Parliamentary Assembly
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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"[1])

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Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Erik Jurgens, Netherlands, Socialist Group

Summary

On 19 June 2001, the Hungarian Parliament passed a law concerning persons of Hungarian identity who are citizens of neighbouring states of Hungary: Croatia, Serbia and Montenegro, Romania, Slovenia, Slovakia and Ukraine.

This law, which grants preferential treatment to those citizens, has been criticised by some of the countries concerned. The main objection to it concerns the unilateral approach adopted.

The Venice Commission, which was asked for its opinion on the law, considers that states must adopt a bilateral approach to protecting kin-minorities and that any laws on the matter must be based on four principles: territorial sovereignty, *pacta sunt servanda*, friendly good-neighbourly relations, and respect for human rights and fundamental freedoms, including the prohibition of discrimination. The Assembly agrees with this opinion.

The Assembly therefore asks the government and Parliament of Hungary to find ways to amend the law of 19 June 2001 in order to respect these principles.

I. Draft resolution

1. The Assembly, in principle, welcomes assistance given by kin-states to kin-minorities in other states in order to help these kin-minorities to preserve their cultural, linguistic and ethnic identity. However, the Assembly wishes to stress that such kin-states must be careful that the form and substance of the assistance given is also accepted by the states of which the members of the kin-minorities are citizens, and to which the basic rules contained in the Framework Convention on National Minorities are applicable.

2. The Assembly considers that responsibility for minority protection lies primarily with the home-states. The Assembly stipulates that the existing multilateral and bilateral framework of minority protection, including European norms, must be held as a priority. Kin-states can also play a legitimate and important role in the protection and preservation of kin-minorities, aimed at ensuring that their genuine linguistic and cultural links remain strong. The emergence of new and original forms of minority protection, particularly by the kin-states, constitutes a positive trend insofar as they can contribute to the realisation of this goal within the framework of international cooperation.

3. On 19 June 2001, the Hungarian Parliament passed a law which has the aim to give such assistance, in this case to people of Hungarian identity who are citizens of neighbouring countries and who consider themselves as persons belonging to the Hungarian "national" cultural and linguistic community.

4. Under the law, preferential treatment is granted to citizens of Magyar “nationality” living in the following neighbouring countries: Croatia, Serbia and Montenegro, Romania, Slovenia, Slovakia and Ukraine. Magyars living in Austria are excluded from the scope of the law.

5. Several of these member states of the Council of Europe have previously adopted legislation based on the principle of preferential treatment of national minorities by the kin-state.

6. On 22 December 2001, in light of the report by the Venice Commission on the preferential treatment of national minorities by the kin-state, the governments of Hungary and Romania did sign a memorandum of understanding which – *inter alia* - extends the conditions and treatment applicable in Hungary in respect of employment to all Romanian citizens, irrespective of their "national" identity.

7. Preferential treatment is subject to possession of a certificate which can be issued only by a Hungarian public authority, as concluded in the opinion of the Venice Commission.

8. On the basis of the aforementioned report by the Venice Commission, the Assembly considers that states must adopt a bilateral, not unilateral approach to protecting kin-minorities and that any laws on the matter must be based on four principles: territorial sovereignty, *pacta sunt servanda*, friendly good-neighbourly relations, and respect for human rights and fundamental freedoms, including the prohibition of discrimination.

9. The Assembly notes that some neighbouring countries have criticised the Hungarian law for failing to respect these principles. Their main objection to it concerns the unilateral approach adopted.

10. Furthermore, there is a feeling that the definition of the concept of "nation" in the preamble to the law could under certain circumstances be interpreted – though this interpretation is not correct - as non-acceptance of the state borders which divide the members of the "nation", notwithstanding the fact that Hungary ratified several multi- and bilateral instruments containing the principle of respect for territorial integrity of states, in particular the basic treaties entered into force between Hungary and Romania and Slovakia. The Assembly notes that up to now there is no common European legal definition of the concept of "nation".

11. The Assembly is convinced that the other points at issue, namely the inclusion in the scope of the law of family members who are not of Magyar identity, the exclusion of other citizens from neighbouring countries from access to economic and social privileges, and the role played by minority organisations in implementing the law, could possibly have been accepted or modified had they been preceded by bilateral discussions and agreements, such as the Memorandum of Understanding between Hungary and Romania.

12. The Assembly refers also to the statement made by the OSCE High Commissioner on National Minorities on 26 October 2001, in which he expressed his general concern that laws of the nature of the Hungarian law called into question earlier advances in the protection of minorities and allowed for discriminatory treatment of the majority in that state, a situation that could have a negative effect on the position of the minority itself, and on inter-state relations across Europe. The Assembly welcomes several consultations held between the Hungarian Government and the OSCE High Commissioner on National Minorities.

13. The Assembly therefore urges the government and parliament of Hungary to find ways to amend the law of 19 June 2001 on the preferential treatment of kin-minorities in such a way that it is based on bilateral discussions and agreements with the neighbouring countries and meets the proposals of the Venice Commission and the criticism of the existing law by the OSCE High Commissioner on National Minorities and by the Parliamentary Assembly itself. Furthermore, the Assembly calls on all governments concerned to enter into or to continue substantial negotiations.

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II. Explanatory memorandum

by Mr Jurgens, Rapporteur

A. Introduction

1. The motion for resolution was tabled on 28 June 2001 on the law regarding the (ethnic) Hungarians (whom I will consistently call “Magyars” in this report, because the noun “Hungarian” in English and French means “citizen of Hungary”, and the adjective means “pertaining to the state of Hungary”) living in neighbouring countries, adopted on 19 June 2001 (hereafter "the Law") (see Appendix I) by the Hungarian Parliament.

2. This motion, tabled by Mr Prisacaruand others (Doc 9153), and the motion for a resolution of 3 July 2001 on trans-frontier co-operation in preserving the identity of national minorities, tabled by Mr Van der Linden and others (Doc 9163), both, under different titles, asked the Assembly to pronounce itself on trans-frontier cooperation preserving the identity of national minorities in general, and the Hungarian Law on Magyar minorities in neighbouring states in particular. For the title of my report I have adopted the more general phrasing used by the Venice Commission. This enables me to take the report of the Venice Commission of that title of 22 October 2001 (168/2001) as my basis, and to then apply it to the case of the Hungarian law, a law to which at least two neighbouring states, Romania and Slovakia, have taken exception. I first visited Budapest on 11-12 March 2002 and Bratislava on 12-13 March 2002. At the request of the Legal Committee – which had been confronted with statements that amendments to the law were being prepared - I again visited Bratislava and Budapest, and now also Bucharest, on 4-6 December 2002. The programmes of these visits are reproduced in Appendix II.

3. The report of the Venice Commission is reproduced in Appendix IV to this report. It would be doubling the excellent work done by the Venice Commission if I were to again explain which principles of international public law and custom apply to the relation between neighbouring states, when a minority in one state is a majority in the other. The Venice Commission has used the term “national minority” as it is known and used especially in the Framework Convention of that name. It has coined the term “kin-state”, so as to indicate the country where the identity of that national minority is that of the dominant culture. The word “kin” is clearly more neutral than the word “mother-state” which is common in some texts, but suggests wrongly that such a state has formal relations with citizens of other states.

4. It is important to note that there are big differences in the way the word “nation” is employed in different parts of Europe and in different European languages. The word nation in many countries and languages denotes a state, or the totality of the citizens of a state. The word nationality is used as a synonym for “citizenship of a state”.

5. In many countries the word nation is however used in a completely different way. The original meaning of the word is derived from the Latin word “nation”, which means “the entity into which one is born”. Historically the word was used to denote groups of which the members identify themselves as culturally, ethnically or linguistically as belonging to that group (i.e. the Franks, the Germans, the Italians). This was in an era when states, as we know them since the 19th and 20th century, did not yet exist. There existed only territories which were bound together by the fact that they had the same lord, prince or king. The members of a nation were often dispersed among a plurality of territories. The German “empire” before 1806, the Holy Roman Empire of the German Nation (das Heilige Römische Reich Deutscher Nation), was an expression of this situation. The drive that lead to the unification of Germany, and of Italy, in 1870/1 was based on this concept of nation. It has an old tradition and is a reality in many parts of Europe. In the 19th and in the first half of the 20th century, especially in Western Europe, governments tried to make the “nation” coincide with

the state, hence the fact that these words have become synonymous. In English and French, the official languages of the Council of Europe, the word “nation” has now to be put between inverted commas if the old meaning is meant. Hence the linguistic problems involved when writing on this subject!

6. There are, therefore, situations where the existence of different “nations” or “nationalities” within a state is recognized as a positive contribution to that society (Spain and Russia for example). Then again, some “nations” which lived together within the same borders were broken up during the 19th and 20th centuries, but the feeling of “nationhood” has remained strong, even if the members of that nation regard themselves as loyal citizens of the states in which they are a “national” minority, i.e. a minority composed of a different “nation” than that of the majority (such as the Magyar “nation”). This report deals with a specific case in this category. Thirdly there is a group of states that do not give any legal effect to the older concept of nationhood. Indeed, they formally do not even know this concept (such as France, Britain, the Netherlands).

7. The feeling of identity as a member of a “nation”, as opposed to identity as citizen of a state, is a normal and wide spread phenomenon in Europe. In many countries it has found recognition in the constitution of the state and is seen as a positive contribution to a pluri-cultural and tolerant society. It can however also be the cause of fundamental conflicts and frustrations within a state if insufficiently recognized in constitutions of states, or if exacerbated by populism and nationalistic rhetoric (here I use the word nationalistic in both the older and the newer the new meaning!). This can also be the case if the members of a “nation” live separated by state boundaries and are the citizens of different states. Because of this, kin-states need to be careful in which way they lend cultural and linguistic support to kin-minorities in neighbouring states. This should preferably be done on the basis of bi-lateral agreements, and not on the basis of unilateral acts.

8. The terminology used to cover the phenomenon of ethnic, linguistic and cultural ties between groups of citizens within separate states can therefore be very important. The use of the word “nation” in official documents of kin-states especially, such as constitutions or laws, should be carefully screened so as to avoid possibly wrong impression or possible misuse.

9. The terminology “kin-minority” and “kin-state” is more neutral[2]. It does no more than state a fact, i.e. that of ethnic, linguistic and cultural ties. It does not evoke deeper-lying, historically or politically motivated feelings that are often associated with the word “nation”, and with the political aim of creating a “nation state” within the boundaries of which the whole nation is brought together, as happened in Germany and Italy in the 1870’s – but which is not consistent with modern ideas about relations between civilized states.

10. If the terminology “kin-state” and “kin-minority” is used consistently, the policy of a kin-state that aims at no more than helping a kin-minority to preserve its identity can more easily be seen for what it is, i.e. not motivated by deeper lying nationalistic or irredentist objectives.

11. The Venice Commission – after giving an historical background - describes the obligation on states to approach minority protection in a bilateral way. It also analyses the present domestic legislation of some European states as to protection of kin-minorities. In chapter D, it then formulates the four principles on which such domestic legislation should be based, i.e:

a. territorial sovereignty and non-intervention

b. *pacta sunt servanda*

c. friendly relations with neighbouring states

d. respect of human rights, especially non-discrimination.

12. The Venice Commission argues these principles forcefully, and ends its report by enumerating six criteria along which domestic legislation about kin-minorities in another state should be measured.

13. Without committing myself to exact wording, or to the supposition that these are the only possible criteria, I can concur with these conclusions. Thus, for the general analysis I may refer to the report of the Venice Commission itself. This allows me, in this report, to concentrate on the following question: Is the Hungarian Law of 19 June 2001 compatible with the general principles and with the criteria outlined by the Venice Commission?

B . Points of criticism

14. It is clear that if there are strong protests from neighbouring states, there must be a problem with at least the principle mentioned under c) above. I have thus chosen to list the complaints made by Slovakia and Romania, under the surmise that probably this list will cover all the elements of the Hungarian law which could possibly not measure up to the criteria formulated by the Venice Commission.

15. These complaints are:

a. Existing bi-lateral cooperation agreements have not been utilized, and the law has been unilaterally proclaimed by the kin-state.

b. The concept of “nation” in the preamble of the law is based on too broad a definition of that term.

c. The reduction of the application of the law to kin-minorities in neighbouring countries (with the exception of Austria), and therefore not to all Magyars suggests deeper lying motives of territorial aggrandizement of the kin-state.

d. Spouses and children of members of the kin-minority who have no Magyar kinship are included.

e. Privileges in the social and economic field (working permits, participation in social security benefits) within Hungary for the kin-minority are discriminatory, because other citizens of the neighbouring country, not belonging to the kin-minority are excluded.

f. In neighbouring states organisations of kin-minorities are, by the law of the kin-state, involved – thus giving an unacceptable extra-territorial element in the law of the kin-state.

C. Comments on the points of criticism

a. Unilateral procedures

16. Basically this is the strongest point of criticism. It is based on the principle of good neighbourly relations. In theory the other five points may have been acceptable, with modifications, if they had been the result of bi-lateral discussions and agreements. This is especially the case if these had been held within the framework of existing treaties, such as the “Treaty on Good Neighbourly Relations and Friendly Cooperation” of 1995 agreed upon between Hungary and Slovakia. Spokesmen on the Hungarian side recalled the position of the Venice Commission that – when a kin-state takes unilateral measures on the preferential treatment of its kin-minorities in a particular home-state, the latter may presume the consent of the said kin-states to similar measures

concerning its citizens. My comment was that this of course only holds until home-states have taken a contrary position.

17. When I publicly commented on the Hungarian Law during my visit to Budapest on 12 March that I regard the non-bilateral way in which the law had been enacted to be “unwise”, it is clear that I meant that much of the present conflict about the law could have been prevented.

18. The Memorandum of Understanding signed between Hungary and Romania on 23 December 2001 (see Appendix V) has belatedly but wisely tried to correct this procedure. The Memorandum in fact accepts that the points of criticism under the points d) to f) above should lead to some sort of correction of the Law. My Hungarian contacts differed of opinion as to how these corrections would come about. In fact, as of yet, they have not led to changes in the law, only to rulings that bring the implementation of the law into conformity with the Memorandum of Understanding. Besides this, the Memorandum of Understanding was concluded already year ago, and also no such agreement with Slovakia has been made.

b. The concept of “nation”

19. As described above, the concept of "nation" can in its consequences sometimes be positive and sometimes relatively innocuous. But it can on the other side carry a suggestion of non-acceptation of those state borders which in fact divide the members of the “nation”. This suggestion can have a negative effect if it causes unrest in the states in which the kin-minorities live, negative also for the position in that state of the kin-minorities concerned. Thus the Law provoked reactions in Slovakia during March 2002 directed against the now entrenched position of the Magyar minority in Slovakia. This works clearly to the detriment of that minority and to harmonious relations within the state.

20. This is the reason why the first paragraph in the Preamble of the Law is in my view hardly reassuring:

“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 ...”.

21. This part of the Preamble seems to be in contradiction with other parts of the Preamble which rightly stress rules of international law and of European integration. Besides, the membership of the Magyar “nation” as a whole does not restrict itself to inhabitants of Hungary and its neighbouring states.

22. The Council of Europe should in my view take a further look at the concept of “nation” as it is employed in many parts of Europe on the basis of traditions that precede the 19th century concept of the nation-state. The Council of Europe, and public international law in general, is based on the concept of "state" and '"citizenship". This leaves no room for the concept of "nation". This was done on purpose after World War II, because nationalist ideologies were root causes of that war (nationalist here used both in the sense of excessive state patriotism, and in the sense of proclaiming one's own "nation" to be superior). Where claims are made on the citizens of other states by virtually “enrolling” them as members of that “nation” which the kin-state seeks to bring together and to represent, this nation-concept which is too strong could endanger the traditions of the Council of Europe.

23. Thus the Council of Europe should be willing to speak out against such misuse of the concept of nationhood. The position of the Council of Europe in favour of the protection of minorities has as its corollary the rejection of forms of support to kin-minorities that are in fact (disguised) claims to territories outside the kin-state where the kin-minorities are a majority.

24. On the other hand we have seen that the concept of "nation" can also have very positive elements, which in the present tradition of the Council of Europe are maybe insufficiently recognised. We do not have to abide by the concepts created in the past that now do not – in a Europe united by the principles of the Council of Europe – always fit into the consciousness of the peoples of Europe and into the *de facto* situation in some parts of Europe.[3] In a paper for the Centre for Russian and East European Studies of the University of Birmingham (United Kingdom), Ms Brigid Fowler argues that "in a broad European context … notions and practices of citizenship, sovereignty and territoriality are in a state of flux…The status law and similar legislation (institutionalise) a relationship between states and individuals who are neither their citizens nor their residents. Inasmuch as status-law-type legislation creates rights claimable by particular individuals against specific states, it creates a form of citizenship, but a form of 'fuzzy citizenship', since it is not a full citizenship, it does not coincide with any existing relationship between states and individuals, and its terms are often unclear."

25. The paper explores this hypothesis and concludes that "the conceptual separation of state and nation in Central and Eastern Europe opens the way at least implicitly to kin-state relationships which challenge 'modern' principles of both territoriality and citizenship, and which admit 'post-modern' notions of multiple identities, non-citizen relationships between states and individuals, and attenuated state sovereignty".

26. If this is the case – and within the European Union this is clearly so, as national sovereignty is being pooled together in the EU, and a citizenship of the EU is being developed – then it obliges the Council of Europe to recognize this fact, to make an in-depth study of this phenomenon, and to formulate new principles governing it. This calls for a further report to the

27. Assembly. In no way, however, would this put aside the necessity of good neighbourly relations between states and of regulating possible 'fuzzy citizenship' on the basis of bi-lateral or multi-lateral (Council of Europe) agreements, and not unilaterally.

28. Even if the concept of fuzzy citizenship would go too far, yet some sort of answer must be given to them who regard themselves in the first place as part of a "nation", and only in the second place as a loyal citizen of the country where they are living. Neglect of such basic feelings can lead to political strife.

29. For example: if Holland plays football against Turkey, a large part of the immigrant Turkish ethnic minority in Holland makes it quite clear that it wants Turkey to win. In this case Turkish Dutchmen have to choose between their two identities. Would Holland be playing against any other country than Turkey, they would hope Holland wins.

30. In my discussions with the Slovak authorities I pointed out that Slovakia also gives rise to concern about the way it describes itself and its citizens in constitutional texts, i.e. "We, the Slovak people, together with the members of the national minorities and ethnic groups" and also "We, the citizens of the Slovak Republic". These texts stress that members of the national minorities do not belong to "the Slovak people", although they are Slovak citizens. Thus a division is made between "Slovaks" and other citizens which is discriminatory and can fuel the same sort of nationalistic sentiments that I described above when speaking of the concept of the "Hungarian nation". Similar citations could be made from Romanian texts.

c. The exclusion of Austria

31. It is not consistent that the law excludes ethnic Hungarians living in neighbouring Austria. However this does recognize the fact that Austria is a member of the European Union and therefore cannot accept preferential treatment of some of its citizens above others. Conversely, neither can

Hungary treat some Austrian citizens differently from others, considering its association agreement with the EU. Hungary will therefore have to change this discriminatory element in its Law as soon as it accedes to the European Union. During my discussions in Hungary it was suggested that the exclusion of Austria had to do with the fact that the Magyar community in that country is small and that Hungarians living in Austria are not covered by the law, due to the fact that the overwhelming majority of them preserved their Hungarian citizenship. But if this is the case, why was Slovenia not also excluded?

32. This leads to a further question: why is the Hungarian law limited to Magyars living in neighbouring states? If it is a law that aims at no more than strengthening the cultural identity of Magyars abroad, why does it not apply to all Magyars, wherever they live? Such a larger scope could certainly help taking away suspicions, in the neighbouring countries – however unjustified they may be - that the law has a deeper layer of an irredentist nature.

d. The inclusion within the working of the Law of family members having no Magyar kinship

33. This argument for such an inclusion can be found in the aim of keeping families together by not discriminating between family members of mixed ethnic background. But it is clear that it can also be regarded as a form of proselytising non-Hungarian family members, an aim which the neighbouring state could well regard as unfriendly (certain Hungarian politicians did indeed suggest that such proselytising was one of the aims of the law). Thus this provision needs careful consideration, and should be based on total agreement about the matter with the neighbouring states.

e. The exclusion of other citizens of the neighbouring states as regards privileges of a social and economic nature

34. This also runs contrary to the principle of non-discrimination which the EU applies. Besides, these privileges (working permits, inclusion in the system of social security) cannot reasonably be regarded only as a form of assistance to a kin-minority to preserve its identity. It is a form of selection of workers from a foreign country which clearly serves the preferential social-economic treatment of co-members of the “nation”. This form of claim on non-citizens belonging to the nation of the kin-state can be very detrimental to good neighbourly relations, as has been shown in the case of the Hungarian law.

f. Involvement of organisations of kin-minorities in the implementation of the Hungarian Law

35. This has turned out to be an especially sensitive matter. The Venice Commission singles it out as an example of extra-territorial application of the Law which infringes the sovereignty of the neighbouring state. The Hungarian-Romanian understanding of 23 December 2001 solves the matter by giving only diplomatic representatives of Hungary the role of registering nationals of the neighbouring state who wish to be regarded as Magyars, and who wish to make use of the possibilities extended to them by the Law. This solution precludes that organisations of Magyars in neighbouring states themselves coordinate the registration of citizens who wish to apply. That would make them agents of the kin-state and this would infringe the sovereignty of the neighbouring state

36. It can of course not be reasonably forbidden that these diplomatic representatives, when *in dubio* over the question whether or not a citizen is a Magyar also ask the opinion of organisations of such ethnic Hungarians. But that is something different than giving the organisations an executive role in the matter.

37. The problem is exacerbated by the appearance of the certificate which Magyars in neighbouring countries can receive, and which gives the bearer the rights enunciated in the Law. The certificate is a booklet of stiff pages bearing the crown of Hungary on the outside, with the personal data of the person concerned on the first page, making it look somewhat like a passport.

38. The Hungarian delegation has put forward arguments that many of the points of criticism have already been met. It points especially to the agreement reached on 23 December 2001 between the governments of Romania and Hungary (see Appendix V), and that the new government of Hungary – which was installed after the elections of April 2002 - is implementing the provisions of this agreement. Indeed, some of the points of criticism have been met, although it is not clear if this has led to changes in the law itself, or only to delegated legislation which implements the law by interpreting it in a way that conforms with the Memorandum of Understanding (these rulings therefore are *contra legem*). It would seem that a change of the law itself is indicated.

39. Furthermore, discussions with the Slovak side have not yet led to an agreement comparable with the Romanian-Hungarian understanding. Perhaps that agreement has been postponed because of the imminence of the recent elections in Slovakia. It would seem that now, even considering the paper from the Slovak delegation[4], an understanding should be expected on the basis of the existing treaty of co-operation between the two countries.

40. During my visit on 4, 5 and 6 December 2002 to Bratislava, Budapest and Bucharest I received assurances that amendments to the Law were being prepared by Hungary. But I also heard that these amendments, although forming – in the view of the Rumanians and the Slovaks - a positive development, did not yet meet all the points of criticism put forward by these governments. Meanwhile the law has already been in force for a year. A half-a-million certificates have been issued, and the ongoing discussion between the three governments has a tendency to force the three governments into uncomfortable public positions after each round of bi-lateral talks between Hungary and its two critical neighbours. At the same time I was assured that, apart from this problem, the relations between the three states were excellent.

41. I have postponed presenting my definite report to the Legal Committee from June, via September and December 2002 and the part-session of the Assembly in January 2003 to 3 March 2003, although interim reports were debated in the committee in the meanwhile. I have done this because a solution arrived at by the three governments concerned would give a positive accent to this report. On the other hand, the continuing procrastination in the matter of the drafting of amendments now makes it necessary for the Council of Europe to take a position, like the European Union has done, and like the OSCE High Commissioner is doing. I do not think that a further postponement would be beneficial.

42. If however, draft amendments are introduced in the Hungarian parliament before the present report is presented to the Assembly, I will add a chapter to this report commenting those amendments in the light of this report.

D. Conclusions

43. Criticism of the Hungarian Law has not only been voiced by two neighbouring states, i.e. Romania and Slovakia. The OSCE High Commissioner on National Minorities, Rolf Ekeus, has also voiced a general concern about laws of this nature. His statement of 26 October 2001 is reproduced in Appendix VI to this report.

44. It is clear that I, as your Rapporteur, would think it wise if the new Hungarian government would see fit to make such amendments to the Law, that the new text will be based on bi-lateral discussions with all neighbouring states, including Austria, and will leave out or modify such

elements of the existing Law as have been criticised by the Venice Commission, by the OSCE and, if this report is accepted, by the Parliamentary Assembly of the Council of Europe.

45. This would clear the air between Hungary and its neighbours after the unilateral way the Hungarian law was introduced, and would make room for an effort to look more deeply into the underlying problems. For nobody would wish to gainsay that it is in the interest of national minorities if an existing kin-state helps citizens belonging to those minorities to be conscious of their identity and to develop it, within the national identity of the state of which they are citizens.

46. But a clash is in some cases clearly possible between the existing rules of public international law – which are based on concepts such as “state”, “territoriality”, “citizen” and “national minority” on the one hand, and the time-honoured use – at the same time – of the word “nation” by some member states of the Council of Europe, denoting ethnic, cultural or linguistic groups which transcend state frontiers.

47. So as to counter possible developments of a negative “nationalistic” or “irredentist” nature in the relations between States based on a specific concept of “nation”, the Council of Europe could – in the study envisaged in paragraph 22 above - consider the possibility of trying to incorporate a positive concept of “nation” into the traditional concepts of public international law mentioned above, by accepting – under strict conditions of sovereignty and statehood - the formulation of a sort of part-citizenship which Ms Brigid Fowler’s report, mentioned under paragraph 21, has coined “fuzzy citizenship”. The outcome could also be that the existing situation – where “national” communities can freely be formed and maintained within our open societies – in fact gives enough possibilities.”

48. This report on the Hungarian law of 19 June 2001 tries to contribute to the solution of a specific issue round a specific Law. The general concept of “nation” underlying this issue should therefore be elaborated on in a separate report tackling the question put forward in a more general way in the Motion for Resolution tabled by Mr Van der Linden and others on “Trans-frontier co-operation in preserving the identity of national minorities”, Doc 9163 of 3 July 2001.

(APPENDIX I – VII not included here)

……

[1] People of Hungarian identity (i.e. citizens of the countries concerned who consider themselves as persons belonging to the Hungarian "national" cultural and linguistic community).

[2] It would be preferable that a similarly neutral term could be coined in the French language, the other official language of the Council of Europe. At present “kin-state” is translated as “*état parent*”, and “kin-minority’ as “*minorité ethnique*”. The use of the word “*parent*” is loaded with the wrong sort of meaning, and the reduction of the description of a minority to an ethnic one is incorrect (linguistic and cultural should be included). In other languages we should also seek to use neutral terms such as “kin-”, which denotes ties of relationship in general.

[3] B. Fowler, ‘Fuzzing citizenship, nationalising political space: A framework for interpreting the Hungarian ‘status law’ as a new form of kin-state policy in Central and Eastern Europe’, ONE Europe or Several? Working Paper 40/02. Falmer, Brighton: One Europe or Several? Programme at the Sussex European Institute, University of Sussex, 2002.

[4] See document AS/Jur (2002) 38.