

Bilateral Instruments

11. Memorandum of Understanding between the Government of the Republic of Hungary and the Government of Romania Concerning the Law on Hungarians Living in Neighbouring Countries and Issues of Bilateral Co-operation

(Budapest, 22 December 2001)

The Government of the Republic of Hungary and the Government of Romania, hereinafter referred to as ‘the Parties’,

Guided by a joint effort to strengthen their bilateral relations in the spirit of mutual understanding and good-neighbourly co-operation,

Bearing in mind the provisions of the European and international documents in the field of the protection of the rights of persons belonging to national minorities,

Guided by the provisions of the Venice Commission’s report on the preferential treatment of national minorities by their kin States, setting forth the conditions in which the involvement of the kin State is legitimate, as the respect of the territorial sovereignty, *pacta sunt servanda*, the principle of good neighbourliness, respect of human rights and fundamental freedoms, in particular the principle of non-discrimination,

Taking into account the Statement of the High Commissioner on National Minorities of the OSCE and, also, the position of the European Commission concerning the Law on Hungarians Living in Neighbouring Countries, who invited the States concerned to reach a bilateral understanding respectful of the current European standards,

In accordance with the Treaty on understanding, co-operation and good-neighbourliness between the Republic of Hungary and Romania, in particular the provisions concerning the protection of the rights of persons belonging to national minorities, acknowledging that providing effective equality in rights and chances for the national minorities living in their respective countries and creating conditions for them to prosper in their land of birth, constitute an indispensable contribution to the stability of the region and to the creation of a future Europe, based on values as cultural and linguistic diversity and tolerance,

Reiterating their strong will to maintain the rhythm of development of bilateral economic relations and decided to give stronger impetus for the increasing of commercial exchanges between their States,

With a view to the 2002 Prague Summit and welcoming the progress of Romania in meeting the accession criteria, the Republic of Hungary supports the decision for Romania to become a member of the North-Atlantic Treaty Organisation,

Reiterating their mutual permanent and substantial support for their integration with the European Union,

Determined to solve all open issues on their agenda and further their co-operation;

Have agreed as follows:

I. Concerning the Law on Hungarians Living in Neighbouring Countries:

1. The present Agreement sets forth conditions of implementing the Law on Hungarians Living in Neighbouring Countries with regard to the Romanian citizens.

2. All Romanian citizens, notwithstanding their ethnic origin, will enjoy the same conditions and treatment in the field of employment on the basis of a work permit on the territory of the Republic of Hungary. Work permits shall be issued under the general provisions on the authorisation of employment of foreign citizens in Hungary. When work permits are issued for a maximum of three months per calendar year, there is the possibility of their prolongation and the Romanian citizens enjoy some facilities on the territory of the Republic of Hungary, which are the following: Romanian citizens working on the territory of the Republic of Hungary on the basis of any type of contract of employment shall have the right to apply to the public benefit organisation established for this purpose for the reimbursement of the costs of self-pay health care services in advance.

By exchange of letters in the first week of January 2002, the Parties shall include amendments also in the Agreement on seasonal workers. These amendments shall concern supplementary

advantages reciprocally granted in case the work permit is issued only for three months (and not for six months as provided in the Agreement on seasonal workers). A mutual obligation of non-discrimination on ethnic criteria during the implementation of the Agreement shall be also included.

3. The Romanian citizens of non-Hungarian ethnic identity shall not be granted any certificate and shall not be entitled to any benefits set forth by the Law on Hungarians Living in Neighbouring Countries.

4. The entire procedure of granting the certificate (receiving of applications, issue, forwarding) shall primarily take place on the territory of the Republic of Hungary in the county public administration established by the Hungarian authorities and respectively at the Office of the Ministry of Interior, and at the Hungarian diplomatic missions.

5. The Hungarian representative organisations or other entity on the territory of Romania shall not issue any recommendations concerning the ethnic origin or other criteria.

The organisations or other entities on the territory of Romania can provide with information with a legally non-binding character in the absence of formal supporting documents.

6. The administrative document which entitles to benefits, issued by the Hungarian authorities, shall be named 'Hungarian Certificate'.

7. The certificate shall contain only the strictly necessary personal data and the entitlement to benefits (name, forename, citizenship, country of residence etc.) and shall include no reference to the ethnic origin/identity.

8. The compulsory criteria on which certificates are granted shall be the following:

- Relevant application,
- Free declaration of the person of belonging to the Hungarian minority in the State of citizenship, founding on his/her Hungarian ethnic identity,
- Knowledge of the Hungarian language, or
- The person should have declared himself/herself in the State of citizenship to have Hungarian ethnic identity, or
- Optionally, the person should either belong to a Hungarian representative organisation (notably membership of the UDMR), or be registered as ethnic Hungarian in a church.

9. The Parties shall start the negotiations in the frame of the Committee on national minorities of the Intergovernmental Hungarian-Romanian Commission of an Agreement on the preferential treatment of the Romanian minority on the territory of the Republic of Hungary and of the Hungarian minority on the territory of Romania, in order to preserve their cultural identity in accordance with the provisions of the international documents, the Venice Commission's report, the guidelines of the OSCE High Commissioner on National Minorities.

10. The Republic of Hungary shall not grant any kind of support to Hungarian political organisations of Romania unless previously informing the Romanian authorities and obtaining their consent.

11. On the basis of common experiences of the Parties, the Government of the Republic of Hungary shall initiate the review and the necessary amendments of the Law on Hungarians Living in Neighbouring Countries in six months after the signature of this Memorandum of Understanding. By the 1st of January 2002, the authorities of the Republic of Hungary shall take the necessary measures in order to implement the provisions of the present Agreement by means of norms of application and shall further on take also into account the recommendations of the Committee on national minorities which shall further on examine the questions concerning the Law on Hungarians Living in Neighbouring Countries.

II. Concerning Their Bilateral Relations:

1. On the occasion of the anniversary of 5 years of active partnership between Romania and the Republic of Hungary, the Parties shall convolve a special session of the Joint Intergovernmental Commission. In order to work out a plan to make concrete steps forward in their bilateral co-operation, Parties will, in the Committees of the Hungarian-Romanian Intergovernmental Joint Commission on Active Co-operation and Partnership and at its plenary session scheduled for the

first quarter of 2002, survey the full range of the bilateral relations and make recommendations for measures to be taken.

2. In order to carry out the Recommendations made in the Protocol of the Committee on national minorities of the Hungarian-Romanian Intergovernmental Joint Commission on Active Co-operation and Partnership, signed at its 4th session on October 19, 2001, which will be approved by the two Governments, who will take the necessary measures for implementation.

3. The Parties give priority to the development of railway and road system connecting the two countries and to the enlargement of the border crossing infrastructure program linked to it.

4. The Parties will start talks with a view to elaborate the operational modalities of a future Joint Financial Fund designed to guarantee the investments of their small and medium size enterprises in the other country respectively.

5. In the field of the Euro-Atlantic integration process the Parties will share their relevant experiences.

6. The Parties express their interest to take all the necessary measures in order to modernise and develop their bilateral legal framework.

Done at Budapest, on the 22nd of December 2001, in two original copies, each of them in the English language.

12. Agreement between the Government of Romania and the Government of the Republic of Hungary

(Bucharest, 23 September 2003)

The Government of Romania and the Government of the Republic of Hungary, hereinafter referred to as '*the Parties*',

Guided by a joint effort to strengthen their bilateral relations in the spirit of mutual understanding and good-neighbourly co-operation,

Bearing in mind the Treaty on understanding, co-operation and good-neighbourliness between Romania and the Republic of Hungary, signed in Timișoara, on the 16th of September 1996, in particular the provisions concerning the protection of the rights of persons belonging to national minorities, acknowledging that providing effective equality in rights and chances for the national minorities living in their respective countries and creating conditions for them to prosper in their land of birth, constitute an indispensable contribution to the stability of the region and to the creation of a future Europe, based on values as cultural and linguistic diversity and tolerance,

Led by the Declaration on Strategic Partnership between the Government of Romania and the Government of the Republic of Hungary, signed in Budapest, on the 29th of November 2002,

Taking into account the prospective membership of the two countries in the European Union,

Willingful of promoting the European values and standards,

Guided by the willingness to promote the preservation and development of the cultural and linguistic identity of the persons belonging to Romanian and Hungarian national minorities living in the two countries, in order for the citizens to have better knowledge on the culture and language of the other State, in conformity with the international treaties on the matter, in force between the two States,

Bearing in mind the provisions of the European and international documents in the field of the protection of the rights of persons belonging to national minorities and the recommendations of the European institutions, in particular the OSCE High Commissioner on National Minorities and the European Commission,

Guided by the provisions of the Venice Commission's report on the preferential treatment of national minorities by their kin States, setting forth the conditions in which the involvement of the kin State is legitimate, as the respect of the territorial sovereignty, *pacta sunt servanda*, the principle of good neighbourliness, respect of human rights and fundamental freedoms, in particular the principle of non-discrimination,

Have agreed upon conditions with regard to implementing the Law on Hungarians Living in Neighbouring Countries concerning Romanian citizens, as follows:

Article 1

The Romanian citizens of non-Hungarian ethnic origin shall not be granted any Certificate and, on this basis, shall not be entitled to apply for any benefits set forth by the Law on Hungarians Living in Neighbouring Countries.

Article 2

The Parties note that the entire procedure of granting the certificate (receiving of applications, issue, distribution) takes place on the territory of the Republic of Hungary, including the Hungarian diplomatic and consular missions as to the receiving of applications.

Article 3

The Parties acknowledge that non-governmental organisations established by the ethnic Hungarians on the territory of Romania shall not issue any recommendations concerning the ethnic origin or other criteria, as far as the procedure of granting the Certificate is concerned.

Article 4

The Romanian Party notes that Romanian citizens which are pupils in elementary schools and high-schools and learn in Hungarian language, as well as the students studying in Hungarian language in higher educational institutions or attend classes in the field of Hungarian culture may enjoy, on the territory of the Republic of Hungary, benefits for the support of their studies, on the basis of their pupil/student quality in Romania.

Article 5

The Romanian Party notes that Romanian citizens teaching in Hungarian language or in the field of Hungarian culture in elementary schools and high-schools or in higher educational institutions may enjoy, on the territory of the Republic of Hungary, benefits for teachers and professors for the support of their teaching activities, on the basis of their teacher/professor quality in Romania.

Article 6

The Parties convened that the ‘School’ Foundation, in conformity with the Romanian legislation, distributes, by contest, on the basis of projects, educational benefits, for educational institutions or for individuals for the purpose of scholarships, on a non-discriminatory basis.

Article 7

The Hungarian Certificates for Romanian citizens shall be used only on the territory of the Republic of Hungary;

Article 8

The Government of the Republic of Hungary strives to take the necessary steps in order to bring the Certificates into conformity with the Recommendations of the European institutions, including those of the European Commission of December 2002.

Article 9

The Government of the Republic of Hungary agrees that the Hungarian citizens of Romanian ethnic origin living in the Republic of Hungary shall be granted, in accordance with the Romanian relevant legislation regarding the support for the Romanian minorities living abroad and on the basis of reciprocity, the same level of facilities as those granted to Romanian citizens of Hungarian ethnic origin living in Romania, in accordance with the legal framework in force between Romania and the Republic of Hungary on this matter.

Article 10

On the entry into force of this Agreement, the Memorandum of Understanding between the Government of Romania and the Government of the Republic of Hungary concerning the Law on Hungarians Living in Neighbouring Countries and Issues of Bilateral Co-operation, signed in Budapest, on the 22nd of December 2001 shall terminate its validity.

Article 11

This Agreement shall enter into force on the date of the latter notification regarding the fulfilment of the domestic procedures necessary for the entry into force of this Agreement.

Signed in Bucharest, on the 23 September 2003, in two original copies, each of them in the English language.

International Organizations

Council of Europe

13. Report on the Preferential Treatment of National Minorities by Their Kin-state [CDL-INF (2001) 19, English only]

(Strasbourg, 22 October 2001)

**Adopted by the (European Commission for Democracy Through Law) Venice Commission
at its 48th Plenary Meeting, Venice, 19-20 October 2001**

Introduction

On 21 June 2001, Romania's Prime Minister, Mr. A. Năstase, requested the Venice Commission to examine the compatibility of the Act on Hungarians living in neighbouring countries, adopted by the Hungarian Parliament on 19 June 2001, with the European standards and the norms and principles of contemporary public international law.

On 2 July 2001, the Hungarian Minister of Foreign Affairs, Mr. J. Martonyi, requested the Venice Commission to carry out a comparative study of the recent tendencies of the legislations in Europe concerning the preferential treatment of persons belonging to national minorities living outside the borders of their country of citizenship.

At its plenary session of 6-7 July 2001, the Venice Commission decided to undertake a study, based on the legislation and practice of certain member States of the Council of Europe, on the preferential treatment by a State of its kin-minorities abroad. The aim of the study would be to establish whether such treatment could be said to be compatible with the standards of the Council of Europe and with the principles of international law.

A working group was thereafter formed, consisting of Messrs Franz Matscher, François Luchaire, Giorgio Malinverni and Pieter Van Dijk. A meeting was held in Paris on 18 September 2001. The Rapporteurs met with representatives of the Romanian and the Hungarian Governments respectively, in order to obtain certain clarifications following the information, which both parties had submitted, at the Commission's request, in August.

The present report was prepared on the basis of comments by Messrs. Matscher, Luchaire, Malinverni and Van Dijk; it was discussed within the Sub-Commission for the Protection of Minorities on 18 October 2001, and was subsequently adopted by the Commission at its 48th Plenary Meeting held in Venice on 19-20 October 2001.

A. Historical Background¹

The concern of the 'kin-States' for the fate of the persons belonging to their national communities² (hereinafter referred to as 'kin minorities') who are citizens of other countries ('the home-States') and reside abroad is not a new phenomenon in international law.

1 For full reference, see: J. Marko, E. Lantschner and R. Medda, Protection of National Minorities through Bilateral Agreements in South-Eastern Europe, 2001.

2 In the pieces of legislation that will be examined hereinafter, the term 'nationality' is at times found with the meaning of 'citizenship'. For the purposes of this study, however, 'nationality' means the legal bond between a person and the State and does not indicate the person's ethnic origin (see Article 2 of the European Convention on Nationality).