



Resolution 1335 (2003)¹

**Preferential treatment of national minorities by the kin-state:
the case of the Hungarian law of 19 June 2001 on Hungarians
living in neighbouring countries ("Magyars")**

Parliamentary Assembly

1. The Parliamentary Assembly, in principle, welcomes assistance given by kin-states to their kin-minorities in other states in order to help these kin-minorities to preserve their cultural, linguistic and ethnic identity. However, the Assembly wishes to stress that such kin-states must be careful that the form and substance of the assistance given are also accepted by the states of which the members of the kin-minorities are citizens, and to which the basic rules contained in the Framework Convention on National Minorities (ETS No. 157) are applicable.
2. The Assembly considers that responsibility for minority protection lies primarily with the home states. It stipulates that the existing multilateral and bilateral framework of minority protection, including European norms, must be held as a priority. Kin-states can also play a legitimate and important role in the protection and preservation of kin-minorities, aimed at ensuring that their genuine linguistic and cultural links remain strong. The emergence of new and original forms of minority protection, particularly by their kin-states, constitutes a positive trend in so far as they can contribute to the realisation of this goal within the framework of international co-operation.
3. On 19 June 2001, the Hungarian Parliament passed the Law on Hungarians Living in Neighbouring Countries which aims to give such assistance, in this case to people of Hungarian identity who are citizens of neighbouring countries and who consider themselves as persons belonging to the Hungarian "national" cultural and linguistic community.
4. Under the law, preferential treatment is granted to citizens of Magyar "nationality" living in the following neighbouring countries: Croatia, Serbia and Montenegro, Romania, Slovenia, Slovakia and Ukraine. Magyars living in Austria are excluded from the scope of the law.
5. Several of these member states of the Council of Europe have previously adopted legislation based on the principle of preferential treatment of national minorities by the kin-state.
6. On 22 December 2001, in light of the report by the European Commission for Democracy through Law (Venice Commission) on the preferential treatment of national minorities by the kin-state, the governments of Hungary and Romania signed a memorandum of understanding which – inter alia – extends the conditions and treatment applicable in Hungary in respect of employment to all Romanian citizens, irrespective of their "national" identity.
7. Preferential treatment is subject to possession of a certificate which can be issued only by a Hungarian public authority, as concluded in the opinion of the Venice Commission.

1. Assembly debate on 25 June 2003 (20th Sitting) (see [Doc.9744](#) rev., report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens; and [Doc. 9813](#), opinion of the Political Affairs Committee, rapporteur: Mr Toshev). Text adopted by the Assembly on 25 June 2003 (20th Sitting).



8. On the basis of the aforementioned report by the Venice Commission, the possibility for states to adopt unilateral measures on the protection of their kin-minorities abroad, irrespective of whether they live in neighbouring or other countries, is conditional upon the respect of the following principles: territorial sovereignty, *pacta sunt servanda*, friendly relations amongst states and respect for human rights and fundamental freedoms – in particular the prohibition of discrimination. States should abstain from taking unilateral measures, which would risk compromising the climate of co-operation with other states.

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

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

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

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

13. The Assembly notes with satisfaction that on 23 June 2003, the Parliament of Hungary amended the law in question on several points, thus responding in part to the critical comments that have been made; these amendments are, however, not based on bilateral agreements with the neighbouring countries concerned.

14. The Assembly therefore urges the Government and Parliament of Hungary to find ways to make further amendments to the Hungarian Law on Hungarians Living in Neighbouring Countries of 19 June 2001 in such a way that it is based on bilateral discussions and agreements with the neighbouring countries and meets the proposals of the Venice Commission and the criticism of the existing law by the OSCE High Commissioner on National Minorities and the Parliamentary Assembly itself. Furthermore, the Assembly calls on all governments concerned to enter into or to continue substantial negotiations.