

## Chapter 15

# Connections of Kin minorities to the Kin-state in the Extended Schengen Zone

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‘Reduction in the strength of Hungarian minorities must be stopped, travel by youth to the homeland must increase, opportunities for recognition of Hungarian language and culture have to be upgraded, and problems relating to visa requirements due to EU accession must be resolved’ (8th Congress of Young Hungarians, Kosice-Slovakia). On the same page of the biggest daily newspaper in Hungary the ex-Minister of Foreign Affairs and a key person in the previous cabinet, Mr. Németh, rejects the criticism of the EU Commissioner for Enlargement, Mr. Verheugen, who urges amendments to the ‘Act on Hungarians Living in Neighbouring Countries’. The MP of the strongest opposition party cannot accept the Commissioner’s interpretation of the act and the Hungarian Certificate, which establishes a specific political connection between Hungary and its kin minorities. ‘Why would we provide cultural and educational benefits exclusively for ethnic Hungarians across the borders? Mr.Verheugen’s statement is in conflict with the expert opinion of the Venice Commission’.<sup>1</sup> These two quotes express briefly the ongoing debates on enlargement, including the application of the Schengen zone, and their impact on domestic and regional as well as wider political and legal attitudes. This article aims to describe certain aspects of the Schengen regime and its ramifications in respect of diaspora policy.

### I. Minority Rights or Issues in the Community?

Minority issues are of a dual nature; they are partly political and partly legal. Due to an absence of a regulatory mandate for EU institutions in this field, the protection of minorities is an internal matter for member states. Instead of common legislation on the EU level, minority issues have been mentioned in various political documents adopted by the European Parliament, for example the resolutions on how to protect and to provide for the teaching and use of regional and minority languages in public education or in public

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1 Both quotes were published in *Népszabadság*, 17 December 2002, p. 3.

services.<sup>2</sup> In addition, respect for human rights and their protection is part of the legal principle of Community law in general, but special guarantees for minority rights are found outside of the EU, such as in the Council of Europe. While the number of EU references to the *European Charter for Regional or Minority Languages* (1992) or the *Framework Convention for the Protection of National Minorities* (1995) is growing, member states are not necessarily state parties to these regional conventions.<sup>3</sup> However, this language protection policy, including budgetary contributions to numerous programmes,<sup>4</sup> can bypass the inconvenient recognition of the existence of an ‘ethnic or national minority’.

Another possibility for the protection of minority rights in the EU can be found in its cultural profile, which was reinforced by the Maastricht Treaty. Article 151 of the consolidated version of the Treaty Establishing the European Community emphasises the protection of regional and national diversity, including the protection of minority cultures.<sup>5</sup> After much debate, no separate minority article was inserted into the EU *Charter of Fundamental Rights* (2000). The protection of cultural, religious and linguistic diversity in the Union is not a binding, legally enforceable obligation as referred to in Article 22 of the *Charter of Fundamental Rights*.

Indirectly, the minority rights present in the Amsterdam Treaty can only be found in the form of combating discrimination on, *inter alia*, the grounds of racial or ethnic origin, religion or belief (Article 13). Today, this is the highest-level reference in the EU *acquis*, which can be applied indirectly to the protection of minorities. The European Court of Justice in the *Bickel-Franz* case affirmed that the protection of such a minority could be the legitimate, just objective of the state.<sup>6</sup> The Court is inclined to accept the legitimacy of the protection of minorities also in the interpretation of the prohibition on discrimination. Moreover, the protection of minorities is indirectly

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2 European Parliament Resolutions on the Community Charter of Regional Languages and Cultures and on a Charter of Rights of Ethnic Minorities (OJ 1981 C 287/106), on measures in favour of minority languages and cultures (OJ 1983 C 68/103), on the languages and cultures of regional and ethnic Minorities in the European Community (OJ 1987 C 318/160), and on Linguistic Minorities in the European Community (OJ 1994 C 61).

3 For more details, see [www.coe.fr/treaties/](http://www.coe.fr/treaties/).

4 See Balázs Vizi, ‘The European Union and the Rights of Ethnic Minorities. A Short Introduction to a Yet Immature Relationship’, *Minorities Research* 4 (2002), pp. 145-159.

5 Martin Estébanez, ‘The Protection of National or Ethnic, Religious and Linguistic Minorities’, in N.A. Neuwahl and A. Rosas, eds., *The European Union and Human Rights* (The Hague, 1995), pp. 133-163.

6 Case 274/96, *Bickel and Franz* [1998] ECR I-7637 (judgement of 24 November 1998) concerned the question whether the right to use the German language in official procedures applied to protect the local German minority as a right of EU nationals. Cf Philip Alston, *Human Rights and the EU* (Oxford, 1999).

served through improvements in social cohesion and social integration that may prevent exclusion, discrimination or racism (in its broader sense) against traditional or new minorities. Nonetheless, these developments are a long way from the point where the protection of minorities can be considered as one of the principles of the *acquis*.<sup>7</sup>

Since the mid-1980s the Council and the Commission have been making use of the EU's foreign trade policies for the protection of human rights with reference also to minority issues in OSCE documents – if the other party is also an OSCE member state. The protection of human rights appeared in a contractual form as a clause of the document, or within the framework of European political cooperation. For instance, the recognition of statehood was made conditional upon guarantees for the rights of ethnic and national groups and minorities in accordance with OSCE documents.<sup>8</sup> Similarly, the partnership cooperation agreements signed with Central and Eastern European countries contain a clause on respect for and protection of minorities. The 'Pact for Stability and Security in Europe' (PSSE), proposed by the French President Balladur, gave new impetus to minority issues in external relations. The partly naive idea of PSSE, which aimed at the settlement of disputed questions in Central and Eastern Europe, originated from the assumption that the economic power and political pressure of the EU and the promise of future membership would motivate the countries of the region to solve, *inter alia*, minority problems in a spirit of good neighbourliness and the protection of minorities. Although numerous bilateral agreements were concluded on good neighbourhood relations, minority protection, and dozens of round table negotiations were held, the whole PSSE process did not yield the expected results due to the absence of any concrete preliminary assistance, control mechanisms, sanctions or accession deadline.<sup>9</sup>

Today, minority rights are most obviously present in the enlargement policy of the EU. The protection of minority rights is one of the accession criteria determined at the Copenhagen Summit in 1993. It is labelled as a political criterion and also a political precondition for the start of accession talks, although together with other political criteria, it is not part of the subject-matter of the enlargement negotiations conducted with EU candidate countries. For this reason, the EU intends to judge minority protection in a less strict way, asking for example, how satisfied are minorities with their conditions in the given candidate state, to what extent do they endanger the political stability of the country; and to what extent is public opinion in the

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7 K. Szajbély and J. Tóth, 'Kisebbségvédelem az Európai Unióban', *Kisebbségkutatás* 11:2 (2002), pp. 520-534.

8 Bulletin EC, 12-1991, 119.

9 Péter Kovács, *Nemzetközi jog és kisebbségvédelem* (Budapest, 1996).

country divided on minority issues? The criticism in the Commission's annual reports on the progress candidate countries have made towards accession covers various aspects of the issue, mainly discrimination, social exclusion, the language rights of and general attitudes towards minorities, in particular to the Roma. Nevertheless, the question arises: On what grounds can the EU evaluate the extent to which and when the policies of candidate states comply with the Copenhagen criteria in the absence of rules, mechanisms and uniform practices of minority protection in the EU *acquis*?<sup>10</sup> 'Presumably, it is not far from the truth that the political criterion of the protection of minorities is a "floating" condition of enlargement'.<sup>11</sup> This inconsistent approach to minority rights in the accession process may endanger the credibility of EU external policy or may raise the question of double standards in the EU. While the assessment of the political criterion concerning minority protection can refer only to non-EU documents, such as minority rights conventions made under the auspices of the Council of Europe or the OSCE, EU member states are not necessarily state parties. Is this likely to change after EU enlargement to the east?

On the other hand, the living conditions of minorities affecting their rights (access to justice, public education, the labour market, vocational training, etc.) have appeared on numerous occasions during accession negotiations. In this context, minority issues are part of the political bargaining between the EU and the government of the candidate state. The indirect involvement of minority issues in accession talks truly has a double meaning; no objective assessment of minority rights exists, and minorities' living conditions are discussed without the participation of representatives of minorities.

The relative and absolute numbers of ethnic and national minorities in the candidate states is significant, and their problems have become an organic part of internal policy and regional affairs. Furthermore, almost all of the accession countries have kin minorities and diaspora in other candidate states and/or in several countries beyond the first round of enlargement to the east. It is unclear in the medium term whether this factor will inspire the establishment of a consistent system of minority rights on the EU level including requirements for retaining connections between kin-states and kin minorities.

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10 For this reason, the International Conference, 'L'Unité et la diversité de l'Europe: les droits des minorités', held at the Palais d'Egmont in Brussels, 28 October 2002, offered *inter alia* to create a legal basis for the evaluation and the establishment of a catalogue of minority rights at the EU level. These recommendations were forwarded to the European Convention on the Future of the EU.

11 Vizi, 'The European Union', p. 157.

## II. The Case of the Hungarian Diaspora

The dominant view regarding the classification of extraterritorial ethnic Hungarians as a diaspora is that while Hungarians living in Western countries are considered to be a diaspora because the emergence of their community is the result of migration, the formation of the Hungarian population in the Carpathian Basin is not (characteristically) related to the migration of people but to the ‘migration’ of state borders in the twentieth century. The whole of the Hungarian population living within the Carpathian Basin is not regarded as Hungary’s diaspora by contemporary commentators of diaspora politics. However, a number of empirical (sociological and anthropological) arguments may provide us with a sufficient basis to recommend that the nature of the connection of ethnic Hungarians across the borders and in the Carpathian Basin with Hungary (a native country that they have never left) should possibly be considered as one displaying diasporic features.<sup>12</sup>

**Table 1. Number of Ethnic Hungarians in Neighbouring States**

Country	Ethnic Hungarians
Austria	6,763
Croatia	22,355
Slovenia	8,503
Yugoslavia	340,946
Ukraine	155,177
Slovakia	556,447
Romania	1,624,142

**Source:** Census (1989-1992).

According to relevant statistics based on the last census in the countries in question, the total number of ethnic Hungarians in surrounding states was about 2,700,000 persons in the early 1990s (Table 1), but the total number of the whole diaspora is estimated at almost five million.<sup>13</sup> From this figure, there are 1,200,000 in the Carpathian Basin and from the whole diaspora about two and half million Hungarians live in scattered communities where the erosion of their language is the strongest feature.<sup>14</sup> For them, all contributions in kind from and personal contacts with the mother country are of utmost importance.

12 Endre Sik, ‘Diaspora: Tentative Observations and Applicability in Hungary’ in I. Kiss and C. McGovern, eds., *New Diasporas in Hungary, Russia and Ukraine: Legal Regulations and Current Politics* (Budapest, 2000), pp. 20-41.

13 Pál P. Tóth, ‘Hungarians in the World’, *Minorities Research* 4 (2002), pp. 15-21.

14 Béla Pomogáts, ‘Két és félmillió magyar szórványban’, *Kisebbségkutatás* 11:2 (2002), pp. 596-601.

Although no references are made to the ethnic background of foreign visitors in statistics compiled by border guards, the aliens police or the immigration office, the proportion of ethnic Hungarians among all groups of migrating populations to Hungary has been significant in the last decade. According to expert opinion, the proportion of ethnic Hungarians among foreign migrants moving to Hungary oscillated between 55 and 95 percent during the period 1990-2000.<sup>15</sup> This means that the majority of (potential) migrants is strongly affected by minority policy in the place of origin and also by Hungarian diaspora policy, as well as by good or sometimes stormy neighbourhood relations. At the crossroads of different principles of migration and kin-state and minority politics, the last decade was a period of establishing new contractual and migration connections in this region (Table 2).

While the gradual liberalisation of border crossing, including visa-free travel and the movement of small-scale local border traffic, was a common need of neighbouring nations, the pattern of readmission agreements and treaties on friendship was related mainly to the accession efforts and the PSSE.<sup>16</sup>

Visa-free travel within this region is almost universal, with the sole exception of the Ukraine where a voucher or invitation letter is required. The old agreements provide residence for up to 30 days but the new ones not only triple this period, but also provide for passport-free travel with Croatia and Slovenia. This liberalised movement was accompanied by liberal controls on the financial requirements for residence in Hungary and the material circumstances of passengers. Because of the over-representation of ethnic Hungarians among migrants, the minimum amount of cash required for travelers has been kept at an artificially low level regardless of the purpose or length of stay in the country.<sup>17</sup> This lax and less controlled entry from the Ukraine and Yugoslavia will change to a great extent, and to a smaller extent at the Romanian and Croatian borders, after EU accession. The EU *acquis* requires the conclusion of new agreements on visa restrictions with the Ukraine and Yugoslavia together with treaties on readmission and cooperation in combating organised crime. All candidate governments have announced that this visa regime (the new 'iron curtain') will only be introduced at the last moment,

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15 Pál P. Tóth, 'Nemzetközi vándorlás - Magyarország (1990-2000)', Paper Presented to the Prime Minister's Committee on Demography, Institute for Demographic Science, Central Statistical Office, 2002. The Office for Migration and Citizenship Affairs (Ministry of the Interior) announced that the overwhelming majority of residence permit holders (i.e. about 110,000 foreigners) living in Hungary were ethnic Hungarians, and that their migration was based on family reunification: *Népszabadság*, 19 December 2002.

16 On accession efforts, see Judit Tóth, 'The Application of Justice and Home Affairs and the Position of Minorities: The Case of Hungary', *CEPS Policy Brief* 18, March 2002.

17 Since 1994 this amount has been 1000 HUF (5 Euros) per capita per entry. See the Decree of the Ministry of Finance 13/1994 of 29 April 1994 and Ministry of Interior Decree 29/2001 of 10 December 2001.

together with the adoption of some additional instruments for political and economic compensation (e.g. agreements on minority protection, free trade, tourism, protection for foreign investment and avoidance of double taxation). The visa requirement alone will raise numerous technical, financial and administrative questions in consular offices and at border crossing points. From the data on border crossings (Table 3),<sup>18</sup> it is possible to predict high pressure on consular offices in the future.

**Table 2. The most relevant agreements on international migration concluded by Hungary with neighbouring states**

Country	Visa-free travel since ...	Local border traffic since ...	Readmission Agreement in force since ...	Bilateral framework agreements on friendship and good neighbourhood relations
Austria	1 June 1997(visa free regime applicable since 12 December 1978) (for a 90 days stay)	-	20 April 1995	-
Slovakia	4 September 1994 (for a 90 days stay)	8 July 1963 (Czechoslovakian agreement is applicable, for a 6-60 days stay)	20 April 1995	Applicable since 15 May 1996
Ukraine	1 September 1979 (with voucher or letter of invitation for a 30 days stay)	26 February 1993 (text not published)	5 June 1994	Applicable since 16 June 1993
Romania	24 February 1968 (for a 30 days stay)	12 January 1970 (for 6-16 days)	30 October 1994	Applicable since 27 December 1996
Yugoslavia	15 February 1966 (for a 30 days stay)	30 March 1976 (10-20 days stay)	- (still to be ratified by Yugoslavia, date of signature 7 November 2001)	20 January 1948 (still in force but not applicable)
Croatia	29 June 2000 (also with an ID card, for a 90 days stay)	Yugoslavian agreement is applicable	20 November 1996	Applicable since 21 December 1993
Slovenia	27 June 1998 (also with an ID card, for a 90 days stay)	Yugoslavian agreement is applicable	29 July 1999	Applicable since 4 March 1994

18 Source: www.b-m.gov.hu.

**Table 3. Number of persons from neighbouring states entering the territory of Hungary (2000-2001)**

At the border of	2000	2001
Austria	5,394,238	5,017,904
Romania	5,055,706	5,179,246
Slovakia	4,391,312	4,285,990
Ukraine	2,713,743	2,858,818
Yugoslavia	3,482,940	4,317,990
Croatia	3,590,600	2,787,043
Slovenia	751,737	637,848

This pressure will be increased not only by the large number of applicants but also because of the need to scrutinise passports, the existence of sponsorship, whether the passenger possesses sufficient material resources for the stay, and the genuine purpose of the travel, etc. This evaluation process treats the applicants as potential criminals in the spirit of the fight against illegal migration in accordance with the *Common Manual* and the *Common Consular Instructions*.<sup>19</sup> Furthermore, irregularity, illegality (e.g. entry for a wage-earning activity or to establish a small business) or the realities of poor living standards experienced by migrants cannot be eliminated by minority or diaspora policy. This ‘risk management’ would be in harmony with minority protection, at least in those state parties to relevant conventions. For example, the ‘free and peaceful contact across frontiers’ and the encouragement of ‘trans-frontier cooperation’ in the *Framework Convention for the Protection of National Minorities in Europe* can be limited within the framework of human rights protection.<sup>20</sup> How can the Schengen *acquis* be

19 See Council Regulation No.789/2001, 25 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications (OJ 2001 L 116, 26.04.2001), Decision of the Executive Committee of 28 April 1999 on the compilation of a manual of documents to which a visa may be affixed (SCH/Com-ex(99) 14), the amended Decision of the Executive Committee of 28 April 1999 on the definitive versions of the *Common Manual* and the *Common Consular Instructions* (SCH/COM-ex(99) 13), Decision of the Central Group of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/C(98) 117), Decision of the Executive Committee of 16 December 1998 on the introduction of a harmonised form providing proof of invitation, sponsorship and accommodation (SCH/COM-ex (98) 57), etc. See further in OJ 2000 L 239 and also General Secretariat of the Council, *The Schengen Acquis integrated into the European Union* (Office for Official Publications of the European Communities: Luxembourg, 2001). On the role of the fight against crime, see Péter Kovács, ‘The Schengen Challenge and Its Balkan Dimensions’, *CEPS Policy Brief* 18, March 2002.

20 Article 17 (1): ‘The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage. (2) The Parties un-



made to conform to human rights? What is the connection of the *acquis* with the international conventions on minority rights?

On the other hand, modification or modernisation of the agreement on visa free travel (e.g. length of residence, procedural matters) with Romania is necessary in accordance with the Council's amended visa regulation.<sup>21</sup> Moreover, Hungary has prepared no strategy in the event that Romania (or Bulgaria) are deleted from the list of countries whose nationals are exempt from the visa requirement. These countries' position is fragile,<sup>22</sup> but Hungary will be the last to encourage the introduction of visa requirements.

Taking into account the major principles of the Schengen *acquis* and the practice of migratory movements at the Hungarian borders, the following 'challenges for the Hungarian-Hungarian relations' can be summarised:<sup>23</sup>

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undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels'. Article 18 (1): 'The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned. (2) Where relevant, the Parties shall take measures to encourage transfrontier co-operation'. Article 19: 'The Parties undertake to respect and implement the principles enshrined in the present Framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles'.

- 21 Council Regulation (EC) 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. It was amended by Council Regulation (EC) 2414/2001 (OJ 2001 L 327, 12.12.2001).
- 22 For example, the Deputy Minister of the Interior announced that tougher measures would be introduced against Bulgarians who took advantage of visa-free travel within the Schengen Area to seek employment, apply for asylum or become involved in criminality. Between April 2001 and October 2002, 6,561 Bulgarian citizens were arrested and expelled from the Schengen states, the USA and Canada: *Migration News Sheet*, November 2002, p. 3. Similarly, the Head of Association of Travel Agencies addressed a letter to the Director General of the Aliens and Immigration Department (Ministry of the Interior) in Spain on 30 September 2002. His action was supported by the Head of the Catalan regional parliament. They proposed the introduction of entry visas for Romanian nationals mainly on the basis that there was unfair competition with Romanian travel agencies but the letter also referred to the 40,000 Romanian nationals, who had arrived not as tourists but rather to seek employment. Romanian travel firms provided them with the necessary 600 Euros to prove at the border that they had sufficient resources to cover their expenses abroad. These funds must be handed back to the firm on arrival at the destination: *Migration News Sheet*, November 2002, p. 5.
- 23 The phrase is that of Péter Kovács, *A schengeni kérdés* (Budapest, 2000). The following is based mainly on the Schengen Implementing Agreement, Arts. 5 (1), 6 (2) and 7.15 15 Resolution of the Government on Executive Costs of the Act on Hungarians Living in Neighbouring States, 11 January 2002.

(1) Obtaining a visa would demand a complex process both for Hungarian authorities and travelers. For instance, the seasonality or peak period of movements cannot be avoided by advanced visa applications because of the strict validity and applicability of visas. Furthermore, the necessary cooperation among the consular offices of member states, including the necessary checks in databases, require more time and proper personnel.

(2) The uniform visa fee will be higher than what is affordable in the context of the living standards in this region, in particular for retired family members, unemployed or inactive persons.

(3) Being placed on the joint list of unwanted foreigners also means a prohibition on entry into the territory of Hungary and *vice versa*. When the Schengen regime enters into force in Hungary, thousands of citizens of neighbouring states would find themselves on this list because of their prior irregular activities.

(4) Other experts have drawn attention to possible or existing errors in personal data management or mistaken identity in the SIS as well as the different data protection practices of member states that may destroy the credibility of the whole joint data system.<sup>24</sup> Moreover, visa and entry controls should be in harmony with the need to observe privacy (e.g. data on health conditions, bank accounts).

(5) Documents supporting the purpose and the conditions of the planned visit, as well as the means of return and means of subsistence must be checked by Hungarian authorities, not only in the framework of the visa procedure but also at border crossings. As the *Common Manual* and the *Common Consular Instructions* stipulate, this check relates to liquid cash in convertible currency, travelers' cheques, cheque books for a foreign currency account, and credit cards, even though there is no proper banking system in all the neighbouring countries, and the majority of the population in Ukraine or Romania have never seen credit cards or travelers' cheques. The gradually unified minimum of subsistence costs per capita would amount to far more than travelers in general would be able to afford in this poor region.

(6) In fact, checks on insurance (of travelers and cars) are not presently enforced for the same reason, but they will be enforced in the future, although insurance is neither common nor cheap.

If these 'challenges' alone are not enough, the number of border crossings from neighbouring states will drop significantly purely because of the small capacity of consular offices and border controls. Some figures on

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24 Boldizsár Nagy, 'A schengeni rendszer és Magyarország: az út Amszterdamig és tovább', *Acta Humana* 37-38 (1999), pp. 24-56; Kinga Szurday, 'A schengeni egyezményről és a schengeni információs rendszerrel kapcsolatos adatvédelmi követelmények', *Acta Humana* 37-38 (1999), pp. 72-80.

costs can be provided as a comparison. The less complicated procedure of issuing about 100,000 Hungarian Certificates in a few months required an increase in consular personnel and administration, and the costs amounted to 10.7 million Euros.<sup>25</sup> It can only be imagined what the issue of 195,000 visas daily for Ukrainian and Yugoslav nationals would require. In the case of obtaining multi-entry visas perhaps a quarter of this figure would be sufficient?

The long tradition of local border traffic has been one of the peculiarities of this region.<sup>26</sup> The post-World War I peace agreements, which ignored ethnic boundaries, led people to develop a local border traffic regime in order to retain more easily economic and family contacts between the kin minority living in the border zones of the new adjacent states and Hungary. Since the mid-1920s, treaties with Austria, the former Czechoslovakia, Romania and Yugoslavia were concluded. Domestic regulations also defined how Hungarian citizens living in the 10-15 km border zone could cross the frontier using a passport, border certificate (e.g. for daily commuters to cultivate the land) or occasionally issued travel permits, either at regular crossing points or in other designated places. Further details were stipulated in each treaty and its executive ministerial decree (e.g., crossing the Austrian and Hungarian border was permitted only between sunrise and dusk, whereas the border certificate permitting the crossing of the Hungarian and Romanian border was valid for three months). After World War II, the new government of Hungary urged the revitalisation of local border traffic agreements on the basis of previous ones. In 1945-46, new agreements were drawn up in response to considerable migratory movements. These also encompassed the 10-15 km border zones and the local population providing six to eight days of residence in the other state party. After a few years when migration was frozen, a new generation of treaties was born in the 1960s with the exception of Austria and the former USSR. These new treaties departed substantially from the previous ones: border crossing was permitted only at regular crossing points, the list of settlements in the border zone was officially fixed, the number of border crossings was limited to four times a year, etc. As local border traffic decreased, ethnic relations were also affected. With the gradual liberalisation of travel and passport rules in the 1980s, local border traffic began to lose its importance. Data from the Ministry of the Interior demonstrate that the applicability of these agreements is largely obsolete (Table 4).

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25 Resolution of the Government on Executive Costs of the Act on Hungarians Living in Neighbouring States, 11 January 2002.

26 János Sallai, 'A schengeni rendszer és a kishatárforgalom', in Judit Tóth, ed., *Schengen -A magyar-magyar kapcsolatok az uniós vízumrendszer árnyékában* (2000), pp. 49-62.

It can be seen that local border traffic is numerically significant only for movement between Ukraine and Hungary, basically as a result of irregular migration. ‘Gasoline tourists’ or ‘suitcase traders’ constitute the major kinds of border crossing in order to take advantage of price differences, which is frequently the only source of income of the unemployed, the socially excluded, or victims of natural disasters. For them, cheaper travel documents and easy border crossings are important but the Commission cannot accept the current regime and prefers to develop the *acquis* on local border traffic based on genuine tourism or regional cooperation between visa-free states. It is questionable, therefore, whether the EU intends to extend the local border traffic regime in respect of nationals who require visas. Today there is no *acquis* on local border traffic.<sup>27</sup> Moreover, the existing rules on bilateral agreements are indeed diverse (e.g. as regards the scope of application, reasons for movement, permissible duration of residence in the other state party, different types of border crossing points and at different times, the existence of readmission clauses). However, the preparatory material for the *acquis*<sup>28</sup> contains no reference to ethnic relations but only to the development of the economy, tourism or the labour market. It also requires that the facilitation of border crossing be accompanied by a firm commitment to combat illegal (irregular) migration and risks to security. The legislative initiative of the Commission establishing common minimum standards to be complied with in all agreements concluded with third countries also intends to serve this purpose.

**Table 4. Number of Hungarian citizens and citizens of adjacent states moving in the framework of local border traffic (2000-2001)**

At the border of	Hungarian citizens		Citizens of adjacent states	
	2000	2001	2000	2001
Croatia	6	11	91	0
Yugoslavia	1,717	1,448	9,100	18,247
Romania	14,196	10,298	17,387	17,475
Slovakia	1,962	1,037	713	1,376
Ukraine	217,938	265,051	1,192,409	1,314,481
Slovenia	0	0	0	0

The Hungarian Government decided to revise the bilateral agreements concluded with neighbouring states on the border regime and local border

27 On the basis of the Schengen Implementing Agreement, Art. 3 (1).

28 Commission of the European Communities, Staff Working Paper, *Developing the Acquis on Local Border Traffic*, SEC (2002) 947 of 9 September 2002.

traffic in the framework of accession efforts in order to develop the unified border control system.<sup>29</sup> The resolution aims to strengthen contacts between border zones and to modernise border controls in accordance with the *acquis*. The Minister of the Interior is responsible for negotiations with government agencies in neighbouring states on the future of small traffic agreements until the end of 2002.<sup>30</sup> The room for manoeuvre for the government is limited because measures on irregular migration, false travel permits and visa restrictions cannot be inserted in any event into local border agreements, in particular with Ukraine.

In general, it is inconvenient for the Government to terminate these agreements<sup>31</sup> or introduce the visa restrictions while representatives of ethnic Hungarians living across the borders feel like abandoned children, or to urge following the preferential practices in EU member states.

As a Transylvanian, I consider the German example pertinent. [...] The Romanian Germans can obtain a visa unconditionally: there is no need for invitation letters and various other documents; they do not have to pay a visa fee – only an administration charge – and they do not have to wait 3-5 days for an answer. However, they need to have papers: the *Volksdeutsch*, the certificate of being a member of the German nation. [...] It is hardly imaginable that the West would act severely against such a solution, which has been practised by a Member State for years. Furthermore, the German example is important because the extension of Schengen borders eastwards will not resolve the problem of preferential treatment of compatriots living in the East for the German government, and it is highly probable that the Government will wish to continue the successful practice of the past 10 years.<sup>32</sup>

This one example represents the prevailing approach of the elite but this legal basis as a pillar of the Hungarian government's strategy in accession

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29 Government Resolution No.2013/2001 of 17 January 2001.

30 Order No.17/2001 of the Minister of the Interior on Adaptation of the Schengen *acquis* in legislation and capacity building of border management, as amended by Order No. 32/2002. For example, the Order aims to terminate the agreements on small border traffic, to introduce uniform visa fees, to revise the agreements on border controls with Romania, Croatia and Yugoslavia, and to recruit border guard staff up to a total of 14,000 persons.

31 One example of ambivalence: Despite the prior information, the small border traffic regime will be kept in place at the Ukrainian-Hungarian border in the first part of 2003. The intention to terminate the agreement was greeted with dismay by the Hungarian community in the Ukraine as expressed in their public letter to the Hungarian Prime Minister: Announcement of the Consular Office MFN, *Népszabadság*, 31 December 2002.

32 Barna Bodó, 'Schengen-The Challenge', *Minorities Research* 3 (2001), pp. 105-113, here p. 108.

talks does not exist. Although Schengen ‘is not a homogeneous system’,<sup>33</sup> the ethnic preferences were developed gradually without the objections of the local state. Furthermore, the principle of citizenship or asylum, colonial ties or the needs of the labour market may ‘cover up’ the ethnic preferences.<sup>34</sup> These preferences have to be compensated by guarantees: that the third country nationals in question do not move to the other states in the Schengen zone; that ethnic preferences cannot violate the principle of non-discrimination on the basis of nationality in Community law; and that a special status including social assistance is not provided for immigrant compatriots, etc. Some politicians in Hungary and beyond the borders believe strongly that national interests can and should be tolerated by accession to the Schengen *acquis* within existing exceptional rules and practices. For instance, ‘a Contracting Party may in exceptional cases derogate from the common visa arrangements relating to the Third State where overriding reasons of national policy require an urgent decision. It shall first consult the other Contracting Parties and, on its decision, take account of their interests and the consequences of this decision’.<sup>35</sup> Travelers in large numbers cannot be treated exceptionally unless strict controls at all internal borders are managed. In other words, this entitlement can be the final solution only for the elite of ethnic communities beyond the borders but others have to stand in long queues in front of consular offices. The long-term national visa was considered as a remedy without taking into account the forthcoming uniform requirements for visas, border crossing and border controls on the basis of the legislative mandate of the EU.

### III. Is There Any Comprehensive Panacea?

In recent years, a number of proposals have been circulated in the press and in political arenas on how the concerns relating to Schengen can be compensated in favour of the diaspora: (1) active governmental lobbying for the removal of Romania from the negative visa list; (2) introduction of visa requirements at the last moment before accession; (3) strengthening good neighbourly relations with adjacent states in the framework of bilateral agreements; or (4) unilateral regulation, such as the granting of dual citizenship or the introduction of a special legal status for all ethnic Hungarians living outside of the extended Schengen zone. The two latter proposals are considered diametrically opposite, and conservatives have urged the unila-

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33 Péter Kovács, ‘Co-operation in the Spirit of the Schengen Agreement - The Hungarians beyond the Borders’, *Minorities Research* 2 (2000), pp. 124-131, here p. 129

34 On citizenship and asylum, see András Gyertyánfy, ‘A határon túli németek jogállása a magyar Schengen-probléma tükrében’, *Regio* 11 (2000), 1, pp. 140-157.

35 Schengen Implementing Agreement, Art. 9 (2).

teral, ‘genuine national’ approach, while the pragmatic socio-liberal coalition has applied the way of mutual compromise and cooperation. However, the agreements on good neighbourly relations contain neither mechanisms for reconciliation or control nor sanctions, and the key actors of both state parties have become exclusively the governments with an eye on their own fragile voter-bases.<sup>36</sup> Moreover, these agreements were concluded in the context of strong international pressure as a follow-up to the PSSE, which also contributed to political resistance in Hungary.<sup>37</sup> Perhaps these circumstances explain why the Hungarian legislation was drifting more and more towards the preparation of the ‘Act on Hungarians Living in Neighbouring Countries’.

The governing programme of the ruling party in 1998-2002<sup>38</sup> proposed the possible creation of the act, although this was not a definitive step. Under the sub-title ‘Integration policy expressing national interests’, the programme refers to the close connection between EU accession and implementation of the Community rules on visas and immigration (in respect of third country nationals) and relations with neighbours: ‘For this reason the Government is making efforts to prepare *special solutions* acceptable to the EU, which can ensure an uninterrupted relationship with the population of neighbouring countries, in particular with Hungarians living there, and which cannot diminish the acquired level of Hungary’s good-neighbour policies’. Integration policy based on (partly) national interests also includes assistance for neighbouring states in their aspirations to accede to the EU as well as respect for bilateral agreements on friendship and cooperation (Basic Agreements) with neighbours that ‘shall be made more substantial and supplemented by further agreements on details and practical issues’.

The programme refers to legislation more unequivocally under the sub-title ‘Nation policy’. Ethnic Hungarians living across the borders are mentioned as participants in the unification of Europe, as subjects who shall make their own way of life in, and as people who are to remain in, the homeland (across the borders): ‘For these purposes the relations of Hungarians across the borders with Hungary shall be determined within a *legislative* and administrative framework which will be able to ensure an organic relationship of Hungarian communities to the kin-state even after EU accession’.

On the one hand, it can be demonstrated that the governing powers have considered ethnic minorities beyond the borders as ‘historical obstacles’ to

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36 Judit Tóth, ‘Diaspora Politics: Programs and Prospects’ in Kiss and McGovern, *New Diasporas*, pp. 96-141.

37 Péter Csigó and Éva Kovács, ‘The Hungarian - Romanian Basic Agreement: Positions and Issues in the Debate’ in Kiss and McGovern, *New Diasporas*, pp. 142-190.

38 The whole text in Hungarian can be found on [www.htmh.hu/kormanyprogram.htm](http://www.htmh.hu/kormanyprogram.htm).

politically smooth European integration and friendship with neighbours. This is the foreign affairs context. On the other hand, the ethnic communities are said to belong also to the fragmented nation that is to be unified (at least spiritually) again. This dichotomy is reflected in the programme as well as in the three priorities of foreign affairs policy followed by Hungary since 1989. Accordingly, the major and equally important goals of foreign policy are as follows: accession to NATO and the EU; maintaining good relations with all neighbours; taking responsibility for ethnic Hungarians outside Hungary as a kin-state cherishing wide contacts with Hungarians living across the borders. Instead of the promised hard negotiations with the EU, there were stormy debates on the Bill inside Parliament and in the media, political discourses about national interests, special solutions and compensatory measures for restrictions on movement. The closing of the negotiating chapters of the *acquis* on free movement of persons and justice and home affairs without any derogation (as a possible element of ‘special solutions’) but with the acceptance of temporary limitations for Hungarian nationals concerning mobility in the EU, the adoption of the new restrictive act on entry and residence for all types of foreigners in Hungary, and the turbulent voting process on the act all followed one another within a month in 2001.<sup>39</sup>

The act, which entered into force on 1st January 2002, contains the following benefits for a Hungarian Certificate holder as well as for his/her minor and spouse (Table 5):

A Hungarian Certificate shall be issued to persons declaring themselves to be of ethnic Hungarian origin who

- 1) are not Hungarian citizens, and
- 2) have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine, and
- 3) have lost their Hungarian citizenship for reasons other than voluntary renunciation, and
- 4) are not in possession of a ‘green card for permanent stay’ in Hungary, and
- 5) have submitted a formal application to the appropriate Hungarian authority, and
- 6) have a clean criminal record in Hungary (‘no criminal proceedings have been instituted against the applicant in Hungary for any intentionally committed offence’), and

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39 The Act was passed by Parliament on 19 June 2001, the ‘Act on the entry of foreigners and residence in Hungary’ (No. 39 of 2001) was adopted on 29 May 2001, and the closure of the aforementioned chapters was announced in late June 2001.



7) have not been put on the list of unwanted foreigners (‘neither an expulsion order nor a prohibition of entry or stay, issued by the relevant Hungarian authorities on the basis of grounds determined in a separate act, is in effect against the applicant in Hungary’).

A ‘Certificate for a Dependant’ shall be issued to persons who 1) meet the above requirements, regardless of ethnic origin, and 2) as a spouse or minor child are living together with a Hungarian Certificate holder in his/her common household, and

3) have submitted a formal application to the relevant Hungarian authority (if a minor, his/her statutory representative).

The availability of the act to an international audience, in its unofficial English translation, gave rise to speedy legal and political reactions. In October and November 2001, the Council of Europe, the European Union and the OSCE High Commissioner on National Minorities gave their own opinion.

**Table 5. Benefits for Hungarian Certificate holders as defined in the Act**

How can benefits be obtained?	Benefits and grants
	Cultural rights
As nationals	Services in public institutes (e.g. in archives) Membership in the Hungarian Academy of Sciences
Free of charge	Public libraries, public collections, museums
As nationals	Competition for state scholarships
Upon request	Regular training in Hungary for Hungarian teachers within the annual quota
Upon request	Contribution to training in home country for Hungarian teachers
As nationals	Teacher card that provides some commercial discounts (e.g. buying books)
Later defined by law	Undefined further benefits for Hungarian teachers and lecturers
As nationals	State Awards
	Schooling
As nationals	Studies at university, college; PhD and post-secondary courses Regular state scholarships at university or college within the annual Quota
Upon request	Contribution to fees in non-state studies
As nationals	Student card that provides a commercial discount (e.g. for public transport)
Upon request	Contribution to establishing new university/college departments in cooperation with the founding university/college in Hungary
Upon request	Family care and contribution to education for bringing up at least two minors attending public school in the Hungarian language
Upon request	Contribution to the study costs of attending university/college
	Social rights
As insured persons	Social insurance including pension and medical care if insurance contribution is paid in Hungary
As defined in the bilateral agreement (free of charge)	Medical care in case of emergency

Public transport	
Free of charge	Minor below 6 or person over 65 on local and national public Transport
For 10 percent of the regular price	Persons aged 7-64 on public transport 4 times per year Group travel (at least 10 minors)
Employment in Hungary	
As privileged foreigners	Employment for three months per year in possession of a labour visa and permit within the annual quota
Upon request	Contribution to fees and charges in labour authorisation
Publicly financed media	
Ex officio	Broadcasting news about and programmes for Hungarians beyond the borders
Ex officio	Contribution to the costs of establishment and operation of editorial offices and studios for Hungarians beyond the borders
Community building	
Upon request	Contribution to the operational costs and programmes of civil organisations of Hungarians beyond the borders

The Venice Commission, as the expert body of constitutional (and international public) law under the auspices of the Council of Europe, placed the act on its agenda. A paper submitted by the Hungarian government explained how and why the goals and principles of the act were in harmony with international standards on minority protection.<sup>40</sup> Respecting diversity as a value in Europe, as the Council of Europe has recognised many times in various documents, and taking into account the preferential treatment of ethnic minorities on the basis of minority protection standards, the allegation that the act constituted discrimination was rejected. Moreover, the Council of Europe *Framework Convention on the Protection of National Minorities* (1995) allows each state party to protect its own ethnic minorities, including the provision of support and assistance for them. The act is in accordance with the *Framework Convention* because its compensatory measures are based on lawful, legitimate and objectively defined aims that are proportional to the disadvantages related to being a minority. The government referred strongly to legislation on national minorities issued by the neighbouring kin-states as a case in point. Their legal practices and regulations have not been criticised either by Hungary or in other European fora. This may confirm the tacit consensus of states regarding the interpretation of cooperation between a kin-state and members of ethnic minorities living in neighbouring states. It may permit organisations of minorities in the home-state to make suggestions for issuing the certificate as a basic requirement for benefits provided by the kin-state. This direct cooperation with the authorities of the kin-state means

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40 Unpublished Position Paper of the Hungarian Government in relation to the Act on the Hungarians Living in Neighbouring Countries (Ministry of Foreign Affairs, 2001).

that there is no authoritative power for organisations or communities of independent organisations. Finally, the personal scope of preferential treatment is broadened. A spouse or minor can enjoy it regardless of ethnic origin as the rules on the Certificate for a Dependant demonstrate. Thus, a discriminatory approach is far from the entire spirit of the regulation. The Hungarian government maintained a strongly defensive opinion instead of a progressive view on the framework and substance of public international law concerning the relations of the kin-state-home-state-kin minority triangle. An appendix enumerated the inter-governmental ‘consultations’ (meetings, supply of information) with neighbouring countries, rebutting the charge of unilateral decision-making and the absence of dialogue.

The Venice Commission’s advisory opinion<sup>41</sup> considers the recently increasing tendency of unilateral, domestic legislation by kin-states towards kin minorities (e.g. in the constitution or in a special law) to be an undesirable development. Such legislation reveals the failure of established cooperation and consent between the kin-state and home-state. The correct legal policy should be based on bilateral regulation informed by the mutual interaction and dialogue of the states in question. This would involve either a multilateral convention or bilateral treaty. Although the basic agreements (on friendship and cooperation) concluded by numerous European countries with each other provide only a general framework of interstate relations without special provisions on kin minority issues, they should be supplemented by specific rules on interests, mechanisms and guarantees in favour of national minorities, and by kin-state and home-state cooperation. These framework agreements should be subject to prevailing international controls and mediator mechanisms in cases of disputes or violation of their obligations by a state party. In addition, their provisions should be implemented directly through the courts in the home-state. Moreover, there are no independent fora that are entitled to interpret subsequent rules in framework agreements or to reconcile the parties. Due to these limitations, governments have definitive power to execute the framework agreements while other democratic organs, including the representative organisations of kin minorities, are excluded from the dialogue, from law-making and from implementation of the provisions (e.g. kin minorities have no right of veto). The existing bilateral agreements on interstate relations and national minority issues should be considered in a complementary fashion together with numerous international mediatory agencies (OSCE and its High Commissioner on National Minorities, UN High Commissioner for Human Rights), other good offices and missions, as well as soft

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41 European Commission for Democracy through Law (Venice Commission), ‘Report on the preferential treatment of national minorities by their kin-state’, Doc. 168/2001 CDL-Inf (2001) 19, reprinted in this volume.

law-oriented minority policy. In short, the unilateral, domestic regulation of a kin-state cannot supersede bilateral or multilateral dialogue, mutual trust and interstate cooperation. If unilateral regulation were needed concerning national minority issues in a kin-state, it should have respect for principles of international law (*pacta sunt servanda*, sovereignty of the home-state, principle of good neighbourliness, and respect for human rights and fundamental freedoms, in particular the prohibition of discrimination) while preparations are made for the implementation of bilateral and/or international agreements.

Responsibility for minority protection lies primarily with the home-States. The Commission notes that kin-States also play a role in the protection and preservation of their kin minorities, aiming at ensuring that their genuine linguistic and cultural links remain strong. [...] In fields other than education and culture, the Commission considers that preferential treatment might be granted only in exceptional cases, and when it is shown to pursue the genuine aim of maintaining the links with the kin-States and to be proportionate to that aim (for example, when the preference concerns access to benefits which are in any case available to other foreign citizens who do not have the national background of the kin-State).<sup>42</sup>

The OSCE High Commissioner on National Minorities drew the attention of kin-states to the same points. He emphasised that the protection of minority rights as an obligation belongs to the state in whose territory national minorities are living:

History shows that when states take unilateral steps on the basis of national minorities living beyond the jurisdiction of the state, this sometimes leads to tensions and frictions, even violent conflict. I am therefore obliged to focus special attention on situations where similar steps, without the consent of the state of residence, are contemplated.<sup>43</sup>

Visiting Bratislava in late January 2002,<sup>44</sup> he was less diplomatic, stating that the act had extraterritorial effect and discriminatory elements. Thus it would establish a detrimental precedent.

The EU Commission's Report<sup>45</sup> criticised the act in the context of the EU's foreign and security policy. Although Hungary has continued to de-

42 Venice Commission Report.

43 Rolf Ekéus, Statement on Sovereignty, Responsibility and Minorities (26 October 2001), reprinted in this volume.

44 *Népszabadság*, 26 January 2002.

45 Commission of the European Communities, 2001 Regular Report on Hungary's Progress Towards Accession, SEC (2001) 1748 of 13 November 2001, reprinted in this volume (hereafter EU Commission Report 2001).

velop good neighbourly relations, the adoption of the act without any consultation raised controversies in some neighbouring states. While the objective of the act is to support Hungarian minorities in neighbouring countries and to maintain their cultural heritage, some of the provisions laid down in the act

apparently conflict with the prevailing European standards of minority protection' as determined in the Venice Commission's Report. Also, as foreseen in its Article 27(2), the law<sup>46</sup> will need to be aligned with the *acquis* upon accession at the latest, since it is currently not in line with the principle of non-discrimination laid down in the EC Treaty (Articles 6, 7, 12 and 13). As the Law itself represents framework legislation, it will not be applicable without the adoption of implementing decrees. Hungary will therefore need to comply with the above principles and hold the necessary consultations in order to agree with its neighbours also as regards implementing legislation in the future. Consultations with the Romanian and Slovak governments started in summer 2001, so far without concrete results. Following the adoption of the Venice Commission's Report (including by Hungary itself), Hungary has, however, committed itself to complying with the report's findings.<sup>47</sup>

The leaders of Romania were the first to send clear messages on the rejection of the implementation of the act in the territory of Romania. Their determination was well-founded in view of the Council of Europe, OSCE and EU statements. The position of the Hungarian government involved a kind of 'blackmail' – it wanted to implement the act on 1 January 2002 at any price. Thus, a 'Memorandum of Understanding'<sup>48</sup> was placed under the Hungarian Christmas tree. It was signed on 22 December 2001.

The direct impact of the international climate can be demonstrated in both a formal and substantive sense. The text of the Memorandum was written exclusively in English for international consumption, although all existing bilateral treaties were drawn up in the official languages. The Memorandum as an instrument of soft law is far from the public law traditions of Hungary. The document, in a spirit of consensus, wished to be in harmony with (1) the Venice Commission's opinion, (2) the statement of the

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46 Article 27 (2) of the act states: 'From the date of accession of the Republic of Hungary to the European Union, the provisions of this Act shall be applied in accordance with the treaty of accession of the Republic of Hungary and with European Community law'.

47 EU Commission Report 2001.

48 'Memorandum of Understanding between the Government of the Republic of Hungary and the Government of Romania concerning the Law on Hungarians Living in Neighbouring Countries and issues of bilateral co-operation', Budapest, 22 December 2001, reprinted in this volume.

OSCE High Commissioner on National Minorities, (3) the EU Report, (4) the Treaty on Understanding, Co-operation and Good Neighbourliness between the Republic of Hungary and Romania,<sup>49</sup> in particular the provisions concerning the protection of the rights of persons belonging to national minorities, acknowledging that providing effective equality in rights and opportunities for the national minorities living in their respective countries and creating conditions for them to prosper in their land of birth, constitute an indispensable contribution to the stability of the region and to the creation of a future Europe, based on values such as cultural and linguistic diversity, and tolerance, (5) ‘the rhythm of development of bilateral economic relations and [...] commercial exchanges between their states’, and (6) the ‘progress of Romania in meeting the accession criteria’ – as the preamble of the Memorandum defined. The Hungarian party offered to support the proposal that Romania become a member of NATO.

This political document appears as an international binding treaty with substantial amendments to the act, although Parliament had given no authority to conclude it, and it was neither ratified nor published. ‘The present Agreement sets forth conditions of implementing the Law on Hungarians Living in Neighbouring Countries with regard to Romanian citizens’.<sup>50</sup> Accordingly: (1) All Romanian citizens, notwithstanding their ethnic origin, will enjoy the same conditions and treatment in the field of employment on the basis of a work permit on the territory of the Republic of Hungary; (2) Romanian citizens of non-Hungarian ethnic identity shall not be granted any certificate (for dependants) and shall not be entitled to any benefits set forth by the act; (3) the entire procedure of granting the certificate (receiving of applications, issue, forwarding) shall primarily take place on the territory of the Republic of Hungary (through county public administration offices and the Ministry of Interior) and at Hungarian diplomatic missions. This excludes organisations of Hungarian communities as actors who can issue a binding document as an attachment to the application; (4) the certificate shall contain only personal data that is strictly necessary and the entitlement to benefits (name, forename, citizenship, country of residence, etc.) and shall include no reference to ethnic origin/identity; (5) the compulsory criteria upon which certificates are granted shall be based on the free declaration of the person belonging to the Hungarian minority in the state of citizenship, knowledge of the Hungarian language or Hungarian ethnic identity, or optionally, membership of a Hungarian representative organisation or of a (Hungarian) church; (6) Hungary shall not grant any kind of support to Hungarian political organi-

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49 It was signed in Temesvar (Timisoara) on September 16, 1996, and was published in Act No. 44 of 1997.

50 ‘Memorandum of Understanding’.

sations in Romania without previously informing the Romanian authorities and obtaining their consent; (7) the parties shall start negotiations on an agreement on the preferential treatment of the Romanian minority on the territory of Hungary and of the Hungarian minority on the territory of Romania, in order to preserve their cultural identity in accordance with the provisions of international documents, the Venice Commission's report, and the guidelines of the OSCE High Commissioner on National Minorities.

Both the legality and the legitimacy of the unpublished pact were severely criticised by opposition parties, as well as by diplomatic and legal experts.<sup>51</sup> The kin minority, as the hostage of the disputed situation, was pleased, even though members of the Hungarian community could obtain only partial information through the press. Elderly Hungarians and perhaps people of the middle generation could sigh with satisfaction, clutching the certificate as evidence of their challenged Hungarian identity in the home-state.

Bad things always come in threes. Given that the act had an extraterritorial impact on Slovakia, the Slovak Parliament discussed blocking the implementation of the act in Slovakia in early February 2002. While state secretaries and officials from the Ministry of Foreign Affairs were commuting between Bratislava and Budapest in order to find a solution, the Slovak Parliament was aiming to adopt a negative position regarding those MPs who requested a Hungarian Certificate. The Foreign Minister of Slovakia announced the possibility of an accord with Budapest on the basis of a memorandum of understanding following the Romanian pattern.<sup>52</sup> It would refer to a basic agreement between the two states which would provide appropriate scope for supporting kin minorities and monitoring their conditions. The memorandum would invite the Hungarian Parliament to harmonise the Act with the Report of the Venice Commission, seeking a bilateral agreement on all kinds of benefits aside from cultural heritage. The negotiations are ongoing without any concrete results. It is unclear whether these negotiations will be completed before EU enlargement.

In view of the experiences of their neighbours, Ukrainian diplomats announced a 'compensation' requirement if the act was to be implemented in its territory. In order to respect the non-discrimination principle, the Ukrainians proposed that the entire population of the Trans-Carpathian district should be covered by a bilateral labour agreement, regardless of the ethnic origin of any potential labour migrant. In accordance with the Ukrainian proposal, articulated in 2000, an annual quota for labourers to Hungary

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51 See the series of articles in daily and weekly newspapers, such as Boldizsár Nagy, 'A szándék-buborék', *Élet és Irodalom*, 25 January 2002; István Eörsi, 'A visszavonulás pancserai', *Népszabadság*, 12 January 2002.

52 Interview with Minister Eduard Kukan, *Népszabadság*, 9 February 2002.

would be agree', Given that this is a poor region with high unemployment, the cultural identity and related challenges there vary in priority because of the economic situation. The first reaction of Budapest was negative: the labour agreement had no connection with the act. Furthermore, Hungary would maintain the visa-free regime with Ukraine until EU accession. It was therefore unclear to the Hungarians what kind of compromise the Ukrainians wished to have.<sup>53</sup>

These examples indicate that unilateral regulation is no substitute for the exchange of views, interstate cooperation and mutual dialogue. The opinion and the climate formed by international organisations are sufficiently coercive to force the Hungarian government and perhaps the Parliament to amend previously agreed principles. However, they are only prepared to reshape the regulation of and relations with kin minorities if this involves no loss of prestige for each actor. Negotiations on the necessary amendments seeking compromises with Romania, Ukraine and Slovakia were launched by the new government in late 2002. At the same time, the Copenhagen Summit established the time and financial framework for enlargement deflecting the public's attention from this new chapter in the story of kin minority and kin-state relations.

## Conclusions

The enlargement process and the integration of the Schengen rules into the *acquis*, which will be applicable from the first moment of membership in the EU, have raised numerous questions, such as how the extension of the Schengen border to the east will influence the visa and border crossing regime, how the absence of minority rights will be inserted into Community law and how the existence of kin minorities can be harmonised with the demands of human rights, national interests, the collective need for security and regular migratory movements. To date, all the responses have come from candidate countries and neighbouring states.<sup>54</sup> In a direct sense, the minority and di-

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53 *Népszabadság*, 9 February 2002. Ambassador Orest Klempus gave more information in a press conference in Budapest on 8 February 2002.

54 See the following example from Poland: 'An amendment of the Act on Repatriation of the Polish diaspora, providing extra government funds for the descendants of the Poles deported eastward as part of the Stalinist repressions, effected a twofold increase in the number of repatriation visas in 2000. The scale of repatriation picked up also from the European republics of the former Soviet Union, which may be explained by the continued economic stagnation in Belarus and Ukraine. However, the rate at which the diaspora is being repatriated indicates that the majority of the Polish nationals will remain in their present area of settlement. The most recent change to the law concentrated the assistance to the residents of Central Asia and Siberia, primarily from Kazakhstan. This leaves the much more numerous Polish minorities in eastern Belarus and central Ukraine with the only option of applying for regular tourist visas from mid-2003. Since the local Poles recruit from lower-income strata



aspora policy in the East has not been one of the topics in accession talks, and representatives of kin minorities or ethnic groups have not been involved in the negotiations, although all candidate states have diaspora and minorities. The EU prefers the 'indirect' approach to minority protection through contributions to improving the quality of life, anti-discrimination, welfare, employment or regional development, and seeks to force the introduction of the migration *acquis*. The gradual implementation of the Schengen *acquis* and frontal restriction of entry of all kinds of third country nationals would give new importance to illegal (irregular) migration towards the enlarged Europe from the adjacent states, and that in turn would have a fundamental impact on the strategic relation of kin minorities to kin-states. It is really questionable whether this prospect has been taken into account when the EU talks about the 'indirect' protection of minorities.

The candidate states are making considerable efforts to modernise their border crossing and visa regime but at the same time they are also adopting compensatory measures, such as acts on kin minorities or bilateral agreements. On the one hand, this unilateral legislative model as a reaction to the questions raised earlier generates further international legal and political conflicts. On the other hand, regular and managed migration towards the candidate countries has to become their own urgent priority regardless of enlargement and diaspora politics. The modernisation of the migration regime can promote awareness of the positive elements and consequences of international migration movements, which have not yet been recognised in the candidate states, at least not publicly. The ongoing accession efforts and pressure on diaspora policy taken together may have hampered genuine cooperation among the candidate states in respect of minority issues, cooperation of a kind which might have taken them beyond their historical prejudices. Initiatives for this cooperation at the European level have to some extent neglected the regional realities: the speed of change, public opinion and legal constraints.

It will only become clear in the longer term whether the postponed debates on minorities and the need to seek compromises in the EU enlargement process in this context will undermine the structure of the new European architecture that includes both EU member states and neighbouring non-member states.

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in the regions at distances of over 500 kilometers from the homeland's borders, their visits might become too expensive were they to apply for regular visas and show the means of subsistence for every day spent in Poland. Therefore, the Ministry of Interior needs to consult with the non-governmental organizations coordinating the ethnic Poles' visits to the country of origin on the special provisions for such organized trips', *Impact of the Extension of the Schengen Agreement on the National Policies and Local Communities of Nine Central and East European Countries*, Institute of Public Affairs (Warsaw, December 2002) (mimeo).