PROTECTION OF MINORITIES BY THEIR KIN-STATES IN THE EU – THE CASE OF HUNGARY

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Abstract

The paper studies the case of the protection of the minority-rights by their kin-states. This issue can be discussed from the viewpoint of the non-discrimination principle of the EU, but the new Schengen borders and the unified visa-regime are also in question. The paper details the report of the Venice commission on the issue and the political debates in Hungary too. It concludes that the national means of minority protection are rather limited, the Hungarian government diverged from the status law (adopted in 2001) in order to comply with the EU-expectations just before the EU accession.

Key words

Minority rights, non-discrimination, Schengen, Venice commission, Hungarian minorities, status law, kin-state

1. Adopting and main provisions of the Act on the Hungarians living in the Neighbouring Countries

The amendment of the Hungarian Constitution in 1989, at the system change, included in Article 6 par. (3): *"The Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary."* The question is still open among the Hungarian constitutional lawyers, whether this „responsibility clause" has a normative force or it is only an aim of the state.[1]

The Parliament of Hungary, carrying out this provision of the Constitution and also responding to the inquiries of the Hungarian organizations from the neighbouring countries – adopted the Act on „Hungarians Living in Neighbouring Countries" only in 2001, at the time

[1] See: *Commentary of the Constitution.* [*Az Alkotmány magyarázata*.] (Ed.: Balogh, Zs. et al.) Budapest, 2003. KjK., p. 158-159.

of rightist Fidesz-cabinet.[2] At the voting in the parliament on 19 June 2001, from the 386 MP's 309 voted 'yes', 17 voted 'no' and there were 8 abstentions. We can consider it as consent of 5 parties from 6 in the Parliament.[3]

This law, scheduled to step into force on 1 January 2002, provided several benefits and assistance basically for the "persons declaring themselves to be of Hungarian nationality who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine" (Article 1). In some aspects, the act shall be applied to spouses and children of the mentioned persons.

Person falling within the scope of this Act were entitled to benefits and assistance on the territory of Hungary, as well as in the country of their residence (Article 2).

The Act provided mainly the following benefits and assistance:

A) Culture, science – the status law provided access and rights (identical to those of Hungarian citizens) to use Hungarian libraries and other collections: the right to use public cultural institutions and the opportunity to use their services they offer; access to cultural goods for the public and for research, access to monuments of historic value and the related documentation.

B) Social Security Provisions and Health Care – even who were not obliged to pay health insurance and pension contributions had the right to apply for reimbursement of the costs of self-pay health care services in advance. Applications shall be submitted to the public benefit organization established for this purpose.

C) Travel benefits – in Hungary on scheduled internal lines of public transport (on railways, to 2nd class fares). Unlimited number of journey provided free of charge for children up to 6, and persons over 65 years of age. A 90% travel discount was provided for the persons falling within the scope of the Act four times a year, and also for a group of at least 10 persons under 18 years of age and two accompanying adults once a year.

[2] Hereafter sometimes I refer to this Act as „Status Law" as the act was called usually by the Hungarian public opinion, and sometimes by the researchers too, see: *The Hungarian Status Law: Nation Building and/or Minority Protection.* Edited by Zoltán Kántor et al., 2004, Slavic Research Center, Hokkaido University. Available at: http://src-home.slav.hokudai.ac.jp/coe21/publish/no4_ses/contents.html

[3] From the opposition, only the Alliance of Free Democrats (SZDSZ) refused the Act.

D) Education, student benefits, training for teachers – pursuing studies in the higher education institutions of the Republic of Hungary in the framework of state-financed training in a fixed number to be determined annually by the Minister of Education. Those who participate in programmes not financed by the state might apply for the reimbursement of their costs of stay and education in Hungary to the mentioned public benefit organization established for this end. Registered students of a public institution in a neighbouring country who were pursuing their studies in Hungarian language, or students of any higher education institution who are subject to the status law were entitled to benefits available to Hungarian students with relevant student identification documents. The law also provided training, benefits and assistance for Hungarian teachers falling within the scope of the Act.

The Act also aimed the preservation of the mother tongue, culture and national identity of Hungarians by supporting the establishment, organization and operation of affiliated Departments of accredited Hungarian higher education institutions in neighbouring countries.

The Act established two types of assistance available in the native country for education. First, for families who raised at least two children receiving education in Hungarian language. Secondly, persons falling within the scope of the Act might apply for assistance for their studies at higher education institutes of neighbouring countries (regardless of the language and the subject of the studies).

E) Employment – it was possible to be employed in the territory of the Republic of Hungary on the basis of a permit, which permit could be issued on the ground of a simplified procedure. The costs of the issuing might have been reimbursed.

F) Assistance of Organizations operating abroad – Hungary shall support such organizations, and promoting the goals of the Hungarian national communities living in neighbouring countries. These organizations may apply for assistance, if their goals include among others:

- the preservation, furtherance and fostering of Hungarian national traditions, language, literature, culture, folk arts,

- the promotion of higher education of Hungarian living abroad by facilitating the work of instructors from Hungary as visiting lecturers,

- the enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve their ability to preserve their population and to develop rural tourism,

- the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary.

These benefits and assistance may be received by presenting either the “Certificate of Hungarian Nationality” or the “Cerificate for Dependants of Persons of Hungarian Nationality”. These certificates might be requested from the Hungarian central public administration body (the “evaluating authority”) designated by the Hungarian Government. The evaluating authority issued the Certificate if the applicant possessed a recommendation which has been issued by a recommending organization representing the Hungarian national community in the neighbouring country concerned, and being recognized by the Hungarian Government. The recommendation should certify – on the basis of a declaration made by the applicant –, that the applicant is of Hungarian nationality.

The Certificate contained the following personal data:

- family and given name
- date and place of birth, and gender
- mother’s name
- passport photo, citizenship or reference to stateless status,
- signature in the hand of the entitled person’s own hand,
- date of issue, period of validity, and number of the document.

The Act’s further parts provided about the application procedures, the budget-issues, central registration of assistance, and empowering the Government and the ministers to regulate certain rules in decrees. It is important to note, that the final provisions of the status law, in Article 27, par. (2) declared: “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 the law of the European Communities.”

Regarding the international commitments of the Republic of Hungary, the preamble of the Act mentioned that the Parliament adopted the status law “considering the European integration endeavours of the Republic of Hungary and in-keeping with the basic principles espoused by international organizations, and in particular by the Council of Europe and the

European Union, regarding the respect of human rights and the protection of minority rights; also having regard to the generally recognized rules of international law, as well as to obligations of the Republic of Hungary assumed under international law; having regard to the development of bilateral and multilateral relations of good neighbourhood and regional co-operation in the Central European area and to the strengthening of the stabilizing role of Hungary."

Despite these solemn forewords and declarations, the neighbour countries started to protest against the Act in the moment of its adoption.

2. The protest of the neighbouring countries and the international dispute

The Republic of Slovakia and Romania – where the biggest communities of Hungarian minorities live[4] – protested against the adoption of the Status Law. Romania was the first and the "spokesman" of the cause, its arguments were followed by Slovakia too. Below, I summarize the Romanian standpoint and objections.[5]

Extraterritoriality

The most frequently used argument against the Status Law is that it contains extraterritorial elements, i.e. that the effects of the law extend to another state's territory in ways that its sovereignty. In that case, argues Hungary, "it is true that the personal effect of the law relates to non-Hungarian citizens of Hungarian ethnic origin living in neighbouring countries in the sense that they may be granted certain benefits and grants on Hungarian territory, but this does not diminish the primary authority of the Romanian state at all, and the relevant persons remain under its jurisdiction."[6]

Discrimination

[4] In Slovakia in 2001, cca. 520.000 confessed themselves as Hungarians, 9,7% of the population of the country. In Romania in 2002, 1,44 Million, which is 6,6 % of the population of Romania.

[5] See in details and analysed: Varga, Attila: *Legislative Aspects and Political Excuses: Hungarian-Romanian Disagreements on the 'Act on Hungarians Living in Neighbouring Countries'*. In: *The Hungarian Status Law: Nation Building and/or Minority Protection.* Edited by Zoltán Kántor et al., 2004, Slavic Research Center, Hokkaido University. p. 461-474.

[6] Varga, Attila: op.c. p. 469.

The law is discriminatory inasmuch as it makes a distinction among citizens of the Neighbouring States, in this case on an ethnic basis.

In an interesting context the 'accusation' of discrimination arose from a (deliberate or accidental) mistranslation, since 'facilities' was translated as 'preferences' and it was accordingly argued that the law violates the 1965 international Agreement on the Prohibition of All Forms of Racial Discrimination, which was also signed by Hungary. Similarly, the Romanian government interpreted the law as contradicting the 1995 Framework Convention for the Protection of National Minorities and also the 1992 United Nations Declaration

on National Minorities. The relevant government statement overlooks certain contradictions; it only declares that the Hungarian act provides benefits for certain people, which (the statement claims) is discriminatory and violates the above-mentioned international agreements. However, the exact Romanian translation of 'benefits' is 'facilități', and international legal documents do not question their raison d'être and do not characterise them as discriminatory at all.[7]

Specific Concrete Objections:

Objection to Benefits Going beyond Educational and Cultural Support

As we saw at the previous point, the Status Law provided benefits for example on the field of rural tourism and employment.

The Hungarian standpoint was that it is not possible to talk about national, linguistic and cultural survival if the members of the community have basic problems earning a living. Thus benefits and grants which help people to make a living, indirectly contribute to preserving and developing identity and may constitute a part of effective minority protection.[8] Similar reasoning could be used in case of the benefits provided for the students studying at higher educational institutes of their home country, regardless to their field or language of studies. In that case, the help for the intellectuals of the Hungarian communities may protect the elites and so the survival of minorities.

The Issue of the Hungarian Certificate

[7] Varga, Attila: op.c. p. 470.
[8] Varga, Attila: op.c. p. 471.

This is the most contentious aspect from the Romanian viewpoint. It makes up a disproportionately large part of the criticism, either consciously or through ignorance of the act, inasmuch as some speak cynically about the 'Act of the Hungarian Certificate', rather than using the (anyway erroneous) term 'Status Law'. (In fact, this is to invert the relationship between ends and means envisaged in the act. The Hungarian Certificate instituted by the act is no more than an administrative instrument for applying and implementing the law. Therefore, the Hungarian Certificate does not appear in the act as an objective in its own right but as an item of procedure.) The expression, said the Romanian argumentation, 'Hungarian Certificate' might be that it could be misleading, since it is not a document certifying and proving Hungarian national identity. It does not mean that only those who possess the certificates can be Hungarians, but it is a document whose owner is entitled to certain benefits in Hungary.[9]

Another objection mentioned that the certificate is very similar to the passport of Hungarian citizens. As we can see, the certificate holds the symbol of the Hungarian Holy Crown, which is actually only a part of the official Hungarian Coat of Arms.

Picture 1. The Certificate of Hungarian Nationality

The Romanian delegation to the Council of Europe in June 2001 started to collect signatures in favor of the Romanian initiative protesting against the Hungarian Status Law. The Council finally decided that it will give a mandate to the Venice Commission study the case.

The Venice Commission in its report – detailed below – summarized the dispute leading to its procedure as follows:

> *"On 21 June 2001, Romania's Prime Minister, Mr A. Nastase, requested the Venice Commission to examine the compatibility of the Act on Hungarians living in neighbouring*

[9] Varga, Attila: op.c. p. 472.

countries, adopted by the Hungarian Parliament on 19 June 2001, with the European standards and the norms and principles of contemporary public international law.

On 2 July 2001, the Hungarian Minister of Foreign Affairs, Mr J Martonyi, requested the Venice Commission to carry out a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship.

At its plenary session of 6-7 July 2001, the Venice Commission decided to undertake a study, based on the legislation and practice of certain member States of the Council of Europe, on the preferential treatment by a State of its kin-minorities abroad. The aim of the study would be 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."

3. The report of the Venice Commission[10]

As *László Sólyom*, Hungarian member of the Commission noticed, "the Romanian Government requested that the Venice Commission Report on the Hungarian preferential law, while the Hungarian government asked for a comprehensive study of European practice. The Commission put the latter request on its agenda, since it did not want to act as umpire in a Hungarian-Romanian dispute. The report examines the preferential treatment provided by Austria, Slovakia, Romania, the Russian Federation, Bulgaria, Italy, Hungary, Slovenia and Greece to 'national communities' living abroad and it consistently refrains from reporting on the approaches adopted by individual states."[11]

The report noticed that in addition to the multilateral and bilateral agreements and to the domestic legislation and regulations implementing them, a number of European States have enacted specific pieces of legislation or regulations, conferring special benefits, thus a preferential treatment, to the persons belonging to their kin-minorities.

The Commission declared that a new and original form of minority protection was emerging. "The Hungarian preferential law is not a unique and unprecedented phenomenon (as Romania described it) but is a part of a new, accepted and positive direction of minority protection.

[10] European Commission For Democracy Through Law (Venice Commission): *Report On The Preferential Treatment Of National Minorities By Their Kin-State* (Venice, 19-20 October 2001) Cdl-Inf (2001) 19 – with related documents available at: http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.asp

[11] Sólyom, László: *What Did the Venice Commission Actually Say?* In: *The Hungarian Status Law: Nation Building and/or Minority Protection.* Edited by Zoltán Kántor et al., 2004, Slavic Research Center, Hokkaido University. p. 365.

Thus the Commission evaluates the appearance of preferential laws as a positive phenomenon. However, it adds that the time that has passed since their adoption is not sufficient to enable us to speak about international customary law. Given that the time is insufficient to recognize them as a part of customary law, the Commission regards unilateral preferential laws of kin-states as realizable and legitimate, but with the condition that they comply with four principles. These are the following: the territorial sovereignty of the states, respect for treaties, respect for friendly relations between the states, and finally respect for human rights and fundamental freedoms, with special regard for the prohibition of discrimination. Nevertheless, the Commission declares that the system of bilateral and multilateral agreements remains the main tool of minority protection."[12]

As a conclusion, the Report stated that the 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. Europe has developed as a cultural unity based on a diversity of interconnected languages and cultural traditions; cultural diversity constitutes a richness, and acceptance of this diversity is a precondition to peace and stability in Europe.

Respect for these principles would seem to require that certain features of the measures in question be respected, in particular:

- A State may issue acts concerning foreign citizens inasmuch as the effects of these acts are to take place within its borders.
- When these acts aim at deploying their effects on foreign citizens abroad, in fields that are not covered by treaties or international customs allowing the kin-State to assume the consent of the relevant home-states, such consent should be sought prior to the implementation of any measure.
- No quasi-official function may be assigned by a State to non-governmental associations registered in another State. Any form of certification *in situ* should be obtained through the consular authorities within the limits of their commonly accepted attributions. The laws or regulations in question should preferably list the exact criteria for falling within their scope of application. Associations could provide information concerning these criteria in the absence of formal supporting documents.

[12] Sólyom, László: op. c. p. 366.

- Unilateral measures on the preferential treatment of kin-minorities should not touch upon areas demonstrably pre-empted by bilateral treaties without the express consent or the implicit but unambiguous acceptance of the home-State. In case of disputes on the implementation or interpretation of bilateral treaties, all the existing procedures for settling the dispute must be used in good faith, and such unilateral measures can only be taken by the kin-State if and after these procedures prove ineffective.
- An administrative document issued by the kin-State may only certify the entitlement of its bearer to the benefits provided for under the applicable laws and regulations.
- Preferential treatment may be granted to persons belonging to kin-minorities in the fields of education and culture, insofar as it pursues the legitimate aim of fostering cultural links and is proportionate to that aim.
- Preferential treatment can not be granted in fields other than education and culture, save in exceptional cases and if it is shown to pursue a legitimate aim and to be proportionate to that aim.

4. The EU accession and the amendments of the Act

The accession to the European Union of Hungary and (from the neighbouring countries) Slovakia with respect to the status law, raised basically two problems. Firstly, the compatibility of the status law with the EU-law, secondly, the impact of the forthcoming enlargement of the *Schengen-area* on the relations of the minorities with their kin-states (prospective difficulties with their entry into Hungary).

The harmonization of the status law with the EU *acquis* – among other issues[13] – had been focused on the equal treatment of the EU-citizens. Regarding the EU human right protection, the report of the Venice Committee includes the most important and applicable reasoning on the principle of equal treatment. Later, this reasoning became valid also at assessing the Hungarian legal system in the light of the EU-accession of Hungary. The Committee's report laid down:

[13] Nagy Csongor István: *Státustörvény és EU csatlakozás, van-e helye a kedvezménytörvénynek az EU-ban? [Status Law and EU-accession, is there any place for the status law inside the EU?]* In: *Magyar kisebbség*. Kolozsvár. 2003. 4. (30.) 223-266 p.; see at: http://www.jakabffy.ro/magyarkisebbseg/pdf/mk%202003_4_1_nagy.pdf

"The legislation and regulations that are the object of the present study aim at conferring a preferential treatment to certain individuals, i.e. foreign citizens with a specific national background. They thus create a difference in treatment (between these individuals and the citizens of the kin-State; between them and the other citizens of the home-State; between them and foreigners belonging to other minorities), which could constitute discrimination – based on essentially ethnic reasons - and be in breach of the principle of non-discrimination outlined above.

[…] in the Commission's opinion the circumstance that part of the population is given a less favourable treatment on the basis of their not belonging to a specific ethnic group is not, of itself, discriminatory, nor contrary to the principles of international law. Indeed, the ethnic targeting is commonly done, for example, in laws on citizenship. The acceptability of this criterion will depend of course on the aim pursued. […] the differential treatment they engender may be justified by the legitimate aim of fostering the cultural links of the targeted population with population of the kin-State. However, in order to be acceptable, the preferences accorded must be genuinely linked with the culture of the State, and proportionate. In the Commission's view, for instance, the justification of a grant of educational benefits on the basis of purely ethnic criteria, independent of the nature of the studies pursued by the individual in question, would not be straightforward.

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 at any rate available to other foreign citizens who do not have the national background of the kin-State)."

Referring to these statements, there were different approaches. The Hungarian Standing Conference – presenting the Hungarian main parties, government, and the organizations of the Hungarians living abroad – had the opinion, the amendment of the status law was unnecessary:

Pursuant to the provisions of Article 22 of the European Charter of Basic Human Rights, accepted in Nice, respect for linguistic, cultural and national diversity is a cornerstone of the European Union. Since the Act on Hungarians living in neighbouring countries intends to promote the preservation of the particularly diverse multicultural traditions in the Central and East European region, it is in line with the approach, principles and objectives of the European Union concerning cultural diversity. The support for the protection and fostering of the identity of minorities has the purpose of promoting equal opportunities for minorities and offsetting the disadvantages arising from the position of minorities. Therefore, the Act on Hungarians living in neighbouring countries is a legal norm of a fundamentally non-discrimination nature.

After the starting consensus of the Hungarian parties inside the Parliament broke up during the international disputes in 2001, the issue of the Status Law became a part of the parliamentary election campaigns in 2002. In 2002, the opposition won the elections in Hungary, which resulted a clear situation for the Act in question. The new government endeavored to settle these international disputes, and cleared everything that could endanger the EU-accession. The Parliament of Hungary amended the Status Law, and abrogated and amended its provisions on several fields. The amendments not supported by the Hungarian Standing Conference were justified by the arguments and statements of the Venice Committee.

On that ground, for example, the benefits and support for the students not studying in Hungary are available only if they study in Hungarian or on the field of Hungarian culture. The benefits on the rural tourism and development were given up. The provisions on the employment on the territory of Hungary were amended too – now the regular procedure shall be applied for every foreign citizen. The organizations of Hungarians living in neighbouring countries got a different role in the issuing of the Certificate of Hungarian Nationality. In neighbouring countries, only the embassies or consulates may conduct the procedure of issuing, the organizations of the Hungarian communities may be as "recommending" organizations, in order to help the authorities in issuing the certificate (at assessing the applicant, his/her mother tongue, etc.).

Other amendments concerned "symbolic" provisions or, better to say, phrasings. The preamble of the Act in 2001 mentioned the "Hungarian nation as a whole" and the Hungarian communities. The commentary of the amendments in 2003 explained that this phrasing dangerously involves the potential intention of establishing a political bond between the kin-state and the Hungarian minorities living in neighbouring states – as the European Commission noticed.[14] Now, the preamble mentions 'only' the relations between Hungary and the Hungarians living in neighbouring countries, the importance of the national cultural heritage and the preserving of the Hungarian national identity.

Concerning the special issue of the discrimination, the "Communication from the Commission to the Council and the European Parliament The application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons

[14] Commentary to the Act Nr. 2001/LXII. on the Hungarians Living in Neighbouring Countries. In: *Jogtár*, Budapest, 2007, Complex, DVD-ROM.

irrespective of racial or ethnic origin"[15] does not mention the problem of the minorities and the enacted provisions of their kin-states. The situation of the national minorities occurs once in the paper, noticing only that for some of the new EU-members, „the idea of protecting individuals against discrimination on the grounds of 'racial or ethnic origin' was very different from their policies aimed at recognizing and protecting the rights of 'national' minorities." It may mean that sensitive issue of the protection of minorities by their kin-states is out of question – as regards the equal treatment…

This situation was quite controversial for the rightist parties in Hungary and the organizations/parties of the Hungarian communities in neighbouring countries. The president of Fidesz offended the amendments as "castration" of the Status Law.

The other problem, the Schengen-area and its new border-line became quite vital since 21 December 2007, as Hungary and Slovakia entered to that area. The Hungarians living in Austria and Slovakia can enter to Hungary freely, those who live in Romania – being EU citizens – can enter without any visa. There are more difficulties regarding the citizens of the Ukraine and Serbia. Due to the unitary Schengen visa-rules, Hungary cannot issue any free visa. Hungarian organizations in Eastern neighbouring countries proclaimed the new Schengen-borders as a new "iron curtain", between Hungary and its kin-minorities. In order to ease these problems, Hungary introduced the so called "national residency visa" in 2005, which can be issued free of charge, but the required conditions are strict (and because of that it is not popular among the Hungarians living in Serbia or Ukraine). The new special residency visa entitles the bearer to multiple entries, and makes possible a stay longer than three months to all those, who intend to stay in Hungary with the purpose of practicing the Hungarian language, maintaining their national identity, continuing studies in institutions other than the state higher education, and nurturing their family relations.[16]

Hungary also signed an agreement with Ukraine on the local border traffic regime.[17] Inside a limited area behind the borders, citizens of these states can enter into the other state, which may help to maintain relations across (and near to) the borders - in particular it is useable for social, cultural or family reasons, or substantiated economic reasons that are not to be considered as gainful activity according to national regulations. The local border traffic permit costs less than a regular visa.

[15] 30/10/2006, COM/2006/0643 final
[16] http://www.mfa.gov.hu/kum/en/bal/actualities/spokesman_statements/051005_visa.htm
[17] Published in Hungary by the Act nr. 2007/153.

5. The afterpiece in Hungarian politics

The above mentioned quarrel about the status law was based on views on the notions of nation and nationalism, and the front-lines were the same with the government-opposition separation. The issue of amending the status law lead to the Hungarian referendum on 5 December 2004. The citizens were asked to answer to question, the first about the health service system, and the second one about the Hungarians living in neighbouring countries. The complicated question was about to give citizenship by preferential way for those who ask for it and have the above mentioned “Hungarian Certificate”; word by word as follows:

> *Do you think Parliament should pass a law allowing Hungarian citizenship with preferential naturalization to be granted to those, at their request, who claim to have Hungarian nationality, do not live in Hungary and are not Hungarian citizens, and who prove their Hungarian nationality by means of a “Hungarian identity card” issued pursuant to Article 19 of Act LXII/2001 or in another way to be determined by the law which is to be passed?*

The referendum was not initiated within the Hungarian political system, but by the World Federation of Hungarians, an N.G.O. dedicated to the protection of the Hungarian diaspora and the nation-above-borders idea. The Federation was able to obtain the signatures of the 200,000 voters in Hungary necessary for putting its proposal on the ballot. The campaign before the referendum became an intent battle between the Hungarian Government (and its recently elected new Prime Minister, *Ferenc Gyurcsány*) and the rightist opposition (lead by Fidesz and *Viktor Orbán*).

Gyurcsány retaliated against nationalism with Europeanism, accusing Orbán of fomenting "nationalist populism" and offering in its place a vision of Hungary as an "island of modernism" that needed to abandon the past and proceed toward a future of full integration into the European community. He also estimated that 800,000 ethnic Hungarians might migrate to Hungary if the proposition passed, leading to an additional $2.9 billion in welfare expenditures each year that would preclude upgrading the country's health services.

The pro-naturalization camp inside and outside Hungary accused Gyurcsany of betrayal and exaggeration, revealing the atmosphere of partisanship, fractiousness and polarization that has characterized the closely divided Hungarian political forces.

The dual-citizenship proposal failed at the polls; with only 38 percent of voters turning out, the 51 percent of them voting in favor of the question was not sufficient to satisfy the requirement of approval by 25 percent of registered voters. Gyurcsany's strategy had carried the day, and analysts agreed that the public had responded to the Prime Minister's pocketbook appeals and had been left cold by Orban's call to unite all 15 million Hungarians, of which 10 million live in the Hungarian state.[18]

The failed referendum caused frustration widely in the opposition and especially among the Hungarians living abroad. The Government in order to show its commitment to the Hungarians living abroad, and to mitigate the frustration, announced in early 2005 the so called "*Motherland Programme*".[19] As the announcement of the Government said, „The ***Motherland Programme*** offers new means for the safeguarding of the Hungarian identity of the Hungarians living in neighbouring countries, with a new, more differentiated system to support their competitiveness in a pragmatic manner. Its aim is to enable the attachment to the Hungarian language and culture to be a simultaneous possibility to jointly live the European identity of the unified Hungarian nation."

The programme included the following means:

1. Motherland Fund: established a separate financial fund providing support for the development of entrepreneurship, as well as for regional and cross-border co-operation, and cultural and educational activities. The Government, with its Decree No. 1128/2004, has also launched an economic development and job creation framework programme. The programme builds on the existing institutional system, the key actors of which include for ex. the Hungarian Development Bank (MFB), Eximbank, Hungarian Export Credit Insurance, etc. The programme provides for the a possibility to spend HUF 25 billion on regional economic development, particularly on encouraging Hungarian companies to invest in the region.

2. National visa: We already discussed this special kind of visa to those, who wish to visit Hungary regularly, for longer periods of time, to safeguard their language, cultural and national identity or to cultivate their family relations. In order to achieve the goals identified in item 2 of the programme, the Government introduced a bill on the amendment of Act XXXIX of 2001 on the Entry and Stay of Foreign Nationals, which the National Assembly adopted on 6 June 2005.

[18] Michael A. Weinstein: *Hungary's Referendum on Dual Citizenship: A Small Victory for Europeanism.* See at: http://www.pinr.com/report.php?ac=view_report&report_id=245

[19] See: http://www.mfa.gov.hu/kum/en/bal/Archivum/Archives/nation_policy_affairs.htm

3. Preferential naturalisation: Administrative deadlines will be shortened considerably (applications for naturalisation or re-naturalisation may be filed immediately upon entry, so that it is not necessary to wait one year, and citizenship may be obtained within 18 months starting from the filing of the application), the scope of those exempted from the obligation to take an examination on basic constitutional knowledge will be broadened, and the administrative burden falling on the clients will be reduced (it will be sufficient to make a declaration concerning the documents held ex officio by the authority, etc.).

4. **Autonomy:** The European integration of our region helps minority communities to live more and more with the means of self-government in numerous areas. Such means and forms, providing a framework for autonomous community existence, include the decentralisation of public administration, self-government, and the application of the basic European principle of subsidiarity. European examples show that autonomy is an efficient means and context of the co-existence of different peoples. The Government therefore firmly supports the quest for autonomy of the Hungarian communities living in neighbouring countries, in accordance with European practices and the spirit of international norms, as a means of regulating their situation on the basis of constitutional equality. The phrasing of concrete goals is influenced by the domestic political situation and the situation of the minorities in the given country, the openness of the majority nation, the weight of the Hungarian minority, the possibilities of applying solutions successfully utilised in other European countries, and the quality of bilateral relations.

We can conclude that the national means of minority protection are rather limited, the Hungarian government diverged from the status law in order to comply with the EU-expectations just before the EU accession. The above mentioned programme has weak budget background, and due to other political issues, the problem of Hungarians living in neighbouring countries come up only in international affairs (like together with Kosovo).

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