The Act on Hungarians Living in Neighbouring Countries Challenging Hungary's Obligations under Public International Law and European Community Law

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I. Historical Background

On 19 June 2001, the Hungarian Parliament, with a vast majority of votes (306 ayes, 17 noes, 8 abstentions[1]), passed Act LXII on Hungarians Living in Neighbouring Countries[2], commonly known as the "Status Law". The act, which entered into force on 1 January 2002, confers certain privileges to persons who are of Hungarian origin but foreign nationality and live in the countries adjacent to Hungary, except for Austria.

The figure of ethnic Hungarians living outside their country of origin is estimated at 3,5 million in total, amongst which 1,7 million live in Romania, 600.000 in Slovakia, 340.000 in former Yugoslavia and 160.000 in Ukraine.[3] The roots of these large ethnic minorities go back as far as the end of World War I: Having fought on the side of the Central Powers as member of the Austrian-Hungarian Double Monarchy, Hungary had to give up, under the Treaty of Trianon (1920), more than 71 per cent of its territory and lost more than 63 per cent of its population.[4]

After the end of the communist era, the Hungarian State expressed the "sense of responsibility for what happens to Hungarians living outside of its borders" and the will to promote "the fostering of their relations with Hungary" (Article 6 § 3 of the amended Hungarian Constitution[5]). However, since the early 1990ies a large number of ethnic Hungarians, particularly from Romania, immigrated to

1 Cf. *H. Küpper*, Ungarns umstrittenes Statusgesetz, in: Osteuropa-Recht 47 (2001) p. 418.

2 English text see Annex; see also in: 40 I.L.M. 1242 seqq.; German text in: Osteuropa-Recht 47 (2001) pp. 424 seqq.; Hungarian text in: Magyar Közlöny 2001, No. 77, pp. 5637 seqq.

3 Cf. Giftiger Streit über den nationalen Konsens, in: Frankfurter Allgemeine Zeitung No. 34 of 9 February 2002, p. 5; see also *G. E. Edwards*, Hungarian National Minorities: Recent Developments and Perspectives, in: International Journal on Minority and Group Rights 5 (1998) p. 345 (355 seqq.).

4 Cf. *D. Silagi*, Ungarn seit 1918: Vom Ende des I. Weltkriegs bis zur Ära Kádár, in: *T. Schieder* (ed.), Handbuch der europäischen Geschichte, vol. 7, 1979, p. 883 (889); *H. F. Köck*, Trianon Peace Treaty (1920), in: *R. Bernhardt* (ed.), Encyclopedia of Public International Law, vol. IV (2000), p. 1001 (1002).

5 The Constitution of the Republic of Hungary as amended, in: *G. F. Flanz* (ed.), Constitutions of the World, Hungary, release 95-4, issued June 1995; see also *H. Küpper*, Völkerrecht, Verfassung und Außenpolitik in Ungarn, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 58 (1998) p. 239 (255 seq.).

Hungary and thereby confronted the State with enormous problems of both integration[6] and illegal employment[7]. Hence, the Hungarian Standing Conference, on its Second Meeting of 12 November 1999, called upon the Hungarian government to examine "the creation of legal provisions to regulate the status in Hungary of ethnic Hungarians living beyond the borders" the primary objective of which being "to reinforce the prospects and opportunities for remaining in the ancestral homeland"[8]. This request gave the idea for the creation of the Status Law[9] which pursues, as finally adopted, a dual aim: to limit, on the one hand, the employment of ethnic Hungarians on the territory of the Republic of Hungary to a maximum duration of in general no more than 3 months and to provide, on the other hand, for financial benefits to ethnic Hungarians as long as they live on foreign territory.[10]

It was primarily the alleged extraterritorial effect of the Status Law that gave rise to strong opposition from the two countries hosting the largest Hungarian minorities – Romania and Slovakia – whereas Yugoslavia and Ukraine signalled that they were ready to accept the law.[11] Only two days after its adoption, Romania's Prime Minister *Nastase* took the initiative by requesting the so-called Venice Commission[12] of the Council of Europe to examine the compatibility of the Status Law with the European standards and the norms and principles of contemporary public international law. On 2 July 2001, the Hungarian Minister of Foreign Affairs *Martonyi* responded to this initiative by requesting the Venice Commission for a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national

6 Cf. *H. Küpper*, (note 1), p. 418 (419).

7 Cf. *K. Kingston*, The Hungarian Status Law, in: RFE/RL East European Perspectives of 3 October 2001, vol. 3 No. 17, http://www.rferl.org/eepreport/2001/10/17-031001.html (access date: 06/13/2002).

8 Cf. Closing Document of the Second Meeting of the Hungarian Standing Conference, http://www.htmh.hu/konferencia/991112_standingconference.htm (access date 06/13/2002).

9 Cf. *B. Nagy*, Introductory Note to Act LXII of 2001 on Hungarians Living in Neighbouring Countries, in: 40 I.L.M. 1240; *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", pp. 42 seqq., http://www.one-europe.ac.uk/pdf/w40fowler.pdf (access date: 06/13/2002); see also Preamble of the Status Law: "Based on the initiative and proposals of the Hungarian Standing Conference".

10 Cf. *H. Küpper*, (note 1), p. 418 (420).

11 Cf. "Hungary and Romania agree pact", CNN.com of 22 December 2001, http://www.cnn.com/2001/WORLD/europe/12/22/hungary.romania/ (access date: 06/13/2002); see also *B. Fowler*, (note 9), p. 6 note 2.

12 "European Commission for Democracy through Law". It was established just after the fall of the Berlin Wall and has played a leading role in the adoption, in eastern Europe, of constitutions that conform to the standards of Europe's constitutional heritage.

minorities living outside the borders of their country of citizenship.[13] The Venice Commission adopted its "Report on the Preferential Treatment of National Minorities by their Kin-State" on 19 October 2001.

In the meantime, on 28 June 2001, a group of parliamentarians had filed a motion with the Parliamentary Assembly of the Council of Europe, calling on the Hungarian authorities to suspend the implementation of the Status Law and inviting the neighbouring countries to co-operate in order to put into practice the existing European conventions and documents regarding human rights and national minorities.[14] The motion was conferred to the Committee on Legal Affairs and Human Rights, which appointed a *rapporteur* on 27 September 2001.[15]

The Council of Europe was not the only international organisation to be involved in the conflict. The Commission of the European Union (hereinafter "EU Commission") had raised concerns about the Status Law even while it was being drafted. The law as finally adopted accommodated some but not all of these concerns.[16] On the eighth meeting of the EU-Hungary Association Council in Brussels on 17 July 2001, the EU underlined the need to comply with the principle of non-discrimination enshrined in the Treaty, notably towards nationals of neighbouring countries that were candidates for EU accession.[17] On 5 September 2001, the European Parliament took note of the adoption of the Status Law and called on the EU Commission to present an evaluation of this type of law in general with regard to its compatibility with the *acquis*, as well as with the spirit of good neighbourhood and co-operation among Member States.[18] Finally, in the Commission's Regular Report on Hungary's Progress towards Accession issued on 13 November 2001, the EU Commission insisted on its position according to which the Status Law was "currently not in line with the principle of non-discrimination laid down in the Treaty"[19].

13 Cf. Report on the Preferential Treatment of National Minorities by their Kin-State, CDL-INF (2001) 19, Introduction; http://venice.coe.int/docs/2001/CDL-INF(2001)019-e.html (access date: 06/13/ 2002).

14 Cf. Doc. 9153, http://stars.coe.fr/Main.asp?link=http://stars.coe.fr/documents/workingdocs/doc01/edoc9153.htm.

15 Cf. Synopsis No. 2001/111 of 1 October 2001, http://stars.coe.fr/Main.asp?link=http://stars.coe.fr/committee/jur/2001/synopsis111.htm.

16 Cf. European Commission, Basic Information on Hungary, 9 November 2001, p. 5, http://europa.eu.int/comm/commissioners/barnier/document/basicong_en.pdf (access date: 06/13/ 2002); see also *B. Nagy*, 40 I.L.M. 1240.

17 Cf. Position Paper of the European Union, UE-H 1511/01, http://register.consilium.eu.int/pdf/en/01/st01/01511en1.pdf (access date: 06/13/2002).

18 Cf. A5-0257/2001, European Parliament resolution on Hungary's application for membership of the European Union and the state of negotiations (COM(2000) 705/ – C5-0605//2000 – 1997//2175 (COS)), http://europa.eu.int/comm/enlargement/docs/ep_resolutions/hungary.htm (access date: 06/13/2002).

19 Cf. Regular Report on Hungary's Progress towards Accession, SEC(2001) 1748, http://europa.eu.int/comm/enlargement/report2001/hu_en.pdf (access date: 06/13/2002).

A third party to play a role in the struggle for a solution of the conflict was OSCE High Commissioner for Minorities, *Ekéus*. Only a few days after he had assumed office on 1 July 2001, he paid one of his first visits as High Commissioner to Budapest and Bucharest in order to gain a better understanding of the purpose of the Status Law and its practical implications.[20] On 26 October 2001, he issued a statement which, without mentioning the Status Law by name, indirectly criticised Hungary arguing that "in order to prevent conflict, protect minorities, integrate ethnic diversity and foster friendly relations between States, we must not erode the principles, standards and mechanisms that have been carefully developed in the past half-century"[21].

These joint efforts finally resulted in the conclusion of a Memorandum of Understanding between Hungary and Romania on 22 December 2001[22] which mainly adopted the position taken by the Venice Commission in its Report of 19 October 2001. However, even after the conclusion of the Memorandum, the tensions continued to prevail. On 14 January 2002, Romania's Prime Minister *Nastase* ordered the creation of a government commission to monitor the implementation of the Memorandum and report possible irregularities.[23] By the end of January 2002, representatives of the Romanian Public Administration Ministry were reported to have found that the local organisation of the Hungarian Democratic Federation of Romania (UDMR) in Covasna County was violating the stipulations of the Memorandum.[24] These irritations were only cleared in the session of the Hungarian-Romanian intergovernmental joint committee on 18 February 2002 when Romania's Minister of Foreign Affairs *Geoana* declared that the application and forwarding procedure of the Hungarian Certificates on the territory of Romania was in line with the contents of the Memorandum.[25].

The Hungarian-Slovak relations first seemed to calm down in early 2002. On 24 January 2002, both sides announced to have agreed upon the conclusion of a bilateral agreement on the implementation of the Status Law.[26] However, on 7 February 2002 the Slovak Parliament approved a declaration expressing "concern"

20 Cf. Annual Report 2001 on OSCE Activities, http://www.osce.org/docs/english/misc/anrep01e_activ.htm (access date: 06/13/2002).

21 Cf. Sovereignty, responsibility, and national minorities: statement by OSCE minorities commissioner, http://www.osce.org/news/generate.php3?news_id=2095 (access date: 06/13/2002).

22 Cf. http://www.htmh.hu/dokumentumok/memorandum.htm (access date: 06/13/2002).

23 Cf. RFE/RL NewsLine of 17 January 2002, http://www.rferl.org/newsline/2002/01/170102.asp (access date: 06/13/2002).

24 Cf. RFE/RL NewsLine of 30 January 2002, http://europa.eu.int/comm/enlargement/report2001/hu_en.pdf (access date: 06/13/2002).

25 Information obtained from the Hungarian Ambassador to the Council of Europe on 11 April 2002.

26 Cf. RFE/RL NewsLine of 25 January 2002, http://www.rferl.org/newsline/2002/01/250102.asp (access date: 06/13/2002); "Nachbarländer vor Einigung", Budapester Zeitung online of 28 January 2002, http://www.bz.hu/artikel.php?artikelid=2234 (access date: 06/13/2002).

over the Status Law and maintaining that it amounted to interference into the exclusive territorial and personal jurisdiction of the Slovak Republic. The declaration called on Hungary to amend the Status Law in line with "the principles of international law and the European standards for the protection of national minorities" and held that it infringed on the basic treaty between the two countries.[27] In reply, Hungarian Foreign Ministry Political State Secretary *Németh* sharply condemned the declaration.[28] Nonetheless, on 12 February 2002 the Hungarian and Slovak Foreign Ministers agreed on the need to continue talks on a declaration dealing with the implementation in Slovakia of Hungary's Status Law, and on finding a mutually acceptable solution.[29]

Finally, it may be observed that nationalist politicians on all sides used the issue for propagandistic purposes. The general elections held in Hungary in April 2002 for their part contributed to heating up the atmosphere.

II. The Main Provisions of the Status Law

Having given this short overview of the diplomatic turbulences that were caused by the adoption of the Status Law, it seems appropriate to summarise briefly the main contents of its provisions.

1. Personal Scope of the Act

The personal scope of the Act is primarily confined to persons declaring themselves to be "of Hungarian nationality" and having lost their Hungarian citizenship for reasons other than voluntary renunciation (Article 1 § 1 (a) of the Status Law). From the distinction made between "nationality" and "citizenship", it becomes clear that the term "nationality" is meant to describe the belonging to the Hungarian national minority. This assumption is supported by the observation

27 Cf. RFE/RL NewsLine of 6 and 8 February 2002, http://www.rferl.org/newsline/2002/02/060202.asp (access date: 06/13/2002) and http://www.rferl.org/newsline/2002/02/080202.asp (access date: 06/13/2002); see also "Nein aus der Slowakei", Budapester Zeitung online of 11 February 2002, http://www.bz.hu/artikel.php?artikelid=2286 (access date: 06/13/2002); Slovak original:
"Vyhlásenie Národnej rady Slovenskej republiky o Zákone o Mad'aroch žijúcich v susedných krajinách",
http://www.nrsr.sk/Slovak/Nrsr/Dokumenty/Vyhlasenia/vyhlas_madari.doc (access date: 03/19/2002).

28 Cf. RFE/RL NewsLine of 8 February 2002, loc. cit.

29 Cf. RFE/RL NewsLine of 13 February 2002, http://www.rferl.org/newsline/2002/02/130202.asp (access date: 06/13/2002).

that the Hungarian word for "nationality" *("nemzetiség")* is closely related to the term "minority".[30]

The declaration to be of Hungarian nationality, however, is not a sufficient basis for the practical enjoyment of the benefits set out by the Act. According to Article 19 § 1 of the Status Law, the said benefits may be received only by presenting a "Certificate of Hungarian Nationality" which may be issued by the Hungarian central public administration body. According to Article 20 § 1 of the Status Law, the issuing of the Certificate depends on a recommendation given by a recommending organisation which represents the Hungarian national community in the neighbouring country. Only in cases deserving exceptional treatment, it may be substituted by a declaration made by the Minister of Foreign Affairs (Article 29 § 3 of the Status Law). In its submission to the Venice Commission of 14 September 2001, the Hungarian Ministry of Foreign Affairs pointed out that the role of the recommending organisations is to verify the existence of objective criteria as to belonging to the Hungarian minority.[31] Hence, the recommendation must be deemed being in principle constitutive for the issuing of the Certificates.[32] This role of the recommending organisations was one of the major concerns articulated by, *in primis*, Romania as it was maintained that the recommending organisations were destined for carrying out quasi-official functions.[33] The Hungarian-Romanian Memorandum, therefore, stipulates that the organisations on the territory of Romania can provide for information only with a legally non-binding character and only in the absence of formal supporting documents.[34] Furthermore, it was agreed that the entire procedure of granting the certificate should primarily take place on Hungarian territory and at the Hungarian diplomatic missions.[35]

According to Article 1 § 2 of the Status Law, the Act equally applies to spouses and minor children of ethnic Hungarians even if they are not of Hungarian origin. According to Article 19 § 1 of the Status Law, these persons may be issued a "Certificate for Dependants of Persons of Hungarian Nationality". The Hungarian-Romanian Memorandum, however, expressly prohibits the issuing of Certificates to relatives of ethnic Hungarians.[36]

30 Cf. *H. Küpper*, (note 1), p. 418 (423).

31 Cf. Report of the Venice Commission (note 13), note 21.

32 Cf. *H. Küpper*, (note 1) p. 418 (421); see also Report of the Venice Commission (note 13), C. ("The document proving entitlement to the benefits under the law").

33 Cf. Statement by Foreign Minister *Geoana* to the Venice Commission (Venice, 19 October 2001), http://domino.kappa.ro/mae/presa.nsf/DiscursuriEng (access date: 06/13/2002).

34 Cf. Memorandum (note 22), I.5.

35 Cf. Memorandum (note 22), I.4.

36 Cf. Memorandum (note 22), I.3.

2. Territorial Scope of the Act

The territorial scope of the Act is restricted to Croatia, Yugoslavia, Romania, Slovenia, Slovakia and Ukraine (Article 1 § 1 of the Status Law). Austria, while still included in a draft dated March 2001[37], was excluded from the territorial scope due to pressure coming from the EU.[38] However, Hungarian politicians sometimes tried to play down the role of the EU claiming that the Hungarians living in Austria did not need the form of support created by the status law since they were living in a country that was richer than Hungary itself.[39]

3. Benefits Granted by the Act

The benefits granted by the Act can be categorised to six major fields: culture and science (Articles 4-6), education (Articles 9-14), social security provisions and health services (Article 7), travel (Article 8), employment (Articles 15-16), and public media and assistance to organisations operating abroad (Articles 17-18).[40] For instant purposes, it may be sufficient to make two principal observations: Firstly, a number of benefits are available to the entitled persons only as long as they live on foreign territory (see Article 10 of the Status Law: benefits for students of higher education institutions in the neighbouring countries; Article 12: benefits for Hungarian teachers living abroad; Article 13: support of "[e]ducation abroad in affiliated departments"; Article 14: educational assistance to parents living abroad; Article 18: assistance to organisations operating abroad). According to the Report of the Venice Commission, this is a unique feature of the Status Law when comparing it to similar acts of countries examined in the Report[41] (namely, Austria, Bulgaria, Greece, Italy, Romania, Russia, Slovakia and Slovenia). Secondly, it is worth mentioning that the persons covered by the Act enjoy preferential treatment insofar as they are accorded the "most favoured" entry and residence conditions within Hungary (Article 3 of the Status Law), are entitled to travel benefits within Hungary (Article 8 of the Status Law) and as they can receive a work permit in Hungary for a maximum duration of in general[42] 3 months per calendar year

37 Cf. The Draft Act On Hungarians Living In Neighbouring Countries, http://www.mfa.gov.hu/Szovivoi/2001/statusTVeng.htm (access date: 03/19/2002).

38 Cf. *B. Nagy*, 40 I.L.M. 1240; see also *B. Fowler*, (note 9), pp. 7 and 56 seq.; *H. Küpper*, (note 1), p. 418 (419).

39 Cf. *B. Fowler*, (note 9), p. 56, with reference.

40 Cf. *B. Nagy*, 40 I.L.M. 1240.

41 Cf. Report of the Venice Commission (note 13), C. ("Scope of application *ratione loci*"); see also *B. Fowler*, (note 9), p. 39.

42 According to Article 15 second sentence of the Status Law, however, a separate legal rule may allow for the issuing of work permits for longer periods of time. Furthermore, the Status Law does not deprive, naturally, ethnic Hungarians of their right to apply for a work permit in Hungary for a longer period of time under the general rules valid for foreign nationals.

without the prior assessment of the situation in the labour market as is normally necessary for the employment of foreign nationals (Article 15 of the Status Law). In the Hungarian-Romanian Memorandum of 22 December 2001, this facilitated access to the national labour market in Hungary was extended to all Romanian citizens, notwithstanding their ethnic origin.[43]

III. Evaluation

The following analysis shall focus, as indicated in the title, on the question whether the Status Law complies with Hungary's obligations under public international law and European Community law. It will comprise four major issues: (1.) territorial sovereignty, (2.) bilateral and multilateral treaties, (3.) the European Convention on Human Rights and (4.) the European Community law.

1. Territorial Sovereignty

As for the question whether the Status Law violates the territorial sovereignty of Hungary's neighbouring countries, it is crucial to make a distinction between the adoption of the Status Law *as such* and its actual implementation, in legal terms: between the "jurisdiction to prescribe" and the "jurisdiction to enforce".[44] Only as regards the latter, it is true what the Venice Commission observed, namely that "no other State or international organisation can exercise jurisdiction in the territory of a State without the latter's consent"[45]. This exclusiveness of the territorial sovereignty emanates, in the last resort, from the principle of sovereign equality of States as embodied in Article 2 § 1 of the Charter of the United Nations[46] and safeguarded by customary international law.[47]

a) Jurisdiction to Prescribe

As regards the jurisdiction to prescribe, however, it has to be recalled what the Permanent International Court of Justice observed: "Far from laying down a general prohibition to the effect that States may not extend the application of their

43 Cf. Memorandum (note 22), I.2.

44 Cf. *M. Breuer*, Verfassungsrechtliche Anforderungen an das Wahlrecht der Auslandsdeutschen, 2001, p. 138, with further references.

45 Cf. Report of the Venice Commission (note 13), D.a.

46 United Nations Conference on International Organization Documents, vol. XV (1945), p. 335.

47 Cf. *S. T. Bernárdez*, "Territorial Sovereignty", in: *R. Bernhardt* (ed.), Encyclopedia of Public International Law, vol. IV (2000), p. 823 (826 seq.).

laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable"[48]. In this context, the German Federal Constitutional Court has held that under international law, a State has the right to regulate matters falling outside its own territorial jurisdiction as long as there is a reasonable connecting point *("ein sinnvoller Anknüpfungspunkt")*.[49] In the case of the Status Law, therefore, the first question that has to be addressed is whether Hungary may claim a "reasonable connecting point" with respect to the provisions contained therein.

The Venice Commission in its Report found that "[i]n certain fields such as education and culture, certain practices, which pursue obvious cultural aims have developed and have been followed by numerous States. [...] In these fields, if there exists an international custom, the consent of the home-State can be presumed and kin-States may take unilateral administrative or legislative measures"[50]. The Commission took, however, a rather narrow approach by assuming that only the granting of scholarships for the studies of the kin-language and -culture is commonly accepted. The Commission concluded, therefore, that the granting of scholarships to foreign students of a kin-minority irrespective of the link of their studies with the kin-State itself might be considered as interfering with the relevant home-States' internal affairs.[51] Given the fact that Article 10 of the Status Law confers the entitlement to benefits to ethnic Hungarian students of any higher education institution, the mere adoption of the Act constituted, from the Venice Commission's point of view, an intervention into the internal affairs of Hungary's neighbouring countries.

In the light of the aforementioned case-law of both the Permanent International Court of Justice and the German Federal Constitutional Court, this approach seems to be far too restrictive. The mere adoption of an act has to be regarded, in principle, as permissible unless there is a lack of a reasonable connecting point. In the case of the Status Law, it has to be taken into account that the gross immigration of ethnic Hungarians since the early 1990ies (cf. supra) confronted the Hungarian State with considerable problems of integration and illegal employment. Hence, the Status Law aims at promoting and preserving the well-being of ethnic Hungarians "within their home country" (Preamble) so that they may be

48 Permanent International Court of Justice, PCIJ Series A 10 (1927), p. 19 – *Lotus*.

49 Cf. Federal Constitutional Court, Fourth Chamber of the Second Senate, decision of 12 December 2000, Europäische Grundrechte-Zeitschrift 28 (2001) p. 76 (81); see also *W. Meng*, "Extraterritorial Effects of Administrative, Judicial and Legislative Acts", in: *R. Bernhardt* (ed.), Encyclopedia of Public International Law, vol. II (1995), p. 337 (340), with further reference.

50 Cf. Report of the Venice Commission (note 13), D.a.i.

51 Ibid.

encouraged to stay in their country of residence. While this aim is, in the author's view, to be deemed a clearly reasonable one, the Status Law at the same time uses a fairly nationalistic language:[52] The Preamble stresses the need to ensure "that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole"; as shown above, the term "nationality" is used in order to describe the belonging to the Hungarian national minority. This taken together with some remarks made by Hungarian politicians such as Hungarian Foreign Ministry Political State Secretary *Németh* who in the context of the adoption of the Status Law suggested "transborder reunification of the Hungarian nation",[53] it is not surprising that Hungary's neighbouring countries, though merely unofficially, expressed fears that the measures envisaged by the Status Law might finally lead to territorial claims from Hungary.[54]

On the other hand, the question of an act's tone is found to be rather an atmospheric one. While there is little doubt that some of the nationalistic remarks made after the adoption of the Status Law ran counter to the spirit of friendly neighbourly relations, this does not deprive the Act's actual aim of its legitimacy. In the author's opinion, therefore, it has to be found that there is a reasonable connecting point and that the mere adoption of the Status Law did not constitute a violation of the neighbouring countries' territorial sovereignty. This is not to say that the actual payment of financial benefits might not interfere with the neighbouring countries' territorial sovereignty (cf. infra) but this is a question of the "jurisdiction to enforce" not of the "jurisdiction to prescribe". The adoption of the Status Law did not offer the entitled persons but an opportunity to apply for being granted a scholarship by the Hungarian State. From the point of view taken here, this cannot be deemed constituting *as such* a violation of Hungary's neighbouring countries' territorial sovereignty.

b) Jurisdiction to Enforce

As for the jurisdiction to enforce, it was stated above that the principle of territorial sovereignty prohibits States to exercise jurisdiction – i.e. to carry out acts of State or *"acta iure imperii"* – in the territory of another State without the latter's consent. Or as *Max Huber* put it in the well-known Palmas Island Arbitration award: "Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusivity of any other State, the functions of a State"[55]. In the present

52 Cf. *H. Küpper*, (note 1), p. 418 (423): "stark ethnonationalistisch gefärbte Sprache".

53 Cf. *K. Kingston*, (note 7).

54 Cf. RFE/RL NewsLine of 17 January 2002, http://www.rferl.org/newsline/2002/01/170102.asp (access date: 06/13/2002); see also *B. Fowler*, (note 9), pp. 24 and 38.

55 Reports of International Arbitral Awards, vol. 2 (1949), p. 820 (838).

case, there are two aspects that need further examination: firstly, the actual payment of financial benefits to students, teachers, parents etc belonging to Hungarian minorities abroad and, secondly, the role of the recommending organisations.

As regards the former, *Küpper* expressed the view that it is "not impossible" *("nicht ausgeschlossen")* that the subsidisation of foreign nationals or organisations against the will of the State of residence constitutes a violation of international law.[56] As he rightly points out, the fact that the payment is granted not directly by the Hungarian State but by public benefit organisations established in Hungary and abroad – and, one might add, on the basis of a civil law contract (see Article 25 § 4 of the Status Law) – does not deprive the payment of its official character.[57] It is this indissoluble connection with the Hungarian State policy which makes the payment of financial benefits to members of the Hungarian minorities abroad appear to be "acts of State" rather than, e.g., the payment of pensions to persons who live in another country. In the proceedings before the Venice Commission, both Romania and Slovakia stressed that the entitlements which they award to their co-ethnics abroad are to be enjoyed only on kin-state territory.[58] In addition, it has to be born in mind that the granting of financial privileges for particular groups could have "disintegrative effects in the States where they live"[59] and might loosen the bonds of loyalty to the respective State of residence.[60] For all these reasons, it has to be concluded that States should refrain from granting financial support unilaterally to their national minorities abroad unless the respective State of residence has given its consent.[61]

As regards the role of the recommending organisations, it has to be noted that Hungary refrained from establishing, for the purpose of issuing of the Certificates, offices of the Hungarian State in the neighbouring countries in order not to violate territorial sovereignty.[62] It has to be found, however, that Hungary cannot

56 *H. Küpper*, (note 1), p. 418 (422).

57 Ibid.

58 Cf. *B. Fowler*, (note 9), p. 53.

59 Cf. statement by OSCE minorities commissioner, (note 21).

60 Cf. *H. Küpper*, (note 1), p. 418 (422).

61 It should be noted in this context that according to information obtained from the German Ministry of Foreign Affairs on 18 April 2002, the Federal Republic of Germany grants financial benefits to German minorities abroad only in close co-operation with the respective State of residence *("Die Bundesregierung legt großen Wert darauf, dass die Hilfe für die deutschen Minderheiten von vornherein eng mit der jeweiligen Regierung abgestimmt wird")*. Furthermore, these financial benefits are not exclusively directed at the minorities themselves but rather aim at improving the general living conditions of the whole population of the area concerned *("Soweit bereits Hilfen im Herkunftsgebiet geleistet werden, richten sie sich nicht ausschließlich an die Deutsche Minderheit, sondern sollen auch den allgemeinen Lebensbedingungen der im Umfeld der deutschen Volkszugehörigen lebenden Bevölkerung zu Gute kommen")*.

62 Cf. *B. Fowler*, (note 9), p. 45.

avoid international liability by charging non-governmental organisations with carrying out official functions. Taking into account the constitutive character of the recommendations,[63] the recommending organisations are to be deemed carrying out quasi-official functions as was maintained by the Romanian government[64] and accepted by the Venice Commission ("indirect form of state power")[65]. Therefore, it was in compliance with international law when Romania insisted on attributing the recommendations a legally non-binding character.

In Hungary's relations with Slovakia, however, attention has to be paid to the fact that the Slovak "Act on Expatriate Slovaks and changing and complementing some laws"[66] contains a provision similar to that of the Status Law: According to Article 2 § 4 of the said Slovak Act, for lack of a "supporting document" (such as birth certificate, baptism certificate etc) the national background may be proven by "a written testimony of a Slovak countryman organisation abroad"[67]. In this context, the so-called principle of reciprocity, which is of outstanding importance in international law,[68] comes into play: if Slovak legislation provides for the issuing of recommendations by Slovak countryman organisations abroad, it cannot prevent Hungary from doing likewise (so-called *tu quoque* argument[69]). Under these circumstances, Slovakia is not entitled to raise objections to the exercise of functions by Hungarian recommending organisations on Slovak territory comparable to the functions carried out by Slovak countryman organisations abroad.

2. Bilateral and Multilateral Treaties

The next question to be considered is whether the unilateral granting of certain benefits to members of a national minority abroad violates bilateral or multilateral treaties existing between, in particular, Romania and Slovakia on the one hand and Hungary on the other hand.

In this context, it has to be observed first of all that Hungary and Slovakia concluded a "Treaty on Good-neighbourly Relations and Friendly Co-operation"[70] on 19 March 1995. Hungary and Romania concluded a "Treaty [...] on Under-

63 Cf. supra.

64 In this sense, see also *H. Küpper*, (note 1), p. 418 (423).

65 Cf. Report of the Venice Commission, (note 13), D.a.ii.

66 Act no. 70 of 14 February 1997.

67 Cf. Report of the Venice Commission, (note 13), C. ("Belonging to the specific national background").

68 Cf. *A. Verdross/B. Simma*, Universelles Völkerrecht, 3. ed. 1984, § 64, with further references; *M. Breuer*, (note 43), p. 196.

69 Cf. *B. Simma*, "Reciprocity", in: *R. Bernhardt* (ed.), Encyclopedia of Public International Law, vol. IV (2000), p. 29 (32 seq.).

70 Cf. http://www.htmh.hu/dokumentumok/asz-sk-e.htm (access date: 06/13/2002).

standing, Cooperation and Good Neighborhood"[71] on 16 September 1996. Both treaties contain provisions according to which the Contracting Parties undertake to apply, *inter alia*, the Framework Convention for the Protection of National Minorities[72] (which, at the relevant points in time, had not yet entered into force) and Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe on an additional protocol on the rights of national minorities to the European Convention on Human Rights[73] (which is, by its very nature, not binding in itself but was given binding effect through the respective treaty provisions), see Article 15 § 4 (a) and (b) of the Hungarian-Slovak treaty and Article 15 § 1 (a) and (b) of the Hungarian-Romanian treaty. In the meantime, the Framework Convention for the Protection of National Minorities has come into force on 1 February 1998, all three States being parties to it.

Whether or not these instruments prevent the Member States from taking unilateral action for the support of their own minority residing abroad is a question, in the first place, of interpretation. Here, the Venice Commission's findings appear to be acceptable: "Legislation or regulations on the preferential treatment of kin-minorities should [...] not touch upon areas *demonstrably pre-empted* by existing bilateral treaties, unless of course the home-State concerned had been consulted and had approved of this step or had implicitly – but unambiguously – accepted it, by not raising objections"[74].

Having regard, therefore, at the particular treaty provisions, it has to be noted that according to the Preamble of the Hungarian-Slovak treaty, the Contracting Parties declare that they "feel responsibility for granting protection to [...] the minorities *living within their respective territories*" (emphasis added). According to the Preamble of the Hungarian-Romanian treaty, the Contracting Parties recognise that the protection of national minorities "forms part of the international protection of human rights *and as such falls within the scope of international cooperation*" (emphasis added). Similarly, in the Preamble to the Framework Convention for the Protection of National Minorities, the signatory States express their will "to protect *within their respective territories* the existence of national minorities" (emphasis added) and according to Article 1 of the Convention, the protection of national minorities "falls within the scope of international co-operation". Equally, the Preamble of Parliamentary Assembly Recommendation 1201 (1993) underlines that the protection of the rights of minorities is "a domain for international co-operation".

71 Cf. http://www.htmh.hu/dokumentumok/asz-ro-e.htm (access date: 06/13/2002).

72 ETS No. 157; see *H. Klebes*, Rahmenübereinkommen des Europarats zum Schutz nationaler Minderheiten, in: Europäische Grundrechte-Zeitschrift 22 (1995) pp. 262 seqq.; *R. Hofmann*, Das Überwachungssystem der Rahmenkonvention des Europarates zum Schutz nationaler Minderheiten, in: Zeitschrift für Europarechtliche Studien 2 (1999). pp. 379 seqq.

73 Cf. http://stars.coe.fr/Main.asp?link=http://stars.coe.fr/Documents/AdoptedText/ta93/EREC1201.htm

74 Cf. Report of the Venice Commission (note 13), D.b. (emphasis added).

Although the said treaty provisions do not expressly prohibit unilateral measures to be taken by the home-States, it would be hardly understandable why States should have provided for the protection of their national minorities through international mechanisms if they could have done so on a unilateral basis. Therefore, OSCE High Commissioner on National Minorities *Ekéus* concludes: "Since the Second World War, a legal regime has been developed following the principle that protection of human rights and fundamental freedoms, including for persons belonging to national minorities, is the responsibility of the State having jurisdiction with regard to the persons concerned. This is not only a cornerstone of contemporary international law and a requisite for peace, it is necessary for good governance, particularly in multi-ethnic States"[75]. In the same sense, the Venice Commission held that "[r]esponsibility for minority protection lies primarily with the home-States"[76]. Consequently, the protection of national minorities must be deemed demonstrably pre-empted to the respective State of residence. Only under exceptional circumstances where a State of residence, after having been duly consulted by the minority's home-State, arbitrarily and without being able to claim a legitimate interest refuses to accept the proposed measures, the home-State might be allowed to act unilaterally. Without due prior consultation of its neighbouring countries, however, Hungary was not entitled to take unilateral steps.

3. European Convention on Human Rights

Under the European Convention on Human Rights (hereinafter "the Convention"), the question arises whether the preferences accorded to members of Hungarian minorities amount to a discrimination in the sense of Article 14 of the Convention. Before being able to address this question, however, it is necessary to examine the applicability of the Convention *ratione loci*. According to Article 1 of the Convention, the rights and freedoms of the Convention shall be secured by the Contracting Parties "within their jurisdiction".

a) Applicability "ratione loci"

In this regard, a distinction has to be made between the preferential treatment on Hungarian territory, which obviously falls within the jurisdiction of the Hungarian State, and the granting of benefits to members of Hungarian minorities on foreign territory. Here, the compliance with the requirements established by Article 1 of the Convention is less obvious. Nonetheless, the Venice Commission found that a State "is held accountable under Article 1 of the Convention also for

75 Cf. statement by OSCE minorities commissioner (note 21).

76 Cf. Report of the Venice Commission (note 13), E.

its acts with extraterritorial effects: all the individuals affected thereby, be they foreigners or nationals, may fall within the jurisdiction of that State"[77].

At the time when the Venice Commission issued its Report, however, it was impossible to foresee the decision on admissibility of 12 December 2001 taken by the Grand Chamber of the European Court of Human Rights (hereinafter "ECHR") in the case of *Bankovic and others* versus 17 NATO Member States. In this case, which concerned NATO bombardment in the Kosovo conflict in early 1999, the ECHR held that the term "jurisdiction" had an "essentially territorial notion"; having examined its own case-law, the ECHR observed that it had accepted "only in exceptional cases that acts of the Contracting States performed, or producing effects, outside their territories can constitute an exercise of jurisdiction by them within the meaning of Article 1 of the Convention"[78]. Therefore, the ECHR concluded: "In sum, the case-law of the Court demonstrates that its recognition of the exercise of extra-territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government"[79].

This decision appears to conflict with the ECHR's findings in earlier cases.[80] In *Drozd and Janousek* v. France and Spain, the ECHR had held that the "term 'jurisdiction' is not limited to the national territory of the High Contracting Parties; their responsibility can be involved because of acts of their authorities producing effects outside their own territory"[81]. In the particular case, the ECHR found that the question to be decided was whether the acts complained of by the applicants were *attributable* to the respondent States, even though they were not performed on their respective territory.[82] Even as late as by the end of 1999, the ECHR expressly reaffirmed its previous findings.[83]

77 Cf. Report of the Venice Commission (note 13), D.d.

78 Cf. *Bankovic and others* v. Belgium and others, decision on admissibility of 12 December 2001, no. 52207/97, § 67.

79 Cf. *Bankovic and others* v. Belgium and others (note 78), § 71.

80 For a critical appraisal, though from a different point of view (relying primarily on Article 15 § 1 of the Convention), cf. *F. Schorkopf*, "Grand Chamber of the European Court of Human Rights Finds Yugoslavian Bombing Victims' Application Against NATO Member States Inadmissible", 3 (2002) German Law Journal, http://www.germanlawjournal.com/current_issue.php?id=133 (access date: 06/13/2002).

81 Cf. *Drozd and Janousek* v. France and Spain, judgment of 26 June 1992, Series A no. 240, § 91.

82 Ibid.

83 Cf. *Yonghon* v. Portugal, decision on admissibility of 25 November 1999, no. 50887/99, unpublished.

Furthermore, it is more than astonishing that in the above mentioned *Bankovic* case, the ECHR, when verifying the allegedly territorial notion of the term "jurisdiction", refers to a number of authorities in international law[84] but does not mention *even one* of the commentators on the Convention itself who unanimously hold that Article 1 of the Convention does not introduce any territorial limitation.[85] The *travaux préparatoires* which the ECHR also refers to[86] admittedly indicate a merely territorial notion of the term "jurisdiction"; however, according to Article 32 of the Vienna Convention on the Law of Treaties[87], the *travaux préparatoires* may be consulted only when the meaning of a word is ambiguous or obscure or when the interpretation leads to a result which is manifestly absurd[88]. In the light of the aforementioned case-law of the ECHR, this cannot be said having been the case.

It is true that under international law, a State must not exercise, as a principle, jurisdiction on the territory of another State. But the fact that jurisdiction *must not* be exercised on foreign territory does not mean that it *cannot* be exercised. A State may exercise jurisdiction on another State's territory by the latter's consent. It might even do so against the latter's will and, consequently, in breach of international law; even in this case does a State exercise jurisdiction. And, one might add, here the protection of human rights is all the more necessary. The only relevant question, therefore, is not whether international law allows a State to extend its jurisdiction to foreign territory but, as the ECHR correctly held in *Drozd and Janousek*, whether or not the acts committed on foreign territory can be attributed to the respective respondent State.[89]

Coming back to the question of the extraterritorial effects of the Hungarian Status Law, it has to be observed that according to the ECHR's ruling in the *Bankovic* case, the Convention and its Protocols apparently have to be regarded as being inapplicable *ratione loci* since Hungary has neither control over the territory of its neighbouring countries nor do the individuals addressed by the Act live on

84 Cf. *Bankovic and others* v. Belgium and others (note 78), §§ 59-60.

85 Cf. *F. G. Jacobs/R. C. A. White*, The European convention on human rights, 2. ed. 1996, pp. 21 seq.; see also *P. van Dijk/G. J. H. van Hoof*, Theory and practice of the European Convention on Human Rights, 3. ed. 1998, pp. 3 seq.; *J. A.. Frowein/W. Peukert*, Europäische Menschenrechts-Konvention: EMRK-Kommentar, 2. ed. 1996, Article 1 ECHR §§ 4-8; *L.-E. Pettiti/E. Decaux/P.-H. Imbert*, La convention européenne des droits de l'homme : commentaire article par article, 2. ed., 1999, pp. 135 seqq.; *A. H. Robertson/J. G. Merrills*, Human rights in Europe: a study of the European Convention on Human Rights, 3. ed. 1993, pp. 29 seq.; *M. E. Villiger*, Handbuch der Europäischen Menschenrechtskonvention (EMRK) unter besonderer Berücksichtigung der schweizerischen Rechtslage, 2. ed. 1999, pp. 75 seq. § 107.

86 Cf. *Bankovic and others* v. Belgium and others (note 78), §§ 63–65.

87 UN Doc. A/CONF.39/11/Add. 2.

88 The ECHR expressly acknowledges this merely supplementary role of the *travaux préparatoires*, cf. *Bankovic and others* v. Belgium and others (note 78), § 65 *in fine*.

89 Cf. note 81.

Hungarian territory. In accordance with the *Drozd and Janousek* ruling, in contrast, the Convention and its Protocols have to be considered as being applicable *ratione loci* since the adoption of the Status Law is clearly attributable to the Hungarian State. In the present context – and, it may be recalled, in concordance with the findings of the Venice Commission –, this view is deemed preferable.

b) Discrimination

As regards the question of discrimination, it has to be observed that the provisions of the Status Law create a difference in treatment between the members of Hungarian minorities residing in Hungary's neighbouring countries and other citizens of the respective countries of residence.[90] In this connection, it shall be mentioned at the outset that all international minority related instruments contain similar provisions according to which positive measures that aim at promoting the full and effective equality between persons belonging to a national minority and those belonging to the majority shall not be considered acts of discrimination (see Article 4 §§ 2 and 3 of the Framework Convention for the Protection of National Minorities; Article 7 § 2 of the European Charter for Regional or Minority Languages of 5 November 1992[91]; Article 5 of Council Directive 2000/43/EC of 29 June 2000, cf. infra). Similarly, the ECHR in *Chapman* held that in certain cases, Article 8 of the Convention might even impose on the Contracting States a positive obligation to facilitate the way of life of persons who belong to a national minority.[92] On the other hand, the Status Law cannot be said to aim at compensating disadvantages which result from the fact of belonging to the Hungarian national minority. Rather, it is found to aim at compensating disadvantages that stem from the general economic situation of the country of residence. The positive measures referred to above are intended for improving the situation of the minority in relation to the majority in a given country. The Status Law, in contrast, intends to improve the economic well-being of ethnic Hungarians irrespective of the situation of the majority in Hungary's neighbouring countries. Therefore, the preferential treatment provided for by the Status Law cannot be deemed in itself as being non-discriminatory.

In the assessment of this preferential treatment, then, reference has to be made to the ECHR's well-established case-law according to which "Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to 'the enjoyment of the rights and freedoms' safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those pro-

90 Cf. also Report of the Venice Commission (note 13), D.d.

91 ETS No. 148.

92 ECHR, *Chapan* v. the United Kingdom, judgment of 18 January 2001, no. 27238/95, § 96.

visions – and to this extent it is autonomous –, there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter"[93]. Protocol No. 12 to the Convention of 4 November 2000[94] which provides for a general prohibition of discrimination has not yet entered into force. Therefore, what has to be determined first is, with regard to any particular provision of the Status Law, whether the ambit of at least one freedom guaranteed by the Convention or one of its Protocols is concerned.

(1) Favoured Entry and Residence Conditions

Article 3 of the Status Law provides for "the most favoured treatment possible" with regard to entry and stay on Hungarian territory for the persons falling within the Act's scope. In this context, it has to be recalled that the ECHR has repeatedly held that "no right of an alien to enter or to reside in a particular country is as such guaranteed by the Convention"[95]. Although, according to the ECHR's case-law, the expulsion of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life guaranteed in Article 8 § 1 of the Convention,[96] this question is clearly not at issue in the present context.

(2) Facilitated Access to Labour Market

Article 15 of the Status Law allows the persons envisaged by the Act facilitated access to the Hungarian labour market for a maximum duration of in general 3 months.[97] In terms of the European Convention on Human Rights, however, it has to be noted that no right of access to the national labour market is *as such* guaranteed. This becomes particularly clear when comparing the freedoms guaranteed by the Convention to the provisions of the European Social Charter[98]: Here, the "right to engage in any gainful occupation in the territory of any one of the [other Contracting Parties] on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons" is expressly provided for.[99] Again, it was only with respect to Article 8 of the Convention that the

93 Cf. amongst others *Prince Hans-Adam II of Liechtenstein* v. Germany [GC], No. 42527/98, § 91, to be published in *Reports* 2001; *Jewish liturgical association Cha'are Shalom Ve Tsedek* v. France [GC], no. 27417/95, § 86, ECHR 2000-VII.

94 ETS No. 177.

95 Cf. judgment of 2 August 2001, *Boultif* v. Switzerland, no. 54273/00, § 39, with reference.

96 Ibid.

97 Cf. supra.

98 Of 18 October 1961, ETS No. 35, consolidated version of 3 Mai 1996, ETS No. 163.

99 Part I § 18; see also Article 18 of the European Social Charter.

Convention organs have dealt with regulations restricting the access of family members of foreigners to the national labour market.[100] However, there is no need to deal at length with this case-law either as family members of ethnic Hungarians are entitled to the same benefits as are ethnic Hungarians themselves.[101]

Therefore, at least under the European Convention of Human Rights, Hungary was under no obligation to extend facilitated access to the national labour market to all Romanian citizens as it was done in the Hungarian-Romanian Memorandum (cf. supra).

(3) Educational Benefits

As regards the educational benefits accorded to students of higher education institutions in the neighbouring countries (Article 10 of the Status Law), clearly Article 2 of Protocol No. 1 to the Convention (right to education) is concerned – provided, naturally, that the extension of the Convention's territorial scope to acts and persons abroad is accepted.[102] For the purposes of Article 14 of the Convention, the ECHR has constantly held that "a difference in treatment is discriminatory if it has no objective and reasonable justification, that is if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Moreover, the Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment"[103].

In this respect, the Venice Commission found that differential treatment of minorities may be justified by the legitimate aim of fostering the cultural links of the targeted population with the population of the kin-State but that "the 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"[104]. Again, the approach taken by the Venice Commission seems to be too narrow. In the case of the Status Law, it has to be born in mind that the Act's actual aim is to improve the economic well-being of ethnic Hungarians residing

100 Cf. the ECHR's judgments of 28 Mai 1985, *Abdulaziz and others* v. the United Kingdom nos. 9214/80, 9473/81, 9474/81, Series A no. 94, § 78 and of 21 June 1988, *Berrehab* v. the Netherlands, Series A no. 138, § 26; the Commission's decision on admissibility of 6 January 1992, *E.A. and A.A.* v. the Netherlands, no. 14501/89; of 13 Mai 1992, *Zariouhi and others* v. the Netherlands, no. 15723/89; of 27 June 1996, *Çiliz* v. the Netherlands, no. 29192/95 and of 3 December 1997, *Klip and Krüger* v. the Netherlands, no. 33257/96.

101 Cf. supra.

102 Cf. supra.

103 Cf. *Camp and Bourimi* v. the Netherlands, judgment of 3 October 2000, no. 28369/95, § 37, ECHR 2000-X.

104 Cf. Report of the Venice Commission (note 13), D.d.

in neighbouring countries so that they may be encouraged to stay in their country of residence. It has been remarked earlier that this aim has to be deemed, in the author's view, a legitimate one although Hungary has to ensure that the Status Law cannot be interpreted as founding territorial claims *vis-à-vis* its neighbouring countries.

In sum, it may be concluded that the examined provisions of the Status Law do not violate the rights and freedoms safeguarded by the European Convention on Human Rights.

4. European Community Law

As a last issue, the compliance of the Status Law with the requirements of European Community law shall be considered. In this respect, mainly two questions deserve further examination: (a) whether the citizenship of the Union in the sense of Article 18 EC[105] will apply to holders of a "Certificate of Hungarian Nationality" after Hungary's accession to the EU and (b) whether the preferential treatment of these persons as provided for by the Status Law is compatible with EU standards.

a) Citizenship of the Union

The concept of EU citizenship was introduced into Community law by the Maastricht Treaty of 7 February 1992[106]. In a declaration attached to the Maastricht Treaty, it was stipulated that, "wherever in the Treaty establishing the European Community reference is made to nationals of the Member States, the question whether an individual possesses the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. Member States may declare, for information, who are to be considered their nationals for Community purposes by way of declaration lodged with the Presidency and may amend any such declarations when necessary."[107] What has to be examined here is, therefore, whether Hungary would be entitled to make, on its accession to the EU, a declaration to the effect that Certificate holders are to be considered their nationals for Community purposes. It may be pointed out in this context that in the law-making process of the Status Law, several actors of the Hungarian Parliament called for granting the Hungarians living in neighbouring countries a

105 Treaty establishing the European Community of 25 March 1957, consolidated version, Official Journal C 340, 10.11.1997, p. 173.

106 Treaty on the European Union of 7 February 1992, consolidated version, Official Journal C 340, 10.11.1997, p. 145; see *C. Sauerwald*, Die Unionsbürgerschaft und das Staatsangehörigkeitsrecht in den Mitgliedstaaten der Europäischen Union, 1996, pp. 54 seqq.

107 Cf. http://europa.eu.int/en/record/mt/final.html (access date: 06/13/2002).

wide range of entitlements including, *inter alia*, the right to settle and work in the EU after Hungary's accession to it.[108]

Although the concept of EU citizenship is a fairly recent one, Member States have previously already made declarations to the effect that certain of their nationals may be or may not be regarded as their nationals for Community purposes. This was due to the fact that many of the provisions contained in the EC Treaty refer to nationals of the Member States (see e.g. Articles 39 § 2, 43 § 1, 49 § 1 EC). Therefore, the Federal Republic of Germany, on the conclusion of the so-called Treaties of Rome on 25 March 1957, declared that all Germans within the meaning of Article 116 of the Basic Law *(Grundgesetz)* shall be regarded German nationals.[109] Denmark when joining the EC in 1972 declared that the term "national of a Member State" shall not apply to Danish nationals resident in the Faroe Islands until the Danish Government has made a further declaration to this effect.[110] Great Britain on its accession to the Community in 1972 made a declaration defining the term "nationals".[111] In 1982, after the entry into force of the British Nationality Act 1981, the United Kingdom Government replaced its former declaration by a new one restricting the term "national" mainly to British Citizens as opposed to British Dependent Territories Citizens and British Overseas Citizens.[112]

Despite of these precedents, the notion of EU citizenship is "far from having been fully examined by the Court" and remains "the subject of divergent views regarding certain of its aspects", as Advocate General *Léger* only recently put it.[113] The European Court of Justice (hereinafter "ECJ") in *Micheletti* held that "[u]nder international law, it is for each Member State, having due regard to Community law, to lay down the conditions for the acquisition and loss of nationality"[114]. In cases where a national of another Member State is also a national of a non-member country, the ECJ held that under former Article 52 ECT (now Article 43 EC), Member States are not allowed to make recognition of the status of Community national subject to a condition such as the habitual residence of the person con-

108 Cf. *B. Nagy*, 40 I.L.M. 1240.

109 Cf. *U. Wölker*, in: *H. v. d. Groeben/J. Thiesing/C.-D. Ehlermann*, Kommentar zum EU-, EG-Vertrag, Band 1, Artikel A - F EUV, Artikel 1-84 EGV, 5. ed. 1997, Vorbemerkung zu den Artikeln 48 bis 50, § 45; see also *C. Sauerwald* (note 106), pp. 89 seq.

110 Official Journal 1972 L 73, p. 163. The further declaration has never been made, *cf. U. Wölker*, (note 109), Vorbemerkung zu den Artikeln 48 bis 50, § 47; *C. Sauerwald*, (note 106), pp. 87 seq.

111 Official Journal 1972 L 73, p. 196; see also *C. Sauerwald*, (note 106), pp. 88 seq.

112 Official Journal 1983 C 23, p. 1; concerning the legal status of Hong Kong citizens see *G. Ress*, The Legal Status of Hong Kong after 1997, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 46 (1986), pp. 647 seqq.

113 Cf. Opinion of Advocate General *Léger*, ECJ, C-192/99 *Kaur* [2001] ECR I-1237, § 27.

114 ECJ, C-369/90, *Micheletti and Others* [1992] ECR I-4239, § 10.

cerned in the territory of the first Member State.[115] In *Kaur*, however, the ECJ held that the United Kingdom was entitled to restrict the notion "national" as it had done in its 1982 declaration on the ground that the declaration did not have the effect of depriving any person of rights to which that person might be entitled under Community law; rather, the ECJ found that such rights never arose in the first place for such a person.[116]

Coming back to the Status Law, it may be noted that there are some similarities with the German situation, given the fact that the notion "German" within the meaning of Article 116 of the Basic Law mainly depends on ethnic criteria.[117] This was due to the Federal Republic of Germany's concept of the former German Reich having survived, as a subject of international law, the unconditional surrender of Germany at the end of World War II and of the Federal Republic being partly identical *("teilidentisch")*[118] with the German Reich. Consequently, both German nationals of the former German Democratic Republic[119] and members of the German minority in Poland[120] were considered "Germans" in the sense of the Basic Law.

On the other hand, it must be recognised that there are differences insofar as "Germans" in the sense of the Basic Law enjoy a constitutional status whereas the persons covered by the Hungarian Status Law do not: in this context, it is interesting to know that the "Act on Hungarians Living in Neighbouring Countries" was formerly referred to as the "Act on Status" (hence the denomination "Status Law"), offering a special status in public law to the targeted Hungarians,[121] but this concept has apparently been given up later. In the meantime, the Act is also

115 Ibid., § 11.

116 ECJ, (note 113), *Kaur*, § 25; see also *P. Shah*, British Nationals under Community Law: The Kaur Case, in: European Journal of Migration and Law 3 (2001) pp. 271 seqq.

117 Article 116 of the Basic Law reads as follows: "(1) Unless otherwise provided by Statute, a German within the meaning of this Constitution is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the frontiers of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendent of such person. (2) Former German citizens who, between 30 January 1933 and 8 May 1945 were deprived of their citizenship on political, racial or religious grounds, and their descendants, are re-granted German citizenship on application. They are considered as not having been deprived of their German citizenship where they have established their residence in Germany after 8 May 1945 and have not expressed a contrary intention."

118 Cf. Federal Constitutional Court, judgment of 31 July 1973, Entscheidungen des Bundesverfassungsgerichts vol. 36 p. 1 (16); for further reference, see *D. Blumenwitz*, Intertemporales und interlokales Verfassungskollisionsrecht, in: *J. Isensee/P. Kirchhof*, Handbuch des Staatsrechts der Bundesrepublik Deutschland, vol. IX, 1997, p. 455 (493 seqq.).

119 Cf. Federal Constitutional Court, decision of 21 October 1987, Entscheidungen des Bundesverfassungsgerichts vol. 77 p. 137 (148 seqq.); see also *D. Blumenwitz*, (note 118), pp. 499 seq.

120 Cf. Federal Constitutional Court, decision of 7 July 1975, Entscheidungen des Bundesverfassungsgerichts vol. 40 p. 141 (175).

121 Cf. *B. Nagy*, 40 I.L.M. 1240.

called "Benefits Law"[122] which manifestly aims at underlining its purely beneficial character. It may also be recalled that the Status Law itself does not grant "citizenship" to the holders of the "Certificates of Hungarian Nationality".[123] The Hungarian-Romanian Memorandum even more clearly stipulates that the Certificates shall be named "Hungarian Certificates", thereby suppressing any reference to the word "nationality".[124] From all these observations, it may be concluded that even under Hungarian national law, Certificate holders are not granted the constitutional status of a "national". This is what *Fowler* describes as "fuzzy citizenship"[125].

Taking into account that according to the declaration attached to the Maastricht Treaty, the question whether an individual possesses the nationality of a Member State shall be settled "solely by reference to the national law of the Member State concerned" and that the Member States governments may only give "information" on this subject, it is submitted here that Hungary would not be entitled to declare Certificate holders nationals for Community purposes.

b) Compliance with EU Standards

Finally, regard shall be had, under the regime of European Community law, to the preferential treatment granted by the Status Law. In this respect, it may be recalled that the EU Commission, in its Regular Report on Hungary's Progress towards Accession of 13 November 2001, attested the Status Law to be "currently not in line with the principle of non-discrimination laid down in the Treaty"[126]. It has to be born in mind, however, that the principle of non-discrimination as embodied in Article 12 EC prohibits discrimination only on grounds of "nationality". According to the foregoing, it is consequent to hold that the Status Law does not grant preferential treatment on grounds of "nationality" but rather of "ethnic origin" within the meaning of Article 13 EC. Yet this provision, which was newly created by the Amsterdam Treaty,[127] does not contain a general prohibition of discrimination but merely empowers the Council "to take appropriate action". Hence, Article 13 EC has no direct effect.[128] On the other hand, Article 13 EC applies "[w]ithout prejudice to the other provisions of [the EC] Treaty". Therefore,

122 Cf. *K. Kingston*, (note 7).

123 According to submission of the Hungarian government to the Venice Commission, Hungary in passing the Status Law "set aside all aspirations for any kind of dual citizenship for persons belonging to Hungarian national minorities and living in the neighbouring countries, cf. *B. Fowler*, (note 9), p. 30.

124 Cf. Memorandum, (note 22), I.6.

125 Cf. *B. Fowler*, (note 9), pp. 31 seqq.

126 Cf. note 19.

127 Cf. *A. Epiney*, in: Calliess/Ruffert (ed.), Kommentar des Vertrages über die Europäische Union und des Vertrages zur Gründung der Europäischen Gemeinschaft: EUV EGV, 1999, Article 13 EC § 1.

128 Ibid.

what has to be determined first of all is whether the Status Law is in breach of any of the special provisions contained in the EC Treaty.

(1) Favoured Entry and Residence Conditions

Article 3 of the Status Law provides that the "most favoured" entry and residence conditions shall be granted to ethnic Hungarians. According to Article 18 EC, every citizen of the Union has the right to move and reside freely within the territory of the Member States. Having acceded to the EU, therefore, Hungary will have to grant free entry and residence to any national of its neighbouring countries from the moment of the respective State's EU accession.

(2) Facilitated Access to Labour Market

The same is true, *mutatis mutandis*, for the facilitated access to the Hungarian labour market provided for in Article 15 of the Status Law. Article 39 § 2 EC contains a right of access to the national labour market under the same conditions as apply to nationals of the respective Member State.[129] This right of access is further detailed by Articles 1-6 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968. Therefore, from the moment of Hungary's accession to the EU, all Member State nationals, including those coming from the Eastern European countries which have also acceded to the EU, will enjoy equal access to the Hungarian labour market.

(3) Council Directive 2000/43/EC

Above all, Hungary will have to comply, after its accession to the EU, with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (hereinafter "the Directive")[130]. It was based on Article 13 EC (cf. supra) and prohibits "any direct or indirect discrimination based on racial or ethnic origin" as regards the areas coveredby it (thirteenth recital of the preamble). While according to Article 5 of the Directive, "[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", it has to be recalled that the measures provided for by the Status Law aim at improving the general economic situation of ethnic Hungarians residing in the neighbouring countries of Hungary rather than at compensating

129 Cf. *W. Brechmann*, in Calliess/Ruffert (ed.), (note 127), Article 39 § 52.

130 Official Journal L 180, 19.07.2000, p. 22.

the disadvantages which result from the fact of belonging to the Hungarian minority (cf. supra). Article 5 of the Directive therefore does not apply.

Furthermore, it has to be observed that unlike under Article 14 of the European Convention on Human Rights where the Member States enjoy a certain "margin of appreciation" (cf. supra), a difference in treatment may be justified under the Directive only in "very limited circumstances" where "a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement" (eighteenth recital of the preamble). The Status Law manifestly does not fulfil these requirements. Therefore, in the areas covered by the Directive – such as, e.g., access to employment, social protection including social security and healthcare, and education (see Article 3 § 1 (a), (e) and (g) of the Directive) –, any difference in treatment on the ground of ethnic origin as provided for by the Status Law will be prohibited. And it should be added that the Directive, according to the thirteenth recital of its preamble, does not only apply to Member State citizens but also to third country nationals.

Therefore, having acceded to the EU, Hungary will have to adjust the Status Law to the European standards. For this purpose, Article 27 § 2 of the Status Law stipulates that from the date of Hungary's accession to the European Union, the provisions of the Act shall be applied in accordance with Hungary's treaty of accession and with the law of the European Communities. Given the above analysis of Council Directive 2000/43/EC, it is not unlikely that, as *Fowler* prophesies, the Status Law will have "to be abandoned in its entirety on Hungary's accession, or so substantially amended as to undermine its purpose"[131].

(4) The EU-Hungarian Association Agreement

The above considerations did only concern the time *after* Hungary's accession to the EU. At the time being, the relations between the EU and Hungary are governed by the EU-Hungarian Association Agreement of 13 December 1991 (hereinafter "Association Agreement")[132]. It may be recalled that the EU urged Hungary to exclude Austria from the Act's territorial scope (cf. supra), thereby relying on Articles 37 and 115 of the Association Agreement which regulates the movement of workers.[133] After Austria's exclusion, the Status Law has been attested by EU commissioner for enlargement *Verheugen* to be in line with the Association Agreement.[134]

131 Cf. *B. Fowler*, (note 9), p. 56.

132 "Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part", Official Journal L 347 , 31.12.1993, p. 2.

133 Cf. *B. Fowler*, (note 9), p. 56.

134 Cf. RFE/RL NewsLine of 27 June 2001, http://www.rferl.org/newsline/2001/06/270601.asp (access date: 06/13/2002).

IV. Summary

In sum, it may be observed that the Hungarian Status Law, even though in conformity, according to the present analysis, with most of Hungary's obligations under public international and European Community law, served little the interests of the Hungarian national minorities abroad since the adoption of the Act caused so many grievances that the climate of friendly neighbourly relations has been considerably strained. For the future, Hungary's aspirations to be among the first countries of Eastern Europe to join the EU will probably be one of the strongest levers in finding a satisfactory solution of the problem. However, past has shown that the Council of Europe too has played a vital role in settling a conflict which otherwise could have easily escalated.

Annex

Act LXII of 2001

On Hungarians Living In Neighbouring Countries*

Parliament

– In order to comply with its responsibilities for Hungarians living abroad and to promote the preservation and development of their manifold relations with Hungary prescribed in paragraph (3) of Article 6 of the Constitution of the Republic of Hungary,

– Considering the European integration endeavours of the Republic of Hungary and in-keeping with the basic principles espoused by international organisations, and in particular by the Council of Europe and by the European Union, regarding the respect of human rights and the protection of minority rights;

– Having regard to the generally recognised rules of international law, as well as to the 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 stabilising role of Hungary;

– 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;

* Adopted by the Hungarian Parliament on 19 June 2001. This document was reproduced and reformatted from the text appearing at the Government Office for Hungarian Minorities Abroad website, http://www.htmh.hu/law.htm. (access date: 06/13/2002).

– Based on the initiative and proposals of the Hungarian Standing Conference, a co-ordinating body functioning in order to preserve and reinforce the awareness of national self-identity of Hungarian communities living in neighbouring countries;

– 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;

Herewith adopts the following Act:

Chapter I

General Provisions

Scope of the Act

Article 1

(1) This Act shall apply to 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, and who

a) have lost their Hungarian citizenship for reasons other than voluntary renunciation, and

b) are not in possession of a permit for permanent stay in Hungary.

(2) This Act shall also apply to the spouse living together with the person identified in paragraph (1) and to the children of minor age being raised in their common household even if these persons are not of Hungarian nationality.

(3) This Act shall also apply to co-operation with, and assistance to organisations specified in Articles 13, 17, 18 and 25.

Article 2

(1) Persons falling within the scope of this Act shall be entitled, under the conditions laid down in this Act, to benefits and assistance on the territory of the Republic of Hungary, as well as in their place of residence in the neighbouring countries on the basis of the Certificate specified in Article 19.

(2) The provisions of this Act shall be applied without prejudice to the obligations of the Republic of Hungary undertaken in international agreements.

(3) The benefits and assistance claimable under this Act shall not affect other existing benefits and assistance ensured by legislation in force for non-Hungarian citizens of Hungarian nationality living in other parts of the world.

Article 3

The Republic of Hungary, in order to

a) ensure the maintenance of permanent contacts,

b) provide for the accessibility of benefits and assistance contained in this Act,

c) ensure undisturbed cultural, economic and family relations,

d) ensure the free movement of persons and the free flow of ideas,

and taking into account its international legal obligations, shall provide for the most favoured treatment possible with regard to the entry and stay on its territory for the persons falling within the scope of this Act.

Chapter II

Benefits And Assistance Available For Persons Falling Within The Scope Of This Act

Education, Culture, Science

Article 4

(1) In the field of culture, persons falling within the scope of this Act shall be entitled in Hungary to rights identical to those of Hungarian citizens. Accordingly, the Republic of Hungary shall ensure for them in particular:

a) the right to use public cultural institutions and the opportunity to use the services they offer,

b) access to cultural goods for the public and for research,

c) access to monuments of historic value and the related documentation,

d) the research for scientific purposes of archive materials containing protected personal data, if the neighbouring state where the Hungarian individual living outside the borders has a permanent residence is a party to the international convention on the protection of personal data.(1)

(2) Persons falling within the scope of this Act shall be entitled to use the services of any state-run public library, and to the free of charge use of the following basic services:

a) visit of the library,

b) on-the-spot use of certain collections determined by the library,

c) use of stock-exploring instruments,

(1) Act VI of 1998 on the promulgation of the Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data, signed on 28 January 1981 in Strasbourg.

d) information on the services of the library and of the library system,

e) in the case of registration, borrowing of printed library material in accordance with the regulations of the library.

(3) Further benefits with respect to the availability of services offered by state-run museums and public cultural institutions to persons falling within the scope of this Act shall be laid down in a separate legal rule.

Article 5

Hungarian scientists falling within the scope of this Act may become external or regular members of the Hungarian Academy of Sciences.

Distinctions and Scholarships

Article 6

(1) The Republic of Hungary shall ensure that persons falling within the scope of this Act, in recognition of their outstanding activities in the service of the Hungarian nation as a whole and in enriching Hungarian and universal human values, may be awarded distinctions of the Republic of Hungary and may receive titles, prizes or honorary diplomas founded by its Ministers.

(2) In the process of determining conditions for state scholarships, the possibility to receive such scholarships shall be ensured for persons falling within the scope of this Act.

Social Security Provisions and Health Services

Article 7

(1) Persons falling within the scope of this Act who, under Article 15, work on the basis of any type of contract for employment in the territory of the Republic of Hungary shall pay, unless otherwise provided for by international agreements, health insurance and pension contribution of an amount equal to that laid down in the relevant Hungarian social security legislation to the authority designated for this purpose in a separate legal rule. Those contributions shall entitle such persons to health and pension provision specified by a separate legal rule.

(2) Persons falling within the scope of this Act who are not obliged to pay health insurance and pension contributions as stipulated in paragraph (1) shall have 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 organisation established for this purpose.

(3) In cases requiring immediate medical assistance, persons falling within the scope of this Act shall be entitled to such assistance in Hungary according to the provisions of bilateral social security (social policy) agreements.

Travel benefits

Article 8

(1) Persons falling within the scope of this Act shall be entitled to travel benefits in Hungary on scheduled internal local and long-distance lines of public transport. With regard to railways, such benefits shall apply to 2nd class fares.

(2) An unlimited number of journeys shall be provided free of charge for:

a) children up to six years of age,

b) persons over sixty-five years of age.

(3) A 90% travel discount shall be provided on means of internal long-distance public transport for:

a) persons identified in paragraph (1) four times a year,

b) a group of at least ten persons under eighteen years of age travelling as a group and falling within the scope of this Act, and two accompanying adults once a year.

(4) The detailed rules of travel benefits shall be laid down in a separate legal rule.

Education

Article 9

(1) Persons falling within the scope of this Act, in accordance with the relevant provisions of Act LXXX of 1993 on Higher Education applicable to Hungarian citizens, shall be entitled to participate, according to the conditions specified in this Article, in the following programmes of higher education institutions in the Republic of Hungary:

a) undergraduate level college or university education,

b) supplementary undergraduate education,

c) non-degree programmes,

d) Doctor of Philosophy (PhD) or DLA programmes,

e) general and specialised further training,

f) accredited higher education level vocational training in a school-type system.

(2) Students participating in state-financed full-time training programmes specified in paragraph (1), shall be entitled to formula funding on the one hand, and financial and other benefits in kind on the other, both being part of the appropriations of budgetary expenditure for students, as well as to the reimbursement of detailed health insurance contributions provided by Act LXXX of 1993 on

Higher Education. The detailed conditions of these forms of assistance and further benefits shall be regulated by the Minister of Education in a separate legal rule.

(3) Persons falling within the scope of this Act may pursue 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.

(4) Students from neighbouring countries participating in education programmes not financed by the state may apply for the partial or full reimbursement of their costs of stay and education in Hungary to the public benefit organisation established to this end.

Student Benefits

Article 10

(1) Registered students of a public education institution in a neighbouring country who are pursuing their studies in Hungarian language, or students of any higher education institution who are subject to this Act are entitled to benefits available under the relevant regulations to Hungarian citizens with student identification documents.

(2) Entitlement to benefits specified in paragraph (1) shall be recorded in the Appendix of the Certificate (Article 19) serving for this purpose. The detailed rules of access to these benefits shall be laid down in a separate legal rule.

Further Training for Hungarian Teachers Living Abroad

Article 11

(1) Hungarian teachers living abroad, teaching in Hungarian in neighbouring countries and falling within the scope of this Act (hereinafter referred to as "Hungarian teachers living abroad") shall be entitled to participate in regular further training in Hungary, as well as to receive the benefits specified in paragraph (2). Further training and the benefits shall be applicable to a fixed number of teachers determined annually by the Minister of Education.

(2) For the duration of further training and to the extent stipulated by a separate legal rule, persons identified in paragraph (1) shall be entitled to request the Hungarian educational institution providing further training to

a) reimburse accommodation costs,

b) reimburse travel expenses, and

c) contribute to the costs of registration.

(3) The detailed rules of further training for Hungarian teachers living abroad shall be regulated by a separate legal rule.

Article 12

(1) Hungarian teachers living abroad, falling within the scope of this Act and those teaching in higher education institutions in neighbouring countries (hereinafter referred to as "Hungarian instructors living abroad") shall be entitled to special benefits.

(2) Benefits available to Hungarian teachers and instructors living abroad shall be identical with the benefits related to Teacher Identity Cards issued to teachers of Hungarian citizenship on the basis of legislation in force.

(3) Entitlement to benefits specified in paragraph (1) shall be recorded in the Appendix of the "Certificate of Hungarian Nationality" serving for this purpose. The detailed rules of access to these benefits shall be regulated in a separate legal rule.

Education Abroad in Affiliated Departments

Article 13

(1) The Republic of Hungary shall promote the preservation of the mother tongue, culture and national identity of Hungarians living abroad also by supporting the establishment, organisation and operation of affiliated Departments of accredited Hungarian higher education institutions in neighbouring countries.

The financial resources necessary for the realisation of these goals shall be set out as targeted appropriations in the budget of the Republic of Hungary. The Minister of Education shall decide on the allocation of the available resources according to a separate legal rule.

(2) The Republic of Hungary supports the establishment, operation and development of higher education institutions (faculties, study programmes, etc.) teaching in Hungarian and seeking accreditation in neighbouring countries. Financial resources required for the realisation of these goals may be applied for at the public benefit organisation established for this purpose.

Educational Assistance Available in the Native Country

Article 14

(1) Parents falling within the scope of this Act and bringing up at least two children of minor age in their own household may apply for educational assistance for each of their children if:

a) the child attends an education institution according to his/her age and receives training or education in Hungarian, and

b) the education institution specified in point a) is in the neighbouring country of residence of the parents.

(2) Parents falling within the scope of this Act may receive assistance for books and learning materials (hereinafter referred to as "assistance for learning materials") if the child of minor age living in their own household attends an educational institution in the neighbouring country of residence of the parents and receives education in Hungarian.

(3) Applications for assistance for education and learning materials may be submitted to the public benefit organisation established for this purpose. In the process of evaluating the applications, the public benefit organisation shall request the position, formulated with the consent of the Hungarian Minister of Education, of the recommending body (Article 20) in the neighbouring country concerned whether instruction and education in Hungarian are ensured in the education institution in question.

(4) Persons falling within the scope of this Act may apply for assistance for their studies at the higher education institutions of neighbouring countries from the public benefit organisation established for this purpose.

Employment

Article 15

(1) Persons falling within the scope of this Act may be employed in the territory of the Republic of Hungary on the basis of a permit. Work permits shall be issued under the general provisions on the authorisation of employment of foreign nationals in Hungary, with the exception that the work permit can be issued for a maximum of three months per calendar year without the prior assessment of the situation in the labour market. A separate legal rule may allow for the issuing of work permits for longer periods of time under the same conditions.

Article 16

(1) The persons concerned may apply to the public benefit organisation established for this purpose for the reimbursement of expenses related to the fulfilment of the legal conditions for employment. These expenses include, in particular, the costs of proceedings for the prior certification of the necessary level of education, of specialised training and of compliance with occupational health requirements.

(2) The detailed rules of the proceedings for the issuing of work permits and the registration shall be regulated by a separate legal rule.

Duties of the Public Service Media

Article 17

(1) Public service media in Hungary shall provide, on a regular basis, for the gathering and transmission of information on Hungarians living abroad and shall

transmit information on Hungary and the Hungarian nation to Hungarians living abroad. The purpose of this information shall be:

a) the transmission of Hungarian and universal spiritual and cultural values,

b) the forming of an unbiased picture of the world, of Hungary and of the Hungarian nation,

c) the preservation of the awareness of national identity, of the mother tongue and culture of the Hungarian minority communities.

(2) The Republic of Hungary shall provide for the production and broadcasting of public service television programmes for the Hungarian communities living abroad through the establishment and operation of an organisation devoted to such purposes. The financial resources necessary for such programmes shall be provided by the state budget.

Assistance to Organisations Operating Abroad

Article 18

(1) The Republic of Hungary shall support organisations operating in neighbouring countries and promoting the goals of the Hungarian national communities living in neighbouring countries.

(2) The organisations specified in paragraph (1) may apply to the public benefit organisation established for this purpose and operating in a lawful manner if their goals include, in particular, the following:

a) the preservation, furtherance and research of Hungarian national traditions,

b) the preservation and fostering of the Hungarian language, literature, culture and folk arts,

c) the promotion of higher education of Hungarians living abroad by facilitating the work of instructors from Hungary as visiting lecturers,

d) the restoration and maintenance of monuments belonging to the Hungarian cultural heritage,

e) 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,

f) the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary,

g) the pursuance of other activities promoting the goals specified in paragraph (1).

Chapter III

Rules Of Procedure Of Application For Benefits And Assistance

"Certificate of Hungarian Nationality" and "Certificate for Dependants of Persons of Hungarian Nationality"

Article 19

(1) Benefits and assistance specified in this Act may be received by presenting either the "Certificate of Hungarian Nationality" or the "Certificate for Dependants of Persons of Hungarian Nationality", both of which may be issued under the conditions specified in Article 20 at the request of persons of both Hungarian and non-Hungarian nationality.

(2) From the Hungarian central public administration body (hereinafter referred to as "the evaluating authority") designated by the Government of the Republic of Hungary for this purpose:

a) persons of Hungarian nationality falling within the scope of this Act may request a "Certificate of Hungarian Nationality" with a photo,

b) a "Certificate for Dependants of Persons of Hungarian Nationality" with a photo may be requested by spouses of non-Hungarian nationality living together with persons specified in point a) and children of minor age being brought up in the same household, provided that:

the applicant meets the requirements set out in points a) and b) of paragraph (1) of Article 1 and the recommending authority specified in Article 20 has issued the recommendation; and neither an expulsion order nor a prohibition of entry or stay, issued by the competent Hungarian authorities on the basis of grounds determined in a separate Act, is in effect against the applicant in Hungary; and no criminal proceedings have been instituted against the applicant in Hungary for intentional criminal offence.

(3) In addition to the requirements specified in paragraph (2), the "Certificate for Dependants of Persons of Hungarian Nationality" shall also be conditional upon whether the person of Hungarian nationality entitling the dependants in question to submit an application for the "Certificate for Dependants of Persons of Hungarian Nationality" is already in the possession of, or entitled to, a "Certificate of Hungarian Nationality". The withdrawal of the "Certificate of Hungarian Nationality" shall entail the withdrawal of the "Certificate for Dependants of Persons of Hungarian Nationality".

Article 20

(1) The evaluating authority shall issue the "Certificate of Hungarian Nationality" if the applicant is in the possession of a recommendation which has been issued

by a recommending organisation representing the Hungarian national community in the neighbouring country concerned, and being recognised by the Government of the Republic of Hungary as a recommending organisation, and which:

a) certifies, on the basis of a declaration made by the applicant (or in the case of a minor by his/her statutory agent), that the applicant is of Hungarian nationality,

b) certifies the authenticity of the signature of the applicant and

c) includes the following:

ca) the application, photo and address of the applicant,

cb) the personal data to be recorded in the Certificate (Article 21),

cc) the name and the print of the official seal of the recommending organisation, the name and signature of the person acting on behalf of the recommending organisation,

cd) place and date of issue of the recommendation.

(2) The recommendation required for the issuing of the "Certificate for Dependants of Persons of Hungarian Nationality" shall certify, instead of the information specified in paragraph (1) point a), the family relationship between the applicant and the person of Hungarian nationality falling within the scope of this Act.

(3) The Government of the Republic of Hungary shall recognise an organisation representing the Hungarian community in the given neighbouring country as a recommending organisation if it is capable of:

a) representing the Hungarian community living in the given country in its entirety,

b) providing for the organisational and personnel conditions for receiving and evaluating applications for recommendation.

Article 21

(1) The period of validity of the Certificate

a) shall expire on the day of the eighteenth birthday in the case of minors,

b) shall be five years in the case of persons between 18 and 60 years of age,

c) shall be indefinite in the case of persons over 60 years of age.

(2) If the period of validity of the Certificate expires, the proceedings specified in Articles 19-20 shall be repeated upon request.

(3) The Certificate shall be withdrawn by the evaluating authority if

a) the recommending organisation has withdrawn its recommendation due to the submission of false data by the bearer of the Certificate in the application process,

b) its bearer has been granted an immigration or permanent residence permit,

c) its bearer has acquired Hungarian citizenship,

d) its bearer has been recognised as a refugee or temporarily protected person by the authorities responsible for refugee matters,

e) its bearer has been expelled from the territory of the Republic of Hungary, or a prohibition of entry or stay has been issued against him/her,

f) criminal proceedings have been instituted against the bearer in Hungary,

g) the Certificate has been used in an unauthorised way or has been forged,

h) the family relationship entitling the bearer to use the Certificate for Dependants has ceased to exist,

i) upon request by the bearer of the Certificate.

(4) The recommending organisation shall also be notified of the final decision on the withdrawal of the Certificate.

(5) The Certificate shall contain the following data of the entitled person:

a) family and given name (also the maiden family and given name in the case of women) as it is used officially in the neighbouring country of residence (in Latin script), and in the case of persons of Hungarian nationality in Hungarian as well,

b) name of the place of birth as it is used officially in the neighbouring country and in Hungarian,

c) date of birth and gender,

d) mother's name as it is officially used in the neighbouring country of residence (in Latin script) and in the case of persons of Hungarian nationality in Hungarian as well,

e) passport photo, citizenship or reference to stateless status,

f) signature in the entitled person's own hand, and

g) date of issue, period of validity and number of the document.

(6) Notes and certifications required for access to benefits and assistance available under this Act shall be recorded in the Appendix to the Certificate.

(7) In order to ensure the authenticity of the Certificate and to supervise the granting of benefits, the evaluating authority (for the purpose of the application of these provisions: the data handling organ) shall keep records of the data of the Certificates, the identification marks in the Appendices, the foreign address of the bearers, the family relationship entitling the bearer to the document, the number and period of validity of the permit entitling to stay as well as the data specified in paragraph (3). The data contained in the records may be handled by the data handling organ until the withdrawal or the expiry of the period of validity of the Certificate. The data contained in the records may be forwarded to the Hungarian Central Statistical Office (KSH) for statistical purposes. Bodies responsible for providing and keeping records of benefits and assistance may also receive those data for the purpose of verifying entitlement and preventing abuse, and so may Courts in charge of criminal proceedings, law enforcement bodies, national security services and the alien policing authority.

(8) For the purpose of evaluating applications and examining the existence of reasons for the withdrawal of the Certificate, the evaluating authority may request information from the following organs:

a) the Central Registry of Aliens on whether the applicant is subject to proceedings under the law on aliens, or on any order of expulsion or prohibition on entry to and stay in Hungary against the applicant, as well as on the details of the residence permit entitling the applicant to stay in Hungary,

b) organs responsible for naturalisation on issues related to the acquisition Hungarian citizenship,

c) the Central Registry of Refugees on recognition as a refugee or temporarily protected person,

d) the Criminal Records Office on criminal proceedings in process.

Article 22

(1) Proceedings of the evaluating authority shall be governed by the provisions of Act IV of 1957 on the General Rules of Public Administration Procedures. The costs of public administration procedures shall be covered by the State.

(2) The applicant may institute proceedings in Court against a final administrative decision on the appeal against the first instance decision regarding the issue or withdrawal of a Certificate by the evaluating authority. The Court may alter the administrative decision and its proceedings shall be governed by the provisions of the Code of Civil Procedure.

(3) The detailed rules of procedure of the evaluating authority and the order of registration of the issued Certificates, as well as the data content and form of the Certificates, shall be regulated by a separate legal rule.

Use of Benefits on the Territory of the Republic of Hungary

Article 23

(1) Hungarian persons living abroad shall be entitled to use the benefits set out in Article 4, paragraph (1) of Article 7, Article 8, Article 10, paragraph (2) of Article 11 and Article 12 – under the conditions determined in the aforementioned Articles – by presenting their Certificates (Article 19) during their lawful stay in the Republic of Hungary.

(2) The state-run organisations and institutions granting the benefits specified in paragraph (1) and economic organisations providing travel benefits shall receive the financial resources necessary for granting these benefits out of the central state budget.

Application Procedures for Assistance Available in the Republic of Hungary

Article 24

(1) The Government shall establish public benefit organisation(s) in order to evaluate the applications of and distribute assistance for persons (organisations) falling within the scope of this Act.

(2) The founding document of the public benefit organisation, taking into account the provisions of Act CLVI of 1997 on Public Benefit Organisations, shall contain the goals of the activities and the range of applications to be evaluated by it and shall determine its main decision-making body as well.

(3) Applications for publicly advertised assistance under this Act may be submitted to the respective public benefit organisation competent according to their subject matter.

(4) Data and documents required in the advertisement by the respective public benefit organisation shall be attached to the applications.

(5) In the case of a favourable decision, the applicant and the public benefit organisation shall conclude a civil law contract containing the conditions of assistance and the amount thereof, as well as determining the purpose of the use of assistance and the rules of rendering accounts thereof.

(6) The financial resources required for the activities of such public benefit organisation(s) shall be provided, on an annual basis, in a separate group of appropriations of the central state budget.

Application Procedures for Assistance Available in Neighbouring Countries

Article 25

(1) Requests (applications) for assistance regulated in this Act may be submitted by persons (organisations) falling within the scope of this Act to lawfully operat-

ing non-profit organisations established in the neighbouring country of their permanent residence (registered office) for this purpose (hereinafter referred to as "foreign public benefit organisations")

(2) The civil law contract concluded between the public benefit organisation established in Hungary and the foreign public benefit organisation established for the evaluation of applications and the granting of assistance shall contain the required range of data, which are to be supported by documents, declarations, planning or documentation, etc.

(3) The public benefit organisations operating in Hungary shall evaluate the application based on the data specified in the civil law contract as laid down in paragraph (2) and on the opinion of the foreign public benefit organisation.

(4) Assistance shall be granted to applicants by the Hungarian public benefit organisation on the basis of a civil law contract. This contract shall determine the conditions of the assistance and the amount thereof as well as the purpose of the use of such assistance and the rules of rendering accounts thereof.

Central Registration of Assistance

Article 26

(1) For the purpose of co-ordinating the entire system of assistance, a central registry of applications for assistance and the relevant decisions made by public benefit organisations established for their evaluation shall be set up.

(2) The Government shall designate the central public administration organ responsible for managing the records.

(3) The organ managing the records shall handle the following data:

a) name, permanent address (registered office) and document number of those submitting applications for assistance,

b) the type of assistance sought,

c) the amount of assistance granted.

(4) Data specified in paragraph (3) may be handled by the organ managing the records for ten years from the date of the granting of assistance.

(5) Data from the records shall be made available to public benefit organisations established in Hungary and in the neighbouring countries for the purpose of evaluating applications for assistance, as well as to the central public administration organs of Hungary responsible for providing the financial resources for assistance.

Chapter IV

Final Provisions

Article 27

(1) This Act shall enter into force on 1 January 2002.

(2) 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.

Article 28

(1) The Government shall be empowered to regulate by decree:

a) the provisions on the assignment of the national public administration organ entitled to issue, withdraw and register the Certificates, as well as on the assignment of its superior organ, on the definition of their competencies and on the rules of procedure of the issuing, replacement, withdrawal and registration of such Certificates,

b) the detailed rules of travel benefits for persons falling within the scope of this Act,

c) the detailed rules related to the provision and use of student benefits for persons specified in paragraph (1) of Article 10 of this Act.

(2) The Government shall ensure the establishment of Hungarian public benefit organisation(s) evaluating applications and allocating assistance under this Act. The Government shall also ensure the co-ordination of the activities of public benefit organisations already operating for this purpose, the appropriate modification of their founding documents and the reallocation of resources in this framework.

Article 29

(1) The Minister of the Interior and the Minister of Foreign Affairs shall determine in a joint decree, with respect to educational assistance with the consent of the Minister of Education, the detailed rules on registering the Certificates, as well as the requirements of the content and form of the Certificates.

(2) The Minister of Economic Affairs shall:

a) determine, in a joint decree with the Minister for Foreign Affairs, the rules of procedure and registration related to work permits for Hungarians living abroad and designate the public administration organ responsible for carrying out these duties,

b) be empowered to regulate by decree the conditions for issuing work permits for a period longer than the one specified in Article 15 of this Act

with regard to employees falling within the scope of this Act, or for a particular group of employees, in consensus with the Minister for Youth and Sports Affairs in cases involving professional sportspersons.

(3) The Minister of Foreign Affairs shall be empowered to substitute his own declaration for the recommendation specified in Article 20 of this Act in cases deserving exceptional treatment on grounds of equity in the course of proceedings of the evaluating authority designated in Article 19, and furthermore in cases where the proceedings specified in paragraph (1) of Article 20 are impeded, to ensure the smooth conduct of administrative proceedings.

(4) The Minister of National Cultural Heritage shall determine by decree the detailed rules of benefits available to Hungarians living abroad with respect to the use of the services provided by museums and public cultural institutions.

(5) The Minister of Education, with the consent of the Minister of Foreign Affairs, shall determine by decree the detailed rules on further training for Hungarian teachers living abroad, as well as detailed rules on the benefits set out in Article 9, Article 11 and 12, paragraph (1) of Article 13 and Article 14 of this Act, including the extent of such assistance.