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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Opinion on the Hungarian Bill N°. 5190
on the Rights of National and
Ethnic Minorities**

**approved by the Commission during its 14th meeting
(Venice, 5-6 February 1993)**

1. As a whole, the Bill presents a remarkable and very impressive endeavour to regulate in a satisfactory way a subject as difficult and complicated as is the legal position of minorities in a country. The Hungarian proposal for comprehensive legislation in this field is without known precedent. On the part of the Commission a number of questions and some critical comments will be stated in the following paragraphs, but they have to be understood primarily as evidence of the Commission's great interest in the subject matter in general and the efforts of the Hungarian legislator in particular.

2. Before commenting on the purport and structure of the Bill, the Commission wishes to make some preliminary remarks. It has to be observed at the outset that the significance of the proposed legislation and the effects it will in due time produce in society, are difficult to estimate without the necessary basic knowledge of other relevant Hungarian laws and of the interrelationship between these laws.

Further, the absence of definitions of certain terms and expressions - perhaps a matter of common knowledge in Hungary - stands in the way of a complete understanding by the non-Hungarian reader. In particular as regards the following notions :

- 'districts of settlements' ('zones de peuplement');
- 'minority self-governments' ('administrations autonomes de minorités');
- 'self-governmental groups' ('groupes autonomes');
- 'area self-governments' ('administrations autonomes territoriales');

- 'partial settlement self-governments' ('administrations autonomes de zones partiellement peuplées par des minorités').

3. Turning now to the tenor of the proposed legislation, a first question concerns the meaning of the term 'Hungarian citizen'. The text as a whole seems to consider persons holding Hungarian citizenship and belonging to a minority, as equal members of the Hungarian population. In one or two places, however, the expression 'Hungarian population' has been used in a narrow sense, excluding members of minority groups. See paragraph 25(2) of the Bill.

4. Paragraph 1 of the Bill proposes an objective norm for answering the crucial question, whether a certain national or ethnic group has to be considered as a minority for the purposes of the law. One of the criteria is: living in Hungary for at least a century (paragraph 1(2)).

In addition to the technical problems of calculation, the Commission expresses doubt on this criterium. The Commission recalls that the definition of minorities in its proposal for a Convention does not contain such a criterium of time.

5. Section (3) of paragraph 2 excludes refugees, immigrants, permanent alien residents and stateless persons from the application of the law.

In as much as such persons - notably aliens and stateless persons - do not hold Hungarian citizenship, section (3) is superfluous: these persons are already excluded by definition.

On the other hand, there would seem to be no good ground for withholding from refugees and immigrants, when once naturalised, the right to join an existing national or ethnic group or minority. Withholding such a right without good grounds, might cause discrimination.

The Commission recommends to consider whether section (3) could be deleted.

6. From the text (as translated) of paragraphs 7 and 9 of the Bill it may be concluded that the law not only recognises the inalienable right of individuals to join a majority of their choice, but at the same time forbids to restrict the admission to membership of the minorities. In so far as such prohibition is directed to the State, it may indeed be justified. However, in the opinion of the Commission, it would not seem to be correct to deny the freedom of a private minority association to apply its own rules and requirements for admission to its membership.

7. Pursuant to paragraph 2(2) of the Bill, minorities not yet recognised as such, may apply for recognition. In this connection the Commission would suggest that paragraph 40 of the Bill, concerning recognised minority languages, ought to be supplemented with a provision allowing the admission of additional languages.

8. The proposed law will not apply to religious minorities; see page 3 (paragraph 7) of the Explanatory Report. Since religious minorities in Europe, at times, have heavily suffered from discriminatory measures and persecution, the exclusion of these minorities from the application of the Hungarian law might well deserve some more explanation than the mere statement referred to above. The Commission considers that such a law on minorities should also apply to religious minorities. However, the Commission notes that other constitutional or legislative provisions of Hungarian law apply to religious minorities. It hopes that these provisions would provide adequate protection for those minorities. In addition, the Commission notes that the vast majority of the Jewish communities in Hungary, consider themselves only as members of a religious minority.

9. Paragraph 12(c) of the Bill guarantees the right of members of a minority, to the protection of their personal data relating to such membership.

On a first impression there would seem to be a contradiction between, on the one hand, the recognition of everyone's right to belong to a minority and the - public - protection of all consequential rights, and, on the other, the concealment of the data upon which the relevant rights have to be based.

10. Amongst the rights of persons belonging to a minority is, in accordance with paragraph 3(4) of the Bill, the right to live on his or her "motherland". Such a right would seem to have two aspects : the right not to be expelled from, and the right to return to the "motherland". This latter aspect, if unlimited, might result in inflicting injustice upon other citizens, who in the meanwhile lawfully have settled in that particular place (and who would risk 'an expulsion or a forceful resettlement', compare the final phrase of paragraph 4(2)).

Consideration might be given to the question whether the above-mentioned right has to be qualified.

11. Amongst the rights formulated in the proposed law, there may be a few more which need to be qualified, if the necessary limitations do not already result from other legislation in force in Hungary. In particular, the Commission points to paragraph 10 of the Bill, concerning, amongst other things, the right to preserve minority traditions. Certain minority traditions, practised in some countries, may not be acceptable as a matter of human rights or public order in Europe.

12. According to paragraph 19 of the Bill, minorities will have the right to parliamentary representation. This, in the opinion of the Commission, is one of the most important rights in a democratic society. This raises the question, whether the right is not too important to leave its elaboration to other legislation.