

Chapter 16

The Hungarian Legislation on Hungarians Living in Neighbouring Countries¹

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I. New Trends and Important Steps in the Overall Protection of National Minorities

The overall management of minority protection has been an ongoing issue throughout the last century and it did not disappear at its turn. Almost all possible solutions have already made their appearance in Europe, being rediscovered again and again according to the needs and circumstances of the continent's minority communities. Assimilation and secession have been the two poles of a wide range of approaches, ranging from the insistence on individual human rights up to autonomy arrangements of various kinds. The legal-technical solutions have also varied widely, from internal laws and decrees up to international and/or bilateral treaties.

And so the bilateral treaties signed between neighbouring states in Central and Eastern Europe during the 1990s were also rediscovered in 2001. These treaties, and especially the process of their adoption and their implementation, were followed with interest by the international institutions in Europe. Special attention was paid to the provisions on the protection of national minorities incorporated in these treaties, as the first instances where the issues of minorities in neighbouring countries and relations between home-state, minority and kin-state were codified bilaterally after the Second World War. These issues suddenly reappeared on the agenda of bilateral relations and international institutions during the fall of 2001, thanks to the 'Act on Hungarians Living in Neighbouring Countries'² adopted by the Hungarian Parliament and the responses to its adoption. The law directed

1 Most of this study was prepared for and presented to the international colloquium: 'Protection of National Minorities by Their Kin-State' organised by the European Commission for Democracy through Law in Athens, 7-8 June 2002; the proceedings were published by the Council of Europe in 2003.

2 'Act LXII on Hungarians Living in Neighbouring Countries', adopted by the Hungarian Parliament on 19 June 2001, and in force since 1 January 2002, provides benefits and assistance to persons who are of Hungarian identity but foreign nationality (citizenship) and live as indigenes in the countries neighbouring Hungary.

special attention to the issue of preferential treatment of minorities, as well as to the role kin-states play in the development of these minorities.

It provoked unexpected reactions on the part of two of Hungary's neighbouring countries (Romania and Slovakia) and was discussed intensively by international institutions, including the Council of Europe, the OSCE High Commissioner on National Minorities and the European Commission. The most important expert body of the Council of Europe, the European Commission for Democracy through Law (Venice Commission) adopted a detailed report on the preferential treatment of national minorities by their kin-state in October 2001.³ In this report the importance of bilateral treaties was stressed and certain aspects of these treaties, their content and implementation were emphasised. This highly respected body established certain basic principles in the field of the protection of national minorities, which can be regarded as a sound basis for further positive developments in this field.

The Venice Commission Report stressed among others things that '[t]he potentialities of bilateral treaties in respect of reducing tensions between kin-states and home-states appear to be significant, to the extent that they can procure specified commitments on sensitive issues, while multilateral agreements can only provide for an indirect approach to those issues. Furthermore, they allow for the specific characteristics and needs of each national minority as well as of the peculiar historical, political and social context to be taken into direct consideration'.⁴

In its conclusion, the Venice Commission Report states that '[r]esponsibility for minority protection lies primarily with the home-States'. This is an important step in the European minority protection system, because this responsibility has not been expressed directly by existing international documents so far. The report also mentions that in addition to multilateral and bilateral arrangements, unilateral measures of kin-states granting benefits to their kin minorities, especially in the fields of culture and education, are legitimate, insofar as they pursue the legitimate aim of fostering cultural links between minorities and their kin-states in order to preserve the minorities' identity. Thus in regard to the issue of discrimination which is often raised, the Venice Commission recognises the principle of positive action if 'this pursues a legitimate aim and the measure taken is proportionate to this aim'

3 European Commission for Democracy through Law, 'Report on the Preferential Treatment of National Minorities by their Kin-State', adopted by the Venice Commission at its 48th Plenary Meeting, Venice 19-20 October 2001, [CDL-INF\(2001\)019](#) (hereafter Venice Commission Report); the text of the report is reprinted in this volume. The aim of the study was to establish whether such treatment could be said to be compatible with the standards of the Council of Europe and with the principles of international law.

4 Venice Commission Report, p. 5.

(This principle is also accepted by the European Union in its Council Directive 2000/43/EC, Article 5).⁵

Despite the existence of similar legislation in Central Europe and existing practice in Western Europe, as well as of certain trends at the international level, the sensitivity of some of the neighbouring countries resulted in unexpected reactions. However it is also the case that, assuming it was or may be possible for the respective governments to come to an agreement, these reactions also provoked the exposure of the issue in an international forum, and thereby directly or indirectly made a positive contribution to the promotion of minority protection in Europe.

Not only the official report of the Venice Commission, but also the steps taken in the framework of the joint intergovernmental committees following and monitoring the implementation of the bilateral treaties signed between Hungary and most of its neighbours, contributed to the promotion of general minority standards through the negotiations linked to the adoption of the Hungarian law. In addition to the role that well-established and active joint intergovernmental committees played in reaching an agreement on the implementation of the law, the role of joint committees which had hardly worked at all before was also reinforced. Thus, alongside the Croatian-Hungarian, Slovenian-Hungarian and Ukrainian-Hungarian Joint Commissions on Minorities, in which explicit or implicit agreement was reached and no objections were raised regarding this law, the Romanian-Hungarian and Slovak-Hungarian Joint Commissions were revitalised as a forum for discussion of the objections and questions that did arise. The negative experience with these committees was that the main concerns of the partners were not raised directly, but through international channels (European Commission, OSCE), or after agreement had apparently been reached on certain principles and measures negotiating partners continued to voice critique and objections through the media or one or another of the international institutions.

Nevertheless, the process in itself was a huge step forward compared to the previous practice, producing such breakthroughs as the adoption of the recommendations of the 'Protocol of the Committee on National Minorities of the Romanian-Hungarian Intergovernmental Joint Commission on Active Co-operation and Partnership, Fourth Session', negotiated on 25 September 2001 in Bucharest and signed on 19 October in Budapest. The recommendations welcomed all measures by their governments that offer to provide support for preserving the ethnic, cultural, linguistic and religious identity of their respective minorities living on the territory of the other state and have been mutually discussed by the parties. The document incorporates principles such as 'positive discrimination, if necessary, in order to secure full equal op-

5 Official Journal L 180, 19/07/2000, pp. 0022-0026.

portunities for both persons belonging to national minorities and persons living in their states and belonging to the majority in preserving their cultural, ethnic and religious identity', or the 'adoption of an annual program of cooperation in which the methods of common action for preserving the ethnic, cultural, linguistic and religious identity of their kin minorities and establishing and supporting the operations of their associations and organisations would be determined'.

Following the positive steps taken by these committees towards an agreement on the implementation of the controversial Hungarian law, a protocol was signed in December 2001 between Romania and Hungary, which established conditions for implementing the 'Act on Hungarians Living in Neighbouring Countries' in regard to Romanian citizens. The Memorandum of Understanding contained principles relevant for the overall protection of minorities, such as the acknowledgement that 'providing effective equality in rights and chances 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 as cultural and linguistic diversity and tolerance'. The Memorandum of Understanding issued at that time also contained an important provision on the role of joint intergovernmental committees: 'In order to work out a plan to make concrete steps forward in their bilateral cooperation, Parties will, in the Committees of the Hungarian-Romanian Intergovernmental Joint Commission on Active Co-operation and Partnership and at its plenary session scheduled for the first quarter of 2002, survey the full range of the bilateral relations and make recommendations for measures to be taken'.⁶

In the case of Hungarians living in Romania, the law has been implemented according to this memorandum without any problems, although even after the adoption of this document the Romanian side objected to the law at the international level. The objections became louder and more intense after the Hungarian elections and after the new Hungarian government took office. These criticisms – although almost always confined to the international level – contributed to the negative attitude of some representatives of international institutions (Jürgens – rapporteur for the Council of Europe, Verheugen – Commissioner of the European Commission) and thus indirectly to the total uncertainty about the future of the law within the new ruling coalition in Hungary.

6 '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', www.htmh.hu.

II. The Background and Aims of the ‘Act on Hungarians Living in Neighbouring Countries’

The existence of Hungarian national minorities living in neighbouring countries and their wish to maintain and promote their identity and foster cultural links with their kin-state are matters of fact. At the same time, it is also a fact that the Hungarian population living in these countries is facing problems. The results of the Slovak census of 2001 show that the number of Hungarians in Slovakia is rapidly decreasing. While in 1991 some 567,000 persons identified themselves as Hungarians, in 2001 only 520,000 Hungarians were registered. This means that in the past decade, the Hungarian community has shrunk considerably, by 8%. Similar tendencies towards rapid decrease in the Hungarian population can also be observed in Romania and Yugoslavia (Vojvodina). In Romania the Hungarian ethnic group numbers 1,434,377 persons according to the census data from March 2002, representing 6.6% of the total population. This is a decrease of 109,600 persons (11.7%), as against the data from 1992.

In Hungary it has always been an open question – except during the years of communist rule – how to handle relations with those large communities of Hungarians who suddenly became residents and later citizens of different countries after the peace treaties of World War I. For the Hungarian government in office in 2001, there were theoretically three options for addressing the question of Hungarians living in neighbouring countries, all of which were represented in current European practice:

The first option would have been to passively accept the migration of Hungarians from neighbouring countries to Hungary and support their resettlement there. However, this was not Hungary’s intention, since its main aim was to preserve the identity and culture of those Hungarians in their countries of birth and residence.

The second option would have been to introduce dual citizenship, by granting Hungarian citizenship to persons belonging to the Hungarian national minorities. There were regular suggestions on the part of the representatives of Hungarian minorities that they be granted a special form of dual citizenship, a ‘foreign resident citizenship’ conceived as conveying status according to the last proposals.⁷ The Hungarian political leaders pointed out on several occasions that dual citizenship would be a very delicate issue for Hungary on both the domestic and the international level. The issue of dual citizenship would be meaningful for the smaller minority communities in Vojvodina, Croatia,

7 Miklós Patrubány, President of the World Federation of Hungarians, speech delivered during the OSCE Review Conference, Vienna, 28 September 1999: ‘The institution of foreign citizenship, as a token for diminishing ethnic tension’.

Slovenia or Ukraine – but would have no reality in the case of the large minorities, such as the Hungarians living in Romania.

The third option, and the one chosen by the Hungarian government, was less dangerous, taking into consideration all the circumstances (historical, geographical, demographic, etc.) of the region: the grant, through secondary measures, of benefits in Hungary and assistance in their native land to the Hungarian minorities living in the neighbouring countries. There were various proposals from the representatives of Hungarian minorities to solve their problems through the creation of a ‘special status’ – also existing practice in Europe (see the Greek legislation in this regard, or the Romanian legislation on Romanians living in Moldova) – which would have included a residence permit and visa-free entry to Hungary. In the end, though, the drafters of the Hungarian Status Law did not take up any of those suggestions, and the law offers only benefits and assistance in the strict sense. Although it has been stated several times by two of the neighbouring countries (Romania and Slovakia) that the law is especially dangerous due to its ‘hidden aims’, Hungary reiterates in adopting this law that the main responsibility for minority protection lies with the home-state. Hungary does not attempt to take over such responsibility but rather plays a contributory or secondary role beside the home-state and the international community.

The term ‘unitary nation’⁸ to which the law refers, however was quite misinterpreted not only among the representatives of neighbouring countries, but also by the European Commission. EU Commissioner Verheugen declared it to be dangerous, as it ‘could be understood in such a way that Hungary is striving for establishing special political links, an aim which conflicts with the sovereignty and jurisdiction of the neighbouring states. Therefore, such terms should be replaced by more culturally oriented ones’.⁹ But this term was purposely intended to cover a cultural phenomenon. In the context of the law therefore, this notion is used in its cultural sense. While persons belonging to the Hungarian national minorities are citizens of different countries, they declare themselves to have Hungarian cultural, linguistic and national identity – without claiming any political bond to their kin-state. Consequently, the law does not aim to establish any political bond.

The simple fact is that in speaking of Hungarian national identity and Hungarian communities in neighbouring countries, the law refers to those more than 2.5 million Hungarians living outside the Hungarian borders, who speak Hungarian, share Hungarian culture in all its cultural aspects – and

8 After the modification of the law in June 2003, this reference to the ‘unitary nation’ was also omitted from the law.

9 In the letter sent by Günther Verheugen to the Prime Minister of Hungary, December 2002: See Documentary Appendix.

would like to keep and share this identity, while at the same time being loyal citizens of their home country without any intention of establishing political ties to Hungary. If these people wanted to establish political ties to Hungary they would ask for Hungarian citizenship, and that might be then interpreted as creating political ties; which was clearly not the purpose of this law. Therefore, the allusion in the expression ‘could be understood [...] as striving for establishing special political links’ simply ignores not only the existing reality (i.e. the existence of these national communities) but also the text of the law which clearly avoids reference to any political bond and stresses the cultural aspects and identity promotion of these communities.

The same idea appears in the draft and later in the final report of Erik Jürgens, member of the Council of Europe Parliamentary Assembly and rapporteur for the Committee on Legal Affairs on the issue of preferential treatment. In the words of the report, adopted by the Parliamentary Assembly of the Council of Europe in June 2003, ‘there is a feeling that the definition of the concept “nation” in the preamble to the law could under certain circumstances be interpreted – though the interpretation is not correct – as non-acceptance of the state borders which divide the members of the “nation”[...]’.¹⁰

Interestingly enough, the ‘Verheugen-comments’ were made in December 2002, before any amendment to the law was even proposed in the Hungarian Parliament. The Council of Europe resolution however was adopted in June 2003, after the amended version went through the Parliament in Budapest – and yet it failed to take any account of the fact that the relevant paragraph of the preamble had been totally changed, much to the dissatisfaction of the Hungarian minorities. In the widespread view of the minorities, the adoption of this strange Council of Europe resolution was clear evidence that it was not the wording of the law that bothered the neighbours and international institutions, but the existence of the law itself.

The question of the ‘loyalty’ of the minorities towards their home-states has also been raised on several occasions since the adoption of the law. This law gives a firm answer to any doubts in this context through its clearly stated and declared aims. It does not seek to provide any basis for questioning the loyalty of those minorities who are citizens of their home-states; it emphasises the importance of their well-being and healthy development in their home countries. The loyalty of an individual towards his/her home country has objective measures; a citizen of a state who does not emigrate, contributes to the common weal by paying taxes and social insurance contributions, fulfils

10 Council of Europe Parliamentary Assembly, ‘Resolution on the Preferential Treatment of National Minorities by the Kin-State: The Case of the Hungarian Law of 19 June 2001 on Hungarians Living in Neighbouring Countries (Magyars)’, see at <http://assembly.coe.int>.

his/her duties in respect of military or other service, and also studies, works and establishes a career and household in his/her home country can offer no more effective proofs of his/her loyalty irrespective of ethnic or national origin. It would constitute 'symbolic discrimination' to expect more evidence of loyalty from the minorities than is ever expected from the majority in a given state. The Hungarian minorities living in Hungary's neighbouring countries prove day after day that they are loyal citizens of their home countries.

International and bilateral discussions of the law have rarely addressed the content and wording of the legislation itself, while the above issues have been raised again and again. But this law does not aim to challenge existing political allegiances. On the contrary, it is designed to encourage people who belong to national minorities to stay in their home countries while contributing to their satisfaction there by promoting their identity and also allowing them to keep ties with their kin-state, thus preserving the cultural diversity of the region. Paragraph 5 of the preamble of the original law stated as much: 'in order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity *within their home country* [...]'. This has been changed through the amendment of the law into the following wording: '[i]n order to ensure the well being of Hungarians living in neighbouring states in their home-state, to promote their ties to Hungary, to support their Hungarian identity and their links to the Hungarian cultural heritage as expression of their belonging to the Hungarian nation'. Moreover, it has to be interpreted in the context of the whole preamble, which also contains the words, '[h]aving regard to the generally recognised rules of international law, as well as to the obligations of the Republic of Hungary assumed under international law [and also] to the development of bilateral and multi-lateral relations of good neighbourliness and regional co-operation in the Central European area and to the strengthening of the stabilising role of Hungary'(paragraphs 3 and 4 of the original version of the law). Similarly, the whole philosophy of the law clearly precludes any kind of territorial revision as a 'solution' to questions raised by the existence of national minorities. The law ensures nothing more than the same assistance for persons belonging to Hungarian minorities living in the neighbouring countries that Hungary, a home-state for a number of minority communities, welcomes from other states.

Another question asked several times was related to the subjects of this law. Why are those Hungarians covered who live in the neighbouring countries and not Hungarians all over the world? The overwhelming majority of persons of Hungarian national identity who live in emigration in Western Europe, in the United States, in South America or in Australia (or their ances-

tors) left Hungary, after all, as a result of their own decision and have kept or regained or may wish to regain their citizenship as a result of their own decision. This difference in status results in a difference in regulation. They kept this citizenship and passed it on to their descendants – of course, along with the citizenship of their home country. The preamble of the Hungarian law clearly states that this law is adopted ‘without prejudice to the benefits and assistance provided by law for persons of Hungarian nationality living outside the Hungarian borders in other parts of the world’.

The legitimacy of a preferential treatment, one of the theoretical foundations of the law, can be objectively and rationally demonstrated. It is precisely the permanent need to ensure an effective equality between the majority and the minority that justifies preferential treatment for minorities. The principle of preferential treatment is not new in international law. For example the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin refers to positive action in its Article 5, stating that ‘[w]ith a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin’.¹¹

The Council of Europe *Framework Convention* and the Council of Europe *Charter on Regional and Minority Languages* also promote the principle that preferential treatment of minorities does not constitute discrimination. According to the Framework Convention, Article 4, paragraph 2, ‘[t]he Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities’. At the same time, it states that ‘the measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination’. This principle is further emphasised in the *Language Charter*, which states that ‘[t]he adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population, or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages’.

The general principle that supporting minorities is not considered as a discriminatory act is not limited exclusively to the internal affairs of a state when supporting minorities within its borders, since the principle does not exclude any help (even help coming from another state) which aims at estab-

11 Official Journal L 180, 19/07/2000, pp. 0022-0026.

lishing the full equality of these communities. In the spirit of the documents and European practice (both the practice of EU states and relevant financial support policies of the Committee) it can also cover support for the minorities of a kin-state in the form of finance for medium-term projects preserving and developing minority communities. Examples of this are establishing and developing bilingual radio programmes in Austria, publishing geography and history course books in Catalan in France, and Roma projects in Hungary, Romania and the Czech Republic.¹² This principle is also enshrined in the Framework Convention signed and ratified by most of the EU countries and by all of the neighbouring countries of Hungary: ‘[T]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation’ (Article 1). The OSCE expert meeting on national minorities in Geneva 1991 also explicitly declared this principle, stating that ‘[i]ssues concerning national minorities, as well as compliance with international obligations and commitments concerning the rights of persons belonging to them, are matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State’.¹³

1. Benefits and Grants

Government experts and opposition parties, as well as representatives of the Hungarian minorities outside Hungary, were involved in the preparation and negotiation of this law, within the framework of the Hungarian Standing Conference established in 1999. The relevance and appropriateness of such a law were the objects of constant debate between government and opposition, and also in the mass media.

Before we consider the issue of promoting identity-preservation among kin minorities, several examples of this type of promotion need to be referred to. These include Slovak, Bulgarian and Romanian legislation, all of which were examined by the drafters of the Status Law. These examples were then also analysed by the Venice Commission – which shows that the Hungarian law was not new or unique in Europe. Developments in the fields of human and minority rights laid the basis for the approach taken by the Hungarian legislators. Numerous countries in our immediate vicinity and in the region have or are planning to pass similar legislation on minorities living in neighbouring countries. In several member states of the European Union,

12 For examples of such initiatives, see http://europa.eu.int/comm/education/policies/lang/langmin/langmin_en.html

13 Report of the CSCE Meeting of Experts on National Minorities, II.(3), Geneva, 1991. www.osce.org.

there is also specific legislation in force to handle special cultural ties (for instance in Germany, Ireland, Spain, Portugal, Greece).

According to the Hungarian law adopted on 19 June 2001 and amended substantively on 23 June 2003, the subjects of the law are eligible for benefits available only in Hungary, while they also have the opportunity to apply for other forms of assistance in cultural sphere through civic organisations and associations operating under the jurisdiction of the home countries. The benefits and assistance provided by the law are closely linked to the preservation and promotion of their cultural and linguistic identity. The only exceptions to this were the provisions for the simplified grant of a three-month permit to work in Hungary and for health care benefits partly associated with employment in Hungary, and these have been deleted from the amended act.

Benefits and grants in the realm of culture are certainly of primary importance. As cultural identity is mainly reflected through language, promotion of the language is an indispensable element of the preservation of identity. However, culture does not mean exclusively literature or folklore. Culture, and thus language as well, must be approached in a more comprehensive sense. The amended law did change its approach to the extent that the promotion of culture and language were interpreted in their narrow sense – thus changing in some degree the original aim of the law. These amendments were heavily criticised by the opposition and the Hungarian minority organisations in the neighbouring countries. The amended law concentrates more on the preservation of the Hungarian language and culture irrespective of the identity of those who use this language. The identity aspect of the original law has thus been diminished, and accordingly the much-criticised and controversial proof of this identity – the Hungarian Certificate – has lost its symbolic value and become rather pointless (In order to be eligible for benefits in Hungary, people who fulfil the criteria established by the law can apply for a Hungarian Certificate. This certificate may only be used in conjunction with a valid passport and does not entitle its possessor to use it for border crossing or formal identification).

In the field of benefits other than cultural ones the original law simply codified the existing practice as it applied to individual members of Hungarian national minorities. In respect of health care, the subjects of the law in its original form were covered by the same regulations that applied to any other foreign citizen. There was no distinction in this regard. For example Romanian citizens – according to the bilateral Agreement on co-operation in the field of social policy signed in 1961 and still in force – receive health care in case of emergency in Hungary. Those foreign citizens who work officially in Hungary receive health care in Hungary on the basis of their social insurance contributions, like the subjects of the law and like Hungarian citizens. The foundation (Segítő Jobb) which has responsibility for dealing with the

health care assistance of applicants from neighbouring countries, and is financed partly from the state budget, provides coverage irrespective of ethnicity. The foundation is designed to provide financial aid to individuals in the neighbouring countries who cannot afford expensive medical treatments. According to its constitution as a humanitarian body, the foundation is not permitted to differentiate between its patients on an ethnic basis. Criteria for selection of those who are in need of medical treatment are the same for ethnic Hungarians and others. The ten-year-long practice of the foundation demonstrates its neutrality in selecting the beneficiaries.

The employment benefits originally provided by the Status Law consisted of a simplified administrative procedure for gaining a permit to work in Hungary. The work permit itself, an entrance visa for the purpose of employment and a residence permit were required of all foreigners (including the subjects of this law) employed in the country. The employment benefits did raise objections on the part of Romania, which were partly resolved in December 2002. With the issuance of the ‘Memorandum of Understanding between the Government of the Republic of Hungary and the Government of Romania Concerning the Act on Hungarians Living in Neighbouring Countries and Issues of Bilateral Co-operation’, the objections of the Romanian side were satisfied.¹⁴

Preferential treatment in this field is not a new phenomenon in Europe, as was pointed out by the Venice Commission. Moreover the Slovak law, for example, established an even broader form of preferential treatment regarding employment, when it stated that ‘the status of a foreign Slovak makes it possible to apply for employment without the stipulated permits’ (Article 6[b]) and ‘[i]n order to enter the territory of the Slovak Republic, invitations and visa are not required of foreign Slovaks’.¹⁵ Nevertheless, since the employment and health care benefits were most often criticised by international institutions the new government after 2002 clearly rejected these, deleting them from the amended version of the text. The whole paragraph on health care

14 ‘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. Work permits shall be issued under the general provisions on the authorisation of employment of foreign citizens in Hungary. When work permits are issued for a maximum of three months per calendar year, there is the possibility of their prolongation and the Romanian citizens enjoy some facilities on the territory of the Republic of Hungary, which are the following: Romanian citizens working on the territory of the Republic of Hungary on the basis of any type of contract of employment shall have the right to apply to the public benefit organisation established for this purpose for the reimbursement of the costs of self-pay health care services in advance’.

15 70/1997 Coll. Laws; Law of the National Council of the Slovak Republic on foreign Slovaks and on change and amendment of some laws. See at: http://www.culture.gov.sk/ANGLICKY/3SCT/LEGISLATIVE/Z97_70.html.

benefits was deleted from the law by the Parliament in June 2003. The fact that the law does not deal with this issue does not mean that the problem does not exist – and the practice outlined above will have to be continued in order to meet the increasing demands in this area.

III. The implementation of the ‘Act on Hungarians Living in Neighbouring Countries’

As had been envisaged immediately after its publication, the legal opinion of the Venice Commission Report of 19 October 2001 was considered seriously by the Hungarian government while preparing the implementation decrees and later when preparing the amendment of the Status Law. The Hungarian law is a piece of framework legislation of a general character, and the implementation rules referred to in Article 28 of the original text translated the general terms into practice. This allowed for the incorporation of the observations made by the Venice Commission and by some of the neighbouring countries without any need to formally amend the law before June 2003. The most relevant rule in this regard was the Government Decree No. 318/2001 on the procedure for the issuance of the Hungarian Certificate and the Hungarian Dependant Certificate.

The implementation decrees and the practice not only followed the Venice Commission observations but were also in conformity with undertakings given in the memorandum of understanding in respect of Romania. Thus the associations of Hungarian minorities have ceased to play an indispensable role in the procedure, since an informative *recommendation* is no longer a pre-condition for issuance of the certificate. The associations can contribute to the process only by providing information on whether individuals meet the relevant criteria, in the absence of formal supporting documents; no quasi-official function is assigned to them. All this is in full conformity with the Venice Commission’s opinion. Also in line with the observations of the Venice Commission, the Hungarian consulates now do play a role in the implementation of the law. They check eligibility and forward the applications to the responsible Hungarian authorities.

As already foreseen in the above-mentioned government decrees and included in an even more restricted version into the amendment of the law, the certificate has become a mere proof of entitlement to certain benefits in Hungary. It cannot be used as a passport, it does not authorise visa free entrance into Hungary, and it does not entitle the holder to a permanent stay in Hungary. It is not accepted by the Hungarian authorities as a substitute for an identity document issued by the authorities of the home-state. The Hungarian Certificate contains the strictly necessary personal data of the subject of the law –

and for the time being is not even clear whether its size and format will be kept for the future.

Whenever I have talked about the law at the international level, I have been asked why such a law was needed – why all these provisions were not included in decrees or just simply guaranteed in practice without this formal instrument. According to several negotiating partners, it was the legal form that was disliked by certain governments, although the practice itself is in use in so many countries in Europe. The way the certificates are handled provides the best example of why their benefits had to be granted by law and not through decrees in Hungary. Even where they have been granted and their use codified in statute law, the lower-level bureaucracy, whose business it is to accept such certificates as proof of entitlement to benefits, do not honour them. Without a law, the chance of breaking through the Hungarian bureaucracy's mentality of total indifference would have been minimal. In practice, the right to benefits demonstrated by possession of a certificate is still not recognised in many everyday situations (museums, rail transport etc.) People seeking to enjoy their rights are often denied these rights and even punished. The reason for this goes back to the long decades of communism in this country, when generations grew up without even hearing about the existence of Hungarians living in the neighbouring countries.

Conclusion

If the sensitivity of the triangular relationship home-state – minority – kin-state were not as high as it is in the region, the aims declared by the Status Law could have been interpreted and treated as positive signs for bilateral relations in general. What was clearly not taken fully into account was the specific problem that arises in this particular region whenever the issue of minorities comes up, be it in an official meeting of representatives of these communities with high ranking leaders of the kin-state, or in the context of joint projects, or in the simple attempt to cooperate within the framework of a Euroregion or transfrontier initiative. The law is far from perfect. It certainly contains measures and provisions that will have to be reformulated. Practice will show which provisions are more, and which less appropriate and meaningful for the targeted groups. It certainly may also have negative aspects, but I would stress the positive ones: It is good that it tries to give clear answers to nagging questions and establishes a clear structure which might help to preclude suspicions about a hidden agenda in this context. As the reactions to this particular law and the lack of similar attention to comparable ones in the same area show, such suspicions did arise regarding Hungary's motivations. Well, let us hope that with its implementation, time and experience will prove that the law was intended to clarify needs and address

those needs effectively, in firm conformity with the country's international obligations.

Since the adoption of the law some constructive comments have been made by international organisations which have been or will be taken into account and will improve this legislation. The importance and the relevance of the issue is not in question (as this conference also proves), although of course ideas about the methods and modalities chosen differ from scholar to scholar and from country to country. The adoption of such a law or the solution chosen in this law does not mean that this practice should be automatically taken by others as a model; the cases might be very different. As with the adoption of bilateral treaties, when we are considering the appropriateness of particular legal instruments real differences in circumstances have to be taken into account.

As of today, around 500,000 Hungarian Certificates have been approved and there has been no evidence of conflict or antagonism. Some people, especially students and young people, apply for the certificate in order to be able to use its benefits in Hungary, while others are awaiting the occasion to apply for assistance in their home-states. The experience of the law in action will, I hope, show that this kind of help offered by the kin-state does not take away benefits from others, does not discriminate against others in its negative sense and does not offend either neighbours or other foreigners. It simply contributes to the protection of identity and to a sense of well-being of these minority communities, and thereby to the well-being of their home country and the whole region.

However, this law, and this type of legislation in general, cannot solve the minority issue in itself. It has to be considered as one area where the kin-state can offer a solution, but other areas, in which the home-state might offer real options, must equally be considered. Measures involving the self-government of minority communities, or different forms of autonomy, might be even more important means of promoting the well-being of the minorities and a fruitful ethnic coexistence.