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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**THE OFFICIAL POSITION OF
THE ROMANIAN GOVERNMENT ON
THE LAW ON HUNGARIANS LIVING IN
NEIGHBOURING COUNTRIES**

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Introduction

1. At a moment where new challenges are addressed to the “new democracies” in the field of protection of minority rights, the Romanian Government has the intention, through this work, to support the scientific efforts of the Venice Commission, whose opinion will, we are certain, contribute to the development of democracy through law.

The analysis of the Law has the relevance of a **case study**, since the situation of the Hungarian minority is not singular.

It is certain that the international community should be prepared to praise or to discourage such initiatives, but to have nevertheless a position, taking into account that it raises a problem of broader public order.

2. Due attention should be paid to **the question of the limits of a more serious involvement of the kin State and the role of the bilateral Treaties between the kin State and the State of citizenship.**

It is beyond any doubt that in the field of human rights and rights of the persons belonging to national minorities, the international community and the state of citizenship are both concerned, but the primary competencies belong to the State of citizenship. In this respect, **the principle of subsidiarity** operates, the international community taking over the protection only if the State fails to grant the protection that is primarily incumbent to it. This principle is conceived in such a manner as **to avoid unilateral interventions of another State than the State of citizenship** in the protection of rights of persons belonging to national minorities, otherwise the stability of the legal relationship between the citizens and their State being affected, by creating a quasi-legal and parallel legal connection.

3. **The regulations in force** in Romania in the field of the protection of the rights of persons belonging to national minorities must not be ignored in order to have a complete view on the relevant elements. The political bilateral Treaty of 1996 regulates (art.15) **in terms of reciprocity** the situation of the persons belonging to the Hungarian minority living on the territory of Romania and, respectively, of the Romanian minority living on the territory of the Republic of Hungary.

The Romanian side is essentially favourable to the idea of granting, in co-operation with Hungary, the highest level of rights for the persons belonging to the Hungarian minority, but as specified in the **bilateral** Treaty, only as a result of **bilateral** co-operation, **by concluding bilateral agreements.**

4. Our study concentrates on the examination of **the conditions of the protection of the rights of persons belonging to national minorities.**

Thus, one cannot but notice that it is not only in the field of culture and education that the Law provides a preferential treatment for persons of Hungarian ethnic origin, but also in the field of circulation of the labour force, in the field of transports, trespassing the margins of the field covered by the international documents in this matter.

5. Our study examines the **different types of discrimination enforced** by the Law: discrimination among members of the Hungarian community, discrimination between the persons belonging to the Hungarian minority living in Romania and the Romanian minority living in Hungary, discrimination between persons belonging to other national minorities living on the territory of Romania, discrimination between the persons of Hungarian ethnic origin and the majority of the population of the State they are living in.

In this context, **the problem of positive discrimination** must be tackled, with a particular view on its limits. It is largely recognised that if positive discrimination goes over a certain threshold (represented by the moment when **equality of chances** is reached), it turns into a situation (condemned by the international community), of superiority of the group priority disfavoured. In our opinion, it is obvious that the Law on Hungarians living in the Neighbouring Countries goes beyond the conditions set forth in the relevant international documents (an objective and reasonable justification, the temporary character, the goal of granting of a full equality between persons belonging to the minority and the majority of the population) in order to be along with the international standards.

6. The degree of conformity of the Law with the provisions of the European Treaties setting forth **the principle of non-discrimination between the citizens of European Union**, especially in the field of labour law is also analysed.

7. As far as the extraterritoriality of the Law is concerned, it is more visible in what concerns the granting of the **Identification Document** (Certificate of Hungarian ethnic origin and Certificate for dependants of persons of Hungarian nationality), a part of the procedure having to take place on the Romanian territory. The practice of issuing ethnic IDs could also lead to the modification of the generally admitted standards in the field of the determination of the ethnic origin.

A special remark is made on the issue of **the concept of "nation"**, this concept being regarded totally differently by the Hungarian party as the international community as a whole. Thus, in the Romanian conception, which shares the generally admitted principles, the nation is formed by all the citizens of the country,

notwithstanding their ethnic origin. The Hungarian conception is quite different; the mother-land is considered to be Hungary for all persons of Hungarian ethnic origin living abroad.

In our opinion, this is an atypical document with **racial characters**, and it must be analysed with due attention and objectivity, taking into account all its possible implications, including that it will represent, if it will be "promoted" by the representatives of the international community, a precedent in the field of protection of the rights of persons belonging to national minorities.

1. General considerations regarding the adoption of the Law by the Hungarian Parliament

The implications of the adoption of this Law by the Hungarian Parliament should be analysed in order to clarify several essential aspects related to the law: First, the situation of the Hungarian minority is not singular; as a consequence, such a legislative demarch could be undertaken also by other States which are in a similar situation as Hungary: persons of the same ethnic origin as the majority of the population of these States are living in foreign countries. In these conditions, **the international community should be prepared to praise or to discourage such initiatives, but to have nevertheless a position**, taking into account that the regulation of the situation of the persons belonging to national minorities is, beyond the recognised competencies of the State of citizenship, **a problem of the international public order also.**

In this balance, it should be taken into consideration which are the limits of a more serious involvement of the kin State and the role of the bilateral Treaties between the kin State and the State of citizenship, having in mind the current practice of the European States concerning the regulation of the situation of persons having the same ethnic origin as the majority of their population, but which are living in foreign countries. (The situation of the legislative practice in this field of the States which are members, observers or special guests to the Council of Europe proves that **no European Law has for the moment all the elements of the Hungarian Law (annex II): restriction of the scope of the Law exclusively to the persons living in the neighbouring countries, granting an Identification Document, granting socio-economic rights, elements of extraterritorial application.** The situation of the European legislative practice, together with a synthesis of this information, is jointed to the position of the Romanian Government).

1.1 The partition of competencies between the role of the State and the role of the international community in the protection of the rights of persons belonging to national minorities

The regulation of the rights of the persons belonging to national minorities is not an exclusive domestic competence of the State where these persons are living. In the field of human rights and rights of the persons belonging to national minorities, the international community and the state of citizenship are both concerned, but **the primary competencies belong to the State of citizenship.**

1.1.1 The role of the State of citizenship

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

Since the importance of the role of the State in the protection of the rights of persons belonging to national minorities is fully recognised, the problem is to identify the proper modalities in which the State can be assisted by the international community in order to fully ensure the protection of rights of the persons belonging to national minorities.

The protection of the rights of persons belonging to national minorities is primarily the competence of the State of citizenship. The international law and the practice of the OSCE High Commissioner on National Minorities show also this perception. The repartition of the most consistent obligations in the task of the State of citizenship is founded **on three reasons**, of civic and functional nature:

1) The relationship founded on citizenship is consolidated on specific, mutual rights and obligations of both sides: the State and its population. In the framework of this relationship, **the obligation of fidelity of the citizen is counterbalanced by an entire series of rights granted to the citizens by virtue of the State's authority. The State has the capacity to grant the rights in such manner as to ensure equality between its citizens. Equality of rights between the citizens determines, as a consequence, the social cohesion and the homogeneity of aspirations** of these persons.

2) If the rights of persons belonging to national minorities are not properly achieved it is more functional that the international community focuses its attention towards **one State which should be held responsible for the infringements of rights of persons belonging to national minorities which are living on its territory.** Too many actors in this field would render difficult the identification of the responsible. The ethnic criterion is somehow unstable since it depends on the free choice of the subject. Hence, a series of difficulties appear in the establishment of the responsibility of the kin state, which could, following this theory, be held responsible for a person it has no legal bounds with. If the persons of Hungarian ethnic origin would be exposed to a discriminatory regime on the territory of Romania, the Romanian State would be responsible for those infringements of rights. This reasoning means that the obligation to ensure full enjoyment of rights for persons belonging to national minorities on the territory of Romanian is incumbent to the Romanian State.

3) **The State of citizenship has all the instruments** in order to provide the highest level of protection of the rights of persons belonging to national minorities, deriving from its **exclusive authority (on the territory where the persons belonging to national minorities are living) in all its dimensions, including the legislative one, in conformity with the principle of the territoriality of the Law.** The political will to determine the State to behave as such is activated by the international co-operation to this purpose, between the States. The fact that the State has the most

important role in regulating the situation of persons belonging to minorities is an expression of its sovereignty and of the strategic trend manifested in the spirit of elaboration of all relevant international documents that the minorities should be integrated **in** the State of citizenship and not dissociated from the rest of the population of the State.

*The effective **protection** of the rights of persons belonging to national minorities is the right and duty of the State of citizenship.*

4) Apart these arguments, the international documents (see for example **Resolution no. 47/135**, adopted at the 47th Session of the **General Assembly of the United Nations**) provide that **States shall take measures** where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the Law. Concluding, **the existence of a domestic Law is a reference reported to which we can establish if a person is subject to discrimination or not.** It is not relevant to report to two different bodies of laws of two different States in order to establish if the persons belonging to national minorities are (or not) subject to discrimination, so if their effective equality with the persons belonging to the majority of the population is or not achieved.

1.1.2 The role of the international community

The international community has a very important role in **promoting** the necessity to ensure the respect of rights of persons belonging to national minorities by the States. **For this purpose, international political or legal instruments are adopted**, setting forth a frame according to which the States take **proper domestic measures** in order to comply with these standards.

The international community should try to ensure protection and not only promotion of the rights of persons belonging to national minorities if the State concerned fails to ensure a proper protection. Although it is not explicitly alleged, in the field of protection of rights of persons belonging to national minorities, **the principle of subsidiarity operates**; the international community takes over the protection and not only the promotion of the rights of persons belonging to national minorities only if the State fails to ensure this protection which is primarily incumbent to it.

1.1.3 The place of the so-called theory of “the kin/mother State” and the functioning of the principle of subsidiarity

In the Contemporary Public International Law, the so-called theory of the “kin/mother State” is not accepted. The general opinion is that notwithstanding that persons belonging to a national minority in a given State have the same ethnic origin as the majority of the population living in another State (the kin State), this situation does not create any obligation or any right for the kin State with

regard to the persons belonging to the national minority. The Republic of Hungary has tried to promote this theory in order to justify a special care for the persons belonging to the Hungarian minority living abroad.

The principle of subsidiarity exposed above refers to a subsequent protection granted by the international community as a whole and not by a given State in order to ensure an effective equality between the persons belonging to the minority and the persons belonging to the majority of the population.

Among the principles which stand as a foundation for the inter-State relations, as consecrated in the *Final Act* adopted in **1975** in *Helsinki* the following are worth mentioning (each principle should be interpreted by taking into account the contents of the other): **"the sovereign equality of States** which suppose respect for all rights inherent to sovereignty", **"territorial integrity of the States"**, **"respect for human rights and fundamental freedoms"**, **"co-operation between States"**.

The principle of subsidiarity states that **the State of citizenship grants primary protection and only subsequently, in case of failure of this kind of protection, an intervention of the international community is possible**; this principle is conceived in such manner as to avoid unilateral interventions of another State than the State of citizenship in the protection of rights of persons belonging to national minorities even if this State is the so-called "mother State".

According to the public declarations of the foreign minister Janos MARTONYI, the Hungarian legislative demarch is meant to be an expression of the European principles in the field of rights of persons belonging to national minorities. **Yet, no European document provides the possibility for another State than the State of citizenship to grant protection to persons belonging to national minorities.**

To accept that one State could substitute the international community as a whole in case of failure of the State of citizenship to ensure the protection of the rights of persons belonging to national minorities will certainly affect **the stability of the legal relationship between the citizens and their State**. The citizens owe fidelity to the State (most of the Constitutions provide this principle; in the Constitution of Romania it is consecrated in art. 50). **This obligation is counterbalanced by the rights granted by the State to its citizens** - notwithstanding their ethnic origin. Unilateral intervention of another State than the State of citizenship is less connected to the idea of protection of the rights of these persons and more related to **the interpretation of the limits of sovereignty**.

That is to say that a State interferes in the relation between the State of citizenship and the citizen by creating **a quasi-legal and parallel legal connection**. It grants the rights which are traditionally granted by the States of citizenship; theoretically, there is no obligation for the citizen of the other State; that is why **only one segment of the**

legal report is achieved – granting of rights – while no obligation is established.

The principle according to which the State should limit its intervention only to its territory is expressed for example in the **Resolution no. 47/135**, adopted at the 47th Session of the **General Assembly of the United Nations** on 18 of December 1992, containing the **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**, art.1 providing that “**States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories ...**”. In the **Final Helsinki Act** this principle is expressed as follows: “**The Participant States on whose territory there are national minorities shall respect the right of the persons belonging to national minorities to equality before the Law, shall grant the full possibility to enjoy effectively of human rights and fundamental freedoms. *The Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE* provides in paragraph 33 the following: “The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organisations or associations of such minorities, **in accordance with the decision-making procedures of each State.**”**

It appears that, in the Public International Law, the State of citizenship has the obligation to ensure the rights of persons belonging to national minorities.

1.2 The analysis of the provisions of the bilateral Treaty on mutual understanding, co-operation and good neighbour hood relations between Romanian and the Republic of Hungary signed in 1996.

1.2.1 The conformity of the provisions of the bilateral Treaty with the European and international standards in the field of protection of the rights of persons belonging to national minorities

At the beginning of the 90's the Balladur Plan for stability in Europe encouraged the conclusion of bilateral treaties between the States of the South-Eastern Europe. These bilateral Treaties constantly contain provisions concerning the protection of the rights of persons belonging to the national minorities. The conclusion of such bilateral Treaties is, without any doubt, a real and effective source of stability for the Eastern Europe.

The political bilateral Treaty of 1996 regulates in art.15 in terms of reciprocity the situation of the persons belonging to the Hungarian minority living on the territory of Romania and,

respectively, of the Romanian minority living on the territory of the Republic of Hungary.

At the moment of the conclusion of the above-mentioned Treaty, the standards provided therein were the highest in the field of protection of rights of persons belonging to national minorities.

Art. 15 of the Treaty refers to the protection of the rights of persons belonging to national minorities. It provides that these persons shall have **"the right to freely use their mother tongue, in private and in public, orally and in writing"** (art.15 para 3) and that **"the Parties shall take all necessary measures so that these persons be able to learn their mother tongue in the frame of public education system, at all levels and in all forms, according to the needs of these persons."** The Parties shall ensure the facilities in order to render possible the **use of mother tongue in the relation with the local administrative and judicial authorities."**(art. 15 para3). These persons have the right to **use their name and first name in the mother tongue** and enjoy the official recognition of these ones. In the regions which are inhabited by a substantial number of persons belonging to national minorities, each Party shall allow that **traditional local denominations, denominations of streets and other public topographic denominations to be exposed also in the language of the minority."** It is recognised the **right to have access in the mother tongue to information and mass media and to change freely information in this language; "the right to create and administrate their own mass-media"** (art. 15 para 4), **"the right to participate, individually or through their parties or organisations, to the political, economic and social and cultural life"** (art. 15 para.5), the **right** for the representative organisations of the persons belonging to these minorities **to be consulted** in problems concerning the protection and promotion of the national identity (art. 15 para 5), the obligation for the Parties to support the efforts for **protection of the monuments"**(art.15 para 6), right to maintain free contacts between them and across frontiers and the **right to participate to non-governmental organisations"**(art.15 para 7) The Parties shall refrain from any measure attempting at modifying the proportion of the population in the area inhabited by such persons (art.15 para 9). **The Parties shall also examine problems related to the bilateral co-operation with regard to national minorities.**

1.2.2 The redundancy of the provisions of the Law in relation to those of the bilateral Treaty

All these provisions have been fully respected by the Romanian side. Moreover, **the political bilateral Treaty has provisions similar to those included in the Law on Hungarians living in Neighbouring Countries.** Such a remark **proves that the Romanian side is essentially favourable to the idea of granting the highest level of rights** for the persons belonging to the Hungarian minority, but as

specified in the **bilateral** Treaty, only as a result of **bilateral** co-operation, **by** concluding **bilateral agreements**. If such bilateral agreements can be concluded **which is then the necessity of the Law since the rights of the persons belonging to the Hungarian minority can be ensured in this manner and by the continuous effort of the Romanian side?**

A **comparative study** of the Law on Hungarians living in the neighbouring Countries and of the provisions of the bilateral Treaty will show that **most of these provisions can be found in both documents**. Only that **in the Law**, they refer only to the persons belonging to the Hungarian minority - while the Treaty covers both the Romanian minority living on the territory of the Republic of Hungary and the Hungarian minority living on the territory of Romania (the right to **access the documents** in archives, libraries and museums - **art. 12 para 3 and para 4** of the bilateral Treaty and respectively art. 4 of the Law -, the **changes of scholars, students, professors and researchers** - **art. 12 para 3 and para 6** of the bilateral Treaty and art. 9 and 11 of the Law).

1.2.3 The principle of mutual assent governing co-operation in fields regulated by the Law on Hungarians living in Neighbouring Countries

It should be remarked that in para 8 of art.12, the Parties undertake explicitly to achieve these goals "by concluding a new **Agreement on co-operation in the fields of culture, science and education** and other similar conventions." The same thing can be said about the **co-operation in the field of the protection of health and medical research** (art. 17 of the bilateral Treaty and **art. 7 para 2** of the Law), **co-operation in the field of the social protection and social security, by the means of bilateral Agreements**.

For this reason, the parties created an Intergovernmental Committee of experts in order to examine problems of the bilateral co-operation on the basis of the provisions of the bilateral Treaty.

The question is the following: Is a State allowed to undertake more obligations than those provided in a bilateral Agreement if the field regulated is the same? It is obvious that this **Law reiterates the main provisions concerning persons belonging to national minorities as those contained in the bilateral Treaty, but it introduces a unilateral approach**, while the bilateral Treaty assigns the persons belonging to the Hungarian minority in the task of the Romanian State and the persons belonging to the Romanian minority in the task of the Hungarian State, in conformity with the internationally accepted rules.

As a consequence, reading **the provisions of the Law in the light of the bilateral Treaty** sets out the **ignorance of the principle of reciprocity**, fundamental in the inter-State regulation of the rights

of persons belonging to national minorities and the **discrimination** which is a consequence of this unilateral regulation.

Moreover, the argumentation of the Hungarian side according to which the **Treaty is just the basic regulation**, the Law being only an improvement of the Treaty, is **not acceptable**. The Law **runs aside** the conception of the Treaty, which establishes that the task of the Hungarian side is the Romanian minority and the task of the Romanian side is the Hungarian minority. **It can not improve the existent standards as long as it refers mainly to the same aspects and standards** already contained in the bilateral Treaty and supposed to be left for the bilateral co-operation.

1.3 The measures adopted by the Romanian State in order to ensure a full equality of rights between the persons belonging to national minorities and the majority of the population.

Romania signed and ratified many relevant international documents concerning the protection of the rights of persons belonging to national minorities.

1.3.1 Constitutional provisions

Art. 20 of the Constitution of Romania of 1991 provides the pre-eminence of the international law upon the domestic law in the field of human rights.

The Romanian Constitution provides **the principle of equality and non-discrimination between all its citizens, notwithstanding the race, ethnic origin, nationality, language, religion**; it guarantees **the right to education in the mother tongue**, ensures the **representation of the organisations of persons belonging to national minorities in the Parliament**, under the conditions provided by the Law concerning the elections; it provides also **the right for citizens belonging to national minorities to be informed in their mother tongue about all pieces of their file, to speak before the Court and to submit conclusions through a translator**; in criminal cases this right is ensured for free. The strong will to ensure the protection of the rights of persons belonging to national minorities is proved by the fact that **Romania is the first country to ratify on 11th of May 1995 the Framework-Convention for the protection of rights of persons belonging to national minorities** and to include the substance of its provisions in the bilateral Treaties concluded with the neighbours (the bilateral Treaty with Hungary and the bilateral Treaty with Ukraine).

1.3.2 International instruments

An entire article, containing 12 paragraphs, of the bilateral **Treaty between Romania and the Republic of Hungary**, signed on

the 16th of September 1996, refers to the problem of national minorities.

Romania signed the **European Charter for Regional or Minority Languages** and the process of ratification is close to the end. Romania also ratified the **European Social Charter** (revised) and the **Charter of Local Autonomy**. Romania is also a Party to the general instruments concerning the protection of human rights: **The European Convention for the Protection of Human Rights and Fundamental Freedoms** and 11 additional protocols and signed Protocol no. 12, **the International Convention on the Elimination of All Forms of Racial Discrimination** (since 1970), the **International Covenant for Civil and Political Rights**, the **International Covenant for Social, Economic and Cultural Rights**.

In the **bilateral Treaty between Romanian and the Republic of Hungary** art. 15 (1 b) refers to the "legal obligation to implement the provisions which define the rights of the persons belonging to national minorities, as embodied in the Copenhagen Document concerning the Human Dimension of the Organisation for Security and Co-operation in Europe, the Declaration of the General Assembly of the United Nations Organisation on the Rights of persons belonging to national or ethnic, religious or linguistic Minorities (Resolution 47/135), Recommendation n. 1201 of the Parliamentary Assembly of the Council of Europe with regard to an additional Protocol to the European Convention for Protection of Human Rights and Fundamental freedoms".

1.3.3 Domestic legislation

Other domestic regulations which prove the constant determination of the Romanian State to improve the protection of the rights of persons belonging to national minorities is the **Law on education** (L84/1995), amended and annotated by the Ordinance of the Government no. 36 of the 10th of July 1997, approved by the Parliament through the Law no.151 of 1999. It **provides the possibility to create groups, sections, post-university form of education and faculties in the mother tongue, in the frame of the public Universities**.

Ordinance no.137/2000 for the prevention and sanctioning of discrimination is also in force. This legal act covers **almost all possible categories of discrimination: founded on race, nationality, ethnic origin, language, religion, social category, convictions, sex, sexual orientation, the fact of belonging to a disfavoured category**, and creates the National Council against discrimination. The action of discrimination is considered to be contravention.

In April 2001, the Romanian Parliament adopted the **Law on the organisation of the public administration and the general regime of local autonomy** (L215/2001), which provides that in those communities in which the citizens belonging to a national minority

represent over 20% of the population, the local authorities shall authorise **the inscription of the denomination of the towns and villages and of the public institutions in the language of the minority as well as the exposing of the announcements of public interest also in the mother language of the citizens belonging to the national minority.** Persons who speak the mother tongue of the persons belonging to national minorities shall be hired in those positions implying attributions in the field of public relations. These persons can receive a **bilingual written answer**, in Romanian and in their mother language as well. At the sessions of the local councils the language of a national minority can also be used if one third of the members of the council is consisting of persons belonging to that minority.

1.3.4 Other relevant aspects for the framework of the protection of the rights of persons belonging to national minorities on the Romanian territory

In what concerns the **participation to the public life**, the **Democratic Union of Hungarians from Romania (UDMR)** was part of the governing coalition between 1996-2000 and since 2000, the governmental Social Democratic Party (PSD) has concluded a Protocol of co-operation with the UDMR. Although it is not a political party, this organisation obtained 39 mandates - 27 in the Chamber of Deputies and 12 in the Senate. At the local elections, 148 mayors and 2586 counsellors of villages, towns or districts were elected.

In 1998, as a consequence of the **positive results in the field of protection of national minorities of the Romanian State**, the PACE decided to cease monitoring Romania.

If one takes into account all the developments in the field of protection of the rights of persons belonging to national minorities, it results that the Romanian State is really endeavouring to achieve a full protection of the rights of persons belonging to national minorities living on its territory and has positive results in this field. That is why, the Government of **Romania, besides the conviction that the Law on Hungarians Living in the Neighbouring countries runs aside the international standards in the field of protection of the rights of persons belonging to national minorities, does not understand the necessity of the implementation of the Law on Hungarians living in the Neighbouring Countries with regard to Romania.**

2. Considerations upon the discriminatory character of the Law

The Law has a **discriminatory approach** towards the persons of Hungarian ethnic origin living in the neighbouring States reported to the majority of the population living in those States.

In the draft Law approved by the Hungarian Government before the adoption of the Law it was provided that the persons of Hungarian ethnic origin are entitled to "preferences and benefits". The final version of the Law eliminates the explicit reference to "preferences" and replaces it with "facilities". But the contents of the "preferences" provided in the draft law and of the "facilities" of the final version are the same.

There is a **provision in the bilateral Treaty which explicitly forbids the discrimination between the majority of the Romanian population and the persons belonging to the Hungarian minority**. Art. 15 para 8 of the bilateral Treaty provides that the persons belonging to the national minorities shall enjoy the same rights and have the same civic obligations as the other citizens of the country they are living in." As a consequence, the discriminatory approach of the Law is also contrary to the fundamental bilateral Agreement between Romania and the Republic of Hungary.

It should be noted that currently there is a controversial upon the relation between the unanimously recognised principle of equality and the so-called "**compensatory inequalities**" which is conceived in order to go beyond the formal equality before the Law, to an effective equality of chances (see also Mc Kean " Equality and discrimination under international law", Oxford, 1983, p. 248-257; art. 15 para 2 of the Canadian Charter of rights and liberties, which recognises explicitly the compensatory inequality). The controversial is raised by the limits which should be respected by the compensatory inequalities, so that they really manage to eliminate the discrimination.

In this respect there are **several considerations which should be pointed out:**

2.1 The protection of the rights for persons belonging to national minorities should be guided by the purpose of achieving the preservation of the cultural and linguistic identity

It is not only in the field of culture and education that the Law provides a preferential treatment for persons of Hungarian ethnic origin, but also in the field of circulation of the labour force, in the field of transports, **trespassing the limits of the field covered by the internationally recognised protection of rights for persons belonging to national minorities**. Granting socio-economic rights for

all its citizens is the task of the State of citizenship and has no connection with the protection of the cultural identity.

The Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE of the 29th of July 2001 expressly provides in chapter 4 that persons belonging to national minorities have "the right to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects (paragraph 32 and 33) and **"in particular" (this expression would mean that other rights are not in connection with the maintenance of the identity of the persons belonging to the national minority) "the use of the mother tongue, the establishment and maintenance of their own educational, cultural and religious institutions, organisations and associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation; to profess their religion; to establish and maintain unimpeded contacts among themselves within the country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious belief; to exchange information in their mother tongue, to establish and maintain organisations or associations within their country and to participate international non-governmental organisations". Similar rights are also provided by the Framework Convention for the Protection of National Minorities.**

These are **the rights considered at the international level to have a decisive role for the maintenance of the identity of the persons belonging to the minority.** There is **no reference to socio-economic rights.** It seems to be self-understanding that these rights are, as we showed above, **granted by the State of citizenship,** in equal conditions to other citizens.

2.2 The Law induces a positive discrimination

2.2.1 Discrimination among members of the Hungarian community

There are several angles of discrimination in the Law on Hungarians Living in the Neighbouring Countries.

First, it is the discrimination referred to in the scope of the Law. It should be remarked that the Law concerns **only** the persons of Hungarian ethnic origin living in the neighbouring Countries of Hungary. Thus, the reasoning at the basis of the Law seems not to take into account the object of the Law - the protection of the ethnic, cultural, linguistic identity of the persons of Hungarian ethnic origin.

This **discrimination inside the Hungarian community** is an interesting problem raised by this Law, but as its connotations could be hardly approached from a legal point of view, and since a political

approach is not the competence of the Venice Commission, the Government of Romania shall not express any further comments upon this first type of discrimination.

2.2.2 A second type of discrimination determined by the Law is referring to the **discrimination between the persons belonging to the Hungarian minority living in Romania and the Romanian minority living in Hungary**. This discriminatory situation is **determined by the unilateral measure taken by the Hungarian side** when adopting the Law. If the Hungarian side had remained in the bilateral frame, when regulating the situation of the Hungarian minority, the two Parties would have negotiated **balanced measures** for the protection of the rights of persons belonging to the Hungarian minority and to the Romanian minority as well.

The Hungarian side presented at the last meeting at Prime - minister level, held in Targu Mures, Romania, on the 28th of July 2001, the proposal that Romania should adopt a similar Law, for the protection of the rights of persons belonging to the Romanian minority living in Hungary. There are two comments which can be formulated at this point. First of all, it seems that **the Republic of Hungary agrees that the present Romanian Law is not similar to the Hungarian Law**. Second, as long as the Romanian side considers that **the Law is not compatible with the European standards**, it does not intend to adopt a similar Act, which would be contrary to its conception regarding the discriminatory character of the Law.

In what concerns **the Romanian Law for granting support to the Romanian communities living abroad (L150/1998)**, it should be said that it provides the issue of material and special aids managed by the Romanian Prime-minister, used basically for:

- a) actions for supporting the education in the Romanian language
- b) cultural and artistic actions
- c) individual aid for special medical cases
- d) **other situations provided in the bilateral programs of co-operation**

This enumeration proves that the object of the Romanian Law is to provide financial support for ensuring the exercise of cultural and educational rights of the persons of Romanian ethnic origin living abroad with the exception of the individual aid for special medical cases.

It should be underlined that **any other situation could be taken into account by the Romanian Government and a specific aid be granted only as a result of the conclusion of bilateral Agreements**. The number of scholarships granted annually for the persons of Romanian ethnic origin living in Ukraine, for instance is agreed by both sides through the conclusion of a Protocol, each year.

2.2.3 The third type of discrimination concerns the **persons belonging to other national minorities living on the territory of**

Romania. As a result of the enforcement of the Law, certain consequences would be produced on the Romanian territory, including a certain preferential treatment granted for the Hungarian minority. This means, in fact, discriminating belonging to other minorities, on the Romanian territory, although these discriminatory measures would not be imposed by the Romanian State.

2.2.4 The **fourth** type of discrimination concerns the **discrimination between the persons of Hungarian ethnic origin and the majority of the population of the State they are living in.** At this point, the question arises of **the scope of positive discrimination.**

All measures provided by the international documents in order to be taken by the State for ensuring the protection of the rights of persons belonging to ethnic minorities are "limited" by the expression of the necessity that "such measures be **in conformity with the principles of non-discrimination with respect to the other citizens of the State concerned**" (Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE para 33(2)).

- **The purpose of positive discrimination: ensuring effective equality of chances between persons belonging to the minority and those belonging to the majority**

The Government of Romania, according to the provisions of international relevant instruments, **the Framework Convention for the Protection of National Minorities (the explanation of art. 4 para 1 and 2 of the Convention in the Explanatory Report), the International Convention on the Elimination All Forms of Racial Discrimination (art. 1 para. 4), the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Protocol no.12 to the European Convention of Human Rights Charter of Fundamental Rights of the European Union, Nice, December 2000 (art. 21), the CEI Instrument for the protection of minority rights of 29th of September 1994, Budapest (art.5)-** considers that **the positive discrimination is allowed only if it is a measure of temporary character which should be taken only in order to ensure an effective equality of chances** between the persons belonging to the minority and the majority of the population. In art 12 of the Recommendation no 1201, referring to the implementation of the additional protocol on the rights of minorities to the European Convention of Human Rights, which is supposed to be drawn up on the basis of this Recommendation, it is provided that "Measures taken for the sole purpose of protecting ethnic groups, fostering their appropriate development and ensuring that they are granted **equal rights and treatment with respect to the rest of the population in the administrative, political, economic, social and cultural fields and in other spheres shall not be considered as**

discrimination". The Framework Convention for the Protection of the Rights of Persons Belonging to National Minorities refers explicitly to the necessity that the result of the positive discrimination should be **"equality between the persons belonging to the minority and the persons belonging to the majority"** (art. 4 para2) and that the **elimination of all discrimination means "equality before the Law"** and **"equal protection of the Law"** (art. 4 para1).

- **The condition of the objective and reasonable justification. The principle of proportionality**

In the Preamble of the **Protocol no 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms**, it is provided that "the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is **an objective and reasonable justification**. Article 1 of the **International Convention on the Elimination of all Forms of Racial Discrimination** provides the following: "Special measures taken **for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms** shall not be deemed racial discrimination provided that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that **they shall not be continued after the objectives for which they were taken have been achieved** and in art. 4 "the States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of a [...] group of persons of [...] an ethnic origin".

It seems that if positive discrimination goes over a certain threshold, which is represented by the moment when the equality of chances is achieved, it turns into a situation - condemned by the international community - of superiority of the group priory disfavoured.

The European Court of Human Rights stated in 1968 "The equality of treatment is infringed if the distinction operated has no objective and reasonable motivation... The existence of such motivation should be assessed reported to the finality and the effects of the respective measure. A distinct treatment in what concerns the exercise of a right provided by the Convention should **not only have a legitimate finality: art. 14 of the Convention is also infringed if, although the finality is legitimate, there is not a reasonable and proportional report between the measures adopted and their finality**". (Decision du 23 Juillet 1968, series A no.6, p.33. par.10, *Affaire linguistique belge*)

Since, as it was already stated, **the International Law aims at protecting the rights of persons belonging to national minorities from the point of view of the preservation of their ethnic,**

linguistic, religious and cultural identity, the adoption of measures of socio-economic nature (in the labour or transportation fields, for instance) is not proportionate to the objectives mentioned above.

- **The time-limited application of positive discrimination measures**

For this purpose, the measure of positive discrimination should not be taken perpetually, in order to avoid, thus, the reverse of the medal - a group which is initially disfavoured becomes too advantaged in comparison to the rest of the population.

The Hungarian side appreciates that the Law is not discriminatory in its interpretation since the granting of larger rights to persons belonging to ethnic minorities without reducing the rights of persons belonging to the majority of the population of a State can not constitute discrimination. **The positive discrimination, by definition, means granting larger rights to a category of persons, aiming thus at compensating a situation of inferiority.**

The Government of Romania reminds that the Law adopted by the Hungarian Parliament, by its nature, **is not a measure of temporary character** because its provisions are **supposed to be implemented for an undetermined period.** Moreover, if we admit that the positive discrimination is allowed only in order to ensure effective equality of persons belonging to the minority with persons belonging to the majority of the population, the adoption of such measure of positive discrimination **would mean that the hypothesis of inequality of chances is achieved.**

- **The lack of conformity of the Hungarian Law with the consecrated standards in the field of positive discrimination**

One of the main problems raised by this Law and in general, by any measure of positive discrimination, is to determinate exactly **when the threshold defined as "the equality of chances" is fully met**, because only in these conditions the positive discrimination fully achieves its role envisaged by the international community -of **beneficial exception from the principle of non-discrimination**, adopted in order to eliminate any situation of inferiority of a certain group or minority.

Moreover, it is generally admitted that the rights granted for the minorities are individual rights and not collective rights, the concern of the international community being **to avoid the possibility that such groups develop a separate existence in the State they are living in, having a totally different regime in comparison to other citizens belonging to the majority of the population.**

It should also be noted with regard to this aspect that the Hungarian Law provides the same advantages for the relatives of

the Hungarian person concerned, although they have not a Hungarian ethnic origin (the relatives receive also an Identification Card).

This situation proves that the adoption of such a measure does not aim at the achievement of an effective equality between the persons belonging to the Hungarian minority and the majority of the population, since even some persons belonging to the majority are granted the same advantages. Since it is suggested that the persons belonging to the Hungarian minority are in a situation of inferiority which determines the necessity to adopt such a Law, why some of these persons (theoretically in a situation of superiority) are granted advantages, by the same Law which intends precisely to ensure the equality of treatment?

By assimilating "spouses of non-Hungarian nationality" to persons belonging to the Hungarian minority, the national proportions on the Romanian territory might thus artificially modify. We do not wish to comment any further on the possible consequences of such measures.

The Law thus becomes a means of materialising a sort of "ethnic proselytism", through "inviting" persons to "join the club" on criteria far from any accepted standards.

2.2.5 Although it seems less obvious, the enforcement of the Law leads to **a fifth type of discrimination: that between members of the majority of the population in the State of citizenship.**

This is the case of the **dependants** (particularly the spouse) of the person belonging to the Hungarian minority, who would benefit, **without any reasonable justification, on the Romanian territory, of different rights from those of the other members of the majority of the population.**

According to the relevant international and especially European documents, **the enforcement of a different treatment can only be justified by the existence of a different situation. This is not the case in the hypotheses mentioned above, where the special treatment is only justified by circumstantial elements.**

According to the practice of the European Court of Human Rights, **"any distinction represents a discrimination unless it has an objective and reasonable justification, that is unless it has a legitimate purpose"**. (Abdulaziz, Cabales and Balkandali v U.K., 28.05.1985, A series, n 94, para 72).

No reasonable justification can be found for this treatment creating a distinction there where no difference of situation can be identified, so the treatment can only be qualified as discriminatory.

Summing up, the Law on Hungarians living in the Neighbouring Countries does not fulfil the conditions set forth in the relevant international documents, in order to be a valid measure of positive discrimination, since:

- *it does not have an objective and reasonable justification*
- *it is not a temporary measure*
- *it does not have as a goal the granting of a full equality between persons belonging to the minority and the majority of the population. Thus, these citizens, who constitute the majority of the population, are discriminated in relation to the persons belonging to a minority, on the territory of Romania.*

2.3 The exclusion of Austria from the scope of the Law and the principle of non-discrimination in the European Union

2.3.1 General considerations on the relation between the E.U. standards and the provisions of the Law

We took notice of the recent decision of the Hungarian authorities not to apply the Law to Austrian citizens of Hungarian ethnic origin, upon the Commission's suggestion. **The question arises if this precedent will also be extended to the candidate States falling into the scope of the Law, in the moment of their accession to the European Union. For instance, will Slovakia and Slovenia be also excluded from the scope of the Law after ending negotiations or at the moment of their accession to European Union? This exclusion was necessary taking into account that a fifth type of discrimination concerns the citizens of the European Union. If Austria had remained in the scope of the Law, a category of its citizens – persons of Hungarian ethnic origin and their relatives – would have been positively discriminated reported to the other European citizens of the European Union.**

The Law seriously ignores the provisions of the European Treaties setting forth the **principle of non-discrimination** between the citizens of European Union while identifying the beneficiaries of the facilities provided by the Law by an ethnic criterion. For example, **art.6 of the Treaty of Rome setting up the European Community, as amended at Maastricht and Amsterdam** in order to extend the scope of non-discrimination to new criteria, including the ethnic origin, as well as **art.21 of the European Union's Charter of Fundamental Rights** reiterating the same principle. It should be noted indeed that only recently the European Union became concerned by the necessity of providing principles for the protection of human rights, because, the EU was basically focused on the economic dimension of the co-operation between the Member States. Even recently, the Charter of Fundamental Rights of Nice, for example, avoided referring explicitly to the protection of the rights of persons belonging to national minorities, because of the incessant controversy regarding this subject in the frame of the EU. Yet, the European Union demands from its member States full respect for the rights of persons belonging to national minorities (for example, the candidate

States should meet the Copenhagen criteria, providing respect for the rights of the minorities).

2.3.2 Ignorance of the E.U. rules in the field of economic rights, especially those concerning labour force

The lack of conformity with the European standards is underlined by certain specific provisions, such as, for example, those granting for foreign citizens of Hungarian ethnic origin a more favourable regime than the one set forth by the general rules in force on the territory of the Republic of Hungary in the field of labour force (including the regime established in the bilateral Romanian-Hungarian Agreements concerning the seasonal workers, respectively trainees). For example, the right granted for the persons under the scope of the Law for whom the "work permit" may be prolonged for an undetermined period of time, whilst such a prolongation is forbidden by the bilateral Agreements mentioned above.

In this respect, one should not ignore the recent declarations of the Hungarian Prime Minister, who, referring to the economic development of Hungary, alleged that it would be maintained with the support of the Hungarian ethnic persons living in neighbouring countries.

But the question naturally arises whether in Hungary the need for labour force from outside its borders is genuine, since the unemployment rate is of approximately 20%. If someone is really interested in providing such kind of support, perhaps other forms of aids (such as investments, for instance), may respond more properly to the needs of Hungarians on both sides of the frontiers? In this respect, **the German model** could be adopted, which concerns the development of **investment programs on a regional, not an ethnic basis**, by the means of concluding annual bilateral agreements with the State concerned.

The examples within the European Union are particularly relevant in this regard. **Art. 69 (4) of the Treaty creating the European Community of Coal and Steel**, provided the obligation for the Member States to eliminate any restriction in the use of labour force based on nationality and art. 69 (4) and forbids any discrimination as to payment and work conditions between the national workers and the immigrants. **Art. 48 of the Treaty creating the European Economic Community** provides the freedom of movement of workers inside the Community which involves the lack of any discrimination as to employment, salaries, other work conditions – art. 48(2). The Regulation of the Council no 1612/68/CEE extends the criteria of discrimination forbidding not only the ostensible discriminations based upon the nationality of the workers, but also any **hidden form of discrimination, which, although applying other criteria of distinction, leads to the same result**. The case Law of the Court of Justice of the European Communities is also very relevant. For example in the **Groener decision (the 30th of May**

1989, file no 33/88, Rec 1591 the Court decided that “ the linguistic knowledge can not be a condition for the employment. They can only be invoked if there is a special need of the employer and or if the job has a certain peculiarity (in the field of education)

2.3.3 The European identity and the Hungarian identification document

Taking into account the establishment of the European citizenship, as a modality to pass beyond the differences of nationality between the habitants of Europe and to create a common identity for the Europeans, **the regulation of an identification document (ID) which entitles the owner to certain “preferences”, based on ethnic criterion, is contradictory to this main characteristic of the European spirit.** This mechanism is unique in the European and world wide practice.

The conditions of granting the document

- have an **extra-territorial application;**
- **are conceived in a manner which raises problems for the neighbour States of Hungary**, whose citizens are entitled to receive these documents;
- provide a **mechanism of empowerment by the Hungarian Government of the organisations (legal persons under the domestic law of the neighbour State)** which grant the ID;
- **the legal persons shall implement a domestic Hungarian Law.**

All these elements prove the non-European character of the Law. The Government of Romania referred to the provisions of the European Law, although neither Romania nor the Republic of Hungary are member of the EU. Even the States that are associated to the EU, taking into consideration their future accession to the European Union, should respect in the pre-accession period the principles of the European Union, as they must respect the pre-accession criteria.

2.4 Particular analysis of the advantages granted by the Law

A particular analysis of these facilities will show the difficulty of eliminating the discriminatory character of the law, through the elaboration of implementation legislation (as the Hungarian side suggested), because the effects of the existence of these discriminatory rights (once provided in the Frame Law) **could not be eliminated unless Hungary concludes bilateral Agreements in all these fields or re-negotiates already concluded bilateral Agreements.** In this hypothesis, the reason of the Law does not subsist anymore.

2.4.1 In the field of culture, the Law provides a series of rights for the persons of Hungarian ethnic origin, which are rights granted usually through Agreements in this field between States, granting those rights to all citizens of the States concerned. Limitation of such rights only to persons of Hungarian ethnic origin is an unjustified discrimination. Such provisions are, for example, those granting the right access to archives containing protected data of the persons for scientific research (art. 4d), the right to access to cultural values for research and publishing (art. 4b), **access to historical cultural values, monuments and documents related to these monuments**. The question arises why should the access to monuments, for example, be a facility granted only to persons of Hungarian ethnic origin.

The Government of Romania considers that even in the cultural field in which, in essence, the Republic of Hungary is entitled to promote effective measures in order to ensure for the persons of Hungarian origin living abroad to preserve their cultural identity, the measures proposed in the Law are **obviously and without justification, discriminatory**.

The fact that the academic distinctions are granted on an ethnic criterion (art. 5 of the Law) and that only the Hungarian scientists can be granted State distinctions, indemnities, diplomas generates discrimination.

2.4.2 Social and health insurances (art. 7) are provided in paras 1 and 3 of this article, which refer to bilateral Agreements between the Republic of Hungary and other countries or to a situation created by these Agreements (para 1)-payment of the contributions to the Hungarian system of social insurance. Even in this case, the necessity of these provisions is not obvious, as long as they can not be implemented without bilateral Agreements. The provisions of para 2 refer to the right to reimbursement of the costs of self-pay health care services in advance, which is similar to the right to health insurances.

2.4.3 Travel benefits (art.8)

This is one of the facilities which can be hardly accorded to the general principle providing that positive discrimination should be restrained to granting of cultural rights.

2.4.4 Education (art.9, 10,11)

These provisions, as we stressed above, would have been more adequate in a bilateral Agreement in the field of education. As to the creation of university extensions (art.13) a bilateral Agreement is absolutely necessary to this end. Otherwise, the extraterritorial dimension of the law, which is obvious in the procedure of granting of Identification Documents, will also concern this provision.

2.4.5 Advantages for families whose children learn in Hungarian schools in their countries of origin.

This type of discrimination is less obvious, taking into consideration that it refers to the right of education and the necessity of preserving the mother tongue.

2.4.6 Advantages concerning the employment on the territory of Hungary (art. 15 and 16)

These provisions are discriminatory and contrary not only to the provisions of the European Law as showed above, but also to the Agreements concluded between Hungary and Romania on the exchange of trainees and seasonal workers. The preference for Hungarian labor force from the neighbouring Countries is obvious. The conditions provided for the employment of these persons are different from those set forth in the bilateral Agreements.

3. Considerations upon the extraterritoriality of the Law

The extraterritoriality of the Law is more visible in what concerns the granting of the Identification Document (Certificate of Hungarian ethnic origin and Certificate for dependants of persons of Hungarian nationality).

3.1 The granting of an Identity Document attesting the ethnic origin

3.1.1 The modification of the generally admitted standards in the field of the determination of the ethnic origin

The procedure itself runs aside the admitted standards in the field of protection of the rights of persons belonging to national minorities. It should be duly remarked that **the issue of an ID has no relevance for an effective protection of the rights of persons belonging to national minorities. In this respect, it should be underlined that the State in which persons belonging to a national minority are living does not issue Identity Documents to attest the ethnic origin of the person.** Yet, the person gets this protection, in the absence of such a document. In this spirit, the *Framework Convention provides in art. 3 para 1* states that "every person belonging to a national minority has the right to freely choose to be or not treated as such and no disadvantage can result from such a choice or from the exercise of the rights related to such a choice".

Moreover, the issuing of such documents by the state of citizenship for persons belonging to national minorities on its territory would be considered, by the mere adoption of such measures, as gravely infringing the principle of non-discrimination.

The free choice is the *sine qua non* condition for the individual to be treated as a person belonging to a national minority and not the possession of an Identity Document, as provided by the Hungarian Law. This document in fact does not have the role of attesting the identity of the person, but of creating solidarity between its possessors.

In this way, the Hungarian Law is trying to create a quasi-legal connection between the Hungarian State and the Hungarians living abroad, through this procedure with obvious administrative characters.

The Explanatory Report to the Framework Convention indicates that the free choice should be based on **objective criteria**, proving this identity. The Law, which is a Frame document, does not mention which are going to be the criteria which attest the ethnic origin of the person.

3.1.2 The extraterritorial consequences of the procedure of granting ethnic IDs

A direct concrete consequence of the enforcement of such principles could be **the serious modification of the census results through encouraging artificial increasing of the number of persons belonging to the Hungarian minority.** Thus, the results of **the census would no longer be the reflection of the genuine ethnic belonging,** but the mere consequence of a political game.

It is beyond doubts that, for the issuing of these IDs, acts issued by the State of citizenship or other instruments would prove necessary in order to prove the national origin of the applicants. The demands are processed by the central authorities of Hungary and **a segment of this procedure is located on the territory of the Neighbouring Countries.** This element renders more difficult for these States (i.e. Romania) to accept this procedure with elements of extraterritoriality.

According to the Law, the ID's are issued at the recommendation of a "recommending organisation representing the Hungarian national community **in the neighbouring country concerned,** and being recognised by the Government of the Republic of Hungary as a recommending organisation". Thus, organisations registered in one State ("the neighbouring country"), would apply, directly or indirectly, the Hungarian legislation, which underlines the extraterritorial character of the Law. As a parentheses, one may even wonder whether the process of issuing such ID's won't turn into a *sui generis* "ethno-business" for the representatives of these organisations, encouraging corruption in this frame. This may constitute a justification for the support this measure enjoyed of.

On the other hand, the bilateral Treaty between Romania and the Republic of Hungary provides the right for the persons of Hungarian ethnic origin to have their Hungarian names officially recognised by Romania. This is an additional criterion for the identification which renders useless the granting of an Identity Document of this kind.

No difficulty had either Romania as State of citizenship to grant protection or the foundations and organisations on the territory of Romania, which are granting support to persons of Hungarian ethnic origin, to identify the beneficiaries of the protection.

3.1.3 "The nation" under the approach of the Hungarian Law. The theory of the "mother-state"

This document which sets forth quasi-legal and administrative connections between the citizens of the Neighbouring countries of Hungarian ethnic origin and the motherland Hungary creates problems of political order.

Art. 4(2) of the Romanian Constitution provides that “Romania is the motherland of all its citizens, notwithstanding their ethnic origin...” Although by issuing a Law on Romanians living abroad, the Romanian State showed an equal interest as Hungary to grant protection for the persons of Romanian ethnic origin living abroad, fulfilling in this manner a similar constitutional obligation as Hungary (art.7 of the Romanian Constitution and art. 6 of the Hungarian Constitution), the conception which defines the “nation” is different. **In the Romanian conception**, which shares the generally admitted principles, **the nation is formed by all the citizens of the country, notwithstanding their ethnic origin.** The persons of Romanian ethnic origin living abroad are part of the **nation lato sensu**, taking into consideration that they share the same language, culture, traditions as the majority of the population of Romania. But **they are not effective part of the nation stricto sensu** unless they repatriate in Romania. This modern conception about the nation is very much influenced by the important role played by **the report of citizenship**, including the obligation of fidelity, and is the expression of the historical evolution, considering that persons which have a common history, should they be part of the minority or of the majority, share the same aspiration and represent a coagulated nation.

The Hungarian conception is quite different; the motherland is considered to be Hungary for all persons of Hungarian ethnic origin living abroad.

The main difference between the two conceptions is the way in which they report the “primordial tie” - which means belonging through the culture, to a primordial entity - to relation between the persons belonging to national minorities and the State of citizenship.

The Hungarian conception is specific to the period of the XIXth century characterised by the formation of the nation States and expresses the tendency of regrouping the persons having the same ethnic origin in the same State, on the afferent territory.

This is an **atypical** document with **racial characters**. It provides more than a proof of belonging to cultural organisation because it **establishes a non-equivocal connection between the Hungarian authorities and citizens of other States**. This relationship has similar characteristics to those created by the State of citizenship. It grants right to work on the territory of Hungary in similar conditions with the Hungarian citizens.

Given the economic situation of Romania and the lack of criteria for granting such a document, there are serious concerns that in Romania not only the persons of Hungarian ethnic origin shall declare Hungarians, for obtaining the advantages provided by the Law. In this respect, Romania may find itself forced to grant, beyond the rules of market economy, supplementary economic rights to its citizens who do not belong to the Hungarian minority, in order to avoid the creation **on its territory, of a discrimination situation on racial criteria.**

3.2 Proposals of the Government of Romania

The Government of Romania considers that the elimination of the Identification Document would be the most appropriate measure.

Nevertheless, the Hungarian side was inflexible despite the argumentation of Romania.

In these conditions, we consider that the entire procedure of granting the Identification Document should be transferred on the territory of the Republic of Hungary; no recommendations should be granted on the territory of Romania.

Conclusions

The Government of Romania considers that this Law should be analysed taking into account all its possible implications, including that it will represent, if it will be "promoted" by the representatives of the international community, a precedent in the field of protection of the rights of persons belonging to national minorities. It must be emphasised that the acceptance by the international community, and especially by the International Law experts, of the principles contained in this "atypical" Law will undoubtedly lead to the creation of a customary process.

This precedent could prove to be dangerous if implemented in regions with potential of instability caused problems of minorities, especially in Eastern Europe (We must mention that unwanted consequences of such a demarch have already been registered. It is the case of Suplacu de Barcău, a small village in the north-west of Romania, where a group of Hungarian ethnic persons "reacted" against the children of a camp having danced Romanian folk dances "on a Hungarians territory", case which gets particular connotations in this context).

From the examination of the practice of different states in the field covered by the law in question, it was noticed that **only a few states have domestic legislation for the protection of the rights of persons having the same ethnic origin as the majority of the population of the State concerned.**

It must be stressed once more, though, that **these laws are restricted to cultural rights. Thus, the Hungarian Law represents an isolated case.**

In this respect, since the purpose of the Venice Commission's initiative is the analysis of the practice of various States in this field, in the hypotheses that the Hungarian model is adopted in this frame, the risk of regional instability increases. When asserting this, we have in mind the fact that in certain States of the region (Ukraine, Croatia), similar documents are in the process of adoption. A position of the

Venice Commission favourable to such tendencies will certainly lead to the creation of a **regional customary process**.

Since International Law cannot ignore political factors, the legal expertise should be rendered, within the margins of necessity and objectivity, with the consideration of the political and historical circumstances.

ANNEXES

Annex I *Synthesis of the situation of the legislative practice in the majority of the European States which are members of the Council of Europe, observers to the Committee of Ministers or to the Parliamentary Assembly of the Council of Europe or special guests to the Parliamentary Assembly of the Council of Europe, concerning the protection of persons having the same ethnic origin as the majority of the population of these States, but which are citizens of other States*

Annex II *The situation of the legislative practice in the majority of the European States which are members of the Council of Europe, observers to the Committee of Ministers or to the Parliamentary Assembly of the Council of Europe or special guests to the Parliamentary Assembly of the Council of Europe, concerning the protection of persons having the same ethnic origin as the majority of the population of these States, but which are citizens of other States*

Annex III *The Romanian Law regarding the support granted to the Romanian communities from all over the world*

Annex IV *The Act on Hungarians Living in Neighbouring Countries*

Synthesis of the situation of the legislative practice in the majority of the European States which are members of the Council of Europe, observers to the Committee of Ministers or to the Parliamentary Assembly of the Council of Europe or special guests to the Parliamentary Assembly of the Council of Europe, concerning the protection of persons having the same ethnic origin as the majority of the population of these States, but which are citizens of other States

Number of countries		34 Member States + 2 Special Guests + 2 Observers	
Member countries of the Council of Europe and observers which are not referred to in the situation of the legislative practice		Andorra, Ireland, Iceland, Estonia, Hungary, Liechtenstein, Former Yugoslavian Republic of Macedonia, Malta, San Marino; Japan, Mexico, United States of America, Holy See	
Countries which have Laws or administrative rules concerning the protection of persons having the same ethnic origin as the majority of the population of these States, which are, in the same time, citizens of other States	9 (Austria, Denmark, Germany, Romania, Slovakia)	Cyprus, Greece, Israel, Russia,	Identification Document: The Slovak Law provides the granting of an Identification Document The Russian Law provides granting of an Identification Document for the persons which were previously Soviet citizens.
			Nature of the granted rights <ul style="list-style-type: none"> - All these Laws concern the protection of the cultural identity. - The Greek and the Russian Law provide economic rights in a generic formulation without examples. - The Slovak and the Cypriot Laws provide the right to work for an undetermined period. - The German Law provides the possibility to obtain a passport, on the condition that the person has domicile in Germany and has applied for the obtainment of the German citizenship
Countries which are currently elaborating draft Laws	3 countries: Croatia, Poland, Ukraine		The Identification Card: Only the Polish draft Law refers to a Polish Card but it has not the accept of the Government, due to the fact that there are serious doubts at governmental level on the conformity of the provisions of the draft Law with the international standards
			Nature of the granted rights There are no details provided

The situation of the legislative practice in the majority of the European States which are members of the Council of Europe, observers to the Committee of Ministers or to the Parliamentary Assembly of the Council of Europe or special guests to the Parliamentary Assembly of the Council of Europe, concerning the protection of persons having the same ethnic origin as the majority of the population of these States, but which are citizens of other States

The State	The Law	The rights granted by the Law	The granting of an "Identity Card" attesting the ethnic origin
REPUBLIC OF ALBANIA	There are constitutional provisions referring to the duty of the State to grant protection to the Albanians living abroad	There is none	There is no such procedure
REPUBLIC OF ARMENIA	There is none	There is none (by an understanding with the Government of Georgia, the Government of Armenia supplies electric power for free to communities where there is dense Armenian population)	There is no such procedure (in the same time, Armenia does not recognize double citizenship)
REPUBLIC OF AUSTRIA	Law no. 57/1979 concerning the equality of treatment for the persons of Austrian origin living in the Southern Tirol for certain administrative fields (applicable for the German speakers of Bozen)	<ul style="list-style-type: none"> - The right to teach in university institutions and to be elected in the directorial bodies of the institutions of education without preliminary contest and without exams for obtaining the recognition of the diplomas and of the scientific awards. - Equal treatment reported to the Austrian citizens with regard to the access to studies and the attendance and also to the scholar taxes - Exemption from the obligation to 	There is no such procedure

		obtain an Austrian visa during the stay in Austria Note: after the accession of the Republic of Austria to the European Union, these provisions lost their relevance; economic and social rights were never granted. There is none		There is no such procedure
REPUBLIC OF AZERBAIDJAN	There is none, although there is a very large community of Azer people living outside the borders of Azerbaidjan (there are unofficial estimations according to which in Northern Iran are living 20-30 million Azers). There is none			There is no such procedure
KINGDOM OF BELGIUM	There is none		There is none (the ex- Belgian citizens living abroad have the right to vote if they pay a fee of around 500 Euro) There is none	There is no such procedure There is no such procedure
BOSNIA-HERTEGOVINA (Special Guest to the Parliamentary Assembly of the Council of Europe)	There is none			There is no such procedure
REPUBLIC OF BULGARIA REPUBLIC OF CYPRUS	There is none There are several legal acts providing rights for the "overseas Cypriots", which are persons of Cypriot descent, even if they are not Cypriot citizens		There is none - Children of the "overseas Cypriots" born abroad after 16.08.1960 may acquire Cypriot citizenship with the registration of their birth and the issue of a Consular Birth Certificate, provided that their father was a citizen of the Republic of Cyprus in the year of their birth. (Since 11.06.1999, they are registered as Cypriot citizens,	There is no such procedure There is no such procedure

<p>CANADA (Observer to the Committee of Ministers of the Council of Europe)</p>	<p>There is none</p>	<p>provided that their mother is a Cypriot citizen) If this condition is not met, they may anyway acquire the Cypriot citizenship, by submitting a request</p> <ul style="list-style-type: none"> - "Overseas Cypriots" may enter Cyprus without a visa and stay and work in Cyprus without formalities for an unlimited period of time. 	<p>There is no such procedure</p>
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CZECH REPUBLIC	There is none	There is none	There is no such procedure
REPUBLIC OF CROATIA	There is none (it is currently being taken into consideration the possibility to promote a specific Law, following the Hungarian pattern; the preliminary debates shall probably start in October this year)	There is none	There is no such procedure
KINGDOM OF DENMARK	There is a series of administrative rules for the Danish minority living in Northern Germany	- Provisions for supporting the cultural and linguistic identity of the Danish minority of the Northern Germany and with regard to the re obtainment by these persons of the Danish citizenship.	There is no such procedure
HELLENIC REPUBLIC	There is none; the Presidential Decree no.291/99 concerning the creation and the work of the Council of the Greek Emigration, which is an autonomous, <u>non-governmental</u> body, developing, for the accomplishment of its objectives, actions and programs through the legal persons whom it creates inside and outside Greece	Rights granted for the accomplishment of the objectives provided by the decree no. 291/99: "a) tightening the relation between the Hellenic community living abroad and Greece and between the communities themselves in the countries where the persons belonging to such communities have their domicile b) Improvement of the conditions of living and especially the protection and the stimulation of the Greek-orthodox morality and the promotion of the right to education, right of an economic character, concerning the conditions of work etc. of the communities living abroad; c) Granting	There is no such procedure

		<p>economic support for the development of the community, especially through the Patriarchy of Constantinople and other churches, together with social local organizations of the communities...; d) tightening the economic, cultural, commercial and civilization relations between the countries where these persons have their residence and the Hellenic Republic; e) integration in the Hellenic society of the Greek which are coming back in the Hellenic Republic</p>	
REPUBLIC OF FINLAND	There is none	There is none	There is no such procedure
FRENCH REPUBLIC	There is none	There is none	There is no such procedure
GEORGIA	There is none, although outside the borders of Georgia are living several million citizens of Georgian ethnic origin	There is none	There is no such procedure
FEDERAL REPUBLIC OF GERMANY	ART. 116 of the German Constitution and a Law providing the conditions for obtaining the German citizenship by persons which are "Deutscher im Sinne des Gesetzes" on the basis of a Decree of 1913 of the 1 st Reich	There is none (rights for the persons of German ethnic origin, living abroad, are granted only on the basis of bilateral Agreements)	The emigrants of german ethnic origin (Aussiedler) may receive specific German passports, although they are not yet German citizens, on the condition sine qua non that they have their domicile on the territory of the Federal Republic of Germany and that they had already applied for the obtainment of the German citizenship. These passports are valid one year and afterwards, after administrative

		checking the decision is taken whether the person be granted or not the German citizenship. In case the answer is negative, the person has no right to a German passport anymore
STATE OF ISRAEL (Observer to the parliamentary Assembly of the Council of Europe)	Two Laws concerning the rights of the Hebrew to return in Israel	Special rights provided for outside Israel are not provided; there are no facilities concerning socio-economic rights (right to work)
REPUBLIC OF LATVIA	There is none	They are in the process of studying the possibility to grant in the future the Latvian citizenship to the Latvian living abroad
GRAND DUCHY OF LUXEMBOURG	There is none	There is no such procedure
REPUBLIC OF LITHUANIA	There is none	There is no such procedure
GREAT BRITAIN	There is none	There is no such procedure
KINGDOM OF NORWAY	There is none	There is no such procedure
KINGDOM OF NETHERLANDS	There is none	There is no such procedure
ITALIAN REPUBLIC	There is none	There is no such procedure
REPUBLIC OF MOLDOVA	There is none	There is no such procedure
REPUBLIC OF POLAND	There is none, currently; a draft Law "the Charter of the Polish" forwarded by the Seim is on discussion; the Polish Government has several fundamental objections, concerning: 1) the ethnic origin is a problem of individual option of the person and not of recognition by the	In conformity with art. 71 of the Law of the 26 th November 1998 on public finance, annually, a sum is granted in order to accomplish through the Association "The Polish Community" the "duty of the State for helping the Polish ethnic". In 2001, this sum shall be used for

	<p>State's institutions 2) there is no such procedure of granting special rights to foreign citizens of Polish ethnic origin because there are constitutional provisions referring to the equal treatment of strangers on the Polish territory; 3) The draft Law contains provisions which are contrary to the Schengen Agreements</p> <p>- There is a Law concerning the repatriation of Polish</p>	<p>- Supporting the young Polish to come to various forms of professional training in Poland or in holiday</p> <p>- Social aids for the Polish which have a very low income</p>	
<p>PORTUGUESE REPUBLIC</p>	<p>There is none (the word "ethnic" has no relevance, because the Portuguese nation formed inside borders which remained unchanged along the history)</p>	<p>There is a proposal of the ex-president Mario SOARES concerning the granting of rights to Brazilian citizens which are Portuguese residents, in conditions of reciprocity with Brazil. The rights supposed to be granted to the Brazilian citizens concern:</p> <p>-The right to be elected</p> <p>-The right to obtain functions in the public administration, excepting defense, national security and diplomacy. This initiative is in the phase of establishing its implications of this demarch in the constitutional field and also reported to the legislation of the European Union.</p>	<p>There is no such procedure</p>
<p>ROMANIA</p>	<p>L150/1998 (Law regarding the support granted to the Romanian communities from all over the</p>	<p>Rights for the preservation of the cultural, linguistic identity</p>	<p>There is no such procedure</p>

RUSSIAN FEDERATION	<p>world) Federal law on the State policy of the Russian Federation with regard to the Russians living abroad</p>	<p>In the Preamble it is provided the support of the Russian Federation for the accomplishment of their political, social, economic and cultural rights. With regard to the economic and social rights, art. 16 provides the granting of support for:</p> <ul style="list-style-type: none"> - The cooperation of the Russian companies with the Associations of the Russians, creation of joint societies with these ones, participation to investments in the Russian economy, relations with foreign companies where Russians are working -Support for the disfavored categories of Russians, on the basis of international Agreements concluded by the Russian Federation - Humanitarian aid 	<p>It is granted for persons which previously had the Soviet citizenship and emigrated or for their descendents; this quality is proved by a special document, whose model is established by the Government of the Russian Federation (art.3); this document is issued in a month, by the diplomatic or consular missions on written demand of the solicitor.</p>
REPUBLIC OF SLOVENIA	<p>There is none (between 1995-1996, a draft law concerning the rights and facilities granted to the Slovenians living abroad was discussed, but it was not approved by all the institutions involved in the process and thus was abandoned before being submitted to the approval of the Government)</p> <p>There is none</p>	<p>There is none</p>	<p>There is no such procedure</p>
KINGDOM OF SPAIN	<p>There is none</p>	<p>There is none (only the right to</p>	<p>There is no such procedure</p>

	reobtain the Spanish citizenship is recognized)		
SLOVAK REPUBLIC	It grants the right to work for an undetermined period, without issuing any residence permit on the territory of the Slovak Republic; tax exemptions for obtaining visas; granting citizenship for special reasons; cultural rights	L no. 70, adopted on 14 th of February 1997 the Slovaks living abroad	It is provided the granting of a card of Slovak on the basis of acts proving the ethnic origin, issued by the State of citizenship (birth certificate, baptize certificate etc., excerpt of the civil status register, confirmation of the State citizenship, confirmation of the domicile), through the missions of the Slovak State in the State of citizenship. Unless provided the impossibility to obtain the acts mentioned above, the solicitor can prove its ethnic origin by a written confirmation from the organization representing the Slovak minority in the State of citizenship or through the confirmation given by two Slovaks living in the State of citizenship.
KINGDOM OF SWEDEN	There is none	There is none	There is no such procedure
SWISS CONFEDERATION	There is none (There is a non-governmental Association for the protection of the Swiss living abroad)	There is none	There is no such procedure
REPUBLIC OF TURKEY	There is none	There is none	There is no such procedure
UKRAINE	There is none	There is none; a draft Law is in the process of elaboration ; the Ukrainian authorities do not wish to offer details in this respect.	There is no such procedure
YUGOSLAVIA APCE sp. guest	There is none	There is none	There is no such procedure

**THE ROMANIAN PARLIAMENT
THE CHAMBER OF DEPUTIES – THE SENATE**

LAW

regarding the support granted to the Romanian communities from all over the world

The Romanian Parliament passes this law.

Art. 1. – (1) A Fund available to the prime minister is constituted, in order to ensure the financing of the activities supporting the Romanian communities on the territory of other states.

(2) The Fund available to the prime minister in order to support the Romanian communities from all over the world is approved by the annual laws of the state budget.

Art. 2. – Such budgetary resources are mainly used for:

- a) activities supporting the schools and education in the Romanian language;
- b) cultural and artistic activities;
- c) activities for youth;
- d) individual aid in special medical cases;
- e) civic education activities;
- f) other cases provided in the collaboration programs.

Art. 3. – (1) The Inter-ministry Council for the Support of Romanian Communities from All Over the World is established, with the approval of the prime minister. Such council endorses the activities to be financed with priority out of the fund established according to art. 1. These activities shall be proposed by the institutions initiating such activities, through the ministries in the field.

(2) The Inter-ministry Council shall meet from time to time and shall comprise representatives of the Ministry of National Education, the Ministry of Foreign Affairs, the Ministry of Culture, the Ministry of Finance, the General Secretariat of the Government and the State Secretariat for Cults. The representative of the Romanian Cultural Foundation has a guest status. The endorsement of the inter-ministry council is consultative.

Art. 4. – (1) For the year 1998, the financial resources required for the constitution of the fund shall be ensured by ROL 5 billions out of the state budget, without affecting the relevant ministries involved.

(2) The fund shall be completed with the financial resources which may be allocated by the law regarding the rectification of the state budget for the year 1998.

Art. 5. – (1) The Center “Eudoxiu Hurmuzachi” for the Romanians all over the world is established, hereinafter called *the center*, a public institution with legal personality, subordinated to the Ministry of National Education, having its principal office in Bucharest.

(2) The duties of the center refer to the fulfillment of the activities provided herein.

Art. 6. – (1) The center is organized and operates according to its own regulation.

(2) The organization and operation regulation, the number of employees required for the development of the activity, the organizational structure, the position status and the remuneration of the center’s staff shall be approved by order of the minister of national education.

(3) The general management of the center's activity is ensured by the general manager, who must be a member of the Romanian Academy or a renowned cultural personality or a professor, appointed by order of the minister of national education.

Art. 7. – The center also has the role of drafting and coordinating the training programs for the Romanian youth from all over the world, in order for them to be admitted at all levels of educational institutions in Romania.

Art. 8. – (1) The center's operation and investment costs shall be financed out of the state budget, by the Ministry of National Education.

(2) The funds required by the center may come out of sponsorships, donations, assistance granted by international bodies, as well as out of incomes resulting from performing scientific research agreements, specialized assistance or consulting agreements and from other legal sources.

(3) In order to cover the expenses required for the appropriate organization and operation of the center in 1998, the amount of ROL 2 billions shall be allocated out of the Budgetary Reserve Fund available to the Government.

Art. 9. – The students and attendants of the center may receive scholarships from the Romanian state and may benefit of free accommodation in students' hostels, for the duration of their studies in Romania. The Government may also grant other forms of support which are deemed necessary.

Art. 10. – (1) The local public administration authorities, from the territorial-administrative units where activities organized or coordinated by the center take place, shall grant the necessary assistance in order to freely ensure appropriate areas and equipment for the duration of the respective activities.

(2) In order to carry out the center's object of activity, the building located in Crevedia village, Dambovita county, which is the public property of the state, managed by the Ministry of National Education and used by the National School of Political and Administrative Studies, together with the land and any other related movable or immovable goods, according to the inventory of 31 December 1997, shall be exclusively used by the center.

(3) The administrative staff of the real property located in Crevedia village, Dambovita county, may be transferred from the National School of Political and Administrative Studies to the center, according to art. 6 par. (2).

Art. 11. – Any contrary provision hereto shall be repealed upon the coming into force of this law.

This law was passed by the Chamber of Deputies during the meeting of 7 July 1998, in compliance with the provisions of art. 74 par. (2) of the Romanian Constitution.

For THE CHAIRMAN OF THE CHAMBER OF DEPUTIES
VASILE LUPU

This law was passed by the Senate during the meeting of 7 July 1998, in compliance with the provisions of art. 74 par. (2) of the Romanian Constitution.

For THE CHAIRMAN OF THE SENATE
CRISTIAN SORIN DUMITRESCU

Bucharest, 15 July 1998. no.150.

ACT ON HUNGARIANS LIVING IN NEIGHBOURING COUNTRIES*

* The Act has not come into force yet thus please note that the text below is formally not an act for the time being. It will come into force once it has been endorsed by the President of the Republic of Hungary and made public by the government in its official paper (Magyar Közlöny).

Parliament

- In order to comply with its responsibilities for Hungarians living abroad and to promote the preservation and development of their manifold relations with Hungary prescribed in paragraph (3) of Article 6 of the Constitution of the Republic of Hungary,
- Considering the European integration endeavours of the Republic of Hungary and in-keeping with the basic principles espoused by international organisations, and in particular by the Council of Europe and by the European Union, regarding the respect of human rights and the protection of minority rights;
- Having regard to the generally recognised rules of international law, as well as to the obligations of the Republic of Hungary assumed under international law;
- Having regard to the development of bilateral and multilateral relations of good neighbourhood and regional co-operation in the Central European area and to the strengthening of the stabilising role of Hungary;
- In order to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole and to promote and preserve their well-being and awareness of national identity within their home country;
- Based on the initiative and proposals of the Hungarian Standing Conference, a co-ordinating body functioning in order to preserve and reinforce the awareness of national self-identity of Hungarian communities living in neighbouring countries;
- Without prejudice to the benefits and assistance provided by law for persons of Hungarian nationality living outside the Hungarian borders in other parts of the world;

Herewith adopts the following Act:

CHAPTER I

GENERAL PROVISIONS

Scope of the Act

Article 1

(1) This Act shall apply to persons declaring themselves to be of Hungarian nationality who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine, and who

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

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

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

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

Article 2

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

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

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

Article 3

The Republic of Hungary, in order to

a) ensure the maintenance of permanent contacts,

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

c) ensure undisturbed cultural, economic and family relations,

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

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

CHAPTER II

BENEFITS AND ASSISTANCE AVAILABLE FOR PERSONS FALLING WITHIN THE SCOPE OF THIS ACT

Education, Culture, Science

Article 4

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

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

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

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

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

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

a) visit of the library,

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

c) use of stock-exploring instruments,

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

- d) information on the services of the library and of the library system,
 - e) in the case of registration, borrowing of printed library material in accordance with the regulations of the library.
- (3) Further benefits with respect to the availability of services offered by state-run museums and public cultural institutions to persons falling within the scope of this Act shall be laid down in a separate legal rule.

Article 5

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

Article 6

- (1) The Republic of Hungary shall ensure that persons falling within the scope of this Act, in recognition of their outstanding activities in the service of the Hungarian nation as a whole and in enriching Hungarian and universal human values, may be awarded distinctions of the Republic of Hungary and may receive titles, prizes or honorary diplomas founded by its Ministers.
- (2) In the process of determining conditions for state scholarships, the possibility to receive such scholarships shall be ensured for persons falling within the scope of this Act.

Social Security Provisions and Health Services

Article 7

- (1) Persons falling within the scope of this Act who, under Article 15, work on the basis of any type of contract for employment in the territory of the Republic of Hungary shall pay, unless otherwise provided for by international agreements, health insurance and pension contribution of an amount equal to that laid down in the relevant Hungarian social security legislation to the authority designated for this purpose in a separate legal rule. Those contributions shall entitle such persons to health and pension provision specified by a separate legal rule.
- (2) Persons falling within the scope of this Act who are not obliged to pay health insurance and pension contributions as stipulated in paragraph (1) shall have the right to apply for reimbursement of the costs of self-pay health care services in advance. Applications shall be submitted to the public benefit organisation established for this purpose.
- (3) In cases requiring immediate medical assistance, persons falling within the scope of this Act shall be entitled to such assistance in Hungary according to the provisions of bilateral social security (social policy) agreements.

Travel benefits

Article 8

- (1) Persons falling within the scope of this Act shall be entitled to travel benefits in Hungary on scheduled internal local and long-distance lines of public transport. With regard to railways, such benefits shall apply to 2nd class fares.
- (2) An unlimited number of journeys shall be provided free of charge for:
- a) children up to six years of age,
 - b) persons over sixty-five years of age.
- (3) A 90% travel discount shall be provided on means of internal long-distance public transport for:
- a) persons identified in paragraph (1) four times a year,
 - b) a group of at least ten persons under eighteen years of age travelling as a group and falling within the scope of this Act, and two accompanying adults once a year.
- (4) The detailed rules of travel benefits shall be laid down in a separate legal rule.

Education

Article 9

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

- a) undergraduate level college or university education,
- b) supplementary undergraduate education,
- c) non-degree programmes,
- d) Doctor of Philosophy (PhD) or DLA programmes,
- e) general and specialised further training,
- f) accredited higher education level vocational training in a school-type system.

(2) Students participating in state-financed full-time training programmes specified in paragraph (1), shall be entitled to formula funding on the one hand, and financial and other benefits in kind on the other, both being part of the appropriations of budgetary expenditure for students, as well as to the reimbursement of detailed health insurance contributions provided by Act LXXX of 1993 on Higher Education. The detailed conditions of these forms of assistance and further benefits shall be regulated by the Minister of Education in a separate legal rule.

(3) Persons falling within the scope of this Act may pursue studies in the higher education institutions of the Republic of Hungary in the framework of state-financed training in a fixed number to be determined annually by the Minister of Education.

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

Student Benefits

Article 10

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

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

Further Training for Hungarian Teachers Living Abroad

Article 11

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

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

- a) reimburse accommodation costs,
- b) reimburse travel expenses, and
- c) contribute to the costs of registration.

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

Article 12

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

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

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

Education Abroad in Affiliated Departments

Article 13

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

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

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

Educational Assistance Available in the Native Country

Article 14

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

- a) the child attends an education institution according to his/her age and receives training or education in Hungarian, and
- b) the education institution specified in point a) is in the neighbouring country of residence of the parents.

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

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

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

Employment

Article 15

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

Article 16

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

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

Duties of the Public Service Media

Article 17

(1) Public service media in Hungary shall provide, on a regular basis, for the gathering and transmission of information on Hungarians living abroad and shall transmit information on Hungary and the Hungarian nation to Hungarians living abroad. The purpose of this information shall be:

- a) the transmission of Hungarian and universal spiritual and cultural values,
- b) the forming of an unbiased picture of the world, of Hungary and of the Hungarian nation,
- c) the preservation of the awareness of national identity, of the mother tongue and culture of the Hungarian minority communities.

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

Assistance to Organisations Operating Abroad

Article 18

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

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

- a) the preservation, furtherance and research of Hungarian national traditions,
- b) the preservation and fostering of the Hungarian language, literature, culture and folk arts,
- c) the promotion of higher education of Hungarians living abroad by facilitating the work of instructors from Hungary as visiting lecturers,
- d) the restoration and maintenance of monuments belonging to the Hungarian cultural heritage,

- e) the enhancement of the capacity of disadvantaged settlements in areas inhabited by Hungarian national communities living abroad to improve their ability to preserve their population and to develop rural tourism,
- f) the establishment and improvement of conditions of infrastructure for maintaining contacts with the Republic of Hungary,
- g) the pursuance of other activities promoting the goals specified in paragraph (1).

CHAPTER III

RULES OF PROCEDURE OF APPLICATION FOR BENEFITS AND ASSISTANCE

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

Article 19

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

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

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

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

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

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

Article 20

(1) The evaluating authority shall issue the "Certificate of Hungarian Nationality" if the applicant is in the possession of a recommendation which has been issued by a recommending organisation representing the Hungarian national community in the neighbouring country concerned, and being recognised by the Government of the Republic of Hungary as a recommending organisation, and which:

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

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

c) includes the following:

- ca) the application, photo and address of the applicant,
- cb) the personal data to be recorded in the Certificate (Article 21),
- cc) the name and the print of the official seal of the recommending organisation, the name and signature of the person acting on behalf of the recommending organisation,
- cd) place and date of issue of the recommendation.

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

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

- a) representing the Hungarian community living in the given country in its entirety,
- b) providing for the organisational and personnel conditions for receiving and evaluating applications for recommendation.

Article 21

(1) The period of validity of the Certificate

- a) shall expire on the day of the eighteenth birthday in the case of minors,
- b) shall be five years in the case of persons between 18 and 60 years of age,
- c) shall be indefinite in the case of persons over 60 years of age.

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

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

- a) the recommending organisation has withdrawn its recommendation due to the submission of false data by the bearer of the Certificate in the application process,
- b) its bearer has been granted an immigration or permanent residence permit,
- c) its bearer has acquired Hungarian citizenship,
- d) its bearer has been recognised as a refugee or temporarily protected person by the authorities responsible for refugee matters,
- e) its bearer has been expelled from the territory of the Republic of Hungary, or a prohibition of entry or stay has been issued against him/her,
- f) criminal proceedings have been instituted against the bearer in Hungary,
- g) the Certificate has been used in an unauthorised way or has been forged,
- h) the family relationship entitling the bearer to use the Certificate for Dependants has ceased to exist,

i) upon request by the bearer of the Certificate.

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

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

- a) family and given name (also the maiden family and given name in the case of women) as it is used officially in the neighbouring country of residence (in Latin script), and in the case of persons of Hungarian nationality in Hungarian as well,
- b) name of the place of birth as it is used officially in the neighbouring country and in Hungarian,
- c) date of birth and gender,
- d) mother's name as it is officially used in the neighbouring country of residence (in Latin script) and in the case of persons of Hungarian nationality in Hungarian as well,
- e) passport photo, citizenship or reference to stateless status,
- f) signature in the entitled person's own hand, and
- g) date of issue, period of validity and number of the document.

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

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

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

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

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

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

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

Article 22

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

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

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

Use of Benefits on the Territory of the Republic of Hungary

Article 23

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

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

Application Procedures for Assistance Available in the Republic of Hungary

Article 24

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

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

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

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

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

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

Application Procedures for Assistance Available in Neighbouring Countries

Article 25

(1) Requests (applications) for assistance regulated in this Act may be submitted by persons (organisations) falling within the scope of this Act to lawfully operating non-profit organisations established in the neighbouring country of their permanent residence (registered office) for this purpose (hereinafter referred to as "foreign public benefit organisations")

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

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

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

Central Registration of Assistance

Article 26

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

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

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

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

b) the type of assistance sought,

c) the amount of assistance granted.

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

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

CHAPTER IV

FINAL PROVISIONS

Article 27

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

(2) From the date of accession of the Republic of Hungary to the European Union, the provisions of this Act shall be applied in accordance with the treaty of accession of the Republic of Hungary and with the law of the European Communities.

Article 28

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

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

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

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

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

Article 29

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

(2) The Minister of Economic Affairs shall:

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

b) be empowered to regulate by decree the conditions for issuing work permits for a period longer than the one specified in Article 15 of this Act with regard to employees falling within the scope of this Act, or for a particular group of employees, in consensus with the Minister for Youth and Sports Affairs in cases involving professional sportspersons.

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

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

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