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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

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

REPORT

**of the Meeting of the Working Group
of the Commission
with Representatives of the Romanian
and Hungarian Governments respectively**

Paris, 18 September 2001

On 18 September 2001, the Venice Commission Rapporteurs, Mr F. Matscher, Mr F. Luchaire and Mr G. Malinverni, met with representatives of the Romanian and Hungarian Governments respectively, in order to discuss the matter of the preferential treatment by a State of foreign citizens belonging to a national minority.

The Romanian Government were represented by Mr Ion Diaconu, Secretary General of the Minister of Foreign Affairs, Mr Bogdan Aureescu, General Director of Legal Affairs within the Ministry of Foreign Affairs and Ms Irina Donciu, 3rd Secretary of the Directorate of Legal Affairs.

The Romanian representatives submitted that the concept of “nation” does not cover all persons of the same ethnic background, irrespective of their citizenship, but all the citizens of a State. The primary role in the protection of a national minority lies with the State of citizenship. The international community is also empowered to exercise a control in this field, and a “kin State” can participate in this collective control but does not have any power to intervene, on its own and directly, in favour of the minority. This action would be in breach of the principle of territoriality. A kin State can only endeavour to obtain certain benefits for the persons belonging to its kin minority through the recognised channels of bilateral or multilateral negotiations. The unilateral granting by a kin State of benefits to foreign citizens of its origin would create unacceptable discrimination, on ethnic bases, in respect of foreign citizens of a different origin in both the countries of citizenship and the kin country.

Further, the ethnic background can be proved by other means than an official certificate; the latter would seem to create an unacceptable political bond with the kin State. In addition, the belonging to a minority is a matter of personal choice and in this respect a mere declaration should suffice, there being no need for an intervention by State authorities in granting a document proving such belonging.

The Romanian representatives explained that Romania and other States in which Romanian minorities live have entered into bilateral agreements with a view to granting, on conditions of reciprocity, a number of entitlements to persons belonging to these minorities. Any specific or additional entitlement is the object of a bilateral negotiation, i. e. it is given either through annual protocols, programs or understandings or through governmental decisions implementing the bilateral agreements. There exists a “Law on the support granted to Romanian communities from all over the world” of 1998, whose provisions are to be implemented through intergovernmental agreements, programs and understandings to be discussed with the relevant countries.

The Romanian delegation concluded by underlying that Romania has nothing against, and in fact favours the promotion of a State’s cultural identity amongst kin foreign citizens, provided that the internationally recognised channels be used in a spirit of mutual co-operation and understanding.

The Hungarian Government were represented by Mr Zoltan Taubner, Head of the Cabinet of the Ministry of Foreign Affairs, Ms Kinga Gal, President of the Government Office for Hungarian Minorities abroad and Mr Gaspar Biro, independent expert. They were accompanied by Mr Bela Kalman, First Counsellor at the Hungarian Embassy in Paris.

The Hungarian representatives consider that the protection of a minority is primarily the task of the country of which the persons belonging to this minority are citizens, but argued that kin States are not prevented from contributing towards this protection. The role of a kin State in

protecting its kin minorities cannot be limited to culture and education, but must comprise the socio-economic field as well. The bonds of these minorities with the kin State do not impinge on their duty of civic allegiance with their country of citizenship.

Bilateral agreements are a privileged channel in this field, provided however that the ensuing co-operation can be effected in an intensive and constructive manner. At any rate, States are not prevented under international law from enacting legislation aiming at protecting their kin-minorities, and when they do so, the said legislation cannot but have extraterritorial effects. It does not create discrimination but difference in treatment; in assessing whether this difference in treatment can be accepted, the significance of its impact on the less favoured persons must be taken into consideration.

The relations of the national minorities with their kin State are a common problem in Europe. In fact, various European countries have legislation similar to the recently adopted "Act on Hungarians living in neighbouring countries". As regards in particular the issuing of an official document proving the individual's national background, Hungary, Bulgaria, Slovakia and Greece have adopted this solution, although the characteristics of this document are different in each country.

The Hungarian representatives concluded by underlining that each European country has to deal with the problem of the protection of kin minorities in the light of its own, specific situation: there are plentiful possible solutions, and it would be a mistake to believe that there is only one acceptable option.