Bilateral Agreements as a Means of Solving Minority Issues: The Case of the Hungarian Status Law

I. INTRODUCTION

The Hungarian government adopted the draft law on Hungarians living in neighbouring countries in April 2001 without consulting neighbouring states. Despite the discontent expressed by the latter, the Hungarian parliament adopted the law in June 2001 (hereinafter “the Law”) almost unanimously. The decision to adopt this Law was a result of a combination of factors. The three most important were, as all mass media in Hungary largely referred in spring 2001, the will of the Hungarian government to set the rules and instruments for developing a relationship with Hungarian minorities abroad before Hungary became a member of the European Union. It is worth mentioning that former Prime Minister Viktor Orban stated to be the Prime Minister of 15 million Hungarians. Another objective of the Law was to contribute to the reunification of the Hungarian nation, ‘dismantled’ by the Trianon Treaty, while encouraging ethnic Hungarians to stay in their native land. The 2002 general elections in Hungary represented another reason for promoting a project aimed at supporting minorities living in neighbouring countries. The adoption of the Law was seen by the Orban government, in this context, as an important electoral ‘hit’.

The fact that the Hungarian government did not consult its neighbouring states on the Law was justified by the concept present in Hungary that the Hungarian state, as ‘mother-state’ has a right and, at the same time, an obligation to protect Hungar-

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ian minorities abroad. It should also be mentioned that, at that time, there were no
detailed standards regulating the support that can be granted to kin-minorities despite
the fact that a correct interpretation of the fundamental principles of international law
would have led to the conclusion that consultation was mandatory.

The Law, as it was adopted in June 2001, raised a number of concerns, in particular
with regard to potential discriminatory effects. The most important ones are the follow-
ing: First, granting facilities in the socioeconomic field, especially the unconditional and
unlimited right to work on Hungarian territory for ethnic Hungarians, created discrim-
ination as far as citizens of neighbouring states of non-Hungarian ethnic origin were
concerned. For instance, a Romanian–Hungarian agreement, already in force when the
Law was adopted, provided for a certain quota of Romanian citizens to work in Hun-
gary (8,000 work permits per year). The number of ethnic Hungarians able to work in
Hungary on the basis of the Law was unlimited, but the number of other Romanian
citizens was limited, thus creating discrimination on an ethnic basis. Second, the Law
stipulated the granting of financial subsidies to ethnic Hungarians in the neighbour-
ing countries on an individual basis, for those who learn/teach in the Hungarian lan-
guage, thus discriminating against other citizens learning/teaching together with ethnic
Hungarians. Third, the Law provided for granting the so-called ‘Hungarian dependent
certificate’ for the non-ethnic Hungarian spouse of an ethnic Hungarian, who was sup-
posed to benefit from the same facilities as a Hungarian, thus creating discrimination
among the non-ethnic Hungarian citizens from neighbouring countries. From the very
beginning, the Law was considered to infringe the provisions of the Amsterdam Treaty
on discrimination, which is why Austria was excluded from the scope of the Law.

The extraterritorial effects of the Law were numerous, especially those concerning
the procedure of granting the ‘Hungarian certificate’. This procedure directly involved
legal persons from neighbouring states (the organizations of the Hungarian minorities
from neighbouring states), which are not Hungarian legal persons. So, the Law directly
regulated the activities of foreign legal persons on foreign territory outside Hungarian
jurisdiction and without the consent of the neighbouring state. According to interna-
tional law, extraterritoriality is permitted if the consent of the foreign state is granted.
These organizations were supposed to issue compulsory recommendations with regard
to the ethnic origin for the persons applying for the certificate (and thus for the facili-
ties set forth by the Law), which represented a clear infringement of the right provided
for by the Framework Convention on the Protection of National Minorities (hereinafter
“the Framework Convention”) to freely chose whether to be considered to belong
or not to a certain national minority. If these recommendations were negative, such
persons would have failed to be considered as ethnic Hungarians and would have had

3 Art. 6(3) of the Hungarian Constitution sets forth: “The Republic of Hungary recognizes its
responsibilities toward Hungarians living outside the borders ...”.
4 On the issue of the exclusion of Austria and the compatibility of the Law with EU law see the
‘Jurgens Report’: Parliamentary Assembly of the Council of Europe, Doc. 9744 rev., report of the
Committee on Legal Affairs and Human Rights, rapporteur: Erik Jurgens, para. 30; and, respec-
tively, the Non-Paper issued in December 2002 by the European Commission “Assessment of
the compatibility of the revised draft Law on Hungarians Living in Neighbouring States with
European standards and with the norms and principles of International Law (findings of the
Council of Europe’s Venice Commission) and with EU Law” (Appendix 3 of this contribution).