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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**PREFERENTIAL TREATMENT
OF NATIONAL MINORITIES
BY THEIR KIN-STATE**

ROMANIAN MATERIAL

**presented at
the Meeting in Paris,
18 September 2001**

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Position du Gouvernement de la Roumanie
le 18 septembre 2001

Monsieur le Secrétaire Général de la Commission,
Messieurs les rapporteurs,
Mesdames et messieurs,

Nous nous présentons devant la Commission Européenne pour la Démocratie par le Droit, afin de clarifier notre position au sujet de la loi sur le statut des hongrois d'autres pays, adoptée récemment par le parlement de la République de Hongrie.

En somme, nous pensons qu'il faut examiner

- a) si un traitement préférentiel accordé par un Etat à certains citoyens d'un autre Etat, sur une base ethnique, est compatible avec les standards internationaux en la matière ; un statut préférentiel par rapport à ses propres citoyens et par rapport aux citoyens d'autres pays, quelle que soit leur origine ethnique.
- b) Si la loi adoptée par la Hongrie produit des effets discriminatoires, quels effets et s'ils peuvent être justifiés.
- c) Si la loi répond d'une manière objective, raisonnable et proportionnelle à l'objectif proclamé.

Nous voudrions soumettre à votre attention les points les plus significatifs de notre analyse, une synthèse des documents dont vous êtes déjà saisis.

Conceptions non-conformes avec le droit international ou erronées

1. La loi hongroise part du point de vue selon lequel la nation hongroise comprend toutes les personnes d'origine hongroise, qu'elles vivent en Hongrie ou au-delà des frontières hongroises, et sur cette base, que l'Etat hongrois serait l'Etat parent et aurait des droits et des responsabilités pour ces personnes.

Je voudrais rappeler le discours tenu par le premier ministre hongrois, M. Orbán, en 1998, selon lequel les frontières de la nation hongroise ne coïncident pas avec les frontières actuelles de l'Etat hongrois.

Cette thèse ne correspond ni aux standards internationaux des droits de l'homme et des personnes appartenant aux minorités, ni aux principes du droit international général.

Elle nous ramène au XIX^{ème} siècle, lorsque les Etats nationaux se sont formés ; le droit international contemporain a consacré le concept de peuple, qui comprend aussi bien la majorité, que les minorités qui coexistent sur un territoire.

De même, la presse hongroise et des représentants politiques, dans leurs commentaires sur la loi en cause, l'ont présentée comme une revanche sur le Traité de Trianon de 1920, comme une réparation à la suite de celui-ci ; c'est une thèse qui peut avoir des implications politiques incompatibles avec les relations amicales et de bon voisinage, avec les tendances européennes vers l'intégration.

La conception de la nation qui dépasse les frontières des Etats serait un précédent dangereux dans le domaine de la protection des personnes appartenant aux minorités car les Etats et les structures qui agissent sur le plan international ne sont pas fondés sur des critères ethniques, mais sur une base politique et territoriale.

De même, le droit international ne connaît pas le concept d'Etat-mère ou Etat parent et ne lui confère aucune conséquence juridique sur le plan des droits et des obligations des Etats et des personnes appartenant aux minorités.

Dans l'annexe nr.3 du document de position de la Hongrie il est dit clairement que toute personne qui désire un « certificat de nationalité hongroise » doit donner une déclaration qu'elle appartient à la nation hongroise ; que signifie cette déclaration par rapport aux relations entre un individu et l'Etat dont il est citoyen, et dans les relations avec l'Etat représentant la nation ?

Se référant uniquement aux ethniques hongrois des pays voisins vivant sur les territoires qui ont appartenu dans le passé à l'Etat hongrois, la loi trahit l'intention de promouvoir la conception de la nation hongroise sur tous ces territoires.

2. Tous les Etats voisins de la Hongrie, où une population hongroise est située, ne sont pas concernés par la loi ; c'est le cas de l'Autriche. Or, la situation de l'Autriche et des hongrois qui y restaient après les traités de paix de 1919-1920 était la même ; le traité de Trianon contenait des dispositions identiques sur les hongrois d'Autriche. Tous les hongrois vivant en Autriche ne sont évidemment pas d'émigrants. La raison invoquée pour expliquer l'exclusion de l'Autriche de la liste des Etats voisins concernés par la loi – ce qui était le cas dans le projet initial - n'est pas exacte ; la réalité est que l'Autriche est membre de l'Union Européenne et que la loi hongroise risque de créer un régime que l'Union Européenne ne pouvait pas accepter ; or, la Hongrie, comme la Roumanie, désirent devenir membre de l'Union.
3. Le document hongrois de position fait une distinction entre « l'etat parent » et la « communauté internationale », dans le sens selon lequel l'Etat parent aurait des droits et pourrait agir seul, séparément de la communauté internationale aux fins de la protection de l'identité des minorités. Ceci risque de transformer les problèmes concernant les minorités en champ de confrontation au lieu de la coopération que la communauté internationale

doit promouvoir et d'introduire dans l'approche de ces problèmes des critères qui diffèrent des standards internationaux.

4. Une autre conception erronée est que les personnes appartenant aux minorités sont en principe discriminées et désavantagées, de par le seul fait qu'elles sont minoritaires ; de là, la thèse qu'il faut prendre des mesures positives en leur faveur, et non pas dans leurs pays mais en Hongrie, en comparant les possibilités dans leurs pays d'origine avec celles de la Hongrie, alors qu'elles vivent dans un autre pays, aux cotés d'une population majoritaire ; sur la base d'une telle conception, on essaie de justifier un traitement qui dépasse les préoccupations pour la préservation et le développement de l'identité linguistique et culturelle.
5. La loi hongroise n'est pas fondée sur la coopération avec les Etats voisins dans la solution des problèmes traités, mais sur des solutions unilatérales, faisant abstraction des intérêts et des positions de ces pays, en dépit des traités internationaux qui établissent des modalités de coopération dans ce domaine.

Il est évident que de telles questions - d'éducation, d'emploi et autres - peuvent être réglées par des accords avec les pays voisins, sur la base de critères objectifs, et, non pas par des lois unilatérales fondées sur des critères ethniques et créant des traitements discriminatoires.

6. Enfin, la loi hongroise semble encourager les individus à déclarer leur appartenance à une minorité nationale et peut déterminer un accroissement artificiel du nombre de personnes lui appartenant, par les avantages matériels offerts. Elle risque ainsi de fausser les données démographiques. En Slovaquie, pays où le recensement de la population est en voie d'achèvement, il y a déjà des indices selon lesquels le nombre de personnes déclarant leur appartenance à la minorité hongroise est accru, en attendant l'application de la loi hongroise et les avantages qu'elle offre. Ceci est prouvé par le fait que les membres de famille, même s'ils appartenait à la majorité, peuvent demander un acte d'identité de hongrois, pour bénéficier de la loi.

Les problèmes concernant la discrimination.

La loi hongroise est évidemment une loi qui établit un traitement différent pour une catégorie de personnes sur une base ethnique.

1. L'affirmation selon laquelle la loi ne serait pas fondée sur l'ethnie, mais sur la langue et la culture, est quant au fond un détournement des notions.

Le mot « ethnos » dans la Grèce antique désignait les peuples qui n'adoptaient pas le modèle politique et social des cités helléniques ; en français, l'ethnie désignait, au XIX^{ème} siècle les sociétés non-européennes ; en anglais, même au début du XX^{ème} siècle le mot désignait les populations qui n'étaient pas britanniques ou américaines.

La majorité des définitions données à présent à l'ethnie insistent sur les éléments en particulier la langue et la religion, et beaucoup moins sur les aspects biologiques.

Un Comité de l'UNESCO d'experts sur les questions raciales distinguait en 1950 entre les concepts de race (lié à des traits physiques héréditaires) et celui de l'ethnie, concernant une entité culturelle.

Le concept ethnique se définit par les éléments culturels ; c'est pourquoi l'article 27 du Pacte international sur les droits civils et politiques se réfère aux minorités ethniques et au bénéfice de leur propre culture, non pas aux minorités culturelles. Des auteurs spécialistes, comme Patrick Thornberry, démontrent que l'élément ethnique s'exprime par la culture et les traditions différentes ; les groupes ethniques sont des constructions sociales et culturelles, non pas biologiques.

Donc l'ethnie est indissolublement liée à la langue et à la culture et le traitement préférentiel envisagé est fondé sur des critères ethniques.

2. Selon les normes du droit international dans le domaine des droits de l'homme, des préférences fondées sur l'origine ethnique ne sont pas admises, car elles représentent des discriminations. Parmi les textes connus, l'article 1 de la Convention sur l'élimination de toutes les formes de discrimination raciale, l'article 4 de la Convention cadre de 1995 du Conseil de l'Europe (toute discrimination fondée sur l'appartenance à une minorité nationale sera interdite), le Pacte international sur les droits économiques, sociaux et culturels (article 2), les standards d'ordre général établis en Europe. Notons en particulier le protocole n°12 à la Convention européenne, selon lequel la jouissance de tout droit prévue par la loi doit être assurée sans discrimination aucune, fondée notamment sur l'origine nationale ou l'appartenance à une minorité nationale ; nul ne peut faire l'objet d'une discrimination fondée sur des tels motifs de la part de toute autorité publique. Rappelons aussi la Charte sociale européenne.

3. Tous ces documents concernent le rapport entre le traitement accordé dans un Etat aux personnes faisant partie de la majorité et celui qui est accordé aux personnes appartenant aux minorités.

Ils obligent un Etat à ne pas discriminer sur son territoire entre la majorité et la minorité, de même que par rapport aux étrangers s'y trouvant.

Ces documents n'ont pas pris en ligne de compte l'hypothèse où un Etat établirait un régime plus favorable aux citoyens d'une autre Etat, faisant partie d'une minorité dans ce dernier, par rapport à ses propres citoyens ; on n'a pas imaginé une telle possibilité. Ceci ne veut pas dire qu'un tel traitement ne serait pas discriminatoire et qu'il serait admis.

Si un Etat ne peut pas discriminer entre ces propres citoyens, ceux de la majorité et ceux de la minorité, sur des motifs ethniques, il peut d'autant moins discriminer en faveur d'une groupe d'étrangers, sur des motifs ethniques, par rapport à la majorité de sa population et par rapport à d'autres étrangers.

4. Les références dans le document hongrois de position à certains documents internationaux, dans le sens qu'ils permettrait à un Etat d'adopter des mesures spéciales ou positives afin de promouvoir l'identité des personnes appartenant aux minorités- Convention culturelle du Conseil de l'Europe de 1954, Convention cadre de 1995 , ainsi que les recommandations du Conseil de l'Europe - ne sont pas pertinentes, car elles concernent les mesures prises par chaque Etat, pour ses minorités, pour des segments de sa population ; dans le cas de la Hongrie, de cette loi, il ne s'agit pas de minorités sur son territoire, mais de minorités d'autres pays.

Il en est encore plus de la Convention européenne des langues régionales et minoritaires, qui se réfère clairement aux langues parlées sur le territoire de chaque Etat partie. Par ailleurs, nous ne pensons pas que la Hongrie ait déclaré, lorsqu'elle est devenue partie à cette Convention, le hongrois comme langue minoritaire ou régionale, qu'elle entend promouvoir par la loi dont nous discutons.

De même, la jurisprudence de la Cour européenne se réfère à la population d'un pays dans son ensemble et aux minorités qui en font partie, c'est aussi le sens de l'opinion de la Commission de Venise concernant le concept de l'action affirmative, dans le cadre de son projet de Convention sur la protection des minorités nationales, qui se réfère aux personnes appartenant aux minorités et au restant de la population - du même Etat évidemment.

5. Selon les standards européens, tout traitement différent ne constitue pas une discrimination. Un tel traitement doit promouvoir une égalité pleine et effective, doit répondre à une justification objective et raisonnable et doit être proportionnel à l'objectif poursuivi.

Est-ce que l'adoption des mesures envisagées dans la loi hongroise, en faveur des minorités d'autres pays, est nécessaire et objectif ?

Pour cela, il faudrait établir d'une manière objective que ces personnes sont désavantagées dans leur pays, qu'elles n'ont pas d'accès à l'éducation dans leur langue maternelle, ou pas d'accès à l'emploi, qu'elle feraient l'objet de discrimination par rapport à d'autres citoyens du pays respectif.

En ce qui concerne la Roumanie :

- l'accès à l'école en langue maternelle est assuré, depuis l'école maternelle, jusqu'à l'enseignement supérieur ; 5% du nombre total des élèves de Roumanie ont étudié pendant l'année scolaire 1999- 2000 en langue hongroise ; d'autres ont étudié la langue hongroise dans des écoles et des classes bilingues ;

- en ce qui concerne l'enseignement supérieur, qui est une préoccupation constante de la minorité hongroise de Roumanie, depuis 1990 le nombre d'étudiants d'origine hongroise, qui étudient, à leur choix, soit en langue hongroise, soit en roumain, soit les deux, a constamment augmenté ; une université privée en langue hongroise s'est ouverte cette année, avec l'appui financier de l'Etat hongrois ;

- des mesures ont été prises afin de créer une université multiculturelle à Cluj, avec langues de base le hongrois et l'allemand ; de même, une nouvelle charte de l'Université bilingue de Cluj a été adoptée, sur la base des recommandations du Haut Commissaire de l'OSCE pour les minorités.

Nous ne pensons pas que l'on doive comparer la situation de la minorité hongroise d'autres pays avec celle des hongrois en Hongrie comme il est suggéré dans le document hongrois de position ; comme cette minorité vit dans d'autres pays, elle doit être éduquée aussi dans la langue officielle de ceux-ci et dans un esprit interculturel.

- dans le domaine de l'emploi, le chômage parmi les membres de la minorité hongroise est plus réduit que parmi la majorité de la population.

- En ce qui concerne la Roumanie, donc, de telles mesures n'ont pas un caractère objectif et nécessaires, car elle ne répondent pas à une situation de désavantage pour cette minorité. L'identité linguistique, culturelle et religieuse de la minorité hongroise en Roumanie n'est nullement en danger ; au contraire, elle est plus marquée et se développe constamment ; si l'objectif de la loi hongroise est de promouvoir cette identité, cette loi n'est pas nécessaire.

6. Plus encore, par la différence de traitement qu'elle crée pour divers groupes, de la population, à la foi nationale et étrangère la loi n'est pas raisonnable.

Aussi, par les préférences accordées en faveur des personnes faisant partie des minorités hongroises d'autres pays, un traitement différent est créé en matière d'éducation, d'emploi, de transport et autres :

- par rapport aux citoyens de la République de Hongrie, quelle que soit leur ethnie ;

- par rapport aux citoyens d'autres pays, auxquels la loi ne s'applique pas y compris ceux appartenant à l'ethnie hongroise ;

- par rapport aux citoyens des pays voisins, qui n'appartiennent pas à l'ethnie hongroise.

Le gouvernement hongrois nous suggère, dans son document de position, de ne pas examiner uniquement cette loi, mais son système juridique dans l'ensemble ; ; nous ne pensons pas que la méthode suggérée soit correcte ; le problème ne se pose pas, pour la Commission de la Venise, d'examiner

l'ensemble de la législation hongroise, ou son application dans des cas concrets, mais les dispositions de cette loi par rapport aux standards internationaux.

Or, le chômage est aussi très élevé en Hongrie ; en accordant des emplois d'office aux minorités de Roumanie, ne fût-ce que 3 mois par an, n'y a-t-il pas une discrimination par rapport aux citoyens hongrois et aux étrangers, établis en Hongrie ? Cela porte atteinte, évidemment, à l'égalité de chances et de traitement. La Convention 111 de 1960 de l'OIT concernant la discrimination quant à l'occupation et à l'emploi énonce des conditions précises pour pouvoir prendre de telles mesures sans être considérées discriminatoires.

Permettez-moi de me référer brièvement à la situation des Roms de Hongrie ; selon le rapport de l'OSCE de mars 2000 sur la situation des Roms et Sinti de la zone OSCE, seulement 33% des élèves Roms suivent l'école secondaire et moins de 1% ont un degré d'enseignement supérieur ; beaucoup d'élèves Roms sont placés dans des classes spéciales, parfois des classes d'enfants retardés, qui créent, en plus de la ségrégation, un niveau de préparation inférieur qui porte atteinte à leur avenir.

Est-il raisonnable que le gouvernement hongrois s'occupe de l'éducation des personnes provenant d'autres pays, créant un régime discriminatoire par rapport à ses propres citoyens, aux Roms, qui se trouvent déjà dans une situation discriminatoire.

Dans le domaine du travail, selon le même rapport de l'OSCE, 70% des Roms sont chômeurs et dans certains villages 100% ; dans le document hongroise des position il est dit que les personnes d'origine hongroise devraient effectuer pendant trois mois des travaux saisonniers, or ces travaux ne sont-ils justement parmi ceux que les ethniques Roms de la Hongrie pourrait accomplir ?

Il n'est pas donc pas justifié que l'Etat hongrois offre des emplois, fussent-ils temporaires à des ethniques hongrois d'autres pays, alors que ses propres citoyens en seraient privés ; la loi revêt donc clairement un caractère discriminatoire par rapport à ceux qui se trouvent déjà dans une situation désavantagée en Hongrie.

La loi n'est donc pas, de ces points de vue, ni objective, ni raisonnable.

7. Enfin, il n'y a pas un rapport raisonnable de proportionnalité entre les méthodes utilisées et l'objectif visé.

Si l'objectif est de préserver et de renforcer l'identité nationale des communautés hongroises, le maintien des contacts entre personnes de la même langue et culture et leur libre circulation - objectifs légitimes par ailleurs - et non pas de promouvoir la conception d'une nation au delà des frontières, il faut constater que les méthodes imaginées par la loi hongroise ne sont nullement proportionnelles à l'objectif.

Afin d'accorder des bourses aux élèves et aux étudiants d'autres pays pour effectuer des études dans la langue du pays d'accueil, il ne faut pas délivrer un acte d'identité ethnique, dressé par un organe d'Etat unique, sur

recommandation d'une organisation unique de l'autre pays, de même pour avoir accès aux institutions de culture ; pour cela, il suffit un carnet d'élève ou étudiant délivré par l'unité scolaire ou universitaire ou un permis d'accès à l'institution culturelle.

En ce qui concerne la réalisation de contacts interpersonnels, auxquels se réfère le document hongrois de position, il est connu qu'ils sont libres et que les Etat sont obligés de les permettre. Mais il est aussi prévu que ces contacts doivent être réalisés directement entre personnes ou par leur organisations, et non pas par l'entremise ou avec la surveillance des organes d'Etat, comme il est préconisé par la loi hongroise. Le système d'actes d'identité, délivré par un organe d'Etat, soumet les contacts individuels à un type d'ingérence de la part d'un Etat, donc les entache d'un caractère politique, ce qui contrevient à l'objectif poursuivi.

Si l'objectif est de promouvoir les contacts interpersonnels, cet objectif ne se réalise pas par des moyens politiques, par des méthodes administratives-bureaucratiques, qui tendent à créer un lien juridique et politique des citoyens d'un pays avec un autre Etat, où les contacts devraient avoir lieu.

Il y a donc une grande disproportion entre l'objectif poursuivi et les moyens utilisés, ce qui contrevient à la jurisprudence de la Cour européenne des droits de l'homme dans le cas Abdulaziz, Cabales et Balkandali, arrêt du 28 mai 1985, de même que dans les affaires linguistiques belges, arrêt de 1968.

Au sujet des Roms, on nous dit même qu'on va leur délivrer des actes d'identité de hongrois, s'ils avaient adopté la langue et la culture hongroise ; est-ce là une manière de protéger l'identité de Roms ?

Par ailleurs, selon la loi le même statut est accordé ; aux membres des familles des personnes de l'ethnie hongroise, mais ils appartiennent à la majorité, donc ils n'ont pas l'identité hongroise ; quel est dans ces cas l'objectif poursuivi ?

Il ne s'agit donc pas de mesures spéciales au affirmatives, mais des mesures qui créent des discriminations sur une base ethnique sans justification objective et raisonnable et disproportionnées par rapport à l'objectif déclaré.

Le certificat de nationalité hongroise

1. La pratique de la délivrance de ce certificat, comme elle est envisagée par la loi en question, soulève aussi le problème de la détermination de l'origine ethnique, donc de l'appartenance à une minorité.

Le principe généralement accepté est celui de l'auto-identification libre de chaque individu, bien sûr, selon les standards européens, fondée sur des éléments objectifs.

En Roumanie, l'appartenance d'une personne à une minorité est basée sur l'auto-identification ; en Hongrie, la même personne, pour être considérée membre de la minorité hongroise de Roumanie, doit avoir un certificat de hongrois, délivré par une autorité hongroise sur recommandation d'une organisation de Roumanie, elle-même agréée à cette fin par l'Etat hongrois. Est-ce que c'est encore une auto-identification ?

Est-ce que cela ne signifie pas créer deux catégories dans les rangs des minorités hongroises d'autres pays : les bons hongrois et les mauvais ?

De plus, la nationalité de la personne comme telle serait expressément mentionnée dans le certificat, pratique à laquelle la plupart des pays du monde ont renoncé, justement pour éviter les discriminations.

2. Ce certificat soulève aussi le problème d'un lien politique et juridique parallèle à celui de la citoyenneté, et en compétition avec celui-ci.

Ceci découle de la délivrance du certificat par l'autorité d'une autre Etat sur la recommandation d'une organisation souvent politique d'un autre Etat, soumise à l'organe d'Etat qui délivre le certificat, et encore, dans le domaine de l'éducation, avec un avis préalable du ministère hongrois de l'éducation.

Si on regarde de plus près les données requises et inscrites dans le certificat, elles sont plus détaillées que celle des passeports ; le certificat apparaît donc comme un document d'identité officiel qui par rapport à l'Etat hongrois fait figure de passeport, ; ce n'est pas un document directement lié aux raisons de la présence de l'individu en Hongrie (études, recherche, culture, travail) ; de plus, les données comprises sont inscrites dans un registre officiel hongrois et peuvent servir à tous les organes hongrois – tribunaux, organes de sécurité, de police et autres.

Ceci est contraire aux normes du droit constitutionnel de chaque pays, ainsi qu'aux normes du droit international général, selon lesquelles le lien de citoyenneté est unic et ne doit pas être brisé par d'autres liens parallèles ; nous acceptons la double citoyenneté mais, il ne s'agit pas de cela.

Une telle procédure est de nature à créer des difficultés dans la voie des relations de bon voisinage et de coopération entre pays concernés.

3. Bien sûr, une personne peut avoir une identité complexe, multiple ; francophone, belge, européen ; mais ces liens ne peuvent pas se transformer en relation politique avec plusieurs Etats, parallèle à celle de la citoyenneté, sur la base de documents d'identité délivrés par des Etats différents.

Qu'il soit requis ou offert, un tel acte d'identité reste un document officiel, délivré par un organe d'un autre Etat, sur une base ethnique et le titulaire peut prétendre à l'Etat qui le délivre des droits ; la loi prévoit par ailleurs la possibilité pour une personne de s'adresser même à un tribunal de la Hongrie si l'autorité refuse de lui délivrer un tel acte. Ceci prouve nettement le lien politique et juridique que l'on essaie de créer.

Il y a un choix de demander ou non un tel certificat – mais ce choix est limité aux ethniques hongrois et aux membres de leurs familles ; de plus, il peut être fortement influencé par les avantages offerts.

L'application extraterritoriale de la loi

Il s'agit des aspects administratifs institutionnels que la mise en œuvre de la loi implique sur les territoires d'autres pays :

- a) la recommandation de l'individu par une organisation d'un autre pays, qui est soumise à l'autorité de l'Etat hongrois ;
- b) la délégation par la loi hongroise et puis par une acceptation de l'autorité hongroise d'une organisation d'un autre pays à effectuer des actes concernant les citoyens de ces pays, des actes donnant lieu à des droits et des obligations. Dans le domaine de l'éducation, par exemple, la loi prévoit une relation multiple, l'autorité en cause doit recevoir la recommandation de l'organisation de l'autre pays (organisation de la minorité) mais formulée avec le consentement (on l'entend préalable du ministère hongrois de l'éducation) et c'est après qu'on délivre le certificat et on accorde assistance pour l'éducation en hongrois, dans le pays voisin ; encore, on fait abstraction de l'éducation bilingue qui n'est pas un phénomène isolé.
- c) il s'agit d'une seule organisation de recommandation, qui doit être reconnue à cet effet par l'Etat hongrois ; et s'il y avaient plusieurs organisations des minorités ? l'Etat hongrois doit-il opérer un choix, ce qui serait un autre acte d'extraterritorialité, et qui affecterait aussi le droit à la libre association, en poussant tous les minoritaires vers une seule organisation ; le fait même que l'Etat hongrois doive agréer et reconnaître une telle organisation est un effet d'extraterritorialité de la loi.

Une telle reconnaissance acceptation ferait intégrer l'organisation respective dans le système des organes de l'Etat hongrois.

Nous reconnaissons l'intérêt légitime des Etats dans la protection de l'identité et des droits des minorités par la coopération internationale, mais pas par n'importe quels moyens.

- d) La loi se réfère également à l'amélioration des conditions d'infrastructure, afin de maintenir les contacts avec la Hongrie ; or, dans ce domaine, l'accord de l'Etat territorial est obligatoire.
- e) La loi hongroise accorde même des attributions notariales à l'organisation agréée – d'habitude organisation non gouvernementale, politique – d'authentifier la signature d'une personne. De tels actes devraient produire des effets en Hongrie.

Transformer une organisation politique en organe notarial, sur le territoire d'un autre pays – voilà un autre effet extraterritorial de la loi.

- f) Les personnes d'autres Etats peuvent même instituer des procédures devant les tribunaux hongrois, contre la décision de l'autorité hongroise de leur refuser le certificat ; pourquoi pas contre l'organisation non gouvernementale

qui refuserait la recommandation ? ; ceci prouve amplement la relation juridique et politique qui est créée.

g) Il ne s'agit pas d'une opposition à ce qu'un appui matériel ou financier soit accordé, comme par exemple cela est arrivé pour ouvrir une université privée en langue hongroise, mais sans établir des régimes discriminatoires et sans créer un lien structurel, institutionnel parallèle à celui de la citoyenneté , entre l'Etat hongrois et les citoyens d'autres pays.

La coopération roumano - hongroise

Le traité bilatéral entre la Roumanie et la Hongrie de compréhension, coopération et bon-voisinage conclu en 1996 prévoit les droits et les obligations des parties concernant le traitement des minorités, en suivant de près la Convention cadre de 1995 du Conseil de l'Europe.

Un comité intergouvernemental d'experts a été créé pour les problèmes des minorités, pour que les deux pays puissent s'aider mutuellement dans la mise en œuvre des dispositions du traité dans ce domaine et pour examiner des problèmes de coopération bilatérale concernant les minorités nationales.

On n'a nullement envisagé la possibilité pour un pays de prendre des mesures à caractère extraterritorial, concernant la minorité située dans l'autre pays.

La conception sous-jacente est toujours celle de l'action de l'Etat territorial, appuyer au besoin par l'autre Etat. La loi hongroise va au delà de cette conception.

Compte tenu de ce qui précède, nous pouvons aussi vous soumettre nos propositions sur ce qui devrait être fait, pour éliminer les conséquences négatives de la loi hongroise.

Permettez-moi de donner la parole à mon collègue, M. Bogdan Aurescu, pour présenter ces propositions.

**Answers to the questions forwarded to the
Romanian Government by the rapporteurs of
the Venice Commission on the Law on
Hungarians Living in the Neighbouring
Countries**

1. Is there or not a practice of the Romanian Government to grant preferential treatment to foreign citizens of Romanian ethnic origin, by the way of bilateral or multilateral treaties ?

The provisions referring to Romanian ethnics living abroad, in the treaties concluded by the Romanian Government are **not granting a preferential treatment** as long as they establish, **in conditions of reciprocity**, rights for the persons belonging to national minorities living on the territory of Romania and respectively on the territory of the other State of the other Contracting Party.

For example, Romania has concluded **treaties of good neighbourliness** with neighbouring countries and **even with countries which are not in the immediate neighbourliness** -Albania, Greece etc.

In case on the territory of the other Contracting Party there is a Romanian minority and on the territory of Romania there is a minority belonging to the same ethnic, cultural, linguistic matrix as the majority of the population of the other Contracting Party, in the text of the treaty there is a provision concerning the persons belonging to national minorities. **As a general observation**, it could be remarked that, **in conformity with the provisions of the international relevant legal documents**, the provisions in the bilateral treaties concluded by the Romanian Government establish obligations in the task of the Contracting Party on whose territory the persons belonging to national minorities **live**.

In particular, the political bilateral treaties provide for the **engagements of the Parties to co-operate bilaterally** for the protection of persons belonging to national minorities .

In the political treaties there is **no reference to a preferential treatment** to be granted **for Romanian ethnics** living on the territory of the other Contracting Party and neither for the ethnics of the other Contracting Party living on Romanian territory.

These political treaties represent the basic framework for concluding other future bilateral agreements.

For example, in **para 5 of the Preamble** of the **Romanian-Hungarian political bilateral Treaty** it is provided that " the national minorities are an **integral part of the society** of the State in which they live " and that the " protection of the persons belonging to national minorities is subject of **bilateral co-operation**" which is considered to be part of the larger field of the protection of human rights in general.

Art.15 para 1 and 2 set forth the ensuring of rights and obligations for the "**minorities living on their territory** " In **para 2** is provided "the right to preserve " ethnic , cultural, linguistic and religious identity" " they can establish their own organisations, institutions or associations which can appeal to **voluntary financial or other contributions and to public support** in accordance with national legislation (which is the legislation of the State on the territory of which persons belonging to national minorities are living. There is no such provisions for the Romanian ethnics living on the territory of the Republic of Hungary.

Moreover, **one can not assert that granting a preferential treatment is envisaged by the Treaty**, because **art. 15 para 8** expressly provides that persons belonging to national minorities "shall enjoy the **same rights and shall have the same obligations as all other citizens of the country they are living in**" . That means that the Romanian ethnics living in the Republic of Hungary have the same rights and obligations as all the other Hungarian citizens. Reciprocally, **the**

Hungarian ethnics living in Romanian should have the same rights and obligations as all the other Romanian citizens.

In the **political bilateral Treaty with Ukraine** there are also detailed provisions concerning the protection of persons belonging to national minorities (**art.13**) and concerning the bilateral co-operation of the Contracting Parties. In the **political treaties with RF Yugoslavia and the Republic of Bulgaria** there are also provisions concerning the protection of persons belonging to national minorities and also in the recently concluded **political Treaty with Former Yugoslav Republic of Macedonia**. **None of those provisions refer to granting of preferential treatment to Romanian ethnics living on the territory of the other Contracting Party.**

In the **political bilateral Treaty with the Republic of Moldova**, initialled last year, there is **no** provision regarding the protection of persons belonging to national minorities as the **majority** of the population of the Republic of Moldova has Romanian ethnic origin. In this political treaty there are provisions asserting the **"existence of a community of origin, past, language and culture between the two States"**.

The bilateral subsequent agreements do not provide any preferential treatment for the Romanian ethnics living abroad.

2. Is there or not a practice of the Romanian Government to add by domestic legislation supplementary rights for the Romanian ethnics living abroad?

The Romanian Government considers that there is a need for **distinction** to be made between the adoption of further domestic legislation, supplementary to the provisions of bilateral agreements and the implementation of these agreements.

The Romanian domestic legislation concerning the granting of support for the Romanian ethnics living abroad is **limited in principle to the Law** regarding the support granted to the Romanian communities from all over the world (**L 150/1998**). This piece of legislation has general provisions concerning the support of schools and education in Romanian language, cultural and artistic activities, youth activities, individual assistance for serious medical cases and civic education, other cases provided in the cooperation programs. The generic provisions of the Romanian Law are to be implemented by bilateral agreements, programs and understandings in the field of culture, scientific cooperation and education.

As to the granting of **scholarships in the educational institutions of Romania**, one has to underline that these scholarships are **not granted only for the Romanian ethnics, but to any citizen of the State of the Contracting Party**, on the condition they understand Romanian language (in the case they do not speak Romanian language, they have the possibility to **pass through a preparatory year in Romania**).

In most of the Agreements concluded by the Romanian Government in the field of education, science, and culture, it is provided the "granting, **in accordance with the possibilities** available for each Party, for the PhD, university, high school, scholarships in the fields agreed upon by the two Parties " (the **Agreement with the Government of the Republic of Moldova**), "granting on reciprocity basis and **within the possibilities available of scholarships** in the field ..." (the **Agreement with the Government of the Hellenic Republic**) " They shall favor the **exchange**

of books and magazines of art and science" (*The Agreement on cooperation in the field of culture, science and education with the Government of Ukraine*)

There are **two possibilities** followed by the Romanian side to grant support for its ethnics, **either by concluding annual Protocols, programs or understandings in implementing these bilateral Agreements** mentioned above **or by issuing governmental decisions** regarding the **strict implementation** (and **not further developing**) of the provisions of the said agreements (which refer to the granting of scholarships within the possibilities of each Contracting Party, **leaving to the choice of each Contracting party the number of scholarships to be granted unless an annual agreement is further concluded**). In the *Understanding on Cooperation between the Minister of National Education of Romanian and the Minister of Education of the Republic of Hungary for the years 1999-2001*, in art. 9-12, it is provided the number of scholarships granted by each Party. Similar provisions are in annual Protocols with Ukraine, the Republic of Moldova. The practice followed by the Romanian Government is the conclusion of annual agreements.

3. Is there or not a practice of the Romanian Government to grant facilities for Romanian ethnics living abroad, for example in the field of education, on the territory of the State of citizenship?

The cultural and educational support granted by the Romanian Government to the Romanian ethnics living abroad could be achieved in conditions established in the **bilateral agreements** or on the basis of **the consent of the local authorities** In this respect, one could quote the provisions of the bilateral *Agreement with the Republic of Hungary, Ukraine, the Republic of Moldova*.

The Funds created at the disposal of the Romanian Prime Minister, in accordance with the Law 150 /1998, has been used **only in 2000** for the **renovation of the school of Molodia (Ukraine) with the consent of the local authorities** and for the **reconstruction of the statue of Mihai Eminescu** (in the International Year " Mihai Eminescu" in the town of Odessa, which was destroyed by people of the area.

Proposals concerning the Law on Hungarians Living in the Neighbouring Countries to be considered by the Venice Commission in the elaboration of its study

1. The Hungarian side should **eliminate from the Preamble** the provisions regarding the "**Hungarian nation as a whole**" and all other references to the concept of **nation which extends beyond the borders of the country and the relations of Hungarian ethnics living abroad with the Hungarian State.**

2. The Law should **not concern only the Hungarians living in the neighbouring countries** (suggesting thus that the Law has a reparatory nature in connection with historical events consecrating the existing borders in our region), but any Hungarian living abroad according to the practice of the European States which have domestic legislation in this field.

3. The Hungarian side should **give up the issuing of "certificates of Hungarian nationality" on ethnic basis**. Taking into account the goal of the Law – which is the preservation of the ethnic, cultural, linguistic identity of the persons of Hungarian ethnic origin – the Hungarian receiving institutions should issue **specific documents on professional/functional criteria e.g.** student cards, library access permits etc.

4. **Spouses and children** of non-Hungarian ethnic origin should **not** be included in the scope of the Law.

5. The **extraterritorial** aspects of the Law should be completely **eliminated**. This concerns any possible involvement of organisations/legal persons of another country **in the selection or certifying the ethnic origin** of the applicants. Elimination of any procedure of recommendation given by legal persons of the foreign States.

6. The **individual applications** should be transmitted **on a case by case basis** by the means which are habitually used, depending on the field of interest – diplomatic missions, institutions of education etc., in accordance with **bilateral agreements** concluded by the States concerned.

7. Facilities in the field of transports should be granted on a professional basis for the students, scholars, scientists, researchers, other persons involved in cultural activities. **These facilities should consist in tickets for different means of transport offered by cultural and educational institutions together with the student card or access permits for that cultural institutions.**

8. The Hungarian side should **eliminate any possibility of recording data** concerning the persons of Hungarian ethnic origin concerned by the Law, **keeping registers** and any **statistics** on the basis of these data.

9. **Elimination of any discrimination** on ethnic criteria concerning the **access to cultural institutions, research, archives** (which are habitually consecrated in bilateral agreements), **right to be granted awards, prizes etc.**

10. The provisions of **art.7** of the Law concerning the conditions of employment on the territory of the Republic of Hungary **should be eliminated or amended in such way as to provide similar conditions of employment as in the bilateral agreements** concluded by Hungary with the States concerned.

Bilateral agreements with the countries concerned should contain **clauses of non-discrimination** on ethnic criteria, **notwithstanding the size of the contingent** (if any) agreed upon.

11. The norms of application should not be elaborated and adopted until the Law is **amended** accordingly.

12. If the aforementioned proposals could not be adopted by the Hungarian Government until the 1st of January 2002, **the entry into force/ implementation of the Law should be suspended** until the process of parliamentary elections is over. Consequently, the process of elaboration of the norms of application should also be postponed.

***Declaration of Mr. Adrian Năstase, Prime Minister of the
Government of Romania, on the occasion of the anniversary of 5 years
since the signature of the
Romanian-Hungarian political Treaty***

Five years ago, on the 16th of September 1996, at Timișoara, the Prime Ministers of Romania and of the Republic of Hungary were signing the Treaty on understanding, co-operation and good-neighbourliness between our States.

The anniversary of this event grants me today the opportunity to remark that the conclusion of the Romanian-Hungarian political bilateral Treaty was a political event of major importance in our bilateral relation and also because it marked in a significant way the openness of the two States towards the co-operation and, by this, towards the consolidation of the regional stability. Nowadays, Romania continues to be fully devoted to this approach and to this conception.

The political Treaty of 1996 was – and continues to be for Romania- an essential legal instrument, in the frame of good neighbourliness Treaties system concluded by Romania, a flexible and modern document which is a part of the newest “generation” of European documents of this category.

In this context, Romania grants a special consideration to the European spirit of the political Treaty from 1996, which is based on the principles of good neighbourliness, mutual respect and co-operation between the two countries in all fields and expresses in the most appropriate way the basic interests of the two countries. It should be underlined that, by the text of the Treaty itself, the two neighbour countries committed themselves to mutually support one another for the integration in EU and NATO. The Treaty also stresses the commitment of the two countries towards the respect of the supremacy of Law, towards the general accepted norms of the Public International Law and for the obligation which they assumed to respect them.

In the frame created by the Treaty, which regulates, in detailed provisions, the bilateral co-operation in all fields of common interest: economy, industry, agriculture, environment protection, transports and many others, Romania is satisfied that, currently, the level of bilateral commercial exchanges is about 1 billion \$ annually. In all other fields regulated by the Treaty could be remarked, since its entry into force, an unprecedented development of the bilateral co-operation, in the frame offered by the Romanian-Hungarian Active Partnership, which has been created as a natural consequence of the Treaty and as the two countries were determined to overpass all the problems of the past and to succeed to take the bilateral relation to a new stage .

The Romanian Government will firmly manifest in future this desire and I express the certitude that, today, more than anytime, the provisions of the Treaty represent a solid basis and a reference point. Beginning with the reconfirmation of the inviolability of the Romanian-Hungarian border and of the territorial integrity of the two countries, from a comprehensive regulation of the conduct and obligations of the two States concerning the protection of the rights of persons belonging to national minorities, living on the territory of each country, Romania and Hungary have developed

generous mechanisms of co-operation by creating the Intergovernmental Joint Commission for Co-operation and Active Partnership, with 11 subsequent Committees. The annual session of the Commission and of the Committees is taking place in this period. It should be stressed that in the framework of the Intergovernmental Commission, the Committee on Minorities has a very important role.

Thus, in the frame of the Treaty, the article referring to the protection of persons belonging to national minorities has a central place, being the most detailed of all provisions of the Treaty. Therefore, the option of the two States when signing the Treaty, for an open co-operation, without reserves, in the field of protection of the rights of persons belonging to national minorities, considered to be an integrative part of the society they are living in, in strict and full conformity with the current international and European standards.

On the occasion of this anniversary, today, of five years since the signature of the political Romanian-Hungarian bilateral Treaty, and in the light of all evolutions which took place during this lapse of time, I want to reconfirm those provisions of the Treaty, which correspond exactly to the steady conviction of the Government of Romania that only by respecting the international and European norms and principles, we can really contribute to the stability and understanding in Europe - and especially in our region - and to the consolidation of democracy in our countries and to their integration in the European and Euro-Atlantic structures.

I express my profound doubt that the unilateral approach in the field of the protection of the rights of persons belonging to national minorities living on the territory of the other Party, without consultations and preliminary agreement, could help to the enhancement of the relation of good-neighbourliness and active partnership, which has so encouragingly developed up to now. Such unilateral approach are leading only to the arbitrary creation of tensions in a field in which obvious progress has been made and, in the same time, are setting a shadow on the obligation to respect strictly the letter and the spirit of the bilateral Treaty. The bilateral co-operation - and multilateral co-operation, of course - is, in our opinion, the only adequate framework for action in the field of preservation of the identity of persons belonging to national minorities, in full conformity with the current international and European standards.

Romania has acted and shall act from now on as a good neighbour and a trust worthy partner for the Republic of Hungary, both at the bilateral level and at the European level. Romania will continue to consider the Republic of Hungary as a European partner who wishes to maintain and develop very good neighbourliness relations.

Romania and the Republic of Hungary should represent a pillar of stability in the region and to encourage the enhancement of the regional co-operation in all fields of regional interest, including in the fight against non-conventional threats to security, which as has been proved recently, could create unprecedented dangers for stability.

In the first year of the third millennium and of the twenty-first century, in which we are celebrating five years since the signature of the political Romanian-Hungarian bilateral Treaty, Romania wants, sincerely, that together with the Republic of Hungary, by strictly respecting the provisions of this fundamental document for the

relations between the two States and people, and by using fully all mechanisms and opportunities created by this instrument of mutual confidence, to build an European model of understanding, co-operation, good-neighbourliness and partnership, able to pass over any difficulty and to promote the system of values and standards of the integrated Europe.

Protocol between the Government of Romania and the Government of the Republic of Hungary on the cooperation in the field of protection of the rights of persons belonging to national minorities

The Government of Romania and the Government of the Republic of Hungary, hereinafter referred to as "the Contracting Parties",

Bearing in mind the guidelines set forth in the international documents in the field of protection of persons belonging to national minorities such as the Universal Declaration on Human Rights (10th of December 1948); the European Convention for the Protection of Human Rights and Fundamental Freedoms (4th of November 1950); the International Convention on the Elimination of All Forms of Racial Discrimination (21st of December 1965); the International Covenant on Civil and Political Rights (16th of December 1966); the International Covenant on Economic, Social and Cultural Rights (16th of December 1966); the Helsinki Final Act of the Conference for Security and Cooperation in Europe (1st of August 1975); the Document of the Copenhagen meeting of the Conference of the Human Dimension of the CSCE (29th of July 1990); the Paris Charter for a New Europe (19th of November 1990); the Declaration on the rights of persons belonging to national, ethnic, religious or linguistic minorities – Resolution of the United Nations General Assembly no 47/135 (18th of December 1992); the Framework Convention for the Protection of National Minorities (1st of February 1995); the Protocol no 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (4th of November 2000); the Charter of Fundamental Rights of the European Union (18th of December 2000),

Bearing also in mind the provisions of the Treaty on understanding, cooperation and good neighbourliness between Romania and the Republic of Hungary (hereinafter referred to as "the Treaty"), especially the provisions of art. 5 para 1 and art.15,

Desirous to ensure on the territories of their respective States, the protection of ethnic, cultural, linguistic identity of persons belonging to the Hungarian national minority in Romania and respectively the Romanian national minority in Hungary (hereinafter referred to as "persons belonging to national minorities"),

Ready to adopt, if necessary, measures of positive discrimination in order to ensure full equality of chances between the persons belonging to national minorities and the persons belonging to the majority of the population of their respective States, in what concerns the preservation of the cultural, ethnic, linguistic, religious identity,

Stressing that, because the persons belonging to national minorities are an integrative part of the society of the State in which they live and share its

destiny, the adoption of measures of positive discrimination on ethnic criteria can not concern socio-economic rights,

Taking into consideration the fact that belonging to an ethnic community, in conformity with the international standards and principles, is based upon the free choice of the person, founded on its true ethnic origin, that can not be influenced by administrative procedures,

Underlining that from this freely assumed belonging can not proceed any disadvantages or any other advantages than the measures of positive discrimination mentioned above,

Recognizing the right of each Contracting Party to offer support in the framework of the bilateral cooperation, on basis of reciprocity, to the other Contracting Party for the preservation of the cultural, ethnic, linguistic, religious identity, of its ethnics living on the territory of the State of the other Contracting Party and determined to restrain from the adoption of any unilateral measures in this field,

Have agreed as follows:

Article 1

The Contracting Parties shall respect and promote on their State territories the right to the preservation of the cultural, ethnic, linguistic, religious identity of the persons belonging to national minorities by adopting legislation and by supporting the efforts of the civil society.

The Contracting Parties shall conclude, if necessary, annual cooperation programs, in order to establish the ways of common action for the protection of the cultural, ethnic, linguistic, religious identity of their ethnics.

Article 2

The Contracting Parties shall ensure the observance of the rights set forth in art. 15 para 2 of the Treaty, in order to protect the rights of persons belonging to national minorities.

The Contracting Parties shall conclude, if necessary annual cooperation programs, in order to establish the ways of common action for supporting the creation and functioning of the institutes, associations and organizations of their ethnics.

Article 3

The Contracting Parties have the obligation to ensure on their States territory the adequate application of art.15 para 3 of the Treaty by adopting domestic legislation and constant monitoring of their implementation at local level.

The Contracting Parties shall conclude annual cooperation programs in the field of education in which they shall establish the number of persons of their ethnics living on the State territory of the other Contracting Party which could benefit from scholarships on basis of reciprocity in their educational institutions, and in the case of teaching staff, training courses.

The Contracting Parties shall establish, by concluding agreements, the creation of university extensions on the State territory of the other Contracting Party.

Article 4

The Contracting Parties have the obligation to ensure the implementation on their State territory of art. 15 para. 4 of the Treaty.

The provisions of art. 15 para. 4 of the Treaty will not be infringed by adopting measures by the Contracting Party on the State territory of which mass-media is functioning, in order to prevent and repress the dissemination by these means of information having propagandistic character, forbidden by the domestic legislation,

Article 5

The Contracting Parties shall take positive measures in order to ensure the implementation on their State territory of the provisions of art. 15 para. 5 of the Treaty.

Article 6

The implementation of the provisions of art. 15 para. 7 does not suppose granting of any advantage concerning the circulation of persons belonging to national minorities, in discriminatory conditions versus the majority of the population of the State they are living in.

Article 7

The Contracting Parties shall elaborate annually in the frame of the Committee for cooperation on issues concerning national minorities an assessment of the implementation of the provisions of this Protocol, which shall be sent to the Council of Europe.

Article 8

The Contracting Parties shall refrain from adopting any unilateral measures concerning the persons belonging to the national minority living on the territory of the State of the other Contracting Party, without consultation and consent of the Contracting Party on whose territory national minority concerned by the said unilateral measures lives.

Article 9

This Protocol shall be concluded for a period of 10 years and shall be automatically prolonged for new periods of 5 years unless none of the Contracting Parties notifies its intention to terminate it at least six months before the expiration of each period of validity.

This Protocol shall enter into force on the date of the latter notification by which the Contracting Parties inform each other on the fulfillment of the domestic legal procedures necessary for its entry into force.

Done at.... on..... in two originals, both in Romanian and Hungarian languages, both texts being equally authentic.

**For the Government
of Romania**

**For the Government of the Republic
of Hungary**

**The official position of the Romanian
Government on the Law on Hungarians Living
in the Neighbouring Countries**

**Supplementary information to the position
document forwarded to the Venice
Commission on the 14th of August 2001**

Summary

1 A perspective of Public International Law on the concept of "kin State"

2. The general obligation of non-discrimination, from the perspective of Protocol 12 to the European Convention for the protection of Human Rights and Fundamental Freedoms

3. The relation between the national minority and the majority of the population from the perspective of the socio-economic rights

4. The obligation of non-discrimination in the field of socio-economic rights as provided in the international legal instruments and in the European Union's standards

5. Considerations regarding the norms of application recently forwarded by the Hungarian side

6. The possible consequences of a standard change in the field of the protection of the rights of persons belonging to national minorities.

1. A perspective of Public International Law on the concept of "kin State"

In Public International Law, **the concept of "kin State" is irrelevant.** In Public International Law, **the State of citizenship is incumbent the obligation to grant the exercise of rights and the protection of the interests of its citizens.** Nevertheless, a professor of political sciences (*David MILLER, "Citizenship and national identity, Polity Press 2001*) remarked that there are **certain attempts "to create trans-national forms of citizenship", by granting "formal citizens rights",** by another State than the State of citizenship. Such attempts are also enumerated in *Konrad HUBER and Robert MICKEY' study "Defining the kin-State: An analysis of its role and prescriptions for moderating its impact"* (cited also in the Hungarian position document). This study takes note of the existence of classic examples in this field: **Russia, Hungary and Albania** (p. 3 of the study) and analyses the modalities of granting protection by the kin State to citizens of another State on ethnic criteria. The authors of the study remark that there are "generally negative examples of kin State behaviour" (p.3 of the study). The **guidelines** for analysing the kin State are the following:

- In Public International Law the State is acknowledged to have responsibilities for its own citizens, and not for foreign citizens abroad who might happen to share an "ethnic affinity" with the population with the State. (p.2 of the study). Therefore, **the kin State is not entitled to give protection neither by virtue of an obligation, nor by a right recognised in the Public International Law.** (It is surprising that while the Hungarian side is granting the possibility to work on its territory for the "persons belonging to the Hungarian community including the Roma persons of the neighbouring States", the rate of unemployment for the Roma persons of Hungary is reaching in some cases up to 100%)

- The modality for the "kin state" to **"seek legal guarantees"** for its co-ethnics is the conclusion of bilateral agreements (p.2 of the study). The so-called "kin State" is **not the subject which grants protection** for the persons having the same ethnic origin as the majority of its population. It is **only entitled to convene with the State of citizenship a bilateral framework,** containing provisions which guarantee for its co-ethnics the protection of their rights by the State of citizenship. The Government of Romania has already referred in its official position to the **principle of subsidiarity** which applied to the protection of the rights of persons belonging to national minorities, entitles the international community as a whole to intervene in case of failure of the state of citizenship to grant such protection. **A single State can not "dissociate" from the international community as a whole and pretend, even if it is not the case of a failure of the State of**

citizenship, that it is entitled to grant protection for the rights of his co-ethnics, in addition to those granted by the State of citizenship. **Art. 18 of the Framework Convention for the Protection of National Minorities** provides the **possibility to conclude bilateral Agreements**, as a supplementary modality ("if necessary" and "especially with the neighbouring States") to ensure the protection of persons belonging to national minorities, **in addition to the domestic measures taken by the State of citizenship. The States of citizenship should analyse the opportunity of concluding such agreements.**

•In the frame of the bilateral co-operation, the kin State should **restrict itself to the objective of the protection of the identity of its co-ethnics living abroad, having in mind their status of minority** in the State of citizenship. It must seek that the "legal guarantees" for their protection concern, in accordance with the relevant international legal instruments, the preservation of the ethnic, cultural, linguistic identity, **with the purpose to facilitate their accommodation and integration in their State of citizenship, of whose society they are an integrative part. The political bilateral Treaty between Romania and the Republic of Hungary provides that national minorities are an integrative part of the State they are living in (para 4 of the Preamble).** The society of the State of citizenship should receive the contributions to diversity of the national minority to its development and mutually give back so that a real integration take place, in benefit of both the minority and the majority of the population, in respect of all the ethnic, cultural, linguistic, religious characters of the minority.

•The intentions of the so-called kin state, **unless expressed in the frame of the bilateral co-operation"** are, in practice, **questionable**, being driven mostly by domestic politics and not by a genuine interest to provide support for the co-ethnics abroad. In this context, should be cited the prime minister Viktor ORBAN in an **interview given in 1998: "The boundaries of the Hungarian State are not coincident with the boundaries of the Hungarian nation."** (Joseph YACOUB, *Les minorites dans le monde, faits et analyse*). The declarations of Hungarian officials referring to the character of reparation of the Law for the effects of the Treaty of Trianon, **even in the frame of the political debate** in the Hungarian Parliament upon the Law, are, in our opinion, political gestures for the domestic public opinion, but **dangerous from the point of view of the Public International Law.**

•A "virage" of the kin State **from the frame of the bilateral cooperation** in the field of national minorities with the State of citizenship towards to the establishment of a direct relationship between it and the citizens of another State, together with granting them discriminatory rights **becomes relevant from the point of view of Public International Law**, because by acting as such the State infringes its international obligations. **The situation of the Hungarian Law on Hungarians Living in the Neighbouring Countries should be analysed**

from the perspective of the Public International Law, not because of the existence of a field reserved to kin States in International Law, but from the perspective of infringing obligations of States under International Law.

• The objective of the Law to “unify the Hungarian nation as a whole” which would contain all the Hungarian living abroad is also a part of the “virage” of the kin State from the frame of the bilateral cooperation which is the specific frame for its intervention in favour of its co-ethnics, with **negative consequences of constitutional nature, firstly at a domestic level**, as the Hungarian Constitution provides that **the Hungarian nation is composed by all its citizens and in this category the foreign citizens of Hungarian ethnic origin are not included, and secondly with negative implications for the relation of citizenship between the State of citizenship of the Hungarian ethnics concerned by the Law.** The Hungarian Law provides a **sort of identity card** which grants **rights and obligations** for the persons concerned. The nature of the rights granted, especially the **socio-economic ones, are normally granted by the State of citizenship.** The international legal documents in the field of protection of national minorities provide the right of persons belonging to national minorities to maintain **contacts with their co-ethnics and not with a foreign State (the kin State)** (art. 12 para 3, 4; art. 15 para 7; art. 18; art.19 para 1 **of the bilateral Treaty**, including the right to maintain contacts by means of associations or non-governmental organisations). Providing such contacts with the citizens of another State, the Hungarian Law determines a breach in the relation of citizenship. Any intervention of the kin State outside the frame of the bilateral co-operation and **in other fields than preservation cultural, linguistic, ethnic identity is not permitted by the current standards in Public International Law.**

• The reasoning of the international community when creating this **current standard, providing no right or obligation for the kin State to intervene in the protection of its ethnics, limiting its intervention to the seeking of legal guarantees for its ethnics in the frame of the bilateral co-operation and not permitting the creation of a direct relationship with the kin State its kin ethnics which are citizens of another State were multiple.** Firstly, as the State of citizenship has **all the instruments**, having sovereign rights on its territory, it is **natural it be responsible** for the situation of its citizens which are members of a national minority. **Secondly**, an intervention of a foreign State by a domestic legal instrument creating a **quasi-legal direct relationship** between it and the citizens of another State, based upon mutual rights and obligations, would have damaged the relation of citizenship as a consequence of the **fracture suffered by the obligation of fidelity.** The relation of citizenship, as a **political-legal relationship** represents **indeed the basis of functioning for the state power.**

Affecting the relationship of citizenship would lead to damage for the political and legal stability of the State of citizenship.

2. The general obligation of non-discrimination, from the perspective of Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms

As to **Protocol 12**, already referred to in the Romanian position paper forwarded to the Venice Commission, but which has not entered into force yet, the number of ratifications by the signatory States being not yet completed it should be analyzed which are the **obligations of the signatory States of the Protocol, from the perspective of the more general provisions of the International Law**. The Protocol shall enter into force the first day of the month which follows after the expiration of a period of 3 months since 10 Member States of the Council of Europe would have expressed their consent to be bound by the Protocol. Both **Romania and the Republic of Hungary**, together with other Member States of the Council of Europe **signed the Protocol on the 4th of November 2001**. According to **art. 18** of the **Vienna Convention on the Law on Treaties** the signatory States of a certain Convention should **restrain from any behaviour which would "lack it of its object and purpose, during the process of ratification"**. The Republic of Hungary acceded to the Vienna Convention on the Law on Treaties on the **19th of June 1987**. Romania is **not yet** part to the Convention, but is implementing its norms, as they have the character of customary law. The **objective of Protocol 12 is to eliminate discrimination**. By adopting a domestic legal act which involves a preferential treatment for a category of foreign citizens, on ethnic criteria, the Republic of Hungary has, thus, **infringed also the general obligation provided in the Vienna Convention on the Law on Treaties**.

3. The relation between the national minority and the majority of the population from the perspective of the socio-economic rights

As the national minority is an **integrative part** of the society of the State of citizenship and as a **consequence of the relation of citizenship** with the State they are living in, together with the citizens belonging to the majority and the citizens belonging to other national minorities, it can be distinguished the existence of a **common denominator between the minority and the majority of the population** and an **imperative necessity** to preserve this common denominator for maintaining the harmony and the **social cohesion of the society**.

From this perspective, the common denominator would include a socio-economic dimension, which is naturally shared by all the members of the society, notwithstanding that they belong to the minority or to the

majority. An **external arbitrary intervention** which would affect the socio-economic dimension would also damage the **social cohesion** of the State of citizenship.

The **common denominator** includes also a **political (polis) dimension**, expressed by the relationship of all the citizens among themselves and with the State authority, notwithstanding their belonging to the minority or to the majority within the same State (**see the section regarding the concept of kin State in Public International Law**)

The entire history, including the recent events after 1990 in South-Eastern Europe have demonstrated that the economic inequalities and poverty, set in an equation with the specific problems of the persons belonging to national minorities created tensions which have developed into conflicts affecting the regional stability. Discrimination, even the positive discrimination practised by a foreign State—the kin State would not enhance the **integration in the society of the State of citizenship** of the persons belonging to national minorities, but, by granting socio-economic rights having the same level of those in the kin State, would facilitate the **integration in the society of the kin State and the isolation of the minority in the society of the State of citizenship, in a first stage and, in time, a process of segregation of the minority.**

4. The obligation of non-discrimination in the field of socio-economic rights as provided in the international legal instruments and in the European Union's standards

- The **ILO Convention no 111/1958** regarding discrimination in the field of labour force and the exercise of the profession, which was **ratified by Romania and the Republic of Hungary** as well is one of the fundamental conventions adopted in the frame of the International Labour Organisation. In the sense of the Convention “discrimination is any difference, exclusion, preference on grounds of race, colour, sex, religion, political convictions, ethnic origin or social origin, which has as an effect the suppression or the damaging of the equality of possibilities or of treatment in the field of labour force and exercise of the profession.” (**art. 1**). The 132 States having ratified the Convention have agreed to **“formulate and practice a national policy, which promotes, by means which should be adequate to the national conditions, the equality of treatment and possibilities in the field of employment and exercise of the profession with the view to eliminate any discriminations”**. (**art.2**) **This international obligation is infringed by the adoption by the Republic of Hungary of a domestic Law which has discriminatory features.**

- In the frame of the Council of Europe, the **European Social Charter (1961)** and the **European Social Charter (revised)** are a synthesis of the norms adopted in the frame of the ILO. **Art.E of Part V** provides that “the respect of the rights recognised in the present Charter

must be ensured notwithstanding the race, sex, language, religion, political convictions or any other opinions, national or social origin, **belonging to a national minority**, or any other situation”

These documents have no substantial provisions in addition to those already cited in the position document forwarded on the 14th of August 2001. Citing these documents in this supplementary information has as purpose to prove that there are a lot of documents which provide the principle of non-discrimination, at the international level and at the regional level.

• ***The incompatibility of the Law on Hungarians Living in the Neighbouring Countries with the European Law***

By creating a **Hungarian certificate** which grants for its beneficiaries the right to benefit from a **preferential treatment** in comparison with citizens of the same country of origin, but having a different ethnic origin (non-Hungarian), the Law on Hungarians Living in the Neighbouring Countries becomes incompatible with the provisions of the **European Treaties (art. 39 and 48)**, with other **European Union legal documents (regulation 1408 of 1971)** and with the **case-law of the CJEC (Reyners 2/74, Walrave 36/74, Bosma C415/93)**. In **Sotgiu case 152/73**, the Court considers that the “**Rules regarding the equality of treatment forbid not only overt discrimination, but also all covert form of discrimination which, by the application of other criteria of differentiation. Lead in the fact to the same result.**”

The principles of equality and solidarity are part of the basic principles of the European construction. The Hungarian Law creates the premises of a social fracture, which could not be covered by a future accession of Hungary to the European Union and is not compatible with the obligations of the Republic of Hungary, as a candidate State to the accession, to respect already in this stage the principles of the European Union.

The Law is also incompatible with another **fundamental objective** of the European Union – the promotion of a **long term stability and of a balanced development** on the territory of the European Union, as it facilitates the “migration” of the labour force of the neighbouring States to the territory of the Republic of Hungary.

Currently, it is developing the **European program of fighting against discrimination-2001-2006**, created by the **Decision of the Council no 2000/750 CE of 27th of November 2000**. This program is part of a set of measures of fighting against discrimination – **Directive 2000/78/CE of 27th of November 2000** and **Directive 2000/4/CE**, which forbids discrimination on grounds of **race or ethnic origin** in the field of labour force, education, supply of goods and, social protection. In conformity with **art. 9 of the Decision**, the programme is **open to the**

proposals of the countries which are candidates to the accession. This proves the **interest of the European Union to set in application a program at global European level** in order to **eliminate discrimination**. The **PECO are an integrative part** to this program. The Law on Hungarians Living in the Neighbouring Countries has features setting it in contradiction with this program. **Point 28 of the Directive** provides that the objective of protection against discrimination, in conformity with the principle of subsidiarity, can not be satisfactorily realised by the member States at the national level and shall be of communitary competence. In accordance with the art. 2, para 2(a), a direct discrimination consists in treating a person in a less favourable manner than another persons which is in a comparable situation. The discrimination induced by the Law on several levels of discrimination, as has been already stressed in the Romanian position document, is contrary to this principle.

5. Considerations regarding the norms of application recently forwarded by the Hungarian side

The Hungarian side has forwarded the draft norms of application of the Law on Hungarians Living in the Neighbouring Countries in four fields regulated by the Law. It should be remarked their **fragmentary character**, the fact that they have been forwarded **only two days before the meeting of the Committee on minorities in the frame of the Intergovernmental Romanian-Hungarian Joint Commission**, which was supposed to discuss also **the problem of the Law on Hungarians Living in the Neighbouring Countries**, among other issues of bilateral interest concerning the problems of national minorities. Given their fragmentary character and the fact that their elaboration seems to have been rather hasty, the Romanian side would like to stress that it shall give a final opinion with regard to the norms of application at the moment when they shall be finalised by the Hungarian side. Nevertheless, the Romanian Government would like to remind that the essential problems raised by the Law - discriminatory character and extraterritorial application - **could not be eliminated by the norms of application unless the Law itself be amended accordingly**.

• The draft norms of application regarding the granting of certificate

The draft norms of application concerning the procedure of granting the certificate do not refer to the attributes of the **board of recommendation** and the **procedure** to issue the recommendation. Nevertheless, it is **obvious** that the Hungarian authorities **have not given up the necessity for the representative organisation of the Hungarians living in the neighbouring country to issue the**

recommendation, as one of the **reasons** for the Hungarian authority to **reject** an application (which is in contradiction with the Framework Convention for the protection of Human Rights) is the lack of a recommendation. The norms provide also the **possibility** for the beneficiary of the certificate **to choose** between using the certificate only on the territory of the Republic of Hungary or to use it also on the territory of the State of citizenship; if the beneficiary intends to use the certificate only on the territory of the Republic of Hungary, **he may leave it at the border crossing points, in order to be kept until the person comes back to Hungary**. The contents of the norms proves that the certificate shall be used **also** on the territory of the neighbouring country which is an **expression of extraterritoriality which was not indicated in the Law**.

Point 10 of the norms of application **provides a direct obligation for the organisations which grant recommendations** to announce the Hungarian authorities which issued the certificate about any reason for withdrawing the recommendation and, implicitly, the certificate. Such provision clearly shows that the extraterritorial approach is still maintained in the norms of application.

The norms of application provide also that the certificate shall contain in an **annex** all the **rights and facilities** for the beneficiary of the certificate, creating thus a parallel system of rights and obligations to the system existent on the basis of the relationship of citizenship.

- *The draft norms of application in the field of health insurance* provide that for the beneficiary of the certificate which is "object of international agreements" the provisions of the Law shall be applied in conformity with the bilateral agreements. Or, the **Law provides different treatment for the Hungarians** and the possibility for them to demand the **restitution of the expenses made for the employment in Hungary**. There is no reference in the norms of application to these aspects. The right to medical assistance of the Hungarians on the territory of Hungary is **contrary to the provisions of the bilateral Agreement which is in force**, between the Government of România and the Government of the Republic of Hungary, which provides that the "**social assistance is granted by the institutions of the Contracting Party on whose territory the applicant has his domicile**." Yet, the Hungarian side asserts that there is a perfect compatibility between the provisions of the bilateral Agreement and the provisions of the Law. In conclusion, the granting by the Hungarian State of socio-economic rights to persons of Hungarian ethnic origin living in the neighbouring countries is maintained by the norms of application.

- *The norms of application in the field of employment* (draft Order of the minister of Economy provide the possibility for some of the persons which are under the incidence of the Order to be applied a

different regime, without giving more explanation about this (art.2 para 2). The prolongation of the work permit by Order of the minister of economy which is also provided in the Law is maintained by the norms of application. In the opinion of the Government of Romania, this is a modality of creating a direct relationship between the Hungarian State (its representatives) and the Hungarian persons living abroad. The norms of application provide moreover the **possibility for the Hungarian persons to benefit from a prolongation of the work permit, on supplementary condition** which opens the possibility of a new discrimination, according to which the Hungarian person benefits of a level of remuneration superior to the **level of remuneration at national level for activities of the same nature**. Thus, if the employer retributes the Hungarian person at a superior level in comparison with the other workers, the work permit of the Hungarian person is prolonged. This possibility of discrimination in the field of remuneration is sanctioned in the European Union and at the international level in general.

The Romanian side would also remark that the **proposal** advanced by the Hungarian Prime minister Viktor ORBAN on the occasion of the meeting of Targu Mures on the 28th of July 2001, concerning the **possible increasing of the contingent of workers provided in the Agreement on the exchange of trainees** between the Government of Romania and the Government of the Republic of Hungary, could not eliminate the discriminatory character of the provisions of art.7 of the Law. In fact, the increasing of the contingent would mean **to multiply the number of individual cases of discrimination, unless adequate mechanisms to avoid discrimination be set forth in the said agreement**.

• Norms of application regarding transport facilities

The discriminatory features of the law are maintained by the norms of application.

6. The possible consequences of a standard change in the field of the protection of the rights of persons belonging to national minorities.

In the field of the protection of persons belonging to national minorities there are only few instruments for "sanctioning" an erroneous treatment for persons belonging to national minorities. There is no jurisdictional body to interpret the Framework Convention for the protection of national Minorities or to judge complaints based upon the Framework Convention. The European Court of Human Rights received with reserve the proposal of the ex Italian Presidency of the Committee of Ministers that by an additional Protocol to the Framework Convention on the

Protection of National Minorities the ECHR be entitled to interpret the Framework Convention. The Court underlined that " its role can be only **complementary to the attributes of the Committee of Ministers and of the Consultative Committee created by art. 26 of the Framework Convention. The Court considered that " by means of a process of dialogue between the States which are parties to the Framework Convention, the Committee of Ministers, assisted by the Consultative Committee, the type of obligation provided in the Framework convention could be clarified"**, stressing thus the political contents of the problems of national minorities.

Therefore, the **implications of the beginning of any customary process** in the field of the protection of persons belonging to national minorities should be **duly analysed by independent experts** in order to assess if the occurrence of new standards in this field is or not, in the end, beneficial for **the final objective of the Framework Convention** which is to ensure a **proper protection of the identity of persons belonging to national minorities**. From this perspective, the limitation of the kin State to the granting of rights only in the cultural, linguistic, religious field, by the means of the bilateral co-operation seems to be the most adequate solution.

There are already signs for the **negative implications of the Law** as results from the **preliminary assessments** of the Slovak authorities concerning the census which took place in the Slovak Republic in May 2001. According to these preliminary assessments, the **number of the persons declaring to have Hungarian ethnic origin has visibly increased** comparing to the results of the previous census. It should be also noticed that a census will take place in Romania and Yugoslavia next year. The opinion of the Venice Commission is also relevant **given the necessity to avoid the artificial alteration of the ethnic proportions, with adverse consequences**.

Having in mind the electoral context in the Republic of Hungary, which stimulated the adoption of this Law, the Romanian side is of the opinion that the legal and impartial point of view of the Venice Commission should be rendered **without any delay**: this would not allow for the Law to continue to be **manipulated in the electoral context** and, in the same time, it would **give possibility for the Hungarian authorities to amend the Law in accordance with the opinion of the Venice Commission**.

Only if such measures could not be adopted by the 1st of January 2002, it should be **at least** recommended to the Hungarian Government to suspend the implementation of the Law until the process of parliamentary elections is over. Consequently the process of elaboration of the norms of application should also be postponed.

The official position of the Romanian Government on the Law on Hungarians Living in the Neighbouring Countries

Commentary concerning the position document of the Hungarian Government on the Law on Hungarians Living in the Neighbouring Countries

Introduction

The Government of Romania took note with interest and carefully analysed the contents of the position paper on the Law on Hungarians Living in the Neighbouring Countries, forwarded by the Hungarian Government to the Venice Commission. The Romanian Government was surprised by the prevalence, in this position paper, of the argumentation of a political nature over that of accurate legal substance and was concerned by the fact that in its presentation the Hungarian Government invoked provisions of international legal documents and elements of case-law, deliberately dissociated from their real context, thus trying to create the impression that the Law on Hungarians Living in the Neighbouring Countries is a document in conformity with the current standards in the field of protection of the persons belonging to national minorities. Therefore, the Romanian Government would like to forward to the kind consideration of the Venice Commission its comments on the Hungarian position paper.

1. Commentary on para 1.2

The approach of the Hungarian side with regard to the issue of minorities is rather different from the approach of the problem of national minorities at the international level. The Hungarian Government considers that Hungary has a significant experience "relating to national minorities, regardless of whether they live inside **or outside its borders**". **(para 1.2)** The relevant international documents provide the obligation for the State to ensure the protection of persons belonging to national minorities within its' territory. This approach indicates a **constant inclination to act like a "mother State"** with regard to the persons of Hungarian ethnic origin living abroad, although in the contents of the position document the Hungarian Government asserts that its behaviour is rather that of a "**kin State**". The general attitude of the Hungarian Government indicates an intention to involve **directly, unilaterally**, in the protection of the Hungarians living abroad and **not by the way of the bilateral cooperation**. The succession of ideas in this paragraph is rather prolix. **It is not clear what is the connection** between the Hungarian policy in the field of national minorities and the situation of "country receiving immigrants".

2. Commentary on para 1.3

The Hungarian Government **admits** that the adoption of the Law could be considered as a **standard-setting measure**. This position clearly shows that even in the Hungarian Government's opinion, the Law is not consistant with the current practice in the matter under discussion.

3. Commentary on para 1.4

The Democratic Union of Hungarians of Romania (UDMR) **is not a political organisation**, as specified in **para 1.4**. It is a cultural organisation, which has participated in the governing coalition between 1996-2000. The democratic medium in Romania has permitted the involvement of a cultural organization in the political life, in order to achieve more deeply an adequate protection of the rights and interests of the Hungarian minority of Romania.

There are a few remarks to be made about the reference to the Treaty of Trianon in the Hungarian position document. **(para.1.4)** According to the provisions of the **Treaty of Trianon, (art.68)** the persons which lose the Hungarian citizenship and acquire a new citizenship, as an effect of the Treaty of Trianon shall have the possibility, from the entry into force of the Treaty, **to choose between the Hungarian citizenship and the citizenship of the State they are living in**. This option determined the **obligation** of those persons **to establish their domicile on the territory of the State whose citizenship they choose to have**. That is

why the Government of Romania considers that it is a **false** assertion to purport that the **loss of the Hungarian citizenship was an effect of the peace treaties**. These persons **were able to choose** and the **loss** of the Hungarian citizenship was a consequence of their **free choice**. For these reasons, it is difficult to render a causality connection between the adoption of the Law on Hungarians Living in the Neighbouring Countries and the necessity to offer a reparation for these persons. Moreover, **it can not be demonstrated that the Hungarians living in Austria are all of them emigrants**. We consider that our opinion is based on historical facts, as those invoked by the Hungarian side. In conformity with the Treaty of Trianon, **Austria was entitled to all rights on the territories of the ex- Kingdom of Hungary, which are beyond the borders of Hungary as established by art. 27-1, 2nd part (the borders of Hungary) (art. 71 of the Treaty of Trianon.)** So, historically the situation is similar, as not all Hungarians left at that moment Austria for Hungary, in order to emigrate then after a few generations, back to Austria. The Romanian Government wishes to underline that, in our opinion, **the exclusion of Austria from the scope of the Law** was determined by **other reasons**, in particular by the **discriminatory character** of the law which is incompatible with the standards of the EU.

2. Commentary on para 1.5

The causality connection between the assertions of **para 1.5** of the Hungarian position document is very fragile. The Law on Hungarians is presented as a contribution to the continuous efforts of the Hungarian organisation to find legal, constitutional solutions. The legality of a demarch is, usually, reported to the legal system of a given State. **A legal act adopted by another State could not be considered as a contribution to a legal, constitutional demarch undertaken in another legal system.**

The Romanian Government also remarks that the Hungarian Law and the Romanian and the Slovak laws **do not have a similar purpose**, as **these laws have never been presented as a "reparation" of any kind for ex Romanian or Slovak citizens**. As to the Romanian Law, its objective is duly circumscribed to the protection of the **ethnic, cultural, religious, linguistic identity**, excepting for the granting of aid for special and serious cases of illness. Supplementary to these kind of provisions, which support ethnic, cultural, religious and linguistic identity contained in the Romanian Law, the Hungarian Law provides also socio-economic rights.

4. Commentary on para 1.7

The Romanian Government would like to clarify certain aspects related to the granting of recommendations for scholarships by the Romanian

organisations on the territory of the Republic of Hungary. **(para 1.7) In the Agreements concluded between the Government of the Republic of Hungary and the Government of Romania in the field of education** it is provided that a certain number of scholarships is granted annually in conditions of **reciprocity**, by the Hungarian side for the persons of Hungarian origin living in Romania and, respectively by the Romanian side for the persons of Romanian ethnic origin living in the Republic of Hungary. Romania has also concluded such agreements with other States in which persons of Romanian ethnic origin are living. It should also be added the fact that **in the Agreements concluded with the Republic of Moldova there is no reference to the persons of Romanian ethnic origin, but to "citizens of the Republic of Moldova", as Romanians are not a minority, but a majority in the Republic of Moldova.** This is why such a recommendation is granted **only** on the basis of the provisions of the bilateral Agreement, convened upon by both Parties. Moreover, it can not be invoked as a precedent by the Hungarian side because the recommendation **is not an act**, as the "certificate" set forth by the Hungarian Law. It is **"valid" only for a determined scholarship**; it represents **an implementation of the rights** of persons belonging to national minorities **to study in their own language**, including in the institutions of education of the State whose citizens are speaking the same language as theirs; **it does not grant the right to facilities or preferences**, given the approach in regime of reciprocity, enshrined in the bilateral agreements. **The reciprocity which is enshrined by a bilateral Agreement makes inoperant any possibility of discrimination.** There is also **no extraterritoriality as these recommendations are not issued in order to implement a Romanian Law.** This is part of the bilateral cooperation for the protection of national minorities between the States. The Romanian side has already forwarded to the Hungarian side a **draft protocol on the cooperation for the protection of national minorities which is meant to be an alternative to the Hungarian Law (Annex &).**

As to the readiness of the Hungarian side to continue consultations and, if necessary, to conclude bilateral agreements concerning the implementation of the Law, the Government of Romania would like to remind that consultations should basically have as objective the elimination of the discriminatory and extraterritorial character of the Law and not only to facilitate the implementation of the Law having such discriminatory and extraterritorial features. **The conclusion of a bilateral agreement for the implementation of a domestic Law, which is an unilateral act, would be an atypical situation.** Thus, consultations regard, in our opinion, especially the principles set forth by the Law which create problems.

8. Commentary on para 1.8

There is fragile causality link between the giving up by the Hungarian Government to apply the system of dual citizenship and the preference for bilateral cooperation, **as dual citizenship does not exclude or affect in any way the cooperation between the States whose citizenship the concerned persons have. Moreover, the Romanian legislation allows double citizenship.** In comparison with the regime of the double citizenship, the rights and facilities granted by the Hungarian Law are **similar to those created on the basis of the relation of citizenship**, this approach having as a consequence the establishments of quasi-legal relations between the Hungarian State and the persons of Hungarian ethnic origin living in the neighbouring countries. It should be stressed that the **Hungarian Law refers explicitly in art.4, 9, 10 to rights similar to those of the Hungarian citizens.**

The Romanian Government would like to stress that the adoption of the Hungarian Law could not be presented as a modality of bilateral cooperation, as provided in para 1.8., as it is purely an unilateral measure.

9. Commentary on para 1.9

Until now, **in Hungary** there is **no legal act** providing the possibility for the **minorities** living in the Republic of Hungary **to be represented in the Parliament.** It could be hardly imagined how the neighbouring States could grant assistance for such an extremely necessary measure which falls directly into the Hungarian authorities' responsibility.

9. Commentary on para 2.1-2.4

From a legal point of view, recognition of the territorial integrity of neighbouring States is not necessarily proved by the rejection by the Hungarian Government of the possibility to grant citizenship for the Hungarians living in neighbouring countries. **There is no legal or logical link between these aspects.** According to the Preamble of the Hungarian Law, **the Hungarian side has the intention to promote the unity of the Hungarian nation as a whole.** Prime-minister Viktor ORBAN has made several declarations about the role of the European integration to make disappear the borders between the states. **The integrative role of the European Union should not be compared with the integrative endeavours of certain States regarding the unity of a nation as a whole, which would be composed of citizens of different States. Enhancing relations between the persons of Hungarian ethnic origin and the persons belonging to the majority of the population of a certain State, speaking the same language is provided in all relevant instruments concerning protection of national minorities, but no**

relevant international legal instrument provides the necessity for the **persons** belonging to national minorities to enhance relations with the **State** in which the population speaking the same language as theirs is living. **The Government of Romania expressed concerns regarding certain declarations of Hungarians officials (some of them issued on the occasion of the debates in the Hungarian Parliament when the Law was adopted), interpreting the Law as an act of reparation for the effects of the Treaty of Trianon.**

The Romanian Government would like to stress that, in its opinion, the objective of the Law is **not restricted** to the enhancement of **cultural and educational ties (para 2.4)**, but has a larger approach, concerning **socio-economic rights**, and creating a **quasi-legal relation between the Hungarian State and the persons of Hungarian ethnic origin living in the neighbouring countries.**

After asserting in **para 1.2** that Hungary shall continue to be a country receiving immigrants, **para 2.4** refers to the necessity to prevent the possible emigration to Hungary. Beyond this **contradiction**, the Government of Romania does not agree upon the argumentation according to which **the granting of socio-economic rights would be motivated by the necessity to prevent emigration.** Thereto, at the beginning of the position document (**para 1.4**) it is underlined the strong will of the Hungarians living in the neighbouring States to remain in their countries.

10. Commentary on para 2.13-2.15

Although the entire argumentation presented at the beginning of the position paper indicated the wish of the Hungarian side to contribute to the protection and preservation of the ethnic identity of the persons of Hungarian ethnic origin living in the neighbouring countries, the approach expressed in these paragraphs is quite different.

Art.20 of the Hungarian Law provides expressly that the beneficiaries of the Law are the persons of Hungarian ethnic origin **and their spouses and children.** The Government of Romania has already commented this situation in its position document. Such an assertion of the Hungarian Government in its **official position** should be, we consider, very seriously analysed as it seems to be **the basis on which** persons of **other** ethnic origin **could be accepted as Hungarians if they declare to be Hungarians.** Paragraph 35 of the Explanatory Report of the Framework Convention for the Protection of National Minorities refers to the necessity for pertinent "objective criteria" for declaring a certain ethnic origin; **free choice of the ethnic origin does not involve the right to choose arbitrarily to belong to a certain national minority;** the access to facilities of the spouse and children of the ethnic

Hungarian is not relevant for the protection of the Hungarian ethnic identity as the spouse and children of the Hungarian don't have Hungarian ethnic origin

Such an approach by the Hungarian side proves that the concerns of the Romanian side regarding the **possibility opened by the Law for artificially increasing the number of persons of Hungarian ethnic origin** on its territory are **duly founded**. In this context should be interpreted the very open provisions of **art. 21 (7) of the Law**, according to which **"The data contained in the records may be forwarded to the Hungarian Central Statistical Office (KSH) for statistical purposes."** and also the provisions of **art. 21 (4)** according to which **"the recommending organisation shall also be notified of the final decision on the withdrawal of the Certificate"**.

Nevertheless the Law sets forth a **mechanism of withdrawal of the card** in case the recommending organisation has withdrawn its recommendation due to the submission of false data by the bearer of the "Certificate" in the application process. The Government of Romania has **two comments** to render on this issue. **First of all**, as underlined in the official position of the Romanian Government, such a mechanism is **in contradiction** with the provisions of the Framework Convention on the Protection of National Minorities which **enshrines** the principle of free choice in declaring the ethnic origin. **Secondly**, taking into account the assertion according to which the granting of the certificate is not based on ethnic criteria, it seems that the Hungarian Law is **contradictory** and that it contains provisions which shall apply **arbitrarily**. **Some** persons of non Hungarian ethnic origin shall be admitted to have such certificates, **others** shall not.

As to **para 2.14** it should be stressed that **the declaration** made by the persons which shall benefit upon this Act **is not enough in itself**. The Hungarian authorities have the last say **in granting or not** the certificate. Moreover, persons having criminal record in the Republic of Hungary (the existence of criminal record in neighbouring countries is not an inconvenient) could not be granted "Hungarian certificate". These are supplementary conditions **infringing the principle of the free choice** of the ethnic origin.

Declaration to belong to the "Hungarian ethnic community" provided by the Law (it should be remarked that **neither in the Law, nor in the Hungarian position document** there is **any reference** to the fact that the destinataries of the beneficiaries of the facilities provided in the Law **would belong to the Hungarian minority**. **The formulations used ("Hungarian community" or "Hungarian nation as a whole")** can not be considered, in the opinion of the Government of Romania, as a **full manifestation of the principle of the free choice of national identity**, provided by the international documents, as the beneficiaries of the

certificate issued on the basis of recommendations granted as a consequence of such a declaration are entitled to **certain facilities, including socio-economic rights**. Freedom of choice in this field, in our opinion, should be characterized by the **awareness** of belonging to a national community and not by the will of belonging to a national minority (not community) **because there are some advantages arising from this quality**(the fact of belonging to the "Hungarian ethnic community" is a condition for obtaining these facilities; see also **para 2.18** referring to the fact that the certificate is not an ethnicity certificate but the materialisation of the will of the interested persons to require the benefits granted by the Law). The issuing of **recommendations** is also an **element of the procedure** that could not be considered in conformity with the principle according to which the fact of belonging to an ethnic community is an expression of the free choice of the individual. **Free choice does not suppose supplementary confirmation from any organisation or authority.**

As to **para no 2.15**, the Government of Romania would like, first, to reiterate that the **granting of certificates to spouses and children** of the Hungarian person infringes the principle according to which **positive discrimination is allowed until full equality of chances is achieved** between the persons belonging to the national minority and the persons belonging to the majority of the population of the State.

The Government of Romania considers that there is **no causality link** between what the Hungarian side tries to accredit **as lack of ethnic character for the granting of the certificate** and the fact that the **declaration is only registered by the so-called recommendatory organ**. Anyway, this statement of the Hungarian position document (the fact that recommendatory organ only registers the declarations and forwards them to the Hungarian authorities) is just an interpretation of the Law. Why to establish a **recommendatory organ** and a **procedure requiring a recommendation from this organ**, if the only task of it should be to collect the declaration? At the same time, this statement is **not consistent with the specification in the Law of the conditions** that the applicant should fulfill in order to be able to receive the "Certificate" (ID)

11. Commentary on para. 2.16

There is a contradiction between the assertion formulated at the beginning of the position document referring to the wish to contribute to the protection of the identity of persons belonging to national minorities notwithstanding that they are living inside or outside the borders of the Republic of Hungary (although such practice runs out of the current standards in the field of protection of national minorities), **and the assimilation of the persons of Roma ethnic origin in the**

Hungarian community. It should be stressed that Romanian citizens of Roma`ethic origin (not Romanian) (**para 2.16**) are entitled to this aid on condition that they pretend to have Hungarian cultural and linguistic identity, and **not** Roma cultural and linguistic identity.

As to the possibility to have dual identity, it should be stressed that a person can not have several identities. A person can have **several citizenships but not dual identity**. (It is relevant in this respect that the Hungarian position document maintains a **confusion** between "**nationality**" and "**ethnic origin**". The position document is referring to "nationality" (the English synonym of the term "citizenship") for denominating in fact "ethnic origin") We consider that the parallel between the possibility of being, for example, both British and European is valid as British are part of the European continent and civilization. The relationship between the notion of "European" and "British" is that from the gender to species, which is really not the case when speaking about the relationship between the notions of "Roma" and "Hungarian", both notions being "species" in this respect.

12. Commentary on para 2.18

Concerning **para 2.18**, there is no causality link between **the limited validity of the certificate** and the fact that the Hungarian authorities have **no intention to grant Hungarian citizenship** to the beneficiaries of the certificate. Moreover, **as the Hungarian Law provides facilities on an ethnic criteria**, from this perspective the granting of the certificate for a limited period **would mean that the ethnic origin is only temporary**. The limited validity of the certificate serves, in fact, our argumentation according to which **in the conception of the Law, belonging to the "Hungarian community" is, in reality, a conjectural choice, permitting to benefit from certain advantages**. These contradictory provisions and assertions show the prolix character of the Law.

13. Commentary on para. 2.19-2.23

Adoption of the Law is an expression of the sovereign attributes of the State inside its territory and not an expression of the bilateral co-operation, which implies conclusion of bilateral agreements.

The behaviour of the Republic of Hungary is that of a mother State and not of a kin State, following the distinction made by the Hungarian Government referring to the fact that, whilst the mother State does not, the kin State recognises the primary role of the State of citizenship, as the adoption of the Law is not an expression of the will to co-operate with the state of citizenship.

14. Commentary on para 3.1-3.9 (general comments)

The Hungarian Law is unique, because there is **no precedent** in the legislative practice having **all the features of the Hungarian Law**. The legal norms issued by the European States in the field regulated by the Hungarian Law, have as an objective to ensure the protection of the cultural identity of the persons having the same ethnic origin as the majority of their population. Only 4 countries (Greece has joint this category after having adopted the Decree no 4000/3/2001) grant socio_economic rights . If these would be the beginning of a customary process, the legal opinion of independent experts should be expressed on its real opportunity, as socio-economic rights do not foster the preservation of cultural identity. In fact, socio-economic rights are usually granted on a non-discriminatory basis by the State of citizenship in conditions of equality for all its citizens. Nevertheless, the granting of social economic rights is **only a part of the very complex relation established by the Hungarian Law between the persons of Hungarian ethnic origin and the Hungarian State**. The Slovene Resolution establishes as a background for the protection of the persons of Slovenian ethnic origin living abroad the bilateral co-operation between the Slovenian State and the State of citizenship of these persons.

Commentary on para 3.5-3.6

The Government of Romania would like to invite the Venice Commission to **demand an official point of view of the Slovak Government regarding the Law** and also of the Government of the Federal Republic of Yugoslavia, as they have on their territories the largest number of persons of Hungarian ethnic origin among the neighbouring States of the Republic of Hungary.

As to the Slovak Law concerning the Slovaks living outside the borders, it should be stressed that, from the information provided by the Consular Division of the Slovak Ministry for Foreign Affairs it results that there have been issued **approximately 2000 certificates for the Slovaks which are Romanian citizens**. There have been **no extraterritorial aspects in the implementation of the Slovak Law**. For the issuing of the identification cards which there have **not been used any recommendations from the Slovak organisations from the territory of the State of citizenship**. There have been used **only** the documents issued by the Romanian authorities or institutions, attesting the Slovak ethnic origin of the applicant, **especially the baptise certificates**.

The Government of Romanian would also like to clarify certain aspects related to Law 150 of 1998 on the Romanians living abroad. **(para 3.8)** Firstly, the Law is not a statute and creates no special status for Romanians living abroad. Secondly, the Law does not provide unilateral financial assistance from the Romanian State for the persons of Hungarian ethnic origin living abroad. Any assistance from the

Romanian State is based on the co-operation with the State of citizenship. Thirdly, granting financial assistance for serious cases of illness does not mean granting a social right, as health insurance is, for example. It is an exceptional help for exceptional cases which supposes no contribution to the Romanian social insurance system of the person concerned. The paragraphs in the Hungarian position document referring to the Law regarding the support granted for the Romanian communities from all over the world represent **a mere transcription of the Romanian Law in its entirety, thus giving the false impression of a very detailed regulation.**

Commentary on para 3.9

A domestic Law in this field should provide only the principles, in generic terms, as does for example the Romanian Law. In the frame of the bilateral co-operation between the State whose citizens are the persons concerned and the State issuing the domestic Law is established the substance of the support

As to the **German legislation**, it refers to the possibility for the persons of German ethnic origin whose residence is on the territory of Germany to obtain a temporary German passport, valid for only one year, until the preliminary procedures for granting the German citizenship are completed and the German authorities decide whether the persons concerned shall or not be granted German citizenship. In case of negative answer, the persons concerned are not entitled to keep this passport anymore.

As to the **Portuguese legislation**, there is **no legal act** establishing facilities for the persons of Portuguese ethnic origin living abroad; there is only **a proposal** concerning the granting of certain rights to Brazilian citizens which are residents in Portugal in terms of reciprocity with Brazil. This proposal is currently under consideration especially concerning its conformity with the EU legislation.

The **Italian legislation** contains **no provisions** in this field. But there are other States among the Member States of the Council of Europe, as it is described in the situation of the legislative practice which was forwarded to the Venice Commission, together with the official position of the Government of Romania, which have domestic provisions regarding the protection of the persons having the same ethnic origin as the majority of their population, living abroad. These domestic norms concern only protection of the ethnic, cultural identity of these persons.

Applying this principle deemed to be essential by the Romanian side to the case of the Hungarian Law, **it appears that the Law regulates**

unilaterally the substance of the support granted for the persons of Hungarian ethnic origin living in the neighbouring countries in a discriminatory manner, with elements of extraterritoriality. The Romanian Government would have deemed more appropriate and in conformity with the international practice to tackle at the bilateral level the problem of co-operation in the field of national minorities, instead of formal consultations on the draft Law. **As an alternative to the Law, the Romanian side has already proposed to the Hungarian side the conclusion of a Protocol between the Government of Romania and the Government of the Republic of Hungary on the cooperation for the protection of persons belonging to national minorities and, if necessary, of subsequent bilateral programs and agreements to this purpose. We would like to have a positive reaction of the Hungarian side to this proposal forwarded at the 5th session of the Committee on minorities (in the frame of the Joint Intergovernmental Commission) held in Budapest on the 10th of September 2001, as soon as possible.**

15. Commentary on para 4.2 -4.16 (general comment)

As to **para 4.2** the Government of Romania would like to stress that the subject under discussion concerning the Hungarian Law does not concern the possibility recognised in the Public International Law to adopt measures of positive discrimination for the protection of persons belonging to national minorities, but the fact that **the conditions also provided in the Framework Convention for the Protection of National Minorities and in other relevant international documents, in order for the measures of positive discrimination to be permitted, are not fulfilled. Firstly, the Law does not have a legitimate goal,** as the full equality of the persons belonging to the Hungarian minority and the majority of the population of Romania is already achieved. Even if such a hypothesis - the lack of substantive equality - would have existed in practice, in our opinion the Law **does not represent a proportionate measure, having a reasonable and objective justification, in the sense of the Framework Convention.** The Romanian Government expresses its interest to know how the Hungarian Government demonstrates that the Hungarian persons living in Romania have no adequate means for the preservation of their ethnic features (para 4.3), which is **the objective and reasonable justification of the Law and the existence of a reasonable report between the adoption of the Law and the objective of protection of Hungarian minority on the Romanian territory (para 4.4),** that the specific conditions in Romania render necessary the positive discrimination provided by the Law **(para 4.7).** It is also necessary to know why the Hungarian Government considers that there is no equality of opportunities (no substantive equality) between the Hungarian minority living in Romanian

and the majority of the population (**para 4.8**). We do not consider that granting permanent advantages by a domestic Law could be a kind of positive measure which should ensure preservation of the identity of the persons belonging to national minorities (**para 4.10**). **In what concerns the persons of Hungarian ethnic origin living on the territory of Romania, there are no disadvantages which should be compensated or prevented (para 4.11)**. Firstly, the adoption of positive measures, if necessary, is **the obligation of the State of citizenship (but this is not the case)**. Secondly, **the Law is not a temporary measure**, condition which is expressed in the international documents.

Commentary on para 4.2, 4.8, 4.14, 4.22 (the case law invoked by the Hungarian position documents)

A case law precedent could be successfully invoked only if the facts are similar, as the Court applies in its reasoning the rule of law to the facts. The dissociation of a part of reasoning of a jurisdictional entity in order to apply it **forcibly** to different facts is an artificial demarch not able to reach the right solution

The Hungarian position documents refers to several cases, some of them of the ECHR case-law.

The guide lines of the paragraphs of the decisions invoked above refer to the subsequent principles to the general principle of non-discrimination (art. 14): the necessity to take positive measures in order to prevent discrimination, (**Belgian Linguistic case**), the necessity to grant additional rights for deprived members of the population. (**Buckley v. United Kingdom** – 25.09.1996), the obligation for the authorities to ensure that competing groups tolerate each other (**Serif v. Greece**), the existence of special needs of the minorities (**Beard v. United Kingdom**).

The facts in the Belgian Linguistic Case are different from the situation created by the Hungarian Law. The applicants invoked the lack of any possibility in their villages in Belgium to study in the French language, or that, in case such a possibility exists, that is inadequate, that the certificates attesting the end of a scholar cycle are not recognized and finally that the educational policy of Belgium State determines a "scholar emigration" to Brussels which involves "risks and difficulties". The ECHR decided there had been a violation of art. 14 (the principle of non-discrimination).

It is obvious that the position document is referring to these decisions with the purpose to accredit the possibility for the Hungarian Government to take measures of positive discrimination **for citizens of another State** (no precedent to the case Law refers to such a possibility), to discredit the concerns of the Romanian Government regarding **the principles** which are inspiring Hungarian Law, **associating these concerns with a hypothetical trend of eliminating pluralism**. This case law invoked by the Hungarian side tries to accredit the idea that

European jurisdictional entities have developed a consolidated case-law regarding the principles of non-discrimination for persons belonging to national minorities. It is to be underlined in this respect that ECHR is **not competent to judge cases related to the implementation of the Framework Convention on the Protection of National Minorities**. ECHR is competent to examine if art. 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms - providing the principle of non-discrimination in respect of the exercise of rights provided in the Convention- has been observed. In *Buckley v United Kingdom* the facts are the following: a Roma woman was not permitted to install a roulotte on a piece of land which she owed and invoked, therefore, a violation of art. 14. In *Beard v. United Kingdom* the applicants are also Roma and they are invoking before the Court violation of art. 8 and of art. 14 as they were not allowed to install their caravans on a piece of land which they owed. **The ECHR decided in both cases that there had been no violation of art. 14**, although it refers in its decision to the necessity to grant additional rights in certain case and respectively to "the special needs of minorities". (The Hungarian position document tries also to accredit the idea that claims of discrimination against majority are not sustainable, by invoking this case in which the applicants were, on the contrary, members of a minority and pretended to be discriminated and the Court found there was no violation) The situation is similar in *Chapman v. United Kingdom*. These final decisions of the Court prove that the Romanian argumentation is correct when stressing that an undisputed principle is applicable only if the facts allow the application of that principle. **In the Hungarian position document, this case is invoked in order to "demonstrate" the validity of the preferential treatment for national minorities. Chassagnou v. France** is a case having no relevance: it tackles with a problem of discriminatory application of a law on hunting! In *Serif v. Greece* the Court decided that there has been a violation of art. 9 (liberty of religion - the applicant, although elected as a religious leader is not allowed to exercise his functions) - there is no connection either to national minorities, or to discrimination. **Neither of the cases invoked is referring to the protection of national minorities.**

Commentary on para 4.16

It is a mere quotation of an information provided in the study of Konrad HUBER and Robert MICKEY (p. 43). As it results from the text quoted, **there was no decision** of the Romania's National Audio Visual Council to **withdraw broadcast authorisation**. Anyway, such decisions are **not supposed to be taken on the basis of the ethnic character of the TV channel**, but if programs **do not respect imperative provisions of public order - including prohibition of dissemination of racial propaganda**.

Commentary on para 4.17-4.19

Both the International Court of Justice and the European Court of Human Rights are charged to judge only the infringement of legal norms and of the rights created thereby and not on the contents or opportunity of the legal instruments. The so-called practice of assessing the discriminatory character of a legal act in relationship with the entire legal system should be interpreted taking into consideration **its logical determination. This practice can not be invoked in order to "cover" a legal act which is obviously discriminatory in itself.** The reasoning of the Hungarian Government would be valid if this principle would be duly applied with all its consequences. **If by separate legal norms the Hungarian side would grant similar advantages to the persons of non-Hungarian ethnic origin living in the neighbouring countries,** the principle would be duly respected. But this hypothetical situation could not be put into practice as **the goal of the Law on Hungarians Living in the Neighbouring Countries is precisely to grant preferences and not to achieve a situation of equality.**

Nevertheless, the legal system which is the point of reference for determining if the persons belonging to the Hungarian minority of the neighbouring States are or not being discriminated is the legal system of the neighbouring countries.

Commentary on para 4.19

There should be made a distinction between the "implementation" of the provisions of a bilateral agreement by means of a domestic law by each Party and the "addition" of supplementary rights and obligations to those mentioned in the bilateral agreement. These rights and obligations could be regulated only by adoption of another bilateral agreement.

16. Commentary on para 4.20 -4.21

The rejection of the proposal to introduce a paragraph in art. 4 of the Framework Convention on the protection of persons belonging to national minorities was determined by the fact that the **objective** of the Framework Convention is to regulate the **protection of the persons belonging to a minority**, not of those belonging to the majority. Moreover, the rejection of the proposal **underlines that positive measures can not be considered as discrimination if they are meant to help the achievement of a substantive equality** of chances between the minority and the majority. We do **not** consider that the rejection of the proposal could be interpreted as **an inclination of the Committee to accept that positive discrimination were a measure having a permanent character** to be taken in favour of the persons belonging to national minorities in various fields, **exceeding** the sphere of the

preservation of the ethnic, cultural, linguistic identity. Even in the case of the Albanian minority in Macedonia, the international experts and the representatives of the Macedonian authorities provided in the **Agreement of Ohrid** measures of positive discrimination for the Albanians **only** in the field of enrolment in high institutes of **education**.

17. Commentary on para 5.1

The Hungarian side should demonstrate that by adopting the Act duly account was taken of the **specific conditions** of the persons belonging to national minorities. (para 5.1). A Law is **not a temporary or an adequate measure in conformity with the relevant provisions of art. 4** of the Framework Convention for the Protection of the Rights of Persons belonging to National Minorities

18. Commentary on para 5.3

The interpretation of the concept of "giving" by the Hungarian side (para 5.3) is not the proper one, as the **concept of "giving"** should be interpreted basically in relationship with the necessity to avoid discrimination. In the Hungarian interpretation, there are, as a rule, two Parties to the Framework Convention which are entitled to grant protection to a certain minority – kin State and State of citizenship, the first having the right, the second having the obligation. From a legal point of view, **each right has a correlative obligation**. Since in case of the State of citizenship, the right of the State to exercise authority is completed by the correlative obligation to grant protection of the rights and interests of its citizens, notwithstanding their ethnic origin, and the citizens have also rights and obligations incumbent towards the State, **in the case of the kin State, from a legal point of view, the right to exercise authority and the obligation to grant protection for the persons mentioned above do not come from the attributes of sovereignty. There is no source of similar rights and obligations as in the case of the State of citizenship as there is no "social contract" between the kin State and the persons concerned.** Yet, the Hungarian Law provides **mechanisms establishing direct relationship between the persons of Hungarian ethnic origin living in the Neighbouring States and the authorities of the Republic of Hungary.** For example, the Government of the Republic of Hungary should accept the organisation issuing recommendations of ethnic origin for the persons concerned; by order of the minister, the work permit for some of the persons concerned could be prolonged etc.

19. Commentary on para 5.6-5.7

As to the **objective and reasonable justification** of the Law, the Government of Romania considers that the interpretation of the decision in Belgian Linguistic case **is not proper**. Thus, it is not generally accepted that being a member of a national minority limits the cultural educational possibilities to preserve the self-identity in comparison with the possibilities in the State where the population of the same linguistic cultural origin is majority. On the contrary, it is generally accepted that national minorities enrich the cultural diversity, as they develop naturally in the State they are living and are borrowing certain features of the culture and civilisation of the majority or of other national communities with whom they are living together. The constant attitude of the Hungarian side to present the members of the Hungarian community as being oppressed as they were "torn out" of the Hungarian matrix is definitely wrong, as the destiny of the minorities should be rather different from the Hungarians living in Hungary.

20. Commentary on para 5.8-5.10

The fact that the Belgian Linguistic case has been misinterpreted is proved by the fact that this decision refers also to the necessity for the positive measures to be proportional with the aim sought to be realized. **Or the Hungarian side simply asserts, without demonstrating, that the Law, as a positive measure is proportional with the sought legitimate goal.** It should be remarked that, giving the examples in **para 5.10**, the Hungarian Government avoids any reference to socio-economic rights, thus recognising that **they are not part of the protection of the preservation of the ethnic, cultural, linguistic, religious identity.** The Hungarian Governments refers separately to them as to **advantages which are not disproportionate.** But the **necessity of proportionality** of the positive measures with the goal is demanded **only** for the **measures which are intended to determine full achievement of the equality of chances** in the field of preservation of this identity. **Other** positive measures are **a priori** considered to be **discriminatory** and not only as in the case of measures concerning the protection of ethnic, religious identity, after proving that equality of opportunities has already been achieved. Discrimination in the field of circulation of labour force (lack of contingent for persons of Hungarian ethnic origin, possibility to prolong the period of work on the territory of Hungary by ministers order) could **not be covered by asserting that this is a modality of establishing contacts with the majority of the population of Hungary, as this suppose contact with the Hungarian culture and civilisation and communication with Hungarians.**

It is obvious that the contingents established in the bilateral agreements shall be applied in the light of the preferential treatment provided by the Law, recognised in **para 5.7, thus discriminating the persons having**

the same citizenship as those of Hungarian ethnic origin, but who belong to the majority of the population of the neighbouring countries

21. Commentary on para 5.12

In the field of financial assistance for education the Government of Romania would add that it is no inconvenience in buying books and other school materials in Romania. The Romanian State grants social aids for persons who have a fragile material situation, without discrimination on ethnic criteria. **Moreover, this provision of the Law could generate an assimilation**, in time, for example of the Roma community members which shall express their will to benefit from the provisions of the Act, because of the economic advantages provided. They shall be tempted to educate their children in Hungarian schools in order to obtain these benefits. We don not consider that this could be a legitimate goal.

22. Commentary on para 5. 14

The Hungarian side admits **implicitly** that the Law has an extraterritorial application, but **excuses this feature**, invoking the precedent of the Slovak Law. The argumentation establishing a connection between extraterritorial character and proportionality of the discriminatory measures could not, in our opinion, be accepted.

23. General Comments on conclusions

The assertion according to which the Republic of Hungary admits that it has a subsidiary and secondary role to that of the home State remains a simple assertion. **Subsidiarity in the field of protection of persons belonging to national minorities does not refer to the right of the kin State to give such protection**, but to the **right of the international community as a whole** to involve in order to determine that the rights of these persons are fully respected. Application of the principle of subsidiarity suppose a **preliminary failure of the State of citizenship in granting this protection**.

The Hungarian Government **admits** also that there are **differences between the Hungarian Law and other laws** referring to persons having the same ethnic origin as the majority of the population of the State, but which are citizens of other States. In our opinion, these differences consist mainly in the **restrictive scope of the Law**, which concerns only Hungarians of the neighbouring countries living on territories which once temporarily belonged to Hungary and in the intention to **unify the Hungarian nation as a whole which would be formed only by Hungarians from the neighbouring countries and Hungarians** from Hungary It appears the question whose nation belong the persons of

non-Hungarian ethnic origin living in the Republic of Hungary . There also differences regarding the **type of facilities which are granted and concerning the extraterritoriality.**

Other general objections have been already expressed in the commentaries on paragraphs.

Commentary on the Hungarian approach of the extraterritoriality

The comments of the Hungarian side on the issue of the extraterritoriality of the Law were placed in the conclusions, although in the corpus of the position document **there is no substantial argumentation on this matter.**

The Hungarian Law is extraterritorial also because **it is possible for the certificate to be used by the beneficiary not only on the territory of the Republic of Hungary, but also on the territory of the neighbouring States, as it is provided in the draft norms of application forwarded by the Hungarian side two days before the annual session of the Committee on the co-operation in problems concerning national minorities** (10th of September 2001)

The Hungarian side refers to "delocalisation of branches of Hungarian institutions of higher education" (section 13), financial help for parents and pupils studying in Hungarian. The Hungarian side tries to accredit the idea that these are **"trans-boundary aspects" which can not be avoided in such a matter.** These trans-boundary aspects of the protection of minorities are presented afterwards as a consequence of the globalisation. Or, the core of the problem is not the trans-boundary aspects which in our opinion are invoked in order to deviate the attention from the aspects of extraterritoriality, but **the fact that a legal norm is implemented by a legal person of another State.** The States concerned could, in principle, tolerate the aspects of extraterritoriality, if they want so. But, as long as the extraterritorial dimension is completed by discriminatory features of the Law and by a political-rhetorical reparation, the extraterritoriality could not be accepted.

The enumeration is supposed to confuse the reader- Trans-boundary aspects are, in the same time, scholarships, creation of university extensions, TV broadcast, issuing of recommendation for obtaining the certificate. Nevertheless, extraterritoriality exists and it can be avoided, and also the discrimination by the means of the bilateral cooperation. Granting assistance is not *a priori* unlawful, nor extraterritorial, if undertaken in a frame which is convened at the bilateral level.

As to the status and role of the organisation issuing recommendations, there are several aspects to be underlined. Firstly, as provided by the Hungarian Law, there should be an organisation

representing the entire Hungarian community in the country, which must be accepted by the Hungarian Government. In Romania for example, such an organisation is the UDMR, which is a cultural organisation participating to the political life of the country and, as an expression of the openness of the Romanian policy, was member of the governmental coalition. In these circumstances, a cultural organisation, with political features, is to be accepted by the Hungarian Government. This situation creates a subtle tie of subordination. Moreover, the relationship between the Hungarian Government and this organisation **could not be presented, as does the Hungarian position document, as inter-state co-operation (para 7.5)**, as a cultural organisation of a national minority does not represent the Romanian State. The Hungarian argumentation is not very consistent. The Hungarian Government consider, in fact, such organisation as its "agency", for citing the Hungarian position document, as long as this organisation is submitted to its acceptance.

Commentary on para 7.6 and 7.8

The Hungarian Government admits that these organisations are participating to the decision-making procedure. Nevertheless, the Hungarian Government makes a comparison, in order to sustain its argumentation, with three other situations. A commentary of this comparison should be restrained to the remark that one of the basic rules in logic, not necessarily in legal logic, were not respected: the *comparandum* - what we compare - (an organisation accepted by a foreign Government is issuing recommendations, implementing thus a foreign Law which is discriminatory towards the citizens of the State whose nationality the organisation has) and the *comparatum* - with what we compare- (nomination for Nobel Prize, mixed committees) do not have the same nature. As to the comparison with the issue of certificate in Hungary attesting the Romanian ethnic origin in order to obtain scholarships in Romania, we have already presented our argumentation concerning the differences between these two practices, but we reiterate that this activity is rendered in the implementation of the Agreement on Education between Romania and the Republic of Hungary and refers only to scholarships, which are neither facilities, nor benefits. It is a result of the Agreement of the Parties to render possible for the persons living on the territory of the other Party to study temporarily in the State of the other Party, in their mother language.

The fact that scientific organisms are granting scholarships in the absence of a inter State Agreement is another inadequate *comparatum*. As a conclusion of these two paragraphs, it should be said that in order to fundament its behaviour, **the Hungarian State - an entity of public Law compares itself with private agents, but such an argumentation could not be accepted.**

Commentary on para 7.9

The right for the persons belonging to an national minority to have contacts with citizens of a foreign State which are speaking the same language as theirs is recognised by the relevant international documents. But, **these contacts are inter-personal** and not contacts between the person and the foreign State, as a public entity. This kind of relationship could not be considered as part of the preservation of the ethnic identity, but creates a quasi-legal report, having elements of the report of citizenship. A **“direct relationship” with the kin State is not provided by any international document.**

24. Commentary on Annex I

The Government of Romania foresees the possible effects of the implementation of the Law, following the statistics. The organisation accepted by the Hungarian government shall provide its estimates for statistical information. It is almost clear that, by including the persons who shall express their will to benefit from the Hungarian Law, even if they are not, from an ethnic point of view, Hungarian (Roma people for example) the statistics shall blow up.

25. Commentary on Annex II

Consultations are an exchange of views between the Parties, based on communication. The fact to inform about a situation is not a consultation, as the interlocutor simply took note of the contents of the information. **There were no multilateral consultations.**

There was only **one** round of Romanian -Hungarian consultations at expert level (24th of May 2001) and **one** round of consultations in the frame of a political high level meeting (13th of July 2001). The rest of the meetings presented by the Hungarian side as consultations were political bilateral contacts, approaching the entire spectrum of the bilateral relation. In brief, the “ nine rounds of consultations” are in fact all the political bilateral contacts between Romanian and Hungary which took place this year until now.

The Romanian side received, for the first time, the draft Law on the 5th of April 2001 in Budapest and not on 2nd of March 2001.

26. Commentary on Annex III

The letter has a visible **trans-ethnic spirit** as it is considered that also a person who **“describes himself as a Hungarian is Hungarian”**

Such an approach could not have as a goal the preservation of the ethnic origin of the non-Hungarians, as they are not Hungarians. What should be the goal then? The letter refers to "**supplementary conditions**" which are not enumerated, on whose basis a person could be accepted as Hungarian even if he/she does not speak the language, regardless the religion or political affiliation. Should this be interpreted *per a contrario* that in other circumstances the religion or political affiliation would be an impediment? This would mean double discrimination.

27. Conclusions

The Hungarian position document should be duly analysed, as there is serious inadvertence and there is questionable argumentation. Annex III could be read as an authentic interpretation of the provisions of the Law. Even if the Law does not refer precisely to the intention of the Hungarian authorities to implement it to persons of non-Hungarian ethnic origin, it appears from Annex III that such an intention exists. The precedents invoked in order to cover the discriminatory and extraterritorial features of the Law are not perfectly similar to the Hungarian Law, so the Law is not part of a customary process.

National Minorities' Protection in Romania

- July 2001-

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National Minorities' Protection in Romania

I. Statistic Data

According to January 1992 census, Romania's population is 22.760.449 inhabitants. The structure of the population in Romania is the following: Romanian – 20.352.980, representing 89.45%, Hungarians – 1,620,199, representing 7.1%, Gypsies – 1.8%, Germans – 0.55%, Ukrainians – 0.3%, Lipovan-Russians – 0.2%, Turks – 0.15%, Serbs – 0.1%, Tartars – 0.1%, Slovaks / 0.1%, other nationalities – Bulgarians, Jewish, Croatians, Cheks, Polish, Greeks, Armenians, etc. (0.3%).

II. Legal Framework on Minorities' Protection **Constitution of Romania**

The Constitution of Romania – adopted by referendum on December 8th, 1991, defining the democratic principles of how to organize public authorities, the republican form of government, the national and unitary features of the Romanian state – also includes a series of provisions relevant for the rights of the persons belonging to national minorities.

- Thus, Article 1, paragraph 3, specifies:
 “Romania is a democratic and social State governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and shall be guaranteed.”
- Consecrating the democratic principle of the people exercising the sovereign power by means of its representatives bodies, legitimated by free elections, the Constitution of Romania is made up in the light of a modern European and civilian conception on the nation, as it is stipulated by Article 4, Paragraph 2:
 “Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property of social origin.”
- As for the minorities' rights, Article 6, paragraph 1 of the Constitution is stipulation:
 “The State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.”
- The constitution is proclaiming the principle of equality and non-discrimination between all its citizens, disregarding their race, nationality, ethnic origin, language, religion, guaranteeing the right to education in their mother tongue,

- liberty to religious education, freedom of conscience, freedom of expression, right to associating. Thus, Article 32, paragraph 3, guarantees the right of the persons belonging to minorities "to learn their mother tongue, and their right to be educated in this language." these stipulations were then concretized by the legislation on local public administration and organizing education.
- The Constitution guarantees the fundamental rights and freedoms of citizens, and its provisions in this field are harmonized to international regulations and documents. The 1991 Constitution is introducing an important change of perspective on human rights, by the provision on applying international treaties, ratified by the Parliament, within the domestic order of Romania. The same, in case there is a lack of harmonization between the pacts and treaties on human rights, whose part Romania is, and domestic laws, the Constitution stipulates the priority of international regulations.
- An important stipulation of the constitution is guaranteeing the representation to the Parliament for the organizations of the persons belonging to national minorities, as well as their right to be elected to the local administration bodies, according to the Electoral Law.
- At the same time, in the progress of the act of justice, citizens belonging to national minorities have the right to learn all the documents and works of their file, to speak in face of the Jury and to reach conclusions through an interpreter, and in the criminal trial this right is provided for free.

International Regulations

- The protection of human rights, including the rights of the persons belonging to national minorities, is provided within the constitutional framework, domestic legislation and relevant international conventions, whose part our country is. Article 20 of the Constitution is consecrating the priority of the international law on domestic law, in the relevant field of human rights.
- Romania is the first country which ratified the Framework convention of the Council of Europe for protecting national minorities' rights, including it – as an instrument of its national policies on protecting minorities rights – in the bilateral treaties signed with the neighbour countries (Hungary, Ukraine).
- Romania is a part to most of the international instruments of protecting human rights, in UN system, as well as in a significantly large number of conventions of the Council of Europe. Presently, Romania has signed other 18 such tools. Romania ratified the European Convention for the Defence of Human Rights and fundamental Freedoms, the first 11 protocols of this, and signed Protocol no.12 of this conventions, the Social European chart (revised) and Local Autonomy Chart.

Bilateral Political Treaties

- The Treaty for understanding, cooperation and good neighbourhood between Romania and Hungary (signed on September 16th, 1996) stands for the beginning of a new stage of the relationships between the two countries, which is consisting of a constructive and efficient dialogue both on political level, and on the level of specialists, in the respect of how to apply the treaty articles, including those on the rights of the persons belonging to national minorities. We stress that Article 15 of the Treaty is entirely consecrated (12 paragraphs) to how to protect the rights of the persons belonging to national minorities.
- The treaty on good neighbourhood and cooperation between Romania and Ukraine (signed on July 2nd, 1997) is a pragmatic approach of the bilateral relations between the two countries. The Treaty is consecrating the highest standards in the respect of protecting national minorities (Article 13). this bilateral legal document is also including relevant stipulations on constituting "Euro-regions": the Upper Prut" and the "Lower Danube", structures bound to facilitate the promotion of contacts and direct cooperation between the Romanian citizens of Ukrainian nationality and the Ukrainian citizens of Romanian nationality (Article 8).
- In order to apply the stipulations of the two bilateral treaties on how to protect persons belonging to national minorities, there were established relevant committees and sub-committees on inter-governmental level.
- the bilateral political treaties signed between Romania and Bulgaria, Croatia and F.R. Yugoslavia also include clauses on protecting persons belonging to national minorities.

III. Minorities' Participation in Public Life Minorities' Representation in Parliament

The Romanian legislation includes regulation on the right of the citizens belonging to national minorities to participate freely in public life, granting their right to be electing to the representative bodies, both on central and local level, as well as the right to be appointed to various public positions and have various charges within central and local administration. Thus, the Constitution of Romania stipulates by Article 59, paragraph 2 that:

"Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one

Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organization only.”

This stipulation is completed by the provisions of the electoral law to elect the chamber of Deputies and the Senate (Law no.68/1992) and Law on local elections no.70/1991, both modified during 2000. According to these legal stipulations, the organizations of the national minorities were constantly represented to the Parliament of Romania since the May 1990 elections.

- Thus, during the November 2000 elections, the Hungarian Democratic Union of Romania (UDMR) obtained 39 seats to the Parliament of Romania (27 mandates in the Chamber of Deputies and 12 mandates in the Senate).
- Both in the Senate and the Chamber of Deputies, UDMR has its own parliamentary group. The UDMR Senators and Deputies are regularly a part of the leading structures of the two Chambers, as well as of various parliamentary committees, official delegation of the Parliament of Romania to the European and international organizations.
- Each of the other 18 organizations of the persons belonging to national minorities, that could not gather the necessary votes to be represented to the Parliament obtained a seat of deputy on the basis of the stipulation of Law 68/1992 to elect the Chamber of Deputies and the Senate.

The following organizations of the national minorities are presently represented to the Parliament of Romania:

1. Federation of the Jewish Communities of Romania;
2. Turkish Democratic Union of Romania;
3. Bulgarian Community of Banat;
4. Hellenic Union of Romania;
5. Polish Union of Romania “Dom Polski”;
6. The Democratic Union of Slovaks and Czechs of Romania;
7. Party of Gypsies;
8. Italian Community of Romania
9. Muslim Turkish Tartar Democratic Union of Romania;
10. Albanian League of Romania;
11. Lipovan-Russian Community of Romania;
12. Serbian Union of Romania;
13. Armenian Union of Romania;
14. German Democratic Forum of Romania;
15. Ukrainian Union of Romania;
16. Rutenian cultural Union of Romania;
17. Croatian Union of Romania;
18. Slavic Macedonian Association of Romania.

The Deputies representing these organization of the minorities are constituted in a group within the Chamber of Deputies (the Parliamentary Group of the national minorities, other than the Hungarian one), its members being a part of various parliamentary committees and leadership structures of this legislative forum.

The Representation of Minorities to the Public Administration Bodies

In April 2001, the Parliament of Romania adopted a new Law on organizing local public administration and the general regime of local autonomy (Law no.215/2001). According to the stipulations of this law, local authorities will grant, at request, also the use of mother tongue within their relations with the citizens of other ethnicity. Within the communes and cities in which the citizens belonging to a national minority are over 20% of the number of inhabitants, local authorities will grant the bilingual writing of the names of localities and public institutions, as well as the public interest announcements, in the mother tongue of the citizens of the respective minority. At the same time, the persons in charge with public relations will be hired if they know the mother tongue of the Romanian citizens of other ethnicity. The persons belonging to minorities can address to authorities (orally or in writing) also in their mother tongue and they have to receive a bilingual answer, in Romanian and their mother tongue. The works of the local councils can take place in the language of a minority, if the representatives of this are at least one third of the members of the council, the mayor being supposed to provide in this case an interpreter.

This law is expanding the rights of national minorities of Romania, harmonizing to the international regulation on protecting minorities, local autonomy and administrative decentralizing.

At the local elections which took place in Romania in June 2000, according to Law no.70/November 26,1996, a large number of persons belonging to national minorities obtained mayors' and advisers' mandates on commune, town, municipality and county level. They have run either on their own organizations' lists, or on the lists of other parties or as independent candidates.

148 mayors and 2,586 advisers of communes, towns, municipalities and counties were elected on UDMR lists. Besides UDMR, other organizations belonging to Hungarian ethnics obtained 33 advisers' mandates.

The situation of the other minorities is as follows:

Mayors' mandates (communes, towns, municipalities):

- German Democratic Forum of Romania 5 mandates;
- Ukrainian Union of Romania 3 mandates;
- Slovak and Czech Democratic Union of Romania 2 mandates;
- Croatian Union of Romania 1 mandate;
- Lipovan-Russian Community of Romania 1 mandate.

Advisers' mandates (communes, towns, municipalities):

- The statistic situation is as follows: Gypsies – 200, Germans – 82; Czechs and Slovaks – 28, Ukrainians – 26; Lipovan – Russians – 18, Serbs and Carashovans – 14, Bulgarians – 11, Croatians – 8, Tartars – 2, Polish – 1, Greeks – 1.

Regulating Documents on Minorities' Rights

Equality of Rights and Non-discriminatory Principle

Romania is a democratic state, in which all citizens are equal in face of the law and public authorities disregarding their race, nationality, ethnic origin, language, religion, gender, opinion, political membership, wealth and social background. In order to support the stipulations of the Constitution of Romania, the government issued a regulating document to establish the legal framework on non-discriminatory Romanian citizens: Ordinance on preventing and sanctioning all forms of discriminations (Government Ordinance 137/2000).

This Ordinance, which is representing an important step ahead in the fight against eliminating all forms of discrimination, forbids any kind of discrimination: racial, national, ethnic, linguistic, religious, social, opinion, gender, sexual trend discriminations, as well as discrimination on reasons of belonging to disfavoured social categories, and so forth.

To sanction all these manner of discrimination, it is stipulation to set up an Anti-discrimination National Council to fight against discrimination.

Education in the National Minorities' Languages

The Romanian authorities' concern to perfect the system of protecting the rights of the persons belonging to national minorities is clearly stressed by the Romanian Law on Education no.84/1995. Thus, the legal framework of Romania is providing:

- education in mother tongue at all levels and kinds of education;

- possibility to set up groups, sections, colleges and faculties in mother tongue within the state-universities;
- possibility to set up multi/cultural universities;
- the right to perform admittance and regular examinations in the language each subject was studied.

The Hungarian minority of Romania has a large number of kindergartens, schools, high schools and faculties whose teaching language is Hungarian.

Within the multi/cultural universities, such as "Babes-Bolyai" University of Cluj-Napoca there are faculties and sections with Hungarian teaching only, while at the Medical and Pharmacy Institute of Targu-Mures and the theatre Institute of Targu-Mures, the entire educational process takes place in Hungarian.

The Hungarian minority's religious cult institutions of Romania include theological schools and institutions to train their cult personnel. Teaching in these educational establishments is exclusively in Hungarian.

Retaining cultural Identity and Freedom of Expression in Mother Tongue

- To encourage and support the retaining of national identity of the persons belonging to minorities, the Romanian State is granting the possibility of expressing in their mother tongues by means of local and national written media, publishing houses and radio and TV stations. In Romania, there are newspapers and magazines in Hungarian, German, Serbian, Turkish etc, publications that provide the opportunity to the persons belonging to national minorities to retain their languages, cultures and traditions.
- A large number of magazines are published in the minorities' languages: 16 in Hungarian, 2 in German, 1 in Ukrainian, 1 in Hebrew etc. The total number of the publications in ethnic minorities' languages is approximately 130.
- Some newspapers and periodicals published in the languages of the national minorities are financed by the Romanian state through the National Council for Minorities (a consulting body of the Inter-ethnic Relations Department) or through the Ministry of Culture and Cults, a ministry that is financing the publication of books in national minorities' languages. Publishing houses such as "Kriterion" and "Mentor", as well as other publishing houses of the country centers, are publishing books in minorities' languages.
- Persons belonging to national minorities have national radio and TV programmes. The National Radio and TV Companies are producing and broadcasting programmes in the national minorities' languages both through their central and local studios. The programmes devoted to minorities are approximately 26 hours a week in Hungarian and around 25 hours in German. These programmes are

operating on the principle of editorial independence and at the same time the editors of these programmes are also belonging to several relevant international associations.

- Local radio and TV stations are also operating according to the principles of autonomy and editorial independence. Stations such as those of Cluj-Napoca, Targu-Mures, Timisoara and Constanta are broadcasting various programmes in 10 languages of the national minorities. These programmes are gathering each week: 71 broadcasting hours in Hungarian, 14 in German, 7 hours in Serbian and 30 minutes in Slovak, Czech, Bulgarian, Greek, Turkish, Tartar and Russian.
- National Radio and TV Companies are weekly broadcasting 60 minute-programmes for the Gypsy minority of Targu-Mures and a 15 minute-programmes in Craiova, every week.
- The organizations of minorities represented to the Parliament are provided a series of special programmes, devoted to retaining and promoting their cultural traditions.
- The Romanian State is providing to the persons belonging to minorities the right to have their own cultural life, as well as their own institutions and associations, in order to retain and develop their spiritual identity.
- The State is also guaranteeing the protection and keeping of the assets which are the minorities' cultural and historical patrimony, such as: monuments, historic, cultural and religious objectives, which stand for the existence and life of the minorities on the territory of Romania.
- In the same conditions, the state is subsidizing publishing houses and cultural institutions of minorities, drama theaters and opera houses, folk ensembles, museums, libraries, etc.
- In Romania, there are 7 drama theatres in Hungarian (in Targu-Mures, Oradea, Cluj-Napoca, Timisoara, Satu Mare, Sf.Gheorghe and Gheorghieni), 3 puppet theatre and an opera theatre (Hungarian Opera House of Cluj-Napoca).

Giving back goods to national minorities organizations

Romanian authorities devote particular attention to reparatory measures, which is giving back goods that belonged to national minorities' organizations.

- Thus, the emergency Governmental Ordinance no.21/1997 (modified by the Governmental Ordinance no.111/1998 and Emergency governmental Ordinance no.101/2000), regulate the giving back of buildings that belonged to Jewish community in Romania (according to this normative document 6 buildings were given back);

- Emergency Governmental Ordinance no.12/1998 is stipulating the giving back of 17 buildings that belonged to national minorities' organizations and that had passed to the state-ownership after 1940 by constriction, confiscation, nationalization or deceiving manoeuvres (out of these, 8 buildings were given back to the Hungarian minority, 3 to German minority, and one to each of the Bulgarian, Polish, Turkish, Greek, Armenian, Serbian minority);
- By Governmental Ordinance no.112/1998 4 buildings were given back to certain religious organizations and cults of the minorities (out of these, 3 were given to the Jewish community);
- Emergency governmental Ordinance no.83/1999 (modified and completed by the Emergency Governmental Ordinance no.101/2000) stipulates giving back 36 buildings which belonged to certain organizations of the national minorities of Romania (Jewish community – 12, Hungarian – 15, German 4, Greek 2, Slovak – 1, Ukrainian – 1 and Serbian – 1);
- The Emergency Governmental Ordinance no.94/2000 stipulates giving back certain buildings, which belonged to religious cults of Romania. In bases of this normative documents at most 10 buildings will be given back to each cult center or parish center;
- Governmental Decision no.1334/2000 on completing the annex to the Emergency Governmental Ordinance no.83/1999 stipulates giving back 37 buildings out of which 20 belong to the Jewish community;
- These normative documents stipulates the setting up of parity committees to include both the representatives of the government and of the respective communities make up the necessary documentation for giving assets back. The new Law on the legal situation of certain buildings abusively undertaken by the state between March 6thm 1945 and December 22nd, 1989 (Law 10/2001) stipulates, by Article 8, paragraph 2, that “the legal situation of the buildings that belonged to religious cults or national communities, undertaken by the state or by other legal persons, will be regulated by special normative documents.”

V. Institutional Framework

Ombudsman

The Institution of Ombudsman was set up according to Law nr.35/1997. This is receiving and solving complaints addressed by natural persons, because of having their human rights and freedoms trespassed by the bodies of the public administration. The structure of this institution includes a Department for Minorities, Cults and Mass Media.

Department for Inter-ethnic Relations

Until 2001, the government programmes for minorities were administrated by the Department for National Minorities' Protection (DPMN). Presently, the governmental programme for inter-ethnic relations is made up and coordinated by the Ministry of Public Information. Within this ministry there is a Department for Inter-ethnic Relations headed by a secretary of state. The National Office for Gypsies and the Regional Office for Inter-ethnic Relations are subordinated to this. A sub-secretary of state coordinates each of these. The two sub-secretary of state are appointed by the Party of Gypsies and the other one by the Hungarian Democratic Union of Romania.

Inter-ministerial Committee for National Minorities

The Inter-ministerial Committee for National Minorities was set up according to the Governmental Decision no.460/august 7, 1998. The works of this Committed are attended by the representatives of the central administration institution, as well as by guests from other institutions (Parliament, Romanian Academy, non-governmental organizations etc.).

This Committee has the role to support the activity of the Department for Inter-ethnic Relations to exercise its own attribution and contributes to making up the unitary strategy on protecting persons belonging to national minorities.

National Minorities Council

It is a government consultative body (set up on June 21, 2001), coordinated by the Ministry of Public Information, whose goal is ensure relations to the legally constituted relations of the citizens belonging to national minorities. This council is made up of 3 representatives of the organizations of the citizens belonging to national minorities, represented to the Parliament of Romania.

The Council for National Minorities has the following main attributions:

- coordinates and supports the activity of the organizations of citizens belonging to national minorities;
- proposes for approval to the Minister of Public Information the sharing of funds allotted from the state budget to support organizations of citizens belonging to national minorities;
- makes proposal to improve the legal framework for national minorities;

- forwards proposition on taking administrative and financial measures, in order to solve more efficiently certain problems in its charge.

The budget funds administrated by this institution are used for publishing books and newspapers in the national minorities' languages. The council is including three specialized committees for various fields of activity: legislation, social and economic-financial matters, culture, cults and mass media.

VI. Present Concerns in the Respect of Minorities

Provisions of the 2000-2004 Governing Programme

The governing programme, approved by the Parliament of Romania in December 2000, includes a special chapter on protecting national minorities, which is specifying trends, democratic principles and strategies to be applied for providing social and political conditions for freely and fully manifesting of all minorities, guarantees aiming at observing human rights, according to Romania's engagement for European and Euro-Atlantic integration, as follows:

- The Government will act to continually develop the legislative and institutional programmes started in the last decade, so that to effectively guarantee the right of the persons belonging to ethnic minorities to retain, develop and freely express their identity, in the light of their culture, language, religion, public life and education. The joint effort and dialogue with the national minorities' organizations will be stimulated in order to learn their specific problems and how to improve decision-making.
- The government will act in order to develop the cultural diversity to the use of the entire society, to prevent the apparition of extremist trend currents promoting intolerance and inter-ethnic hatred. At the same time, the government will provide good operability to an education system for observing the law and promoting democratic values.
- The government programme starts from the conviction that minorities are a great resource for any country. A good management of this resource is a manner of equally serving the development of minorities' identity, and to guarantee the inter-cultural cooperation. This model can be defined as a civic-multi-cultural model.

The specific objectives to support multi-cultural development are:

- providing a community framework favorable to continuing the development of each specific cultural model, both to the relevant community, and to local and national community.
- developing a model of transferring to the majority the cultural values of minorities, so that to be able to provide to each and every citizen, the opportunity to assimilate knowledge on the spirituality and history of the "other one" sharing the space with.
- administrating tensions, which might arise at a certain moment, so that to prevent conflicts and be able to manage crises.
- the Government will analyze the opportunity of enlarging the existing education and media framework for national minorities.

The Government will go on analyzing the opportunities to consolidate and develop ethnic identity for the largest minority, the Hungarian minority, in the respect of education, culture, language and religion. Thus, the Government will take into account:

- the enlargement of the existing educational framework divided into sections and levels of training – elementary, vocational, high school, university;
- providing conditions to use mother tongue in public activities, so that to encourage multi-cultural society, and multi-linguistic integration;
- inter-connecting and integrating Hungarian radio and TV cultural programs, so that to be coherently coordinated on national level;
- providing conditions to retain and develop the confessional patrimony, observing the principle of freedom of conscience and religious pluralism;
- the correct representation to the social and professional structures of the country, on basis of the principle of equal chances within the context of the effort to consolidate society's unity in diversity.

A national strategy including relevant programmes, will be made up in order to substantially improve the situation of Gypsies, as follows:

- varied kinds of education to take into account the Gypsies' present training level;
- the national Television will produce educational programmes to attract illiterate people to learn Romanian and to restrict school abandoning;
- the relevant state-institution will involve in socializing young Gypsies.
- achieving an economical housing programme in the country, for Gypsy families and granting them land;
- directing sanitary education to assist Gypsies;
- Gypsies will be represented to local public administration;
- politics to make Gypsies responsible from the civic point of view and be provided citizenship education;

- the State participation in international projects to financially and culturally support Gypsies.

At the same time, strategies for cultural and social integration of the other ethnic communities will be made up.

National Strategy to Improve Gypsies' Situation

The Romanian Government Strategy to improve Gypsies' situation was adopted during the government meeting of April 25, 2001. According to the governing programme this strategy includes steering principles and short and medium term objectives.

The steering principles to implement the strategy are as follows:

- **Principle of consensus** – the Strategy to improve Gypsies' situation is the result of a joint effort made by the government and the Gypsies' organizations. Implementing these strategic programmes and projects will be achieved in consulting with the representatives of the Gypsies' organizations.
- **Principle of social usefulness** – the Strategy is responding to the specific needs of Gypsies, in order to achieve the necessary conditions to integrate Gypsies in society.
- **Principle of dividing into sections** – the Strategy is made up and applied in fields that are divided into sections, so that the responsibilities are clearly specified.
- **Principle of decentralized execution** – the Strategy is achieved by institutions and public authorities which are in charge with specific responsibilities, and by attracting non-government organization to implement local programmes that are a part of the Measure Plan to put the Strategy into practice.
- **Principle of legislative compatibility** – the stipulations of the strategy are in accordance to the constitution and Romanian laws, as well as the relevant international legislation and practice.
- **Principle of identity difference** – this strategy aims at edifying an institutional system of community development, fighting against the discrimination of Gypsies, promoting inter-cultural education, creating an elite of gypsies, in order to prepare them for social solidarity, and help them reconstruct their identity.
- **Principle of equality** – the protection of the Romanian citizens of Gypsy origin must not damage encroach upon the rights and freedoms of the other Romanian citizens.

The Goals of the Strategy:

- Institutionalizing political objectives taken up by the government in the respect of Gypsies, and making central and local public authorities involve more in applying concrete measures to improve the situation of the Romanian citizens of gypsy origin.
- Backing the shaping and promotion of the intellectual and economic gypsy elite to support social and modernizing policies.
- Eliminating stereotypes, misconceptions and practice of certain civilian servants of the central and local public bodies, who are encouraging the discrimination of the Romanian citizens of Gypsy origin.
- Producing a positive change in public opinion in the respect of Gypsies, on basis of the principle of tolerance and social solidarity.
- Stimulating the participation of Gypsy ethnics in the economic, social, educational, cultural and political life of society, by attracting these to assistance programmes and community development.
- Preventing institutional and social discrimination of the Romanian citizens of Gypsy origin in their access to the services provided by society.
- Providing equal chances to gypsy ethnics in order to reach a decent life standing.

The strategy includes the guidelines and a general plan of measures to be taken in the following fields: administration and community development, housing, social security, health, economy, justice and public order, children's protection, education, culture and cults, communications and civic participation.

The strategy is designed on 10 years (2001-2010); with a four-year measure plan (2001-2004).

UDMR Participation in the Political Life of Romania

The Hungarian minority of Romania is politically represented by the Hungarian Democratic Union of Romania (UDMR), an organization present in the Parliament since the 1990 elections.

After signing the Treaty between Romania and Hungary, UDMR has been between 1996-2000 a part of the majority coalition, together with CDR (Democratic Convention of Romania) and USD (Social Democratic Union), the governing coalition by that time. Co-opting UDMR to ruling was internationally considered as a token of normalizing the inter-ethnic relations in Romania and an expression of Romania proving the way it is protecting national minorities' rights and their participation in public life.

In the Report on the Romanian 2000 autumn elections, the OSCE observers, by means of the Office of the Democratic Institutions and Human Rights, consider that "Romania has reached positive standards in the respect of the national minorities' participation in the electoral process. (OSCE, Office for Democratic Institutions and Human rights, Romania – Presidential and Parliamentary Elections, November 26 and December 10, 2000, Final Report, Warsaw, January 15, 2001, p.1)

Specifying that the electoral atmosphere was normal and characterized by the "total absence of inter-ethnic tensions and campaigns against minorities, the Report is mentioning that the representatives of minorities to the Parliament and to the local administration bodies, considering that the concerns and problems are properly and efficiently promoted by the present system encouraging the spirit of dialogue and inter-ethnic cooperation.

In the 2000 elections, UDMR obtained parliamentary representation correspondingly to the percentage of Hungarian out of the entire population, which is 7%. Undertaking governing in December 2000, PDSR signed a parliamentary cooperation agreement with UDMR in order to support political, administrative and economic reform measures started by the government, as well as solving by political and parliamentary means the specific demands of the Hungarian minority.

On basis of this agreement, the Parliament of Romania passed, during the February – June 2001 session, the Law on local public administrations and the general regime of local autonomy, which is including permissive and favourable disposition to use Hungarian in administration and in relations between local authorities and citizens in the localities in which the Hungarian minority is over 20%.

In the light of this political cooperation, the UDMR representatives are at the leadership of certain Prefect's Offices and certain decentralized services of the public administration; they are present in the structures of certain institutions, on the principle of competency. UDMR has also a sub-secretary of state who is heading the **Regional Office for Inter-ethnic Relations** within the Department for Inter-ethnic Relations, which is included by the Ministry of Public Information.

On Parliamentary level, UDMR has a Parliamentary group both in the Senate and the Chamber of Deputies, in the present legislature too. According to the Regulations of the two Houses, the UDMR senators and deputies are present to the standing bureaus of these, and are a part of the leadership structure of certain Parliamentary standing committees.

Thus, in the present session of the Senate, one of the four positions of Vice-Presidents is held by a UDMR Senator, while within the standing committees, the UDMR Senators hold two chairmanships (Committee for Human Rights and Minorities, Committee for Public Administration and Land Organizing) and a Secretary position (Committee for Agriculture, Food Industry and Forestry).

At the Chamber of Deputies, the Parliamentary Group for National Minorities, other than the Hungarian one, has in the framework of the standing committees, two chairmanships, two vice-chairmanships and two secretary positions.

VIII. ANNEXES

CONSTITUTION OF ROMANIA (Excerpts)

Article 4

Unity of people and equality between citizens.

1. The State foundation is laid on the unity of the Romanian people.
2. Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.

Article 6

Right to identity

1. the State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity,
2. The protecting measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.

Article 16

Equality of rights

1. Citizens are equal before the law and public authorities, without any privilege or discrimination.
2. No one is above the law.

3. Access to a public office or dignity, civil or military, is granted to persons whose citizenship is only and exclusively Romanian, and whose domicile is in Romania.

Article 20

International human rights treaties

1. Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human rights, with the covenants and other treaties Romania is a party to.
2. Where any inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to, and internal laws, the international regulations shall take precedence.

Article 25

Freedom of movement

1. The right of free movement within the national territory and abroad is guaranteed. The law shall lay down the conditions for the exercise of this right.
2. Every citizen is guaranteed the right to establish his domicile or residence anywhere in the country, to emigrate, and to return to his country.

Article 29

Freedom of conscience

1. Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.
2. Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
3. All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.
4. Any forms, means, acts of actions of religious enmity shall be prohibited in the relationships among the cults.
5. Religious cults shall be autonomous from the State and shall enjoy support from it including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.
6. Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them.

Article 30**Freedom of expression**

1. Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.
2. Any censorship shall be prohibited.
3. Freedom of the press also involves the free setting up of publications.
4. No publication shall be suppressed.
5. The law may impose upon the mass media the obligation to make public their financing source.
6. Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and to the right to one's own image.
7. Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.
8. Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Law shall establish indictable offences of the press.

Article 32**Right to education**

1. The right to education is provided for by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and post-graduate refresher course.
2. Education of all grades shall be in Romanian. Education may also be conducted in a foreign language of international use, under the terms laid down by law.
3. The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.
4. Public education shall be free, according to the law.
5. Educational establishments, including private institutions shall be set up and conduct their activity according to the provisions of the law.
6. The autonomy of the Universities is guaranteed.

7. The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.

Article 37

Right of association

1. Citizens may freely associate into political parties, trade unions and other forms of association.
2. Any political parties or organizations which, by their aims or activity, militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania shall be unconstitutional.
3. Judges of the constitutional court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties.
4. Secret associations are prohibited.

TREATY*
of understanding, cooperation and good neighbourhood
between Romania and the Republic of Hungary

Article 14

The contract parties will encourage a climate of tolerance and understanding between their citizens who have different ethnic and religious origins, cultures or languages. They condemn any manifestation of xenophobia, hatred, discrimination or racial, ethnic or religious prejudices, and will take efficient measures to prevent any of these manifestations.

Article 15

1. a) The contract parties engage the that, according to the rights and duties of persons belonging to national minorities living on their territory, to observe the Framework convention of the Council of Europe on national minorities, if in their domestic order of right there is no regulation more favorable to persons belonging to national minorities.
b) The contract parties, without encroaching upon the above-mentioned paragraphs in order to protect and promote the ethnic, cultural, linguistic and religious identity of the Romanian minority in Hungary, and Hungarian minority in Romania, will apply, as juridical engagement, the stipulations defining the rights if these persons, the stipulations defining the rights of these persons, the way these are incorporated within the relevant documents of the United Nations Organization, Organization for Security and cooperation in Europe and the council of Europe, mentioned in the annex to this treaty.
2. As a result, the contract parties re-assert that the persons, referred to by the previous paragraph, have the right, exercised individually or together with other members of their group, to express freely, to retain and develop their ethnic, cultural, linguistic and religious identity. Accordingly, these have the right to set up and retain their own institutions, organizations or educational, cultural and religious association that can request voluntary financial contributions, as well as public support, according to the domestic legislation.
3. The contract parties observe the right of the persons belonging to the Romanian minorities in Hungary and the persons belonging to the Hungarian minority in

Romania to freely use their mother tongue, in private and in public, orally and in writing. They will take the necessary measures so that these persons to be able to learn their mother tongue and to have the proper opportunities, to be educated in their language, in the framework of the state education system, on all levels and kinds of training, according to their needs.

The contract parties will provide conditions to make possible the use of mother tongue in their relations with local administrative and judiciary authorities, according to the domestic legislation, as well as with the international engagement taken by the two sides. These persons have the right to use their name and surname in their mother tongue and will enjoy the formal recognition of these. In the areas inhabited by a large number of persons belonging to the relevant minorities, each contract party will allow exhibiting – in the minority's language too – the traditional denomination of the locality, street names and other topographic inscriptions for the public.

4. The contract parties will observe the right of the persons belonging to national minorities to have access, in their mother tongue, to information and election and written media, as well as to freely exchange and broadcast information. They will grant these persons the opportunity, in the framework of each one's domestic legislation, to set up and administrate their own mass media.
5. The contract parties will ensure the exercising by the persons belonging to these minorities the right to effectively participate, individually or by their parties and organizations in the political, economic, social and cultural life and in solving problems of national and local interest, by their representatives selected to the central and local public authorities bodies. Each contract party, in decision-making, on protecting and promoting these persons' national identity, will consult their organizations, political parties and associations, in accordance to the democratic decision-making procedures, stipulated by the Law.
6. The contract parties respect the cultural and historic inheritance of the national minorities, support their efforts to protect historic monuments and sites, which preserve the culture and history of minorities, and take the due measures so that in the mixed-population areas, the citizens acknowledge the Romanian and respectively Hungarian cultural values.
7. The contract parties will respect the right of the persons belonging to these minorities to keep in touch freely to one another and over the borders with the citizens of other states, as well as their right to participate in the activities of the national and international non-governmental organizations.
8. The contract parties recognize that in exercising the rights referred to by this article, any persons belonging to a national minority will observe, like any other citizen of the relevant state, the national legislation and the other persons' rights.

These persons enjoy the same rights and have the same citizen duties like the other citizens of the country in which they live.

9. The contract parties, without encroaching upon the measures taken in the framework of their general integration policies, will refrain from any policy or practice whose purpose is assimilating, against their own will, the persons belonging to national minorities, and will protect these persons against any action aiming at such a kind of assimilation. They will also refrain from taking measures - which modifying the proportion of the population in the areas inhabited by persons belonging to national minorities - are directed against the rights and freedoms coming from the international norms and standards mentioned by paragraph 1 of this article.
10. The contract parties will support each other in pursuing the manner of putting into practice the provisions of Article 5 of this Treaty, the contract parties will also examine the bilateral cooperation problems on national minorities, coming from applying this Treaty, and will set up an inter-governmental committee made up of experts. They will cooperate in correspondingly displaying the procedures of the Organization for Security and cooperation in Europe and of the Council of Europe, supervising the fulfillment of the engagements on protecting minorities, within the organization, which the contract parties subscribed to.
11. The contract parties will cooperate to develop the international legal framework to protect national minorities. They agree to put into practice, as a party of this Treaty, the stipulations of the international documents, in whose light they will take other engagement to promote the right of the persons belonging to national minorities.
12. None of the engagement included by this article can be interpreted as involving any right to enterprise any activity or to commit any action contrary to the purposes and principles of the United Nation Charter, other duties coming from the international law or the provisions of the Helsinki final Act and Paris Charter for a new Europe of the Organization for Security and cooperation in Europe, including the principle of territorial integrity of the states.

- This Treaty was ratified by the Parliament by Law no.113, October 10, 1996 to ratify the Treaty for understanding, cooperation and good neighbourhood between Romania and the Republic of Hungary, signed in Timisoara, September 16, 1996. This Law was published in the Monitory Official of Romania, part I, no.250, October 16, 1996.

LAW NO.68/1992
on electing the chamber of Deputies and Senate

Art. 4. –

- (1) Legally constituted organizations of citizens belonging to a national minority, which in the elections have not obtained at least one Deputy or Senator mandate shall have the right, together, according to tide 59, paragraph (2) of the Constitution, to a Deputy mandate, if they have obtained throughout the country at least five per cent of the average number of validly expressed votes throughout the count for the election of one Deputy.
- (2) The organizations of citizen belonging to national minorities participating in the elections shall be, as far as electoral operations are concerned, juridical equivalent to political parties.
- (3) Organizations of citizens belonging to national minorities which have participated in the elections on the common list of these organizations sheaf also benefit by the provisions under paragraph (1); in this case, if no candidate from the common list has been elected, a Deputy mandate shall for all the organizations which have proposed the list, under the observance of the provisions under paragraph (1).
- (4) The provisions under paragraph (3) shall not apply to an organization of citizens belonging to a national minority which has participated in the elections on the common list with a party or another political formation, or both on common lists, according to paragraph (3), and on their own separate lists.
- (5) The Deputy mandate assigned according to paragraph (1) or (3) shall be granted over and above the total number of Deputies resulting from the norm of representation.

LAW NO.70/1991*
on local elections

Art. 2. - Romanian citizens, without any distinction of nationality, race, language, religion, sex, political convictions, or profession shall exercise the electoral rights equally.

Art. 103. - In the sense of the present law, the legally constituted organizations belonging to national minorities shall be assimilated to political parties, political alliances, and electoral alliances.

* Republished in the Monitory Official of Romania, part I, no.79, April 18, 1996

LAW NO.215/2001*
on local public administration

Article 17

Within the administrative-territorial units in which citizens belong to national minorities are over 20% of the inhabitants' number, local public administration authorities will ensure, in the relations with these, the use of their mother tongue, according to the stipulations of the Constitution, of this law and international convention whose part Romania is.

Article 40

8. In the communes or towns in which citizens belonging to a national minority are over 20% of the inhabitants' number, the days' agenda is publicly acknowledged also in the mother tongue of the citizens belonging to the relevant minority.

Article 43

3. The works of the meetings is Romanian, the official language of the state. Within the local council in which advisers belonging to a national minority are at least one third of the entire number, the council meetings can use their mother tongue too. In these cases by the care of the mayor, the interpretation into Romania will be ensured. In all cases the documents of the council meetings are written in Romanian.

Article 51

In the administrative-territorial units in which citizens belonging to a national minority are over 20% of the inhabitant's number, normative decision are publicly acknowledged also in the mother tongue of the citizens belonging to the relevant minority, and the individual ones are communicate, at request, in the mother tongue too.

Article 90

- 1) The Romanian language is used in the relations between citizens and local public administration authorities.
- 2) In the territorial administrative units in which citizens belonging to a national minority are over 20% of the inhabitants', in their relations with local public administration authorities and their own specialized personnel, these can address, orally or in writing, in their mother tongue and will get the answer both in Romanian, and in their mother tongue.
- 3) In the conditions stipulated by paragraph 20, persons who know also the mother tongue of the citizens belonging to the relevant minorities will be hired in the positions in charge with public relations.
- 4) Local public administration authorities will ensure inscriptions of the localities' denominations and public bodies under their authorities, as well as public interest announcements also in the mother tongue of the citizens belonging to the relevant minorities in the conditions stipulated by paragraph 2.
- 5) Official documents are compulsorily made up in Romanian.

Article 106

- 1) The county council gathers in ordinary meetings once every two months, called by the Chairman of the County Council.
- 8) In the counties in which citizens belonging to a national minority are over 20% of the inhabitants' number, the day's agenda is publicly acknowledged also in the mother tongue of the citizens belonging to the relevant minority.

GUVERNING PROGRAMME BETWEEN 2000-2004

CHAPTER X: INTER-ETHNIC RELATIONS

National minorities' protection will be achieved by providing opportunities to all minorities' freely and fully manifesting, by observing human rights, according to Romania's European and Euro-Atlantic integration engagements:

- The Government will go on developing the institutional and legislative initiatives of the last decade.
- The Government will involve in ensuring the right to freely retain and develop the expression of ethnic identity to all Romanian citizens belonging to national minorities, so that to fully manifest in the spheres of culture, language, religion, education, training and public life. The joint effort and dialogue to national minorities will be stimulated in order to improve the decision-making and assertion of ethnic identity within the population.
- The government will act for developing the cultural diversity to the use of the entire society, to the purpose of excluding the apparition of certain extremist trends promoting inter-ethnic intolerance and hatred. At the same time, the government will ensure the good operating of an education system to observe the law and to develop democratic values.
- In PSD (Social Democratic Party) thinking, minorities are a great resource for any country. A good management of this resource is a way to equally serve the development of minorities' identity, as well as a way to guarantee the inter-cultural cooperation. This model can be defined as a civic-multicultural one.

10.1. Specific goals to support multi-cultural development are as follows:

- providing a community framework favorable to going on developing each specific cultural model, both in the relevant community, and in the local community, as well as on national level.
- developing a model of transferring the minority's cultural values to the majority, so that to be able to provide every citizen the opportunity to assimilate knowledge on the spirituality and history of the "others" in the same space.
- administrating diversity, tensions and distortion that might arise at a certain point, in order to prevent conflicts and ensure crisis management.
- the government will analyze the opportunity of enlarging the existing framework of education and media components in minority's languages.

10.2. The Government will go on analyzing the opportunities to consolidate and develop the ethnic identity for the most numerous minority, Hungarian minority, in the respect of education, culture, language and religion.

In this respect the Government will take into account:

- enlarging the present education framework into special and various level training: elementary, vocational, high school, university;
- interconnecting and integrating radio and TV cultural programmes in Hungarian, so that to provide these coherence and enhanced consistency on national level;
- providing conditions to use mother tongue in public activities, so that, to encourage this way both multi-culture and multi-linguistic integration.
- providing conditions to preserve and develop the confessional patrimony, in the context of observing the principles of conscience freedom and religious pluralism;
- the correct representation to the social and professional structures of the country, on basis of the principle of equal chances in the context of the effort to edify society's unity in diversity.

10.3. Making up national strategy and specific programmes, to fully ensure the Gypsies' situation, by:

- various forms of education to take into account the Gypsies' present level of training;
- achieving by the national television station certain educational programmes to attract illiterate persons to learn Romanian and limiting the abandon of school;
- making the relevant state-bodies involve in socializing your Gypsies;
- achieving a programme of economical houses in the country, devoted to Gypsies' families and granting them farming lands;
- directing educational and sanitary assistance to Gypsies;
- gypsies' representations to the local public administration;
- civilian responsibility and citizen education policies addressed to Gypsy population;
- State's participation in international projects to support Gypsies financially and culturally.

10.4 Making up certain strategies full cultural and social integration of the other ethnic communities.