that the "suspended" Hungarian citizen may be excluded, that is essentially deported, from the territory of Hungary – essentially, a modern form of banishment.

Under the new laws, there are four grounds for suspension. Hungarian citizenship may be suspended if a person has served in the armed forces of or as an official for a foreign state, excluding member states of the EU, the EEA and states allied to Hungary. It may be suspended if the citizen has been found guilty by a Hungarian court of genocide, crimes against humanity, apartheid, treason, insurrection, plotting against the constitutional order, espionage, terrorism, financing terrorism, or other, similarly serious crimes. A third grounds arises if the citizen is a member of, or has sustained contact with "a terrorist organization as defined under international law." Finally, citizenship may be suspended if the citizen "engages in activity that is offensive to the national security, sovereignty or the constitutional order of Hungary, in the interests of, on behalf of, or as a representative of a foreign power or organization."

The final grounds is the most troubling, in a country where there is a "Sovereignty Protection Office" that regularly accuses journalists, independent NGOs and opposition politicians of violating Hungarian sovereignty, because of accepting funding from the EU, from USAID, or from individual donors who are based outside of Hungary. To be sure, the "Sovereignty Defense Authority" has no coercive mandate, but it does have near-unlimited access to personal data, operates without administrative and judicial oversight, and its campaign of naming and shaming public figures who are opposed to the Fidesz regime is relentlessly Putinist. Fidesz politicians have already hinted that George Soros, Viktor Orbán's erstwhile mentor and a general bogeyman to the Hungarian regime, may soon have his Hungarian citizenship suspended.

The authoritarian edge of the law is blunted somewhat by two provisions within the act. Firstly, so as to conform with EU law (particularly the Wiener Landesregierung case) and the 1961 Convention on the Reduction of Statelessness, Hungarian citizenship may not be suspended for Hungarians who are citizens of Hungary only; nor for dual citizens, whose other citizenship is that of an EU or EEA member state. Additionally, a suspended Hungarian citizen whose loses their other citizenship shall have their Hungarian citizenship fully restored, immediately. Therefore, the new Hungarian law will not violate Article 8 of the 1961 Convention, which prohibits the revocation of a person's nationality if it will render that person stateless. The aim to avoid conflicts with EU law on the free movement of persons and the fundamental rights of EU citizens is also clear. The celerity with which the Hungarian Parliament sought to avoid any conflict with EU law and the international law of statelessness suggests that they too view the suspension of citizenship as essentially a form of imposing (temporary) statelessness. Furthermore, repeated suspensions imposed upon the same person again and again, are not excluded under the law.

Secondly, a general balancing provision states that the authorities must consider the weight, repetition, intentionality and the time elapsed since the offending acts, and compare them to the citizen's actual ties with Hungary, as well as the suspension's

effects on the family life of the citizen. Accordingly, hopefully any future suspension shall not be arbitrary, discriminatory or disproportionate (as set forth by the Inter-American Court of Human Rights in The Girls Yean and Bosico v. Dominican Republic).

The resulting legislation is, one strongly suspects, still contrary to EU law, as well as international and European human rights law. Eric Fripp has reminded us of "the right to enter [one's] own country" under Art. 12 (4) of the ICCPR, and the right "to vote and to be elected [and] to have access… to public service in [one's] country" under Art 25 of the ICCPR. Thorny questions, such as a suspended citizen's rights if they acquire EU citizenship through becoming citizens in another EU member state, or a suspended citizen's newborn child's Hungarian citizenship, are entirely unaddressed. And it is hard to take seriously the grounds of suspension, in conjunction with the carve-outs for EU citizenship – apparently, a Hungarian-Canadian terrorist presents a grave danger to the Hungarian state, one that justifies the suspension of their citizenship; but a Hungarian-German terrorist is just a run-of-the-mill criminal.

At the same time, we must also take note of how the revocation of citizenship is gaining ground in global practice. The ISI's and EUI's joint report on citizenship revocation, from 2022, has found that "79% of the 190 countries studied have at least one… deprivation grounds on their books; most countries provide for two or three." Disloyalty, military or other service to a foreign state, and security-related justifications were the most common reasons for citizenship revocation, and these terms were often defined very loosely and broadly: "concepts such as 'conducive to the public good' or 'vital interests of the state' are [often] not further defined in the law[s]." Even some stable democracies, notably the United Kingdom, have broad denationalization powers, where "The Secretary of State may by order deprive a person of a citizenship status if the Secretary of State is satisfied that deprivation is conducive to the public good." (sec. 40 (2) of the 1981 Nationality Act). As Rayner Thwaites has stated, it is hard to conceive of a more "broad and sweeping [form of] executive discretion" than "conducive to the public good" (pp. 1306, 1318-19). Petter Danckwardt has recently reported that Sweden is also considering modifying its constitution so as to make citizenship revocation legally possible.

In the remainder of this blog post, instead of speculating on which exercises of the new Hungarian provisions on citizenship suspension will violate which international human rights provisions, I will remark on two aspects of the law of statelessness that create enduring tensions with human rights law. The two aspects are the locality of human rights, and the functional doubling of criminal provisions.

Suspension, Statelessness and the Locality of Human Rights

Petter Danckwardt has remarked that "Despite its relevance, statelessness remains surprisingly vague in both legal and political discourse." The choice of *suspension*, instead of the straightforward revocation of citizenship, by the Hungarian legislature,

is probably to contribute to this vagueness. Nevertheless, the importance of the right to reside in a certain place makes me argue that the suspension of citizenship must be functionally equivalent to its revocation.

In Hannah Arendt's famous phrase, citizenship is "the right to have rights" and those who have lost their citizenship have lost every right. "The calamity of the rightless… is not that they are not equal before the law, but that no law exists for them; not that they are oppressed but that nobody wants even to oppress them." An illustration is the fate of Deepan Budlakoti, a (non-)Canadian petty criminal who was born in Ottawa to employees of the Indian High Commission to Canada. Although Budlakoti received a Canadian passport, subsequent legal proceedings declared this to have been a mistake, and claimed that Budlakoti must have been Indian, because his parents enjoyed diplomatic immunity at the time of his birth. India, for its part, claimed that Budlakoti has to be Canadian – a striking instance of "Schrödinger's Citizenship." Budlakoti now exists in a complete legal limbo: neither Indian nor Canadian, without the right to healthcare or to legal employment. His only viable future is the revolving door between imprisonment and the demi-monde of drug-dealing and weapons trafficking.

However, statelessness need not lead to such a complete loss of rights. In fact, if one takes human rights seriously, not much depends on having or not having citizenship. The UDHR uses the language "everyone has the right to…" or "no one shall be subjected to…", without reference to place or nationality or immigration status. The ICCPR applies to "all individuals within its territory and subject to its jurisdiction" – therefore, rights should be available to undocumented immigrants and stateless persons as well. The Supreme Court of Canada stated in *Andrews v. Law Society of British Columbia*, that:

> "Citizenship, while properly required for certain types of legitimate governmental objectives, is generally irrelevant to the legitimate work of government in all but a limited number of areas."

Budlakoti himself could receive public healthcare, the right to work, the right to housing, etc., *if* these rights are disentangled from citizenship, or the right to reside in Canada. Hannah Arendt herself was stateless between 1933 and 1951; but from 1941 onwards, when she was residing in New York City, her statelessness was hardly an impediment to her peaceful life and successful career as a professor of philosophy at the New School for Social Science.

These two views of statelessness are separated by the right to *a* place, which may be governed by citizenship, refugee status, or immigration status regardless of statelessness. If statelessness cannot lead to deportation proceedings, it should have very little consequence in a state that respects human rights. If statelessness does lead to deportation (as in the case of the Hungarian legislation), then it will always be a grave menace to the enjoyment of human rights.

The *Dédoublement* of Criminal Law

The other striking aspect of much legislation on the revocation and suspension of citizenship is that it is essentially a criminal law sanction applied through non-criminal proceedings. “Suspension of citizenship” is regulated already in the Constitution of Guatemala, the Constitution of Venezuela, and the Constitution of Paraguay: its meaning, however, is equivalent to a type of felon disenfranchisement. In other words, the suspension of citizenship means the removal of the right to vote, and the right to run for office, for a fixed term, as a form of criminal punishment. In Hungarian law, however, “prohibition from public affairs” (*közügyektől való eltiltás*) has been a existing criminal punishment since 1961, currently regulated in Sections 61-62 of Act C of 2012 on the Criminal Code. The essence of the suspension of citizenship, therefore, is not to preclude dangerous Hungarian citizens from taking part in public affairs for a limited time period – but banishment, the removal of the dangerous, but not necessarily criminal person from the physical territory of the state.

In this respect as well, the suspension of citizenship is strikingly similar to the revocation of citizenship in, say, British law, which is also exercised by the Home Secretary, on their own initiative, with rather limited judicial oversight. There is a notable literature on “crimmigration law,” that is the way in which immigration law has brought in elements from criminal law (e.g. compulsory detention in prisons or prison-like environments, compulsory deportation) without the rights and safeguards present in criminal law (e.g. the right to counsel, the right to a fair trial, a high standard of proof compared to civil and administrative cases). Nowadays, in more and more countries, revocation of citizenship has essentially joined immigration enforcement, as a shortcut around criminal law.

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Eric Fripp says

August 21, 2025

Hungary's citizenship suspension law offers much food for thought regarding authoritarianism and nationality/citizenship. I attach a few short notes on points raised by Dr Szigeti's interesting post.

First, 'Suspension of citizenship' might appear a thing creating an effort to avoid the stigma which may be attracted by a state responsible for outright deprivation of nationality. Here Hungary offers an unfortunate parallel to the Third Reich, which by its Reich Citizen Law of 15 September 1935 and First Regulation to the Reich Citizenship Law of November 14, 1935 did not remove the status of 'state citizen' ('Staatsangehöriger') of those not of 'German or kindred blood', but removed the political rights such persons otherwise possessed qua 'state citizen', limiting these to those denoted as a 'Reich citizen' ('Reichsbürger'). It seems likely an important reason for the form of this measure was to avoid outright deprivation of nationality and the international opprobrium attached to states which by deprivation of nationality created crises of statelessness impinging not only on other individuals (historically, outright deprivation followed for many in 1941, under the 11th Executory Decree to the Reich Citizenship Law). In this sense the adoption of a relatively novel concept of 'suspension of citizenship' may serve to confuse and distract- but it is not devoid of meaning.

Secondly, it seems the law as described might be operated inoffensively and impartially. But if instead applied for illegitimate purposes such as the targeting and exclusion or suppression of political opposition, would breach a number of obvious standards. If it does not apply to a dual Hungarian-German citizen, for instance, because the second nationality is that of an EU or EEA member state, then in application to, say, a dual Hungarian-Canadian citizen, it might seem that 'suspension' of Hungarian citizenship means either (i) if the effect of 'suspension' of Hungarian citizenship is consequent 'suspension' of the EU citizenship otherwise secondary to Hungarian citizenship under article 20 Treaty for European Union and exclusion from benefit of article 3(2) Treaty on the European Union, by which 'The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime'- or (ii) even if 'suspension' does not vitiate EU citizenship and its effects generally, for the affected person, if Hungarian law excludes an individual from exercising EU rights in Hungary, his or her country of state nationality, this still seems to collide with the EU law acquis, even without reference to the affirmation of the importance of EU citizenship in Commission v Malta (Citizenship by Investment) [2024] EUECJ C-181/23.

Thirdly, it is trite to observe that the right to a nationality and general prohibition on arbitrary deprivation of nationality at article 15 of the Universal Declaration on Human Rights was not mirrored either in the European Convention on Human Rights (ECHR) or the International Covenant on Civil and Political Rights. But there is perhaps a some silver lining in the fact that this has left the European Court of Human Rights to develop a jurisprudence around the article 8 right to respect for private and family life in such cases as Huseynov v Azerbaijan (no 2) appn 1/2016 [2023] ECHR 591 (declaration of interest, I was instructed in the matter by an intervenor, the Institute on Statelessness and Inclusion), given that this means that should the Court be asked to examine 'suspension' of nationality, it need not be hung up on definitions.

Fourthly, Dr Szigeti mentions section 40(2) British Nationality Act 1981 (BNA 1981), in this form since amendment in June 2006, under which the Secretary of State for the Home Department 'may by order deprive a person of a citizenship status if… satisfied that deprivation is conducive to the public good' (although this may not be done of the Secretary of State is satisfied deprivation would render the person in question stateless, absent special circumstances- section 40(4)-(4A) BNA 1981). That provision might well be thought unduly broad (see inter alia 'Conducive Deprivation of British Citizenship Status and Statelessness: Further Problems' (2013) 27 Journal of Immigration, Asylum, and Nationality Law, No 4, 315-330). Although applied in a relatively small number of cases, the small number of cases is not a consequence of the statute but of restraint- or assumed restraint- by particular political attitudes and beliefs, as much as by ECHR or domestic administrative law.

Fifthly, I would respectfully dissent from Dr Szigeti on nationality measures as dédoublement of criminal law, in re BNA 1981 or otherwise. A matter may attract either a criminal or civil sanction or both. Accepting fully that 'suspension of citizenship' is a concept in the law of some Latin American (and perhaps other) states which can in that particular context be characterised as 'a type of felon disenfranchisement' by which civic rights are attenuated following criminal conviction, that seems very different from the Hungarian law, and I worry that this may risk mixing two concepts using the same name, which in fact are different in that one has an aspect of dédoublement and the other does not.

Sixthly and finally, Dr Szigeti explains that a 'suspended' Hungarian citizen benefits from instant restoration of unsuspended Hungarian status if the other citizenship is lost. This does create some scope for action by second countries. To provide an example, and finish with a happy nationality story involving Canada, all Canadians know that in January 1943 the Dominion of Canada declared a ward of the then Ottawa Civic Hospital temporarily outside Canada, so Princess Margriet of the Netherlands could be born to the exiled Princess Juliana and Prince Bernhard a Netherlands citizen by ius sanguinis, not a British subject by ius soli (https://www.cbc.ca/news/canada/ottawa/royal-birth-at-ottawa-hospital-celebrated-with-tulips-80-years-after-liberation-of-netherlands-1.7532885).

Thank you again Dr Szigeti!