AGORA International Journal of Juridical Sciences

http://univagora.ro/jour/index.php/aijjs/

Year 2010
No. 1

Minorities and Human Rights

This journal is indexed in :
International Database
International Catalog
C.N.C.S.I.S. in category B+
Publisher: **AGORA University Editing House**

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THE ROMANIAN OMBUDSMAN'S ROLE IN KEEPING CHECKS AND BALANCES IN THE FRAMEWORK OF THE SEPARATION OF POWERS

Emil Bălan[*]
Gabriela Varia[**]

Abstract

Having as a starting point the status of autonomous public authority that is accorded to the Romanian Ombudsman and its involvement in conflicts brought in front of the Romanian Constitutional Court, the present paper aims at identifying the possible role the institution may have in providing redress for citizens in their relation to public authorities.

Key words: *ombudsman, separation of powers, good administration*

Introduction

As years passed, the Romanian Ombudsman arrogates himself – like similar institutions from other countries – an increased role in analyzing problems concerning conflicts that may appear between different institutions, but also between society and public authorities.

Our study is conducted in the larger framework of the research project "The right to a good administration and its impact on public administration's procedures", (code ID 698/2007) financed by the Romanian National University Research Council (C.N.C.S.I.S.).

Considerations Concerning the Evolution of the Separation of Powers

The State is organized according to the principle of separation and balance of the legislative, executive and judicial powers within the system of constitutional democracy. The question of the separation of powers within the State, as we know it today, was for the first time formulated by the English philosopher John Locke (1632-1704). In order not to permit the transformation of the basis of the state – the social contract – from an act based on the free and equal wills into an act that bases itself only on submission, John Locke tried to develop a theory of the refrains and counter-weights between the

[*] University Professor Ph.D., Vice-Rector of the National School of Political Studies and Public Administration, Faculty of Public Administration, Bucharest, email: emil_balan2005@yahoo.fr

[**] University Assistant Ph.D., National School of Political Studies and Public Administration, Faculty of Public Administration, Bucharest, email: gabrielavaria@snspa.ro

State's forces. Thus, he showed that *the temptation to take all the power would be to large if the same persons' that could make laws would have into their hands also the power to put them into execution, because they might be pilfering the laws they are making.*[1]

His ideas represented a great importance for the history of the political doctrine and became sources of inspiration for Charles de Secondat, baron of Montesquieu (1689-1755), who revived and elaborated further on the problem of the separation of powers. In Montesquieu's opinion, in the framework of the State it exist three different powers: legislative, executive and judicial power, powers that are given to some organs which are independent one from another. Thus, Montesquieu considered that *when, in the hand of the same person or of the same body of statesman there are unites the legislative power and the executive power, there is no freedom, because the fear may arise that the same Monarch or the same Senate to create tyrannical laws, which to apply in a tyrannical manner. Also, there is no freedom if the judicial power is not separated from the legislative and the executive powers. If it were combined with the legislative power, the power over the life and liberty of citizens would be arbitrary, because the ludge could have the force of an oppressor. All would be lost if the same man, or the same group of leaders, be them noblemen, be them the people, would exercise these three powers: the one that makes the laws, the one that fulfills the decisions of the community, and the one to judge crimes or litigations between private parties.*[2]Although many of Montesquieu's theories are out-of date, as example like the one concerning the judge's role, some of them prove to be very actual, like the doctrine of the separation of powers that dominate nowadays all the contemporary democratic systems.[3]

Thus, the Declaration of Human's and Citizen's rights states in its article 16 that a *Society where human rights are not guaranteed by law and where separation of powers is not established, is not established on legal basis.*[4]

Encyclopedia Britannica defines the separation of powers as being *the division of the legislative, executive, and judicial functions of government among separate and independent bodies. Such a separation, it has been argued, limits the possibility of arbitrary excesses by government, since the sanction of all three branches is required for the making, executing, and administering of laws.*[5]

Contemporary constitutional doctrine proposes a new lecture of the Montesquieu's theory concerning the separation of powers, in terms of *powers* and *counter-powers.* Thus, the notion of counter-power is the one that

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[1] Cited by Paul Negulescu, *Curs de Drept constituıional român,* editat de Al. Th. Doicescu, Bucuresti, 1927, p.299.
[2] Montesquieu, C. *Despre spiritul legilor,* Ed. Stiintifica, Bucureşti, 1964, p. 54.
[3] Malaurie, P., *Antologia gândirii juridice,* Ed. Humanitas, Bucureşti, 1997, p. 124.
[4] Declaration of the Rights of Man and Citizen, 1789.
[5] Separation of powers, In *Encyclopædia Britannica*. Retrieved from Encyclopædia Britannica Online: http://www.britannica.com/Ebchecked/topic/473411/separation-of-powers .

condenses Montesquieu's genius, by which we nowadays understand the idea according to which, in the framework of a democracy, each power must encounter in front of it a counter-power sufficiently legitimate and sufficient performant to abste it.[6]Thus, the counter-power is first of all functional: its first role is to moderate powers by mobilizing of a faculty to state or of a faculty to hinder, but it cannot be credible pure and simple, but with the condition of being granted with an adequate efficacy, so that perceptible form the point of view of the re-equilibrium of powers.

Nowadays an attentive observation should be given to the interference mechanism (or collaboration mechanisms) of the governing structures. Through interference mechanisms of the governing structures it is understood the assembly of the methods or forms through which governing institutions, exercising their constitutional prerogatives that concur through a close interference to carry out the leaden of the global social system.[7]

The interference mechanisms of the three powers put into application separately by the parliament and by the government, according to the prerogatives that were given to each other through Constitution, as well as the principles that govern the rapports between the two governing bodies and the methods used for the transposition of these principles into practice, imprint not only the political system, but also on the political regime, being considered a bench mark for characterizing a political system as being democratic, or, on the contrary, as a totalitarian political system.[8]The modalities of powers' interference are different from one state to another, and the main forms are considered to be the executive power's action on the legislative (e.g. denomination of some members of the parliament by the executive power, the direct involvement of the executive power into Parliament's legislative activity etc) and the Legislator's influence on the executive (e.g. Parliament's intervention on the executive composition, Parliament's intervention on the existence of some executive's authorities etc).

The separation of powers also comprises in itself the premises of an exceeding and disproportionate evolution of each of the powers, situation that may generate disequilibrium between the State's functions.

Romanian Structures that Contribute to Realization of the Powers' Equilibrium within the State

The separation of powers does not exclude, but presupposes their collaboration in order to ensure and maintain the unity of the state's power. By reference to constitutional democracy, the lawmaker aimed at establishing certain authorities that cannot be classified in any of the three classical powers,

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[6] Hourquebie, F., *De la separation des pouvoirs aux contre-pouvoirs:"l'esprit" de la theorie de Montesquieu,* în L'evolution des concepts de la doctrine classique de droit constitutionnel, Institutul European, Iaşi, 2008, p. 67.

[7] Ionescu, C., *Drept constitutional si institutii politice,* ed. a II-a, All Beck, Bucureşti, 2004, p.215.

[8] Cadoux, C., *Droit constitutionnel et institutions politiques,* Cujas, Paris, 1973, p. 284.

since they are the expression and consequence of their collaboration, such as the Constitutional Court, the Court of Accounts or the Ombudsman. [9]

Romanian Constitutional Court represents the guarantor for the supremacy of the Constitution. Judges of the Constitutional Court are independent in the exercise of their office and irremovable during the term of office with the most important role in judging conflicts of constitutional nature that may appear between the State's powers.

Constitutional Court is the unique authority of constitutional jurisdiction in Romania, independent from any other public authority and submitted only to the Constitution and to the law that regulates its organization and functioning.[10]

The Superior Council of Magistracy proposes to the President of Romania the naming into functions of the judges and prosecutors, and accomplishes the role of judging instance in the matter of their disciplinary responsibility. Its essential role is that of the guarantor of the independence of the judicial power as a power within the State. If we analyze the authorities that realize public administration in the framework of the current Romanian constitutional and legal system, we establish that we can take into discussion two categories of administrative authorities, respectively authorities of the governmental administration and non-governmental authorities: autonomous administrative authorities and authorities of the local public administration.

The Romanian Constitution, in the Chapter V, Entitled "Public administration", regulates in its first section the specialized public administration. Specialized public administration is made up by *ministries*, which shall be organized only in subordination to the Government and by *other specialized agencies* that may be organized in subordination to the Government or ministries, or as *autonomous administrative authorities*.

On the authorization of the Court of Audit, the Government and Ministries may set up specialized agencies in their subordination, but only if the law acknowledges the competence thereof. The Romanian Constitution does not come to further explain what an autonomous administrative authority consists of, but it in its article 117 align. 3 it stipulates that they may be established by an *organic law*. We consider that this particular mention, that autonomous administrative authorities may be established by an organic law, is representative for the increased degree of importance accorded to such type of institutions.

The Romanian administrative system knows nowadays a large variety of autonomous administrative authorities, such as: Legislative Council, National Bank of Romania, Romanian Court of Audit, The Commission for the Insurance Surveillance, National Agency for Integrity, The National Council for Defense, The National Council for the Study of the Security's

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[9] M. Constatinescu, *Constituţia României revizuit*ă – *Comentarii* s*i explicaţii,* Ed. All Beck, Bucureşti, 2004, p.3.

[10] Law no 47/1992 on the organization and functioning of the Constitutional Court, republished, Official Journal of Romania, First part, no 502/3 June 2004.

Archives, The National Council of Audio Video, The Romanian Information Service.

Some of these autonomous administrative authorities have an obvious role in the Romanian constitutional democracy, as factors of maintaining the equilibrium between the State's powers, as it follows:

Romanian Court of Audit exercises control over the formation, administration, and use of the financial resources of the State and public sector. The Court of Audit annually reports to Parliament on the accounts of the national public budget administration in the expired budgetary year, including cases of mismanagement.[11]We consider that the Court of Audit, through its powers to control the financial resources of the State and public sector is in a position that makes it an equilibrium factor between the State's powers.

□□*People's Advocate* whose scope is to safeguard citizens' rights and freedoms in their rapports to public authorities.[112] This autonomous administrative authority was introduced in the Romanian political and administrative system through the 1991 Constitution.

The Romanian Ombudsman (People's Advocate) in Relation to the State's Powers

In the vision of the Romanian Constitution of 1991, the Ombudsman was, in fact, an independent person appointed by the Parliament to monitor the administration in its relation to the citizen, whose mission was to defuse the conflicts occurred. By means of the role fulfilled, the Ombudsman represented an important guarantee for the observation of human rights by the executive and the public administration. The Constitution review in 2003 extended the role of ombudsman, giving it the possibility to also watch over the constitutionality of laws, which it can attack before the Constitutional Court, both by means of action and through exception, when through their provisions fundamental citizens' rights and liberties are affected.

We can consider that after the Constitution review, the role of the Ombudsman manifests in relation to all powers in the state, its intervention aiming to ensure their balance. The Ombudsman monitors the state powers and intervenes to correct the „excesses" that can negatively influence the fundamental rights and liberties.

On the basis of the duties established in its organizing and functioning law, the Ombudsman exercises, in relation to he state powers, duties such as:

a) Relations with the legislative power:

- Presents reports in the joint session of the Chamber of Deputies and the Senate, or at their request. The reports may comprise recommendations regarding the modification of the legislation or measures of another nature for the protection of citizens' rights and freedoms;

[11] Law no 94/1992 on the organization and functioning of the Romanian Court of Audit, republished, Official Journal of Romania, First Part, no 282/29 April 2004.

[12] Law no 35/1997 on the organization and functioning of the People's Advocate, republished, Official Journal of Romania, First Part, no 844/15 September 2004.

- Although it cannot withhold, and must reject without motivation the petitions regarding the acts issued by the Chamber of Deputies, the Senate, the Parliament, The Ombudsman must search these acts from the perspective of citizens' rights and freedoms, being able to identify gaps in the legislation, or unconstitutionality situations.
- The Ombudsman communicates to the Parliament the cases when the Government, notified by the Ombudsman with respect to the illegality of certain administrative acts or deeds, does not adopt the necessary measures within 20 days;
- Monitors the constitutionality of the laws adopted by the Parliament having the possibility to notify the Constitutional Court to decide on the constitutionality of laws before their promulgation and on the right to directly raise the unconstitutionality exception before the Constitutional Court.
- If the Ombudsman establishes, with the occasion of the research performed, that there are gaps in the legislation, will present to the presidents of the two Chambers of the Parliament a report containing the findings. The Ombudsman can be consulted by the initiators of the project drafts that, through the content of the regulations, refers to the citizens' rights and liberties established by the Constitution.

b) *Relations with the judicial power:*
- The competences regulated to the Ombudsman do not allow the expansion of its activity to the court decisions. When it establishes that the settling of a petition it was notified with is of the competence of the judicial authority, the Ombudsman can address, as the case may be, the minister of justice, the Public Ministry or the president of the court of law, who are obligated to communicate the measures taken.
- According to the administrative contentious law, the Ombudsman, following the control performed according to its competences, if it appreciates that the illegality of the act or the refusal of the administrative authority to execute its legal duties cannot be removed except in justice, it can notify the competent administrative contentious court at the petitioner's domicile. The petitioner rightfully gains the quality of plaintiff, going to be subpoenaed in this quality. If the petitioner does not adhere to the action formulated by the Ombudsman on the first trial date, the administrative contentious court annuls the petition.
- With respect to constitutional justice, the Ombudsman can submit actions, either directly, or through exception.

c) Relations with the executive power:
- Through its recommendations, the Ombudsman notifies the public administration authorities with respect to the illegality of the administrative acts or deeds (including silence) or the late issuing of the acts).
- The Ombudsman is entitles to perform its own investigations, to request the public administration's authorities any information or documents necessary for the investigation, to hear and take statements from the leaders of the public administration authorities;
- When it establishes that the complaint of the injured person is grounded, the Ombudsman will request, in writing, to the public administration authority that

breached the rights, to reform or revoke the administrative act and to repair the damages caused, as well as to restore the injured person to the previous situation. The law obliges the public authority in case to immediately take the measures necessary for removing the illegalities established, the repairing of the damages and the removing of the causes that generated or favored the breaching of the citizens' rights and freedoms;

- The Ombudsman is entitled to notify the Government with respect to any illegal act or deed of the central public administration and of the prefects.
- If the Ombudsman establishes, with the occasion of the investigations made in serious corruption cases, or of non-observance of the country laws, will present to the Prime-Minister a report containing the findings, making proper proposals;
- The Ombudsman can be consulted by the initiators of the drafts of governmental ordinances, which, through the content of the regulations, refer to the rights and liberties established in the Constitution.

If we analyze the relations that ombudsman-type institutions develop in other countries with the State's powers, we notice that in *Sweden*, The Ombudsmen are to contribute to remedying deficiencies in legislation. If, during the course of their supervisory activities, reason is given to raise the question of amending legislation or of some other measure by the state, the Ombudsmen may then make such representations to the *Riksdag (Parliament)* or the *Government*. In *Spain*, whenever the Defender (The Ombudsman) receives any complaints regarding the operations of the Justice Administration, it shall forward them to the *citizen's rights ministry* in order to investigate its veracity and adopt necessary measures in accordance with the law, or pass it on to the *General Council of the Judiciary*. The Spanish Ombudsman is also authorized to *interpose any unconstitutionality and protection appeals* in accordance with the provisions in the Constitution and the Organic Act of the Constitutional Tribunal 2/1979, October 3. It may also initiate any *habeas corpus proceedings*.

In the Czech Republic the ombudsman shall submit an annual written report to *Chamber of Deputies* by 31st March each year on his/her activities during the past year; this report is a parliamentary publication. The report will also be sent to the *Senate, the President of the Republic, the Government and other administrative authorities having competence over the entire territory of the Czech Republic.* The Czech Ombudsman is also authorized to recommend the issuing of, an amendment to or the annulment of a legal regulation or internal order. Such recommendations are presented to the authority concerned and, if the matter concerns a ruling, a governmental decree or a law, *to the Government itself.* He is authorized to propose that the *Supreme Public Prosecutor* bring an action for the protection of the public interest. In Estonia, The Chancellor of Justice (The ombudsman) exercises functions entrusted to him by law, like submitting his opinion to the *Supreme Court* in constitutional review court proceedings (as provided for by the Constitutional Review Court Procedure Act), or *initiating disciplinary proceedings* with regard to judges (as provided for by the Courts Act).

Conclusions

In conclusion, one of the roles of the Ombudsman is to monitor the State's powers and to intervene in order to correct their „excesses" that can negatively influence the fundamental rights and freedoms. Thus, in relation to the legislative, the Ombudsman manifests duties of correcting the unconstitutionality of the laws adopted by the Parliament. Therefore, it notifies, through the reports addressed to the Chambers of the Parliament the possible gaps in the legislation. Through special reports, the Ombudsman can notify discrepancies between the norms approved through different laws, as well as the non-observance of the principles of the normative regulation system. By monitoring the activity of justice**,** the Ombudsman aims at the observance of the provisions of the European Convention of Human Rights, regarding the achievement of an equitable trial performed within a reasonable term. In this sense, the Ombudsman can address, as the case may be, the minister of justice, the Public Ministry, or the president of the court of law, who are obligated to communicate the measures taken.

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ON THE RIGHTS AND LIBERTIES OF CHILD REFUGEES IN ROMANIA

Andreea Drăghici[*]
Daniela Iancu[**]
Andra Dascălu[***]

Abstract

There are multiple causes that compel a state to grant a person refugee status. The international conventions in this field or the state legislation do not resolve, nor eliminate these circumstances; however they manage to compensate for most of the deprivations plaguing these people in their own country by offering them refugee status. Amongst the victims of these deplorable circumstances there are children who see themselves in a situation where their must adapt to different life conditions and a completely unknown environment. In Romania however, in terms of rights and legal liberties, child refugees enjoy the same legal situation of Romanian children indiscriminately. This status is sanctioned by Act 272/2004 in agreement with article 3 of the Geneva Convention of 1951 relating to the status of refugees, article 8 of 122/2006 Act relating to political asylum in Romania, as well as all the principle underlying the reality of child protection as established by the provisions of the United Nations Convention on the Rights of the Child (1990).

Key words: *The rights and liberties, refugee children, equality of treatment*

Introduction

The rights and liberties of refugee children in Romanian territory are governed by the principles established by the Geneva Convention of 1951 that gives the conditions, in which the signatory states grant refugee status to persons that make such petitions and by its provisions seeks to endow the refuges with as many rights fundamental human rights and liberties as they can exercise. Thus, a non-discriminatory situation is regulated by the provisions of the Convention, a situation that the awarding state must honour in relation to any other refugee, notwithstanding race or country of origin. Also, the Convention explicitly refers to the freedom of faith of refugees, especially when the sameness of acknowledging this right of our own nationals and that of the refugees is being questioned. Thus, it is stipulated that the

[*] Lecturer Ph.D., University of Pitesti, Faculty of Juridical and Administrative Science, andidraghici@yahoo.com
[**] Lecturer Ph.D., University of Pitesti, Faculty of Juridical and Administrative Science, danutaian74@yahoo.com
[***] Assistant, University of Pitesti, Faculty of Juridical and Administrative Science, andradascalu@yahoo.com

signatory states will award refugees on its soil at least as favorable a treatment as it does its nationals, with regards to the freedom to practice their own religion and to their children's religious upbringing.

How a child gains refugee status according to Act 272/2004. Children that request refugee status, as well as those who have already been granted it enjoy protection and humanitarian assistance as it is their right. They also enjoy one of the protection measures stipulated by Act 122/2006.

In case a child requesting refugee status is not accompanied by his parents or another legal representative, during the process of securing his refugee status his interests are tended to by the General Directorate for Social Service and Child Protection, in whose jurisdiction there is also the local body of the Ministry of Administration and Internal Affairs where the petition for refugee status is to be filed.

The child's petition for refugee status has priority. In order to adequately uphold the child's rights as stipulated by paragraph 1, the General Directorate for Social Service and Child Protection assigns a person with university-level legal or social service background from within its own staff or that of an private authorized body, who must uphold the child's rights and take part, along side the side the child, in the whole procedure of granting refugee status.

In case that the assigned person does not fulfill his duty to protect the child's rights accordingly or proves bad faith during this process, the National Office for Refugees can demand of the General Directorate for Social Service and Child Protection to replace this person.

Until the matter is completely and irrevocably solved, the children are lodged by a type of housing service belonging to the General Directorate for Social Service and Child Protection or to a private authorized body, as stipulated by the current law.

Children that are 16 years old can by lodged in reception and housing centres under the authority of the National Office for Refugees. Children granted refugee status enjoy the special protection of a child temporarily or permanently deprived of parental protection, as stipulated by the current law.

In case that the child petition is rejected definitely and irrevocably, the General Directorate for Social Service and Child Protection appeals to the Foreign Office and demands of the court to order the child's placement in foster care. This measure lasts until the child is returned to his parents' country of origin, where other members of the child's family live and who are willing to take him/her in.

The Rights and Liberties of a Child Refugee in Romania

According to law 272/2004, child refugees have the same rights as Romanian children. This fact is supported by the legal sanctioning, in article 2 of the law, of the principle of non-discrimination in compliance with which, the law seeks to eliminate any difference in the treatment of children that are in their family's care, on one side and children that find themselves in certain

special situations, determined by familial circumstances or the their state of health, on the other side. This principle is also supported by other articles of law, e.g. art 7 that stipulates that "The rights specified under the current law are guaranteed for all children, without any discrimination and irrespective of race, colour, gender, language, political or any other opinion, nationality, ethnic affiliation or social origin, financial situation, degree and type of disability, status at birth or acquired status, shape, development or other types of difficulties of the child, of the parents or legal representatives, or of any other distinction".

In comparison to its notoriety and consequences, this very important principle is also found in article 2 of the United Nations Convention on the Rights of the Child that stipulates that "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".

The fight against discrimination and the violation of the rights of certain types of people is a priority matter for the United Nations. The United Nations Convention on the Rights of the Child identifies several other criteria of discrimination than those identified by the United Nations Charter (race, gender, language and religion), thus nearing the Universal Declaration of Human Rights, which identifies an even larger number of criteria.

Generally, discrimination can be understood as any limitation or exclusion with the purpose of restricting a person's possibility to exercise a certain right or to refuse to acknowledge that person equal rights. There are definitions of discrimination included in international conventions that deal with different forms of discrimination.

Law 272/2004 strongly affirms the obligation of the public authorities, private authorized bodies or of legal and physical persons, responsible for the protection of the child, to respect, to promote and to guarantee "the rights of the child as established by the Constitution and the law, in accordance with the provisions of the UN Convention concerning the rights of the child and of other international document in this field, of which Romania is signatory party" and with the "principle of the child's best interest".

Similar to the UN Convention, the internal law manages to cover most of all the categories of rights. The law groups the rights of children in four main sections, namely: civil rights and liberties; the rights of the family environment and alternative care; the rights concerning the child's welfare and education and the rights concerning recreational and cultural activities. There are also four distinct chapters in the law concerning child protection in different situations: the situation of children deprived of parental protection, the situation of refugee children, protecting the child during an armed conflict, the protection of children guilty of criminal offences but unaccountable before the law, the protection of the child against economic exploitation and the protection of the child against abduction and other forms of trafficking.

Although law 272/2004 represents the main regulating piece of legislation in this field, the provisions that complete this field are found in other laws.

In relation to civil rights and liberties, law 272/2004 places great importance on: the right to an identity, freedom of speech, freedom f association in formal and informal organizations, as well as the freedom to peaceful gatherings, within the limits established by the law, the right to information.

Article 8, paragraph 1 of law 272/2004 stipulates that "The child has the right to receive and maintain his or her identity". The right an identity is one of a complex nature that implies the individualization of the person through their name, citizenship, nationality, marital status, residence, etc. In this way, article 8, paragraph 2 of the same law states that: "The child is registered immediately after the birth and starting from this date, the child has the right to a name, the right to receive citizenship and, if possible, to meet his / her parents, to receive care, be raised and educated by them".

The child's right to an identity directly determines the obligation of the authorities with competences in this field to take measures as declared by law in case one of the elements constituting his/her identity is missing. The law institutes for this purpose an obligation to have results in their endeavours and not to be just diligent, seeing as they intervene only in "urgent situations".

In Romania, respecting the child's right to an identity is done through certain institutions and legal rules belonging to different branches of law: constitutional law, civil law, administrative law, family law etc.

In relation to regugee children, they enjoy an identidy corresponding to their ethnic and national origins. More that this, they have a surname, a name as well as the citizenship of the state where they came from. In other words the child refugee already has an identity given to him by the individualizing elements established in his country of origin. This does not prevent hoever, in extreme situations, the Romanian state from intervening in order that his identity be reestablished, when there is the problem of intervening or encroaching upon this right.

As an act acknowledging the child as an autonomous being, with wishes and needs, law 272/2004 expressly acknowledges the child's right to free speech. Ensuring this right is conditioned by fulfilling two obligations by te parents the foster family: the first concerns the obligation of the parents to supply the child with information, explanations and advice, depending on the age and level of understanding of the child and to spread informantion and ideas of any kind, whatever the bordres, in oral, written, typed or artistic form or by any other means possible, whatever the child's choice, and the second obligation is to allow the child to express their point of view, their ideas and opiions. The right to free speech may be restricted by the parents only in cases expressly stated by the law. In other words, exercising this right can be subject to restrictions, but only when these restrictions are expressly stipulated by the law and absolutely necessary for: the respect for the rights or reputation of

others or for the protection of national security, public order, public health and good morals.

Beyond these aspects, the Conventions also recognizes the importance of means of mass information and their role, and such sources of information that allow the child access to productions that aim to promote his social, moral and spiritual wellbeing and his mental and physical health. Broadcasts of material of social and educational interest of the child are promoted; encouragement, international cooperation in the production, exchange and spreading of this information and material resulting from cultural, national and international sources: printing children's books, encouraging means of mass information that mind, in particular, the linguistic needs of the native children or of those belonging to a minority group[1]. All these means of information must be in compliance with the goal stated in article 29 of the Convention on the Rights of the Child[2].

Article 24 of law 272/2004 stipulates that "The child who has the capacity to discern has the right to freely express his or her opinion regarding any matter which involves him or her". Thus, a 10 year old child has the right, according to the law, to be heard in any matter that regards him, and in the situation that he is not of this age yet, he can be heard if the *competent* authority appreciates his testimony as necessary to the solving of a matter.

The right to be heard gives the child the possibility to ask and to receive any pertinent information, to be consulted, to express his/her opinion, if it is respected, as well as to be consulted in any decision that concerns him. The views of the heard child shall be taken into consideration while considering his/her age and level of maturity.

In relation to refugee children, they are given this freedom in the same conditions as a native Romanian child. However, as the special situation of the child refugee produces a variety of circumstances wherein his opinion could be considered relevant, law 122/2006 establishes certain rules with regards to interviewing the child.

Thus, underage asylum applicants are interviewed in the presence of their legal representatives. The legal representative informs the applicant about the purpose and the possible consequences of this personal interview and takes the necessary steps to prepare the applicant for the interview. These applicants and unaccompanied underage asylum applicants are interviewed in any case when possible, depending on the stage of their metal development.

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[1] Article 17 of the United Nations Convention on the Rights of the Child.

[2] In other words the means of information bust be in accordance with a proper education that has to aim to: plenarily develop the personality, the vocations and mental and physical aptitudes of the child; to cultivate respect for the fundamental rights and liberties of people, as well as for the principle upheld by the United Nations Charter; to educate the child in the spirit of respect for his parents, his language, his cultural identity and values, the national values of the country he inhabits, of his native country as well as for other civilizations than his; to prepare the child to take on the responsibilities of life in a free society, in the spirit of understanding, peace, tolerance, equality between genders and friendship between peoples and ethnic, national, and religious groups and the native people; to educate the child in the spirit of respect for the natural environment.

Freedom of thought, conscience and religion is guaranteed by article 25, paragraph 1 of aw 272/2004 and the Romanian Constitution, which in article 29, paragraph 1 states that "Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions."

The law relating to the protection and promotion of the child's rights, still acknowledges the right of the parents to guide their child in choosing a religion, but by no means forcing him/her to adhere to a religion or a religious cult. Also, the religion of a child of 14 cannot be changed without his/her consent, while a child of 16 has the right to choose for himself/herself.

The freedom of thought, conscience and religion is guaranteed by the law just mentioned through an imperative rule that forbids any action meant to influence the religious convictions of the child. Through the aforementioned provisions, Romania is one of the countries that allow children to choose their religion, without imposing upon them the faith of their parents.

In relation to the aforementioned legal provisions it is forbidden that a person be constrained to accept a certain religion, thus in Romania a child refugee will not be forced in this way by any authority or legal provision. More than this, the Geneva Convention also establishes the protection in this case, stating that *the Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.*

The right of association is a fundamental socio-political right, classified in the category of freedom of opinion, next to the freedom of conscience and the freedom to express oneself.

Freedom of association is guaranteed by the Constitution of Romania and acknowledged in the case of children as well, in the same limits stipulated by the law. The child has the right to freely associate in formal and informal organizations, administrative public local authorities, institutions of learning and other public or private institutions, as they are responsible for this association to succeed.

According to the UN Convention, exercising the aforementioned rights cannot be limited except if this is necessary in a democratic society.

As it is also expressly acknowledged by law 272/2004, exercising this right is also the prerogative of the child refugee. Concerning his/her freedom to have personal relationships (bonds with other people), nothing specific is mentioned in the UN Convention.

The state of health and wellbeing of the child implies the right to a decent standard of living and to healthcare services (medical and recovery services). The access of the child to medical and recovery services, as well as to proper medicine for his/her condition, in case of illness is guaranteed by the state, and all costs thereof are covered by the National Fund for Social Care and from the state budget.

In order to ensure a child's health, the authorities and institutions with competence in healthcare must make all the efforts to reduce child mortality;

preventing malnutrition and contracting disease, developing actions and programs for the protection of health and he prevention of disease, assisting the parents and educating, as well as family panning services etc.

It therefore ensues that the right of the child to health and wellbeing corresponds to the related obligations belonging to the state.

The wellbeing of the child implies his/her rights to a living standard that can allow him/her to develop physically, mentally, spiritually, morally and socially. This right is accomplished through the child's parents or legal representatives who are obligated, in this sense, to ensure a home and all the necessary condition for their child's upbringing, education, learning and professional training.

The Law outlines the quality of the relationships established between the child, the state and the parents, establishing that in case the parents, for reasons beyond their control, cannot ensure or satisfy the minimal needs of the child for a home, nourishment, clothing and an education, the competent public authorities are then responsible for satisfying these needs by means of funds, resources and forms of services that it can provide.

In case the child has a handicap, he/she has the right to special care depending on his needs. This rule also applies to the child refugee with special needs who must benefit from an adequate treatment for his state of health. In this sense, law 122/2006 establishes the right of the refugee to proper medical assistance. Thus, he/she must enjoy the benefits of receiving proper medical assistance; correspondently, emergency medical assistance as well as medical care and free treatment in case of serious or chronic life-threatening illnesses are regulated by the national healthcare system for emergency and first aid medical assistance. These services are ensured, in any case, by the medical service of the housing centres or /and by other healthcare units accredited and authorized in accordance with the law.

According to law 272/2004 "The child has the right to receive an education which would allow him or her to develop his or her capacities and personality, in non-discriminatory conditions" (article 47).

The right to an education involves the children's freedom to choose the kind of education, teachings and professional training they want.

In order to facilitate the access to the Romanian teaching system, underage asylum applicants enjoy, free of charge, for a whole year of school, a training course with the purpose of registering in the national teaching system. The preparatory course is established by the Minister of Education and Research, in collaboration with the Romanian Office of Immigration. The underage asylum applicant is registered in an introductory Romanian language course that lasts for 3 months since the asylum application was submitted. At the end of the introductory Romanian language course, an evaluation panel whose members and functioning are determined by order of the minister of education and research, assesses the level of Romanian acquired by the applicant and requests the registering of the underage asylum applicants that have obtained a form of protection in Romania in a learning institution for that

school year. The right of underage asylum applicant to have access to school is mandatory in the same conditions as Romanian minor.

Conclusions

Any refugee has, acoording to article 2 of the Convention, obligations towards the state that received him, and particularly the obligation to abide by the laws and regulations, as weel as the measures taken to maintain public order.

The relation between the rights acknowledged by the Geneva Convention and other domestic or international documents that sanction rights and liberties is also established by the provisions of this international implement. Thus, the Convention establishes that neither provision from this Convention amends the rights or privileges given to refugees, regardless of this Convention. Because the acknowledged rights and liberties of child refugees are sanctioned by the United Nations Convention on the Rights of the Child (1989), it follows that analyzing their rights and liberties must be first apporached from the perspective of the principles that the Convention upholds. The internal regulations that acknowledge the rights and liberties of children must be considered as well, we recall here act 272/2004 concerning the protection and promotion of child rights.Another internal regulation that contains provisions relating to the refugee status in Romania is act 122/2006 concerning political asylum, which established in its turn a series of fundamental principles that aim to reunite the family[3] and what is in the child's best interest. In compliance with these, the law states that Romanian authorities must ensure that the principle of family unity and all the other decisions with respect to minors are made in the best interest of the child.

According to law 272/2004, child refugees have the same rights as Romanian children.

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Convenţia de la Geneva privind statutul refugiaţilor, adoptată în 1951 la Conferinţa Naţiunilor Unite.

[3] In compliance with Community legislation, the provisions referring to the reunification of the family are established by Directive 2003/86/CE and Directive 2004/38/CE.

LEGAL PROTECTION OF MINORITIES AND HUMAN RIGHTS AT NATIONAL AND EUROPEAN LEVEL

Dragodan Arina*

Abstract

Chronologically speaking, the onset of the concept of human rights can be positioned in antiquity concerned with human and defining its position in society and for bringing the high moral principles, the idea of justice.

Now, respect for fundamental human rights is one of the basic principles of the European Union and essential condition of its legitimacy is based.

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights.

Over time minority rights have occupied an important place in the European context. In this respect, European countries have signed up provisions on the protection of minorities in their constitutions.

European Union has undertaken to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

Keywords: *minorities, the right to identity, protection, human rights and fundamental freedoms, equal rights, discrimination.*

Introduction

The appearance of the concept of the human rights was a result of developments in humanistic ideas and their perception of increasingly intense. The start, in terms of chronology can be positioned in antiquity which was concerned with human definition and its position in society and for bringing the high moral principles, the idea of justice.

1. Institution of the Human Rights

One can appreciate that, a concept of human rights was the result of legal documents with rich moral and political content, formed in consecration of documents drafted by lawyers of high prestige to the principles of political

* National School of Political and Administrative Studies (NSPAS) Bucharest arina_dragodan@yahoo.com ; Beneficiary of the "*Grants to support doctoral research: competitiveness, quality, cooperation in the European Higher Education Area*", project financed by the European Union through the European Social Fund Operational Programme Human Resources Development 2007-2013.

organization, based in theoretical works of universal value that have withstood time[1] .

The concepts of "the human rights" and "the citizen rights" requires a careful analysis of the interference, but also in their individualization, because it makes them but do not overlap them perfectly. The concept of human rights as developed internationally, serves as an important support to substantiate the idea of their rights and liberties. The concept of human rights has much wider significance than that of civil rights because human rights are universal rights applicable to all human beings, while civil rights are under their own name, specific to a particular group of people and citizens of given state[2].

The notion of "human rights" includes a system of ideas, representations or values which means certain concepts concerning human beings, society and state power, that postulates the equality between all people and the respect of their dignity" [3].

In terms of legal rights, the human rights have been defined as "whole international legal standards that are recognized by individual attributes and faculties which ensure dignity, freedom and development of his personality and who enjoy close institutional guarantees".[4]

Categories of human rights

The modern constitutions follow through the consecration of the fundamental rights and freedoms to estabilish more properly guarantees in order to protect the human beenig, the personal life, to encurage the prticipation of the citizants to the public life and for the material and cultural development of the citizens.

The historical development of human rights described in the literature specialized[5] by three "generations." "First generation" rights includes civil and political rights. In this category of fundamental rights are those rights which have as their object the protection of the human person and its private life: the right to life and physical and mental integrity, freedom of movement, inviolability of domicile and residence, secrecy of correspondence and other means of communication, freedom of conscience, right to information.

"The second generation" of rights refers to economic, social and cultural, which is why they are included as socio-economic rights. Included in this category the following rights are: right to work, right to health, right to strike right to private property, right to inheritance, right to education, the right of the injured in a law or a public authority, free access to justice.

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[1] V. Luncan, V. Duculescu , „*Drepturile omului – studiu introductiv, culegere de documente internationale si acte normative de drept intern*", Ed. Lumina Lex, Bucharest, 1993, p. 61.
[2] N. Purdă, „*Protecţia drepturilor omului*", Ed. Lumina Lex, Bucharest, 2001, p.26 – 27.
[3] D. Lochas, „*Les droits de l'homme*", Ed. La Decouverte&Syros, Paris, 2002, p.4.
[4] C. Bîrsan, „*Convenţia europeană a drepturilor omului. Comentariu pe articole*", Ed. All Beck, , Bucharest, 2005, p.14.
[5] T. Drăganu, „*Drept constituţional şi institutii politice*", Ed. Lumina Lex, 1998, Volumul 1, Bucharest, p.154 şi p. 155.

And "third generation" solidarity rights "promotes a new category of rights: the right to a healthy environment, right to peace and security, right to humanitarian assistance, the right to good administration.

2. History of legal instruments to protect of the human rights

So far almost all world regions have developed their own international instruments for promoting and protecting the human rights: European Convention on Human Rights (1950), American Convention on Human Rights (1969), African Charter on Human and Peoples Rights (1986) Declaration of Fundamental Duties of Asian peoples and the Arab Charter of Human Rights (adopted in 1994).

The first written document enshrined protection of human rights appeared in England called "the Magna Carta Libertatum" given by John of England on 19 June 1215 by the English barons and bishops get a number of privileges and procedural safeguards to the king.

It followed them and others of great importance as the French Revolution Declaration of Human Rights and Citizen, adopted in 1789.

Progress was marked by signing the Single Act which allowed the incorporation of fundamental rights in the Community scheme. For the first time in an EU treaty in the preamble of the document reference was made to protect them[6].

Another milestone in strengthening human rights protection is the adoption in December 10, 1948, the Universal Declaration of Human Rights.

Treaty on European Union (TEU) in 1992 for the first time made reference to respect "fundamental rights as guaranteed by the European Convention".

Fundamental rights and democratic values are respected in EU Member States under the obligations assumed by them by signing documents such as the European Convention on Human Rights (1950), Universal Declaration of Human Rights (1948), European Social Charter (1962) or the Community Charter of Fundamental Social Rights of Workers (1996).

Treaty on European Union, called the Maastricht Treaty (February 7, 1992) reaffirmed the commitment of member countries in its preamble the principle of freedom, democracy and human rights and fundamental freedoms(1996)[7].

Another important document is the Charter of Fundamental Rights proclaimed in 2000, with a more broad than that of the European Convention on Human Rights and Fundamental Freedoms, scoring in or all individual rights, civil, political, economic and social aspects that enjoyed by EU citizens and residents, entered into six chapters: Dignity, freedom, equality, solidarity, citizenship and justice.

It was followed by the Treaty of Nice came into force on February 1, 2003. By article 7 of the Treaty also provides a safeguard mechanism in case

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[6] Zlătescu Moroianu Irina; Demetrescu R., „*Drept instituţional european şi politici comunitate*", Ed. Calistrat Hogaş, Bucharest, 2001, p.143.

[7] Mihaela Vrabie, „*Cetăţenie şi drepturi europene*", Ed. Tritonic, Bucharest, 2007, p.16.

of clear risk of serious violation by a Member State of Fundamental Rights and a sanction mechanism in case of serious violations and their persistence.

On December 1, 2009 came into force the Treaty of Lisbon, signed by Heads of State and Government of the 27 European Union member states on December 13, 2007, which amended the Treaty on European Union and EC Treaties and put to the EU legal framework and legal instruments needed to meet future challenges[8]. According to him, the Union recognizes the rights, freedoms and principles in the Charter of Fundamental Rights of 7 December 2000, as adjusted at December 12, 2007, in Strasbourg, which has the same legal value as the Treaties and the Fundamental Rights, as guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from constitutional traditions common to the Member States, constitute general principles of Union law.

The Treaty establishes a Europe of rights, values, freedom, solidarity and security, which promotes the values of the Union, introduced the Charter of Fundamental Rights in European primary law provides new mechanisms of solidarity and ensure better protection of European citizens. It maintains and enhances the "four freedoms" and political freedom, economic and social citizens.

3. Constitutional rules to protect human rights in Romania

In our country the Institution of the fundamental rights for the first time appeared in the 1866 Constitution. Title II of the Constitution was the suggestively titled "About the rights of Romanians". All Romanians were declared "equal before the law without discrimination and duty to contribute to taxes and public duties."

The 1923 Constitution, a document which was a legal instrument more elaborate than the1866 Constitution and it has introduced new principles such as: the consecration of national unitary state (Article 1) inclusion of universal suffrage (art.64); the concept of social function of property (Article 17) state commitment to social protection (Article 21);

The 1938 Constitution based on suggestions given by the king Carol II preserves the spirit of previous regulations. But it has established some changes in constitutional principles, such as: emphasizing individual limiting factor for expansion of state power and concentration of political power in the hands of King.

Socialist Constitutions in 1948, 1952 and 1965 have legalized serious deviation from democratic principles[9], among which the restriction of rights and liberties and individual subordination to the state and the right to life - the main human right was severely violated. Thus, although it insisted on his demagogic regime consistently refused to ratify international documents prohibiting the death punishment.

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[8] Source: http://europa.eu/lisbon_treaty/full_text/index_ro.htm .

[9] C. Ionescu, „*Drept constituţional şi instituţii politice*” *Volumul 2*, Ed. Lumina Lex, Bucharest, ,p.80.

Romanian Constitution of 1991 regulate the fundamental rights under the heading "Fundamental rights and freedoms" .

Equal rights

Constitution of Romania in 1991 republished, states that Romania is a state of law, democratic and social, in which human dignity, *rights and freedoms*, free development of human personality, justice and political pluralism represent *supreme values,* in the spirit of democratic traditions of the Romanian people and ideals of the Revolution of December 1989, and are guaranteed, and at 16 enshrines the principle of equal rights[10]. Romania's accession to the European Union, EU citizens who meet the requirements of the organic law have the right to elect and be elected to local government authorities.

Article 20 of the Constitution of Romania, republished, expresses the principle that rights and freedoms shall be interpreted in accordance with the Universal Declaration of Human Rights, the covenants and other treaties Romania is part of.If any inconsistencies exist between the covenants and treaties regarding the fundamental human rights to which Romania is part of, and national laws, international regulations shall prevail unless the Constitution or national laws contain provisions more favorable. In Chapter 2, the Constitution provides for rights and fundamental freedoms.

4. The Rights of national minorities in Romania

Article 4 paragraph 2 of *the Romanian Constitution republished states that Romania is common and indivisible homeland of all its citizens irrespective of their race, nationality, ethnic origin, language, religion, sex, political affiliation, wealth or social origin.*

Regarding the right to identity of minorities, the Romanian Constitution republished stipulates in Article 6 that "the State recognizes and guarantees national minorities the right to preserve, develop and express their ethnic, cultural, linguistic and religious, with provided "protective measures taken by the state for preservation, development and expression of national minorities must comply with the principles of equality and discrimination in relation to other Romanian citizens."

Romanian State recognizes and guarantees certain rights of persons belonging to national minorities, such as:

- The right to learn their mother tongue and the right to be educated in this language,
- The right to be represented in Parliament, and where members of national organizations do not obtain the number of votes for representation in Parliament, they are entitled to one Deputy seat in election law. Citizens of a national minority can be represented by one organization,

[10] *Romanian Constitution*, republished in the Monitorul Oficial 767 of 31.10.2003, p. 16: "Citizens are equal before the law and public authorities, without any privilege or discrimination. Nobody is above the law."

- The right to use minority-language, national written and oral relations with local government authorities and the decentralized public services, the territorial-administrative units where citizens belonging to national minorities were significant.,
- Romanian citizens belonging to national minorities have the right to express themselves in their own language before courts in the organic law.

Equal rights, as defined by the Constitution is a guarantee for all subjective rights, whether provided by the Basic Law, or laws or other regulations[11].

This field includes all areas in which the person may carry, whether they concern social, economic, legal, political or cultural. In these areas, either by law or other regulations or acts of legal enforcement, did not allow any discrimination between citizens, which under identical conditions should be treated identically.

Protection of minority rights by other legislation in Romania

In the last 10 years *Romania has made efforts to create the necessary legislative transposition of EU directives (EU Council Directive 2000/43/EC and Directive 2000/78/EC of the European Union), which constitute the community acquis in the field of prevention , and combating discrimination.*

In this regard, the legal framework in Romania, in terms of combating all forms of discrimination, was established by Government Ordinance adoption. 137/2000 on preventing and sanctioning all forms of discrimination, republished, with subsequent amendments [12].

Scope of the legislation on preventing and combating all forms of discrimination have particular regard to protecting the right to personal dignity, access to education, access to public administrative, legal, health and welfare, the right to goods and services, freedom movement, right to free choice of residence and access to public places, equality in economic, in terms of employment, occupation and social security.

Government Ordinance no. 137/2000[13] on preventing and sanctioning all forms of discrimination determines that in Romania, the rule of law, democratic and social, human dignity, rights and freedoms, free development of human personality is the supreme values and are guaranteed by law.

The principle of equality among citizens, the exclusion of privilege and discrimination are guaranteed in particular in exercising their rights under this legislative act.

By Law 324/2006 translate all the provisions of Council Directive 2000/43/EC on the principle of equal treatment between persons irrespective

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[11] T. Drăganu, *works cited*, p.185.

[12] Government Ordinance no.137/2000 was published in the Monitorul Oficial, Part I, no. 431 of 2 September 2000, and republished in the Official Gazette, Part I, no. 99 of February 8, 2007.

[13] Law no. 324/2006 amending and completing Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, published in the Monitorul Oficial, Part I, no. 626 of July 20, 2006.

of racial or ethnic origin, published in the Official Journal of the European Communities (OJEC) no. L 180 of 19 July 2000 and the provisions of Council Directive 2000/78/EC establishing a general framework for equal treatment as regards employment and employment, published in the Official Journal of the European Communities (OJEC) no. L 303 of December 2, 2000.

National strategy to implement measures to prevent and combat discrimination (2007 - 2013) which was approved by Order of the President of the National Council for Combating Discrimination no. 286/2007.

5. Recognition of minority rights issues in Europe

According to the explanatory dictionary of Romanian language, the term "national minority"[14] defines a group of people of the same language and origin living within a nation state.

After some authors, national minorities, ethnic, religious or linguistic formed in different historical epochs, in different circumstances, their situation is different from country to country, continent to continent[15].

Compared to today, we can say that minorities are social groups, political, ethnic, religious, racial, cultural, linguistic, etc.. a group which is a part of a society who includes a smaller number of memebers compare to the colectivity they belong to.

Currently minorities are present in almost all countries, their number and volume components of members ranging from country to country.

A definition of minority find in French literature, emphasizing that it "designates a group of people who differ in race, religion, language or nationality of the majority group (augmented) among whom he lives[16].

Regarding the promotion of rights and liberties which *the democratic societies are promoting them, where the people are concern as individuals, as citizens and not like members of a political, racial, ethnic, religious, cultural or other nature group.To respect these rights, states must have the necessary means to eliminate discrimination of minority and majority groups.*

Thus, Art. 14 European Convention on Human Rights and Fundamental Freedoms contains a general clause prohibiting discrimination in the sense that "enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground, especially on gender, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. "

General principles of Community law governing the matter and today occupies an essential place in the Court of Justice and the Court of First Instance of the European Communities, few relate directly to ensure respect for fundamental rights, their protection and fundamental freedoms.

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[14] Source: http://dexonline.ro/definitie/minoritate

[15] V. I. Diaconu, „*Minorităţile. Statut, perspective*", Ed. IRDO, Bucharest, 1996 p. 9-11; Irina Moroianu Zlătescu, „*A culture of peace, democracy and tolerance in Romania*", Ed. N.C.R. UNESCO, R.I.H.R., Bucureşti, 2003, p. 133.

[16] Larousse. Dictionary of Sociology, Ed. Univers Enciclopedic, Bucharest, 1996, p. 169-170.

One such principle is the equality which is expressed in Community law, referring to the prohibition of discrimination on grounds of nationality, gender, pay, etc..

Equal treatment between EU citizens which prohibits discrimination based on nationality is mainly under the Community legal order. It is a basic principle for the functioning of the Common Market, meaning that area without internal frontiers in which to secure the free movement of persons, goods and capital between Member States.

Prohibition of discrimination relates to other specific situations such as free movement of migrant workers, in terms of access to different forms of education, training, to employment, the benefits of services, cultural organizations, sports, tourism , medical care, travel, etc[17].

Human aggregates, minorities themselves aware of any developments like living social organism. Their situation is therefore not stationary, but in a dynamic and continuous fall below the objective processes and trends of modern societies worldwide. Globalization of interaction and social phenomen means today the globalization of the minority issues as well[18].

The accelerated economical globalization, the increase interdependence of the region and subregion of the world creats for many societies as a whole, as well as for the groups and comunities belonging to them, a reflex of keeping a specific identity perceived as threatened by the possible evolution of humanity toward smoothing mondialiste.

International protection of minorities and found institutional expression in the League of Nations. It was founded after the war and organized a system of protection of minorities, which functioned satisfactory[19].

Right to equality before law and protection against discrimination for all persons constitutes a universal right recognized by the Universal Declaration of Human Rights, UN Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination, The United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the European Convention on Human Rights and Fundamental Freedoms, signed by all Member States.

In this respect, *the international community has established[20] that human rights are universal (apply equally to all persons regardless of race, color, sex, language, religion, political or otherwise, national origin, social origin or other status).*

The first multilateral instrument devoted to the protection of national minorities in general is the *Framework Convention for Protection of National*

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[17] Irina Moroianu Zlătescu, „*Drepturile omului-un sistem în evoluţie*", Ed. IRDO, Bucharest, 2007, p.100.

[18] A. Farcaş, „*Dreptul internaţional al drepturilor omului şi problematica minorităţilor naţionale*", Ed. IRDO, Bucharest, 2005, p.15.

[19] Irina Moroianu Zlătescu, „*Protecţia juridică a drepturilor omului*", Ed. I.R.D.O, Bucharest, 1996, p.140-141.

[20] Surce:http://www.civica-online.ro/concepte/drepturile_omului.html.

Minorities adopted in Strasbourg on February 1, 1995[21] which includes legal principles which States undertake to respect for the protection of national minorities.

In that it is stipulat that parties must ensure: that the rights of all persons belonging to national minorities, freedom of peaceful assembly and freedom of association, freedom of expression, freedom of thought, conscience and religion (article 7). It also recognizes their right to manifest one's religion or belief and the right to establish institutions, religious organizations and associations (Article 8).

Convention requires States Parties commitment to promote the conditions necessary for persons belonging to minorities to preserve and to affirm the core values of their identity, namely their religion, language, traditions and cultural heritage. In other articles of the Framework Convention stipulates that States Parties shall encourage a spirit of tolerance and intercultural dialogue, they take effective measures to promote mutual respect, of understanding and cooperation between all people living on their territory (regardless of their ethnic, cultural, their linguistic or religious), especially in education, culture and media.

Regarding relations with the Convention - the framework states that States Parties are obliged to guarantee the right of every person belonging to national minorities to be informed promptly in a language they understand, the reasons for his arrest, nature and cause of accusation against him, and to defend the language and, if necessary, to have the free assistance of an interpreter.

European Charter for Regional or Minority Languages was adopted by the Council of Europe in 1992, at Strasboug, and entered into force on March 1, 1998[22]. Article 7 of the Convention establishes that States Parties to the following objectives and principles enshrined in the Charter: -recognition of regional or minority languages as an expression of cultural wealth;-compliance with the geographical area of each regional or minority languages, so that existing administrative divisions or new ones should not constitute an obstacle to the promotion of such regional or minority languages;-the need for firm action to promote regional or minority languages, both in public life and in the private-development and maintenance of links (in the fields provided in this Charter) between groups using a regional or minority language and other groups in the State, who speaks a practiced in a language identical or similar form, and establish cultural relations with other groups in the State using different languages;-facilitating and encouraging the use of oral or written regional or minority languages in public life and private life - provide appropriate forms and methods to study these languages at all appropriate levels;-providing facilities to enable those who do not speak a minority language (but live in areas where it is used) to study if they so wish;-promoting studies and research in these languages at universities or equivalent

[21] Romania ratified the Convention - the Framework Law. 33 of 29 April 1995, published in the Monitorul Oficial Part I, no. 82 / May 4, 1995, Bucharest.
[22] Romania signed the book on July 17, 1995.

institutions;-promoting transnational exchanges in the fields covered by the Charter for regional or minority languages used in identical or similar form in two or more states.

European Charter for Regional or Minority Languages aims to protect regional or minority languages and would promote them through their effective use in various fields (education, administration and public services, cultural institutions, economic and social life).

Regarding the establishment of community institutions, we review briefly the *EU Fundamental Rights Agency,* an independent body with legal personality of the European Union was established under Council Regulation nr.168 from 15.02.2007[23] which aims to provide institutions, State body and relevant agencies of the Community, and Member States under Community law, assistance and expertise in fundamental rights, to help them in full compliance with them when their area of competence, take measures or define actions.

The first multi-annual framework for the EU Fundamental Rights Agency, adopted by Decision of Council 28 February 2008[24], which covers the period 20007-2012, includes the topics: racism, xenophobia and related intolerance of it, discrimination based on sex, race or ethnicity, religion or belief, disability, age or sexual orientation and against persons belonging to minorities, and any combination of these criteria (multiple discrimination); compensation for victims; childrens rights, including child protection, etc[25].

Agency shall cooperate with Member States and be guided by the multiannual framework respecting the Charter of Fundamental rights and anti-discrimination directives.

In 2008, the Fundamental Rights Agency has released its first annual report assessing the situation of the EU states on racism, xenophobia and intolerance against ethnic and national minorities, migrants and asylum seekers.

According to the report, Romania is among Member States that have made encouraging progress in terms of legislation relating to discrimination on the grounds of ethnicity and has a relatively effective legal mechanism to combat the discrimination[26].

Conclusions

As noted, a definition of human rights is difficult to formulate. What is certain is that a human right is a claim that he is entitled to demand.

Respect for human rights, fundamental freedoms, democracy and the rule of law is the foundation of the European Union. Peace, security and sustainable development cannot exist without human rights. So the European Union human rights is a major responsibility.

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[23] Published in the Official Journal of the European Union L53 of 22.02.2005.

[24]Sursa: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:063:0014:0015.

[25] Irina Moroianu Zlătescu, "*Agenţia drepturilor fundamentale a Uniunii Europene"*, în Revista Drepturile omului nr.2-2008, Ed. IRDO, 2008, Bucharest, p.4.

[26] *Ibid*., p.5.

On the basis of human rights are fundamental values: human dignity, equality, freedom, respect for other, non-discrimination, tolerance and responsibility.

Undeniable merit of all international documents in this area, since the Universal Declaration of Human Rights is to be established and marked by their terms, the equal rights of all people, whether they are born free and equal in rights.

Fundamental rights as a fundamental principle of the European Union, resulting primarily from the Treaty establishing the European Union, which states that ,

"Union is based on principles of liberty, democracy, respect human rights and fundamental freedoms and the rule of law, principles which are common to the Member States.

Now, Europe has more tools to ensure these rights. The most important of these, in fact, the best known is undoubtedly the European Union Charter of Fundamental Rights approved by Parliament in November 2007 in Brussels, then solemnly proclaimed on 12 December 2007. This book inspired Union treaties, the jurisprudence of Court of Justice, the constitutional traditions of Member States of the European Union and European human rights conventions.

Charter of Fundamental Rights brings together in a single text all rights, civil, political, economic and social aspects of European citizens and all persons resident within the EU.

The EU constitution based on democracy and human rights, the peoples of Europe have established an ever closer collaboration between them and therefore decided to have a peaceful future based on common values.

Its goal is to achieve greater unity between its members to promote the ideals and principles which are their common heritage and one of the means for achieving this goal is to protect and develop human rights and fundamental freedoms.

As an EU member, Romania is concerned that fundamental human rights are respected in legislation, mentioned in its legislation the sanction for those who violate these rights. At the same, Romania joined the international documents on the protection of human rights, governmental structures set up to defend these rights, to transpose EU directives contain provisions on fundamental human rights.

Thus the rights of persons belonging to national minorities and promoting knowledge of international standards internally is a constant concern of the European Union.

Positioning the issue of human rights and fundamental freedoms in the spotlight in the contemporary world is evidence of a great political and legal transformations taking place in the international community, cultural spiritual and moral change that occurs.

Recognition and universality of human rights necessarily requires their equal application to all people: "All beings are born free and equal in dignity and rights", proclaims the first article of the Universal Declaration of Human

Rights in 1948. This means that fundamental rights and freedoms are recognized all individuals, without distinction, whatever its source, ie without any discrimination.

A truly democratic society must not only respect the ethnic, cultural, linguistic and religious identity of every person belonging to national minorities, but, also, to create appropriate conditions enabling them to express, preserve and develop this identity, which leads to enrichment of each society.

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BRIEF CONSIDERATIONS ON DEFINING CONCEPT OF NATIONAL MINORITY

Ramona Duminică[*]
Carmina Aleca[**]

Abstract:

The concept of national minorities has born theoretical controversy, both on national and international scene, the main interest in clarifying these issues being determined by the desire of contributing to human communities' defence.

Considering there is no legal definition, generally accepted, we intend to highlight the significance of national minority and to present all conditions it requires.

Apparently, the meaning of minority seems to be very clear, but implementing it into a legal determination has proved to be difficult. Understanding this concept implies a reference to principle of equal rights, to unity, sovereignty and democracy.

Based on these considerations, this article aims to achieve an analysis of definitions of national minorities under the terms of the United Nations (UN) and Council of Europe and, at the same time, to highlight the main views expressed in the doctrine.

Keywords: *national minority, political criteria, sociological criteria, objectivistic definition, political and normative definition*

Introduction

Although there has been and there still is an intense preoccupation to find a unanimously accepted and legally valid definition, this goal has not been achieved at an international level.

During the 47th session of the Commission on Human Rights of the Unirted Nations Economic and Social Council of 1991 has admitted the difficulty of this undertaking. Subsequently, article 12 in the report of the Framework Convention for the protection of national minorities of 10th November 1994 come into force on the 1st February 1998 states that "no definition of the notion of national minority is included in the Framework Convention. It has been decided to approach the problem pragmatically, based on admitting the fact that it is to reach a conclusion".

[*] Assist. Ph.D., University of Piteşti, Faculty of Law and Administrative Sciences, duminica.ramona@yahoo.com
[**] Assist. Ph.D., University of Piteşti, Faculty of Law and Administrative Sciences, e-mail: carmina.aleca@yahoo.com

1. Definitions of the concept of minority on an international scale

In order to enunciate a coherent definition, the Subcommission charged with the protection of human rights, backed by the UN requested that three studies e made by F. Capotorti in 1971, J. Deschenes in 1984 and M. Corby in 1986, followed by a text by A. Eide in 1993.

A definition considered as the most relevant and a starting point for other definitions given on a doctrinal level is the one by F. Capotorti, which is based on numerical and sociological criteria. He declares that a minority is "a group numerically inferior to the rest of the population of a state, which possesses ethnic, religious or linguistic characteristics that set them apart from the rest of the population and manifests in an implicit manner a feeling of solidarity in order to preserve their culture, traditions, religion and language[1]."

Starting from this definition, M.J. Deschenes proposes in his turn the following definition: "The term minority describes a group of people inferior in number to the rest of the population of a state, who are citizens of that state and have ethnic, religious or linguistic characteristics different from those of the rest of the population and who are driven by the will to maintain their culture, traditions, religion and language." On can notice that the author in his attempt at a definition used the same two criteria: the quantity and quality criteria, while adding the condition of member solidarity, the collective wish for survival and the group purpose: to obtain equal rights as the majority.

Concerning A. Eide, he used in his definition the same objective criteria, stating that a minority is "any group of people living in a sovereign state, representing at least half of the national population and whose members have particular characteristics of an ethnic, religious and linguistic nature that distinguish them from the rest of the population".

These criteria used by doctrinaires cannot be found in international law, which limits itself to using the notion without defining it.

In Europe, the only attempts of defining national minority can be found in Recommendation 1134 of the Parliamentary Assembly of the Council of Europe in relation to the rights of persons belonging to a national minority, adopted on 01/10/1990, at point 11, which contains the following definition of national minorities: "separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of that state and have certain religious, linguistic, cultural or other characteristics which distinguish them from the majority of the population".

Also, Recommendation 1201 of the Parliamentary Assembly of the Council of Europe, on 01/02/1993 uses in article 3 the same criteria to define national minorities: a. reside on the territory of that state and are citizens thereof; b. maintain longstanding, firm and lasting ties with that state ; c. display distinctive ethnic, cultural, religious or linguistic characteristics; d. are sufficiently representative, although smaller in number than the rest of the

[1] A. Lajoie, *Quand les minorites font la loi*, P.U.F., Paris, 2002, p. 23.

population of that state or of a region of that state; e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.

2. A short analysis of the criticism against objectively defining the notion of minority

In order to find a definition for the notion of minority, one must emphasize above all the various cases, in which this term is used. The term minority has many meanings that vary depending on the context in question, legal, political or social. Therefore we can have civil minorities, parliamentary minorities, ethnic minorities etc.

The only common point in these different cases is the idea of difference, of opposition between minority and majority. As such, a minority does not exist per se, but only in relation to the social reality. The elements or groups that constitute this reality have an identity of their own, but they are not a minority or a majority, except if there is a relation that designates them as such. Establishing that there is no minority without a majority means in fact that the minority exists because of the majority.

In order to distinguish the notion of "minority" from that of "majority", we generally turn to objective criteria, of a sociological nature. The minority is part of the population of a state, numerically inferior to the other part due to an objective element, ascertained sociologically: ethnicity, language, race etc. the majority is also determined objectively, starting with the same criteria. Apparently, things are clear. However, the definitions given from a sociological point of view pose certain legal problems.[2]

A first attack on the sociological definition was made by the doctrinaires, such as G. Sartori who states: "the democratic future of democracy depends on the capacity of the majority to converse into the minority and vice versa"[3]. As such, to determine the objective of the minority and majority generates unchangeability and inoperativeness from a democratic point of view.

We confer with other authors and we consider that the objective and sociological determinativeness of a minority must be doubled, if not replaced with a subjective determination. This aspect would lead not only to the reconfiguring of the notion of minority, but also its replacement in the legal field with the notion of "person belonging to a minority", because legally only the person is noticeable, and not the minorities. It is thus shown that: "What the legal system does when it protects persons belonging to a minority is to prevent the sociologically noticeable group, and therefore objectively determined one, from turning into a distinct legal group, therefore with a distinct constitutional or legal system on the grounds that sociologically it is different by race, ethnicity, language, sex etc. In other words, to ban discrimination or privileges based on criteria that sociologically constitute the

[2] To see: D.C. Dănişor, *Drept constituţional şi instituţii politice. Teoria generală,* vol. 1, Ed. C. H. Beck, Bucureşti, 2007, p. 305.
[3] G. Sartori, *Teoria democraţiei reinterpretată*, Ed. Polirom, Iaşi, 1999, p. 48.

basis of a forming minority protects people because it prevents social minorities from becoming legal minorities"[4].

A second problem posed by the objective definitions is linked to the use of the numerical criterion, quantity, in the respective definition. This criterion is found in the definitions attempted by the UN and the Council of Europe.

The relation between majority and minority in the political and social field is apparently just a quantitative one, because the numerical criterion does not reflect its profound reality.

The concept of majority cannot be fully explained if only the quantitative data is used because the number of the majority can be relative. A group that represents less that half of the population in a certain state can occupy a position of power so that it can impose itself upon all the other groups. This group can make the others groups into minorities and place itself in a position of power, as a majority.

Thus, it is established that the true sense of the concept of minority does not become clear except in relation to the notion of power. In order to position a group, firstly it must be put in relation to the idea of dominance, before elaborating the typological criteria. In the case of this fundamental question that seeks to determine whether it involves a dominant or a dominated group, the numeric aspect loses in importance. In this sense it is shown that "…the Ethnic group is the most important numerically, but the weakest politically and socially it must be considered a minority"[5].

However, this aspect is not a subordinate one nowadays, because legitimacy comes from a majority, fictitious or real, as a reminder of the democratic idea. The power of the minority from a numeric point of view cannot be legitimate. It is enough to qualify the power of the white population in Africa as minor to declare it illegitimate. This situation is outdated, and because it is integrated in the historic context of the colonization period, it cannot last indefinitely. It clearly highlights the bond between these two essential points, namely the first one stating that the notion of minority is not apparent except as a political concept and the second one stating that according to the democratic ideology of the Universal Declaration of Human Rights, which associates power with the majority, in an attempt to reduce the minority to a numeric reality[6].

The doctrine still holds that the minority is a dominated group. Even if the quantitative aspect is neither missing, nor unimportant, the relation majority-minority makes no sense within the limits of the dominant-dominated relation, which can disappear from political analysis. A group does not exist as a minority except when it is in the situation of the dominated party. The minority does not exist as a political category except as a result of an authority in power that constitutes it, designates it and treats it like a minority. The

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[4] D. C. Dănişor, *cited work*, p. 305.

[5] To see: Th. Veiter, *Comentariu privind conceptul de minorităţi naţionale*, Revista drepturilor omului (*Revue des droits de l'homme*), Vol. VII, 1974, pp. 280-281.

[6] A. Fenet, *Essai sur la notion de minorité nationale*, Publications de la faculté de droit et des sciences politiques et sociales d'Amiens, nr. 7, PUF, 1997, pp. 96-97.

characteristic of the minority is its powerlessness. Also, the minority is classified and maintained in a marginal position depending on one criterion that identifies and keeps it in a dominated status. This designation by those in power represents the essential act and it is more important for the forming of the minority than for the reality it depicts: the criterion whereby individuals are categorized.

Generally it can be established that the minority is a product of power due to its being dominated. Nonetheless, it is not possible to discount the interest for particular analyses.

Every minority actually represents a specific case: a certain minority situation resulted from a conflict of forces. We do not exclude, also that the identity of the minority and the fact that he has his own culture, religion, language or his skin colour. This has nothing to do with the devaluing of factors of distinction and solidarity that define humanity. Besides history and geography, these are the groups that are more or less stable, with better or less well defined limits and exercising a smaller or greater influence on individuals. These feelings of solidarity can work together and may also exclude each other in a complex and never ending struggle to remain at the centre of human diversity. These feelings of solidarity represent one of the riches of humanity and their objective cohesion and the strong feeling they can produce should not be underestimated. However, they carry no political weight *a priori*. It is power that gives human diversity political significance, making it into a factor of domination. By doing so, the power takes form and solidifies the diversity. The living, autonomous and evolving relationships are transformed by power in closed, shut off social categories, laden with devalued connotations and destined to degenerate. Power creates minorities of these categories[7].

Minorities under legal represent another inadequacy of sociological definitions, posing the problem of where do we have to stop in our effort to identify them. If ethnic, racial, religious, sexual minorities need to be protected, why not then blond people or people who wear glasses or with brown eyes etc.? The sociological factor, uncompleted by a legal one makes the notion of minority protection a regressive one and thus impossible to define correctly.

Last but not least, another problem of objectively defining minorities consists in finding an objective definition of the nation.

If the minority is based on ethnicity, race, language and space etc., then the nation as a support for the state cannot define itself otherwise than by the same criteria. Thus, the national minority cannot be defined as a collectivity living in another state than the same one and whose members have the feeling of "belonging to another nation that does not support a state"[8]. This aspect implies that the nation support of the state does not contain minority groups as well, and as such it is not a subjectively determined community, but an

[7] A. Fenet, *Essai sur la notion de minorité nationale*, Publications de la faculté de droit et des sciences politiques et sociales d'Amiens, nr. 7, PUF, 1997, pp. 96-100.
[8] Y. Plasseraud, *L' identité,* Montchrestien, Paris, 2000, p. 44.

objective one, and therefore based on clear and permanent reasons for exclusion, that we obviously cannot allow.

Hence, we establish that the stable sociological determination of groups that form protected minorities makes it so that every time the minority is not protected but the persons belonging to that minority.

If the minorities wish to be protected as such, or at least its organizational structures, then we adhere to the opinion[9] that these minorities should be defined by starting from criterion that assures mobility of people between the minority and the majority, vertically or horizontally, by relating to the principle of freely taking part in the lawmaking process and not only in equality, criterion that must be subjective, not object. More exactly, it comes to replacing the sociological element as the basis for the definition of minority with a normative political criterion.

3. Arguments for a normative political definition of the concept of national minority

Doctrinaires that plead the case of a normative political definition of the concept of minority recommend the following staple definition: non political minorities are "those social groups that contribute to the forming of opinions that will lead an individual to freely opt for where he is to be placed in a normative political majority or a minority", stating as well that belonging to these groups is contingent on the minority and not on the group or the authority, meaning that it is subjective.[10]

This type of approach in defining the notion of minority presents an uncontestable series of advantages.

One of the first advantages lies in the fact that it limits the criteria constituting a non political minority without giving this limitation a rigidity a simultaneously extending the criteria of indetermination.

Therefore, on one side, not all distinctly sociological groups contribute to the building of a political identity of people and, on the other side, undefined social groups based on characteristics that legally are not discriminatory contribute to this identification. The definition first offers us a selection criterion of non political minorities that must be protected without appealing to the non discrimination criteria, so to a horizontal principle, the criterion being the participation of the group in the establishing in which a person can start to take part in the lawmaking process. The group must first convince the person to take part, and not to exclude themselves, as those groups that do not consider themselves part of the nation or its political system. For example, this could justify the fact that the existence of certain political parties is not legally protected on the grounds that they operate against the sovereignty of the nation, the constitutional system, democracy or human rights: Nazi, religious fundamentalist, Communist parties etc.[11]

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[9] D.C. Dănişor, *cited work*, p. 310.

[10] D.C. Dănişor, *Noţiunea de minoritate: de la definirea sociologică către definirea politică în* R.D.P. nr. 2/2003, p. 17-27.

[11] D.C. Dănişor, *cited work*, p. 311.

Also, the criterion allows the introduction in the concept of minority of certain groups that are excluded by the usual definition of minorities through the usual objective criteria: homosexuals, lesbians etc.

We assess that the participation in building the political identity of persons is a extensive factor, on one side, not limiting the criteria of constituting minorities to those that are expressly stipulated as non discriminatory, but actually using all the criteria of their nature (yet this nature is not at all homogenous if we use the classic definition, the opinion and political affiliation are essentially distinct from race, ethnicity or language, but it becomes homogenous if we take into consideration the fact that they contribute to the positioning of the person in relation to the majority normative function) and restrictive, on the other side, because it allows for the exclusion of groups that do not contribute to the formation of the political identity of the person. These inclusions and exclusions of groups in the concept of minority are changeable on time and space. A factor might be essential for this identification at a given time or in a certain cultural space and then it can lose its importance or vice versa.[12]

The definition contributes to the expansion of non discrimination factors.

Thus, it is shown that "The advantage of using the political criterion in defining minorities is that it emphasizes the fact that non discrimination imposes not only the unity of the people, but also the unity of the political body, meaning the indivisibility of the electorate. If the former strictly refers to equality, the latter refers to the equality of participation, i.e. it opposes any category of voters or those eligible to vote."[13]

Another advantage of this type of definition is that, by starting from its core factor we can distinguish between the protection of persons belonging to minorities and the protection of minority structures or organizations.

The protection of minorities as a structure that aids in the forming of the political identity of the person involved in the participation in the exercise of the majority normative function, while the protection of people belonging to minorities stems from the non discrimination in relation to the criteria that constitute a minority.

Even though, as we have shown, there are clear advantages to the defining of political minorities, yet it itself is incomplete. Thus, it does not warrant the protection of a legal minority per se, but only for persons belonging to it, extending this last notion to the legal persons formed as structures of the minority group.

If the rights of the group per se are under discussion, we stumble upon another controversial problem: the possibility as a principle of collective rights on condition that the fundamental principles of the legal order are individualized, i.e. the people, equality in rights and the indivisibility of the nation's sovereignty.

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[12] D.C. Dănişor, *cited work*, p. 311.

[13] L. Favoreu, L. Philip, *Les grandes décisions du Conseil constitutionnel*, Dalloz, 2001, p. 542..

The literature has a phrase "collective rights" that has three meanings: either as a quality of all rights, the rights of the collectivity, but most of all as a category of human rights. If we relate to this last approach, the international documents sanction two principles: non discrimination and equality. F. Capotorti shows us that: this would mean the placing of minority members "from all points of view on the same level with every other national, the prevention of any action that refuses the individuals and groups the equality of treatment that they want and the suppression of any behaviour that denies or restrains the right of a person to equality".

However, in applying these principles it has been established that instead of obtaining equality between all individuals in fact the rule of the majority is favoured most of the times. In this situation certain measures must be taken (called by some positive discrimination or by others a privilege) that should satisfy certain specific rights that constitute the object of collective rights in relation to minority rights.

Accepting this so-called idea of "collective rights", would turn minorities into public legal subjects, which implies both rights as well as legal collective obligations. Generally, even if there are no clear specifications made and there are no generally accepted notions, collective rights can be considered: the right of a people to peace and security, to self-determination, the right to a healthy environment, the right to exploit its own resources, the right to develop. Yet can these rights be associated with national minorities.

The doctrinaires consider that "in order for individual rights to become to become the rights of a national minority constituted on a collective group endowed with its own legal personality that is distinct from that of the individuals it comprises of, it would be necessary that by virtue of domestic and international laws to establish the procedural conditions for their formation and organization, the required majority in this purpose and the activities that they are enabled to undertake in order to exercise the rights they would be acknowledged eventually"[14]. The internal regulations as well as the international ones are far from creating this legal framework that is absolutely necessary to the affirmation of certain minority rights.

Although there are states that have accepted national legislation acknowledging the collective rights of national minorities (e.g. Hungary) and even if there are minorities that claim such rights, the international legislation refers without exception to the rights of persons that are part of a minority.

Accepting the sentence that the group is entitled *de plano* to collective rights, would generate a radical shift in the whole conception and practice of the international community, in the matter of national minorities, of human rights as a whole.

In this sense, it has been said that "the idea of collective rights would lead to the right to have and to value the legal pretensions to a ius standi of

[14] T. Drăganu, *Câteva consideraţii privitoare la problema drepturilor colective ale minorităţilor naţionale*, Revista Română de drepturile omului nr. 18/2000, p. 41.

certain groups of people based on national criteria, which is known neither internally, nor in international procedures".[15]

More than this, we ascertain that without the existence of a distinct legal personality granted to a collective, the collective would have no rights, or interests. In other words, the rights have always belonged to a determined individual subject.

Conclusions

As we have shown, each of the definitions proposed in the international regulations, either presenting an advantage in doctrine, as well as deficiencies, so that the elaboration of a complete and coherent definition from a legal point of view remains a goal of research. In our opinion, we ascertain that the notion of minority should be defined by starting from the sociological factors and progressing to the political one, and still the most important is that these by filtered into a definition valid in the current domestic and international legal system in order for this concept to attain the a functional value from a legal point of view.

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[15] I. Diaconu, *Minorităţile. Statul. Perspective*, I.R.D.O., Bucureşti, 1994.

BRIEF REFLECTIONS ON THE EXERCISE OF THE RIGHT TO EDUCATION OF THE ROMANY MINORITY

Ramona Duminică[*]
Andreea Tabacu[**]

Abstract:

The right to education, a fundamental human right should be organised in a way that it guarantees equal opportunities to people, stating first of all the prohibition of discrimination or of privileges.

Although international regulations establish and guarantee, both at general level, as well as in particular, the right to instruction without discrimination, the exercise of this right continues to be a problem for some minorities, such as in the case of the Romany minority.

Therefore, this article aims at re-bringing into discussion the problem of segregation in education with respect to Romany children, having as starting point the contents of the Directive on Racial Equality of the European Union (2000/43/CE) and some of the cases settled by the European Court of Human Rights in this matter.

Keywords: *right to education, Romany minority, segregation in education, discrimination, CEDO case-law.*

Introduction

In modern times, the existence of ethnic, religious or language communities is an undeniable reality which justifies the special concern for the legal protection of human rights, generally and implicitly, as integrant part into legal protection of minorities.

The minority groups of population are thousands worldwide, including hundreds of millions of people, with the various ethnic origins, traditions and languages. Following the recent studies, only in Europe is found the existence of around 80 minorities. Facing these realties, the international law created and promoted a constructive policy regarding the minorities, which contributes to the maintenance of an internal and international stability.

1. General legal framework

[*] Assist. Ph.D., University of Pitesti, Faculty of Law and Administrative Sciences, duminica.ramona@yahoo.com
[**] Lect. Ph.D., University of Pitesti, Faculty of Law and Administrative Sciences, andreea.tabacu@upit.ro

In Africa and Asia, the number of the minority population, linguistic or tribal communities, with different ethnic features is greater.[1]

Among the international conventions on protection of minorities we find: the International Convention on the Elimination of All Forms of Racial Discrimination in 1965, the Convention against Discrimination in Education adopted by UNESCO in 1960, the American Convention on Human Rights in 1969, the African Charter on Human and People's Rights in 1973, the Universal Islamic Declaration of Human Rights in 1981, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities on December 18, 1992, the Charter of Paris for a New Europe on 1990; the Framework Convention for the protection of national minorities by the Council of Europe on November 10, 1994, entered into force on February 1st, 1998.

Regarding the international regulation on the rights of persons belonging to minorities in the area of education, can be approached from two perspectives.

On the one hand, it can be noticed that we are in the presence of a general guarantee of the right to education without discrimination and, on the other hand, are enshrined and protected rights in the area of education specific to minorities. The first aspect aims the access of national minorities to the existing and guaranteed by the state education. Thus, the Protocol on March 20, 1952 additional to the European Convention on Human Rights states in its Art 2 that "No person shall be denied the right to education".

The Convention against Discrimination in Education adopted by UNESCO in December 14, 1960, enshrines the minorities' rights as it is done also by other treaties with the universal feature, ensuring the protection of the minorities' rights in the general protection of human rights system, thus prohibiting any form of discrimination on race, religion and national origin and forcing the states to ensure equal rights for persons belonging to national minorities.

In the light of this Convention, by discrimination in education is understood "any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular of depriving any person or group of persons of access to education of any type or at any level; of limiting any person or group of persons to education of an inferior standard; of establishing or maintaining separate educational systems or institutions for persons or groups of persons, besides the case in which these systems or institutions are allowed in a state, for linguistic or religious motives and are optional".

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[1] Aurel Preda Mătăsaru, *Tratat de drept internaţional public*, 2nd Edition reviewed and amended, Lumina Lex Publishing house, Bucharest, 2006, p. 219-227.

The signing states admit that, every person has the right to study in his native language, irrespective of the degrees of education, but, it must be mentioned that, studying in the official language of the state is compulsory[2].

Intense debates on specific rights of persons belonging to national minorities in education are held especially in Eastern Europe. These debates aim the possibility of creating private institutions by these persons, the study language and learning the native language.

Art 8 Para 2 of the Recommendation 1201 on the Additional Protocol admits the right of persons belonging to national minorities "to set up and manage their own schools and education and training establishments in the legal national system".

According to Art 13 Para 1 of the Framework Convention, these persons can pretend that "Within the framework of their education systems, the parties shall recognize that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments".

Regarding the study language, Art 14 Para 2 of the Framework Convention settles that "In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavor to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language". Art 14 Para 3 of the same Convention draws attention that Para 2 of the same article "shall be implemented without prejudice to the learning of the official language or the teaching in this language".

2. Discrimination in education

Though, as shown above, there is a legal framework solid enough in this area, the situation of many Romany in Europe remains difficult, still speaking about the segregation of the Romany children in education.

The term "segregation" expresses its area by a simple etymological analysis; the origin word – "*segregatio*" – derived from the Latin word "*se*" (special, separated) and "*grex*", "*grecis*" (crowd, mass) – means in a simple translation "to set aside". Thus, the segregation represents a classic form of physical distance. It assumes a separation, a demarcation line, visible or just symbolical, between different groups and individuals. Following such practices are created concrete, more or less institutionalized, mechanisms of demarcation between "us" (in group) and "the other ones" (out group). In education, the segregation assumes the establishment or maintenance of systems, education institutions and separated classrooms for different persons or groups at the level of the classroom, the segregation designates the

[2] Francesco Capotorti, *Studies of the Rights of Person Belongins to Ethnic, Religious and Linguistic Minorities*, doc. E/C.N. 4 sub 2/384, Rev. 1 (1979), p. 104.

didactical practices that creates and intentionally maintain or nor inequitable separations and demarcations between scholars, based on artificial criteria such as ethnical or economical origin or scholar performances etc.[3]

Therefore, the segregation is a serious form of discrimination. In the educational system, except schools/classes with teaching all disciplines in the Romany language, the segregation consists of the intended or unintended physical separation of the Romany children by the rest of the children in schools, classrooms, buildings and other facilities, thus the number of Romany children from the non-Romany children is disproportionately high compared with the percent of the school age Romany children from the total population with school age from that certain administrative-territorial unit.

The segregation of the Romany children in Europe does not directly represent a consequence of the legal regulation of the educational system in schools different for Romany children or different classrooms for them in relation to the non-Romany children.

Depending on the mechanisms generating the segregation, it is often distinguished between: *de jure* segregation and the *de facto* segregation. *De jure* segregation is, in a simple and trivial express, that type of separated organization of pupils with "a legal base"; it is the consequence of a legal framework favorable to separation, represents the practice of some legislative decisions, while the *de facto* segregation represents "the aggregated result of the individual or group actions based on ideologies or specific mental models which creates the social situation of separation".

Thus, the two types of segregation have different initiation mechanisms: the first one derives from a social policy (permissive and favorable to separation), and the second one designates cumulatively particular practices, which are not a direct consequence of a central, governmental strategy. But, in practice, the demarcation line between these categories can become sufficiently wiped. A characterized *de facto* segregation can be proven to be *de jure* after a historical research that will connect a previous regulation with an actual segregation situation[4].

Studies are constant in showing that maintaining separation in education based on ethnical criteria has negative effects both for the Romany but also for the society as a whole, as well as maintaining the prejudices at the level of the majority population and the Romany, the inferior feeling to Romany children, insufficient number of the qualified teachers, the teachers' fluctuation, the incapacity of training pupils at a level that will ensure the scholar performance, the high rate of illiteracy and school abandon etc. On the other hand, it is known and proven the fact that the inclusion of children in joint classes, ethnically and culturally, contributes to knowledge and accepting

[3] Anca Nedelcu, *Segregarea etnică în educaţie: forme de manifestare, categorii, mecanisme privind elevii romi* in Practical Guide – Combating and Preventing Segregation in Education, Infcon S.A., 2008, edited by the Romany Access in the project "Combating the Segregation of the Romany Children in the Romanian Educational System", p. 25.
[4] Anca Nedelcu, *op. cit.*, p. 27.

the ethnical and cultural differences, tolerance, and favorites the school performance.

In a report on equal access to quality education for Romany, the Open Society Institute establishes that segregation in education of the Romany children is usually met in the Central and South-Eastern Europe, because of the geographical isolation/residential segregation, procedures of forming classes or because of the teaching language.[5]

In most EU's Member States, according to the Annual Report of the European Union Agency for Fundamental Rights (FRA) published in 2008, groups who suffer for discrimination in education are Romany and children of the asylum seekers and migrants without legal papers: "Discriminatory policies and practices towards Romany remain at a high level in the EU. Romany is still facing with inappropriate educational systems which lead to segregation and unequal opportunities". [6]

At the level of the education systems in the Member States, the main identified forms of segregation are: classes exclusively formed by Romany children or units in schools (Hungary, Romania, Slovenia and Slovakia), over-representation of the migrant children and children belonging to national minorities in special schools (Bulgaria, Czech Republic, Luxembourg, Hungary, Austria, Poland, Romania, Slovenia, Slovakia, Finland), schools exclusively or predominantly formed by migrant pupils or belonging to national minorities because of the socio-economic or inhabiting factors, policies for admission, discriminatory attitudes and/or teaching language (Bulgaria, Czech Republic, Estonia, Greece, France, Ireland, Italia, Latvia, Lithuania, Luxembourg, Hungary, Holland, Austria, Romania, Slovenia, Sweden, Great Britain).[7]

Also, in another report completed at the request of the European Commission on the segregation of the Romany children is established that: "in the new Member States, often Romany children are segregated in schools. This phenomenon can be presented as the scholar segregation by organizing separate classes for Romany or segregation intra-class by the different offered level of the curricular standard applied in the same class. Inter-scholar segregation has three different sources: geographical or residential segregation between ethnic groups, inappropriate selection process or cultural subjective which determines the placement of children without disabilities in schools for children with mental disabilities or the existence of private or religious institutions, with admission based on examination or fee, from which the Romany children are *de facto* excluded because of the social disadvantage.

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[5] Open Society Institute, *Equal Access to quality, Education for Romany*, 1st Volume: Bulgaria, Hungary, Romania, Serbia; 2nd Volume: Croatia, Macedonia, Muntenegru, Slovakia, Monitoring Reports, Q.E.D. Publishing, 2007.

[6] FRA – European Union Agency for Fundamental Rights, Annual Report, 2008, Section 4.3.4.1., *Romany, Sinti and Travellers*, p. 74.
(http://fra.europa.eu/fraWebsite/material/pub/ar08/arOS _en.p).

[7] *Idem.*

Individual segregation, shaped as residential schools, is also an often met segregation type" .[8]

By the Treaty of Amsterdam, the European institutions received considerable competences in the area of racial and ethnic discrimination by the introduction of a new article, allowing the adoption of the European legal framework and other measures for combating discrimination, including racial and ethnic criteria. This amendment represents a clear recognition of the necessity of confronting different types of discrimination and racism at the European level. In November 1999, the European Commission formulated the proposal based on the new Art 13 of the Treaty of the European Community and on June 29, 2000 was adopted the Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[9].

The scope of the antiracial Directive was to create a legal framework for combating discrimination on the criteria of racial and ethnic origin, emphasizing the efficiency of the principle of equal treatment in the Member States. Though, the text of the Directive does not include a definition of racial or ethnic discrimination, the only reference being found in the Preamble, at Point 6, where is stated that the European Union rejects theories which attempt to determine the existence of separate human races and the use of the term "racial origin" in this Directive does not imply an acceptance of such theories.

The antiracist Directive conceptualizes the standard of direct and indirect discrimination, harassment, order to discriminate or victimize and applies specifically to education, but the Directive does not specifically places the subject of segregation on the criteria of racial or ethnic origin and does not include any reference to this term. Though this fact might raise provokes from a restrictive interpretation of the Directive's standards' perspective, there is the opinion[10] that the explicit "non-reference" to the term "segregation" cannot be an obstacle in stating segregation as a discrimination form, either directly in the meaning of the Directive "when a person is treated less favorable by another person, was or might be treated in a similar manner, on the criteria of her racial or ethnic origins", or as an indirect discrimination "when an apparent neutral regulation, criteria or practice disadvantages persons by a certain race or origin towards other persons, except the case in which those regulations, criteria or practices are justified by a legitimate purpose, and the methods used to achieve this purpose are appropriate and necessary".

3. Decisions of the European Court of Human Rights in the area of segregation in education of the Romany children.

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[8] Comisia Europeană, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.2; Lilla Farkas, *Segregation of Roma Children in Education*, Addressing Structural Discrimination through the Race Equality Directive, July 2007.

[9] Official Jounal of the European Communities L l80/22 of July 19, 2000.

[10] Dezideriu Gergely, *Segregarea copiilor romi în sistemul educaţional românesc şi protecţia juridică împotriva discriminării* în the new Review of Human Rights No 1/2009, C.H. Beck Publishing house, Bucharest, p. 39.

Case D.H and others v Czech Republic

In the case D.H and others v Czech Republic, which has as object the placement of the Romany children in schools for children with special needs (mental disabilities), in the first instance, the Second Section of the European Court has decided that there was not a violation of Art 14, corroborated with Art 2 of the First Protocol to the European Convention on Human Rights. The applicants argued that the different treatment was materialized by admitting the Romany children in special schools, justified by the quality of education received substantial inferior to the one ensured by the common education system, which has as a consequence the denied access to secondary education different from the one ensured in the vocational training centers. In this regard, were considered as victims of the racial segregation, suffering psychological consequences as a result of their etiquette as "stupid" or "retarded"[11].

Started from its own case law establishing that discrimination assumes the different treatment for persons in similar relevant situations, without an objective and reasonable justification, the European Court of Human Rights showed that in the situation in which a policy or a general measures has disproportioned effects in order to prejudice a group of persons, the possibility that those measures to be considered as discrimination cannot be excluded, even if it does not aim as specific or direct target the persons in that certain group. Though the Court stated that the rules applicable to the placement of children in special schools does not referred to their ethnical origin, as they follow the legitimate purpose of adapting the education system to the needs and aptitudes of the children with disabilities. Since these are not legal concepts, it is correct that the experts in educational psychology be responsible for their identification. In addition, the Court showed that it would be difficult to request to the defendant Government to prove that the psychologists who have examined the applicants had a particular subjective attitude, and on the other hand, the applicants did not succeeded to combat the result established by specialists in the meaning that the learning disabilities of the applicants do not allow them to learn in the general education system. The Court has also stated that it is the responsibility of the parents, as part of their natural obligations, to ensure the education which their children will receive, to study the education opportunities offered by the state, to ensure themselves that they are aware on the date they accepted that their child to be placed in a certain school, and, if necessary, to attack the decision establishing the placement if it was enacted without their consent. In these conditions, although noting the fact that the applicants would have no information on the education system or were in a climate of mistrust, in the context of the administrated evidences, the Court stated that the aspects of the case did not had the nature to allow the conclusion that placing the Romany children in special schools was the result of the racial discrimination prejudices[12].

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[11] ECHR, case *D.H and others v Czech Republic*, Section II, Complaint No 57325/00, decision on February 7, 2006.

[12] ECHR, case D.H and others v Czech Republic, Section II, application no 57325/00, decision on February 7, 2006, Para 49-52.

The decision of the Court was criticized by the doctrine. Thus, it was shown in this respect that in the first decision, in the case *D.H and others v Czech Republic*, the Court was prepared to accept the tacit parental consent as a potential justification for segregation in education, noting that "the needs and aptitudes or disabilities of the children", as well as the parental behavior justifies the difference in treatment. Also, the Court did not approached in detail the issue of the parental consent and the conditions in which it represents an "informed consent", rather preferring an approach oriented towards the common individual in society, who is familiarized with his rights, did not experienced the pressure of the public authorities and has access to relevant information to make informed decisions[13].

Case Orsus and others v Croatia

In a different case, *Orsus and others v Croatia*, the applicants addressed the European Court of Human Rights for the different treatment applied to Romany children in education by placing them in separated classes exclusively based on the ethnic origin criteria. Thus, the applicants considered that the chances of access of the Romany children to higher education were lower in relation to the education received in the elementary cycle, based on a curriculum of up to 30 % reduced compared with that provided in elementary cycle. In the first instance, the Section II of the European Court considered that there was not a violation of Art 2 of the Protocol No 1 of the Convention and of Art 14 of the Convention.

The Court noticed that the applicants were not deprived of their right to go to school and to have an education, and during the national proceedings in front of the courts was stated the equal character of the school curriculum for separated classes (of Romany) in relation to the one ensured for the parallel classes in the same school. The Court noted the fact that the applicants did not have enough evidences is sustaining the aspects on different curriculums. It also noted the fact that the transfer from a class with only Romany children to a joint class was a regular practice[14]. The decision of the Court, in first instance, was attacked, being recently referred to the Grand Chamber, on December 1, 2008, the hearing for appeal being set on April 1, 2009.

Case Sampanis and others v Greece

It is also interesting the case *Sampanis and others v Greece*[15], in which the European Court found a violation of Art 14 corroborated with Art 2 of the Protocol No 1 to the Convention on the failure to ensure admission in a school year and subsequent placement of the applicants in special classes, in an annex

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[13] Lilla Farkas, *The Scene after battle: what is the victory in D.H. worth and where to go from here?*, in Roma Rights, Journal of the European Roma Rights Centre, Roma education: The Promise of D.H. November, 1/2008, Fo-Szer Bt., Budapest.

[14] ECHR, case Orsus and other v Croatia, aplication no 15766/03, decision on July 17, 2008, Para 59-60.

[15] ECHR, Sampanis and others v Greece, application no 32526/05, decision on June 5, 2008, definitive on September 5, 2008.

of the main school, measure considered discriminatory on the criteria of ethnic origin.

As an effect of admitting 23 Romany children in the primary school, among who were also the applicants, the parents of the non-Romany children organized a public protest requesting the transfer of those children in another facility of the school. According to the Romany parents, they signed under pressure a declaration written by the teachers in which they agreed with the transfer of the children in a separated facility.

The Court has shown that the competent authorities should have admit the particularities of the case and to ease the admission of the Romany children, even if some administrative documents were not available at a given moment, considering the vulnerability of the Romany community, which necessitates a special attention to its needs.

Applying the same reasoning of the case *D.H and others v Czech Republic*, in the case *Sampanis and others v Greece*, though the Court established that the admission of the Romany children in special classes represents segregation, and the *de facto* separation of the Romany children was tolerated by authorities, however the Court did not created a distinction of this discrimination form.

A similar critic is also brought to the decision, in first instance, given in the case *Orsus and others v Croatia*, by which the European Court of Human Rights did, not, considered the similar aspects from the decision *Sampanis and others*, by which it stated the obligation of the state to appropriately evaluate the education needs of children, including of those belonging to disadvantaged ethnical minorities. In literature it is stated that erroneously were delimited by the Court the differences between the situation of separating the Romany children in distinct classes and the situation of separating them in schools for special needs and not considering the racist reasons that are at the base of evaluation of the Romany children[16].

4. General aspects on segregation in education in Romania

Regarding Romania, the Roma Education Fund show that even if there has not been an explicit policy of segregation, was instituted a *de facto* segregation, starting with the early stages of education, mostly because of the creation of special classes in schools. On the other hand, the segregation in education is also the result of the decisions of school managers or of the residential segregation[17].

In combating and preventing segregation, in our country were elaborated specific regulations. Among them we note the relevant ones:

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[16] Anita Danka, *The European Court of Human Rights missed the opportunity to recognize that segregation in education can also take place in mainstream schools*, în Roma Rights, Journal of the European Roma Rights Centre, Roma education: The Promise of D.H., November, 1/2008, Budapest.

[17] Roma Education Fund, Country Assessment and the Roma Education Fund's Strategic Directions, Advancing Education of Roma in România, Komaromi Nyomda es Kiado Kft., 2007, p. 38-39.

Government Injunction No 137/2000 on the prevention and sanction of all discrimination forms[18], the Notification of the Ministry of Education and Research No 29323/ April 2, 2004, the Order of the Ministry of Education, Research and Youth No 1540/July 19, 2007 on the prohibition of segregation in education of the Romany children and the approval of the Methodology for prevention and elimination of the segregation in education of the Romany children.

The antiracist Directive was efficiently transposed, as an effect of a long legislative process, by subsequent amendments of the Government Injunction No 137/2000. Regarding the access to education, the Injunction No 137/2000 states the fact that "the denial of the access to a person or a group of persons to the national or private education system, to any form, degree and level, based on their belonging to a certain race, nation, ethnicity,… social category or a disfavoured category…" is a contravention.

Like Directive 43/2000/EC which does not expressly refer to segregation in education also the Romanian anti-discrimination legislation does not contain any explicit regulation in this area. This lack is covered by Art 2 of the Directive 43/2000/EC, and by Art 2 of the Government Injunction No 137/2000, republished, on the prevention and sanction of all discrimination forms.

Prohibiting segregation in education of the Romany children in our country was firstly stated on the jurisprudential way, by stating it as a form of discrimination in the decisions of the National Council for Combating Discrimination.

The Directive Council debated, firstly, the issue of creating a balance between the situation and the interest of the Romany children, as members of a ethnical community disadvantaged and the interests of the school, appreciating that the pedagogical principle of forming and maintaining ethnical homogeneity of a class cannot justify *de plano* the ethnical segregation of the Romany children. In the same time, the Council noted that the effect of forming, moving or shaping classes entirely with Romany children represents direct discrimination on the criteria of ethnicity, which encourages the unequal access to a quality education for the Romany children[19].

The Notification of the Ministry of Education and Research No 29323/April 20, 2004 had as base the existence, both before and during the program "Access to education for the disadvantaged groups, focalized on Romany", in certain teaching units, of the cases of segregation in the compulsory education, by creating classes or schools frequented only by the Romany children.

The notification established the fact that the segregation is a serious form of discrimination, and in the education system, except the schools/classes with teaching all disciplines in the Romany language, "the segregation is the

[18] Republished in the Romanian Official Gazette No 99/ February 8, 2007.

[19] Dezideriu Gergely, *Segregarea copiilor romi în sistemul educaţional românesc şi protecţia juridică împotriva discriminării*, New Review of Human Rights No 1/2009, C.H. Beck Publishing house, Bucharest, p. 56.

physical separation, intended or unintended, of the Romany children from the rest of the children in schools, classes, buildings and other facilities, so that the number of the Romany children towards the number of the non-Romany children is highly disproportioned in relation to the percent that the school age Romany children represents from the total school age population from that particular administrative-territorial unit"[20].

On July 19, 2007 the legislative framework on the prevention and combating segregation in education was improved by the adoption by the Ministry of Education, Research and Youth of the Order No 1540 prohibiting segregation in education of the Romany children and the approval of the Methodology for preventing and eliminating segregation in education.

The Order has as main objective the prevention, prohibition and elimination of segregation, seen as a serious form of discrimination, with negative consequences on the equal access of children to a quality education. For achieving this objective are prohibited, starting with the school year 2007-2008, 1st and 5th classes with majority or only with Romany children[21].

Conclusions

Though the Romany communities are the most numerous ethnical minorities of the European Union, still continues to suffer discriminations even in the exertion of some fundamental human rights, such as the case of the right to education, despite the fact that education is considered to be one of the most important functions of the state, which must ensure equal opportunities and especially guarantees such as the fact that the access to education must be equal for every person.

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[20] See: the Notification of the Ministry of Education and Research, No 29323/April 20, 2004.

[21] See: Mădălin Morteanu, *Protecţia juridică internaţională împotriva discriminării şi combatrea segregării în educaţie* in the Practical Guide – Combating and Preventing Segregation in Education, Infcon S.A., 2008, edited by the Roma Access in the project "Combating segregation of the Roma children in the Romanian education system", p. 20.

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ENSURING RIGHT TO A FAIR TRIAL IN THE REPUBLIC OF ARMENIA. COMPARATIVE WITH NATIONAL LAW

Ioan Gânfălean[*]
Miruna Tudoraşcu[**]

Abstract

In accordance with art. 3 of the draft of Law on National Minorities in Romania "by the national minority we understand any community of Romanian citizens living in Romania since the establishment of the modern state, numerically inferior to the majority population, with its own ethnic identity, expressed through culture, language or religion, which wishes to maintain, express, and develop."

Key words: *fair trial, rights, national minority, unitary state, legitimate interests.*

Introduction

In Romania, the Armenians are an ancient ethnic community of about a millennium, being present in all regions of Romania. Currently, community members are only a few thousand.

According to the 2002 census, Armenians in Romania was 1780, many in mixed families, 721 of them stating their mother tongue as the Armenian language.

Republic of Armenia, or Armenia (Armenian: Հայաստան, Hayastan, Հայք, Hayq), is a country in the southern Caucasus, between the Black Sea and Caspian Sea, which borders Turkey to the west, Georgia to the north, Azerbaijan to the east and south Iran. Armenia is a member of the Council of Europe and of the Independent States Community and over many centuries has been a tracing point from West to East. A former Soviet republic, Armenia is a unitary state with a multi-cultural heritage and ancient history. Armenia is a member of more than 40 international organizations including UN, Council of Europe, the Asian Development Bank, Commonwealth of Independent States, World Trade Organization, the Organization of Black Sea Economic Cooperation and the Francophonie. CSTO is a member of the Alliance military, and participating in NATO's Partnership for Peace (PfP). In 2004 its forces joined KFOR, NATO's international force in Kosovo. It is also an observer member of the Eurasian Economic Community and the Non-Aligned

[*] Associate Professor Phd.,
[**] Junior Lecturer Phd. Student

Movement. The country is a developing democracy. Armenia is classified as medium human development country and 10.6% of the population lives below the international poverty line of 1.25 dollars per day.[1]

It seemed interesting to approach this problem, which is a topical and is also a fundamental right of citizen. Article 11 of Romania's Constitution establishes, as a principle value, the Romanian state's obligation to fulfill in good faith duties which are deriving from the treaties where Romania is a party, and that treaties ratified by Parliament as part of national law .

Access to justice is enshrined as a fundamental civic right, so by item 1 of article 6 European Convention on Human Rights and by Article 21 of Romania's Constitution, by article 10 of the Universal Declaration of Human Rights and 14 item 1 of the International Covenant on Civil and Political Rights.

In the Constitution, access to justice is conceived as a right of every person to be able to address justice for rights, freedoms and legitimate interests, ensuring that this right cannot be restricted by any law.[2]

One of the main goals pursued by the judicial reform in the Republic of Armenia is fundamentally changing the judiciary with a special stamp on the protection of legitimate rights and interests a person in accordance with recognized principles and norms of international law.[3] This process gained momentum by the ratification of the European Convention on Human Rights and Fundamental Freedoms and its protocols.

Right to a fair trial is guaranteed for all international treaties ratified thus the Republic of Armenia, but also in national legislation the Republic, as also reflected in our national law.

Article 6, section 1 of the European Convention of Human Rights states: "Everyone is entitled to a fair, publicly and in his case within a reasonable time by an independent and impartial tribunal established by law, the determination of infringement of its rights and obligations of a civil nature, either on the merits of any criminal charge against him. Judgement shall be pronounced publicly, but the acces in the courtroom may be denied for the press and public throughout the duration of the process, or parts thereof in the interest of morality, public order or national security in a democratic society, where the privacy interests of juveniles or the parties so require, or to the extent strictly required by the court when, in special circumstances where publicity would be likely to prejudice the interests of justice. "

Article 19 of the Constitution of the Republic of Armenia states that every person is entitled to compensation for violating the rights, and to disclosing the reasons for the charges against him in public, under the protection requirements of law and fair justice through a fair trial within a reasonable time.

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[1] http://ro.wikipedia.org/wiki/Armenia .

[2] Judges Raluca Moglan Culea, Nina Ecaterina Grigoraş, Court of Apel Bucureşti, *Dreptul la un proces echitabil și accesul liber la justiție (art.6 din Convenţia Europeană a Drepturilor Omului)*, http://www.inm-lex.ro/fisiere/pag_35/det_126/406.doc .

[3] Public Ad-Hoc Report, *Human Rights Defender of the Republic of Armenia*, Yerevan 2009.

This principle is also found in criminal procedural law. In art. 23, section 4 of the Criminal Procedural Code of the Republic of Armenia states that the court, hearing related to the defendant, will wear the objectivity and impartiality, considering all relevant circumstances in the process. In section 5 of the same Article, stipulates that the parties participating in the criminal process should be treated with equal opportunity to defend their position. The court must judge as evidence, examining them, must be equally accessible to parties.

By way of comparison, we relate to art. 21 of the Romanian Constitution which states: "Access to justice: (1) any person is entitled to justice for rights, freedoms and legitimate interests.

(2) No law may restrict this right.

(3) Parties are entitled to a fair trial and to resolve cases within a reasonable time.

(4) ... "

Behold, constitutions are similar on this fundamental right, and concurs by international provisions.

The notion of rule of law is one of the defining features of European constitutionalism, whose influence in today's world is undeniable. Through this concept, the state itself, restricts the scope of its action in relation to its own value system. If he does not take account of positive law, which is his own creation, even legitimate exercise of power is questioned. 'The Public power which affects the legal system that has established itself, gives its own limitation', mentioned at the beginning of this century by Ihering. One of the greatest theoreticians of French doctrine, Carrie of Marlberg stressed that: 'the rule of law system is designed in the interests of citizens and is designed specifically to ensure its early and to protect against arbitrary state authorities' and public institution which is located at the individual, the court: "For the rule of law to be done, is indeed essential that citizens be armed with legal action, allowing them to attack the vicious acts that would harm state their individual right". In these circumstances, judicial review is in this perspective, and even more than in the past as effective guarantee the rule of law.[4]

As our subject specific but the principle of fair process involves primarily the right of access to a fair trial. In this respect, Article 18 of the Constitution of the Republic of Armenia states that: 'Everyone has the right to effective legal remedy rights and freedoms to justice, and the other national authorities'. This constitutional principle was also stated in Article 2 of the Code of Civil Procedure of the Republic of Armenia, which states: 'The person concerned is entitled to request the court in accordance with the procedure laid down in this Code, the protection of his rights, freedoms and legal interests stipulated and provided in the Constitution of Armenia, in laws and other legal acts or agreements. "

[4] Associate Professor Phd. Florin Bucur Vasilescu, „*Dreptul la un proces echitabil*" http://www.ccr.ro/default.aspx?page=publications/buletin/1/vasilescu .

Based on the need for effective management of the judiciary, the legislature of the Republic of Armenia provides a specific procedure for review of cases. But procedural rules will not deny or impede a person's right to obtain a legal remedy breach.[5]

Since 2001, cases brought by the owners of expropriated in the public interest and national and state non-commercial organizations, are a large number of disputes related to ownership.[6]

There are a large number of such cases and have therefore adopted two decisions by the Constitutional Court of the Republic of Armenia[7], which confirmed "non-compliance" of certain provisions of the Constitution of the Republic of Armenia and the existence of dozens of cases in which the issue of expropriation, the European Court of Human Rights.

In accordance with Article 3 of the Code of Civil Procedure of the Republic of Armenia: 'Court initiates a civil case only upon request or civilian applications. " This request is attached evidence. Where the trial participant is unable to obtain necessary evidence from a person participating in or outside the trial process, in accordance with Art. 49 (2) of the Code of Civil Procedure, is entitled to court a motion requesting that evidence.

Studying jurisprudence, we find that civil proceedings of this nature takes a long time, because of the expertise needed for their inability to execute civil judgments in many situations.

Article 91 of the Code of Civil Procedure sets out clearly the reasons for rejecting and accepting the call to justice. (Which are not considered subject to dispute in court, there is a decision which came into force on the dispute between the same persons, the same problem for the same reasons, in another court or arbitral tribunal is conducting a dispute between the same people on the same subject and the same reason, there is a decision of an arbitral tribunal or a mediator in the financial system on the dispute between the same persons, the same problem for the same reasons, unless the court refuses to issue a warrant execution for enforcement of an arbitration or a court decision of Mediatorolui the financial system.

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[5] Public Ad-Hoc Report, *Human Rights Defender of the Republic of Armenia*, Yerevan 2009, p. 28.

[6] Decisions of the Government of the Republic of Armenia No 1151-N of 1 August 2002, No 1025-N of 15 July 2004, No 950 of 5 October 2001, No 57-N of 29 January 2004.

[7] Decision (27 February 1998) of the Constitutional Court of the Republic of Armenia on the case regarding the conformity to Articles 8 and 28 of the Constitution of the Republic of Armenia of second, third, fourth and fifth parts of Article 22 of the Law of the Republic of Armenia on Real Estate adopted by the National Assembly on 27 December 1995.

Decision of the Constitutional Court of the Republic of Armenia “on the Case concerning the Determination of the Issue regarding the Conformity of Article 218 of the Civil Code of the Republic of Armenia, Articles 104, 106 and 108 of the Land Code of the Republic of Armenia, Decision of the Government of the Republic of Armenia N]1151 of 1 August 2002, "on the Activities of Implementation of Development Programmes whithin the Administrative Borders of "Kentron" Community of Yerevan” of 18 April 2006.

The Romanian system of law, the Convention on Human Rights and Fundamental Freedoms is directly applicable, and the internal order of many other European countries.

Conclusions

In this context, we have tu underline the role of the European Court of Human Rights, a dynamic interpretation of precedents, which led, in many areas, to an "European" an autonomous right and original and coherent case, which requires the conclusion that "Right Convention is an evolutionary and case law and the Convention "living instrument" to be interpreted "in light of prevailing conceptions in democratic societies today." The provisions of Article 6 concerning the right to a fair trial of the Convention are often raised by courts Romanian, along with those of Article 5 on individual freedom, Article 10 on freedom of expression and Article 13 on access to a court and the Strasbourg Court on Article 6 is frequently reflected in judgments.[8]

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[8] Lidia Bărbulescu, judge of Supreme Court**,** *Importanţa unui proces echitabil pentru justiţia din România din perspectiva Înaltei Curţi de Casaţie si Justiţie*, *material presented at the Conference: "Aspecte recente ale cazuisticii CEDO în materia dreptului la un proces echitabil."*

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RECOGNITION OF MINORITIES IN THE EUROPEAN SPACE

Elena Georgescu *
Nadia Popescu **

Abstract

The minorities problem, with its various implications has been a significant issue all over the world for centuries. Existence of minorities is an important feature of our times even more striking in the context of geo-political changes in the European space.

In the European practice, recognition of minorities lead to an improvement of their situation, giving them a firm legal basis for effective protection of the rights of all persons who compose it.

Key words: *minorities, recognition, rights, freedoms, fundamental*.

Introduction

Minorities topic and their real rights became not only a subject of debate but also a subject of domestic law or European legislation.

Most European countries recognize the existence of minorities on their territory based on specific legal mechanisms developed by the European Union institutions.

Starting with the importance of respecting fundamental rights and people's freedom, whose application demonstrates the ability of understanding and cooperation of all states and people, measures are necessary to be imposed in order to promote democracy, freedom, understanding, cooperation between states, ethnic and religious groups for safeguarding world peace and security.

The institution of Human Rights is particularly complex, governed by the national legal order of the states and the one's of European Union, but also by the international legal order.

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* Assistant Professor, Ph.D. candidate, Universitatea Spiru Haret, Facultatea de Drept si Administratie Publica Rm. Valcea, elenacristinag@yahoo.com
** University Assistant, Universitatea Spiru Haret, Facultatea de Drept si Administratie Publica Rm. Valcea, nadipopescu@yahoo.com

People enjoy rights wherever they are, regardless of nationality, race, sex, religion or living and working place. Rights and fundamental freedoms that any person enjoys are inalienable, equal, with universal nature.

The international and European law enshrines, through transposition into national legislation, the human rights of life, dignity, security, peace, property, and its social and political protection against damage to persons, against all discriminations.

In order to deliver a perfect cohabitation, each state must understand and accept these rights for every individual regardless of race, social status, nationality, ethnicity, etc.

Following the evolution of society, due to historical conditions that made possible for some ethnic groups to settle on territories of some countries inhabited by the majority of a population, and with regards to issues related to equality, language and national culture, arising from the consequences of war, individual and collective rights were considered as being of general and human interest, and therefore they have been developed in peace treaties, becoming a subject of concern for the League of Nations in 1919, when the equality between national minorities and dominant nations has been recognized as an international obligation, only the main aspects and the general references of the equality being specified.

In this regard the League of Nations was entrusted to safeguard the rights of national minorities, five special treaties on minorities being completed, peace treaties and general statements before the Council of the League of Nations, while the signatory states were required to include in their Constitutions provisions on respecting and guaranteeing those rights.

Thus, peace treaties with Austria, Bulgaria, Hungary, Turkey, the special treaties on the protection of minorities with Poland, Greece, Romania etc. as well as the general statements, they all contained provisions on minorities, namely: full protection of the rights to life and freedom, without discrimination of any kind, free exercise of any faith, religion or belief, in public or in private; equal benefit of civil and political rights; equal treatment before the law and equal access to public office, professions and industries, facilities so as to allow the use of minority languages before the courts, in addition to the freedom of using any language in private, in trade, in the press and public meetings, in charitable, religious, social and education institutions of minority groups; rights for minorities to establish, manage and control such institutions at their own expense in those areas where the minority members live in a considerable proportion; possibility to provide instruction in minority language in the primary schools, public funding for religious, educational and charitable purposes for minorities.

Due to the formation of new states, the completion of others, the formation of new minorities, as a consequence of the struggle of peoples from Central and Eastern Europe, after the 1st World War the victorious Allied and

Associated Powers, found as necessary the creation of a protection mechanism for the minorities in certain countries[1].

These regulations were intended to ensure equality before the law for the persons who belonged to minorities, to maintain their traditions, to enable their participation in public life, to avoid the forced assimilation of minority groups.

According to the Agreements between states, follow up and promotion systems were set up for the application of the minority rights, but also reviewing systems for the petitions of those persons or associations acting on behalf of a minority group.

Protecting the integrity of the group complements that of the individual integrity. Minorities are human groups linked by common lineage, language or religion, with a very high mobility and flexibility with regards to adherence to immediate reality.

The notion of minority should be approached on the basis of objective criteria in relation with linguistic, religious, cultural, national particularities, without confusing with foreigners or immigrants[2]. This way, states in which there are ethnic, religious or linguistic minorities cannot deprive the persons belonging to those minorities of their right to conduct jointly with other group members their own cultural life, to practice their own religion or the right to use the mother tongue. The general principle of non-discrimination guarantees the same treatment for all individuals, and the persons belonging to minorities must enjoy the same rights as the other citizens of the national state. In this regard, the European Chart of Human Rights forbids any form of discrimination.

It is a beneficiary of minority recognition, with all the legal consequences under the European rules, the existence of any Community on the territory of a state, even if its presence is voluntary, regardless of time that has elapsed from the establishment, if it is determined to remain in that respective State provided it will maintain its ethnic traits, namely the separate ethnic identity, linguistic, cultural, religious[3].

Moreover, it is presumed that there isn't anymore in the world a country that does not have ethnic minorities on its territory.

Presently, the existence of minorities in different countries, is generally recognized by an explicit recognition by the constitution or other special laws, or by an implicit recognition stemming from the granting of rights such as language use, religious freedoms etc.

The rights of persons belonging to minorities and, consequently, the obligation to protect the identity of such persons do not depend on their explicit official recognition, but the mere existence of a national minority on

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[1] Ion Diaconu - *Protecţia drepturilor omului în Dreptul internaţional contemporan*, Ed. Fundaţia România de Mâine, Bucureşti 2007, p.159.

[2] Federic Sudre – *Drept European şi internaţional al drepturilor omulu*i, Ed. Polirom, 2006, p. 85.

[3] Ion Diaconu - *Protecţia drepturilor omului în Dreptul internaţional contemporan*, Ed. Fundaţia România de Mâine, Bucureşti 2007, p.171.

the territory of a national state is sufficient for persons belonging to those minorities to benefit from European rules, according to the generally accepted concept.

In these circumstances, the states cannot deny anymore their existence, the same way the constitution of sovereign states, their existence and history cannot be disputed.

The existence and recognition of minorities, linguistic, religious, ethno-cultural minorities, create different problems to political and social balances of all sectors of the contemporary world. These issues involve an analysis of the claims, aspirations and attitude of those persons belonging to minorities towards the majority society. However the recognition of minorities is likely to improve the situation of all persons who compose it.

The European Charter of Minority and Regional Languages includes commitments on the use of minority languages in the education, media, cultural, economic, social activities etc.

The states commit themselves to adopt legislative measures on learning, education, culture and information so as to promote and protect the rights of the persons belonging to minorities.

The European states should take into account the general standards to be adopted by the European Council, to apply the Charter requirements, to ensure full rights of minorities, the preservation of the individuality of persons belonging to those minorities, according to their general obligations as citizens of these states and the general principles of international law, while the persons belonging to minorities will respect, under the Charter, the national laws and the rights of the other majority persons, namely the majority population of that national state.

Protection of minority rights has taken a new scale as a consequence of the collapse of the totalitarian communist regimes in Europe, as well. Thus, the document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990, refers to the rights of persons belonging to national minorities, to the modalities of exercising those rights, but does not regard the basis for recognition of these rights as collective rights.

The issues related to national minorities and their legal status, have therefore been subsequently developed and debated through a series of resolutions of international conferences, as well as in the parliamentary Seminar „Central Europe and its national minorities", that was held in Bucharest between 15-16 of September, 1994.

At the seminar, two major points of view have been expressed by specialists and prestigious politicians, namely that the real rights should be granted to minorities, with a large administrative decentralization, with the condition of loyalty to the national state, and on the other side it has been affirmed that minorities must necessarily be given autonomy in order to avoid conflictual situations between the majority national population and minorities.

The Framework-Convention for the Protection of National Minorities, adopted by the European Council on November 10, 1994 and signed on February 1, 1995 by 27 member states of the Council, represents the most

important document for the protection of minorities and is an ongoing concern on reconciling their claims in relation to current requirements of state unity and cohesion, with the respect of the territorial integrity principle.

The Framework-Convention provides for the right of every person belonging to a minority to exercise the rights under the Convention, individually or in community with others, the right to choose freely (a democratic society allows persons belonging to minorities to promote their interests), to participate in public life besides and with the same conditions applied to the other majority citizens, guaranteeing the equality and the protection before the law, the elimination of any discrimination based on membership in a minority, the obligation of states to adopt appropriate measures to promote full equality between persons belonging to minorities and the majority in all areas of economic, social, political and cultural life.

According to the Convention, States Parties shall promote the conditions necessary for persons belonging to minority groups to maintain, to develop their culture and to preserve their identity. States Parties undertake to refrain from policies and practices against these people will, and commit themselves under the Convention to protect them against threats, violence or acts of discrimination.

The recognition of the right of persons belonging to minorities to use freely and with no obstacle, in private or in public, orally or in writing, the mother tongue, is also provided in the Framework-Convention.

With regards to the field of education in the mother tongue, the Member States commit themselves to recognize the right of every person belonging to the minorities to study or teach the minority language, to ensure, according to the conditions and requirements, that they might learn the minority language, to receive an education in that language, especially within the territorial areas where they live. These objectives can be achieved by the Member States but in different degrees of complexity and completeness, according to the commitments they individually assume as per the European Charter for Regional or Minority Languages[4].

Moreover, the 1994 Framework-Convention requirements allow the application of these provisions by States according to specific circumstances.

However, the learning institutions must be part of a single national system that has yet to provide education for all children and young people. In these circumstances, according to the Convention on elimination of discrimination in education, the access to educational institutions should be optional, by choice and meet a common level of education for schools of the same level. Such criteria are set by the national state through its competent authorities.

Recognition of linguistic identity of the person who is part of a minority, represents the right recognized by the memeber state to each person to use the full name in his/hers language and to be granted the official

[4] Ion Diaconu, *Protecţia drepturilor omului în Dreptul internaţional contemporan*, Ed. Fundaţia România de Mâine, Bucureşti 2007, p. 175.

recognition of the right to present in the mother tongue signs, inscriptions and other private information visible to the public.

Also, the Convention provides for the commitments of States Parties on recognizing the right to promote history, culture, language and religion of persons belonging to minorities, the recognition of the right of minority persons to drive their own private educational and training institutions, the access to textbooks, the right of those persons to pursue their own educational activities, provided these do not infringe on the majority community rights, taking into account the national state education policy.

States Parties committed under the Convention, to create conditions necessary for effective participation of persons belonging to minorities in cultural, social, economic life, public affairs, not to unlawfully interfere in the exercise of minority rights to establish contacts and keep the existing ones with the persons legally established in other states, especially with those who have the same ethnic, cultural, linguistic or religious identity and to practice only those restrictions, limitations or exceptions that are provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Regarding the recognition by Romania of the minorities, of the rights of persons belonging to those minorities, the commitment of our country to grant complete and full care of their lives and freedom, including the freedom of exercising public and private, for all inhabitants irrespective of nationality, race, language or religion, was enshrined by the special Treaty between the major Allied and Associated Powers and Romania, signed in Paris in 1919. By the same treaty signed in Paris in 1947, Romania also commits to take all necessary measures to ensure to all persons under its jurisdiction irrespective of race, sex, language or religion the enjoyment of human rights and fundamental freedoms, not to determine through its legislation, any discrimination between persons of Romanian citizeship with regards to all rights pertaining to person, property, professional, financial or commercial interests, political or civil rights, personal status[5].

Besides, with regards to the recognition of national minorities, Romania became in recent years, a signatory of several documents in this regard, as in 1990, during the Meeting in Copenhagen, Romania recognized the rights of persons belonging to minorities through a document entitled „Declaration on the Rights of Persons belonging to ethnic, national or religious minorities and the protection of their identity", specifying that each state will have to establish constitutional and legal guarantees, as well as the institutional framework necessary for their accomplishment[6].

In 1991, during the Geneva Meeting, Romania presented a code of conduct for States with regards to international cooperation on minority issues

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[5] Victor Duculescu, *Protecţia juridică a drepturilor omului,* Ed. Lumina Lex, Bucureşti 1994, p. 234 şi următ.

[6] Adrian Năstase, *Drepturile omului, religie a sfârşitului de secol,* Intitutul român pentru drepturile omului, Bucureşti 1992, p. 148.

through which it states, similarly, the rules of conduct that should make the basis of states' cooperation on minority issues.

Conclusions

The recognition and the granting of minority rights are essential, vital for the stability, tranquility and peace in Europe. Thus, the legal status of minorities in all European states must be in accordance with the general standards adopted by the Council of Europe, which should ensure full rights and the preservation of their individuality to the persons belonging to minorities, in line with the general obligations which they hold while being citizens of those respective states.

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**Framework Convention for National Minority Protection.*

ABUSE OF OFFICE BY RESTRICTION OF RIGHTS ACCORDING TO THE NEW PENAL CODE

Gheorghe Ivan[*]

Abstract

In the article 297 of the new Penal Code (Law no. 286/2009) the Romanian legislator incriminated the abuse of office of two types. The first type was dedicated to the abuse of office against personal rights when there is damage or violation of the legal rights or interests of natural persons or public or private legal entities.

The second type refers to the abuse of office by the restriction of exercise of a right of a natural person or a public or private legal entity by creating a situation of inferiority for that person on grounds of nationality, race, ethnic origin, language, religion, sex, sexual orientation, partisanship, fortune, age, disability, noncontagious chronic illness, HIV infection.

Thus, the Romanian legislator has set up one of the penal means of protection of the rights of the minorities and other social categories, taking into account, among others, the provisions of the Frame-Convention regarding protection of the national minorities adopted by the European Council at Strasbourg on February, 1st, 1995 ratified by Romania by Law no. 33/1995.

It must be mentioned that the abuse of office by restriction of rights has been incriminated by the Penal Code in force as well (since 1969) in article 247.

Key words*: penal protection of the rights of the minorities, abuse of office, office.*

Introduction

1. Notion and definition. Consistent with the protection of the minorities' rights and other social categories, the legislator of the new Penal Code (Law no. 286/2009[1]*) incriminated the abuse of office by restriction of exercise of several rights in article 297, paragraph (2) as a type of the abuse of office.*

According to this rule of incrimination, the action of a civil servant [or any other of the persons mentioned in article 308, paragraph (1), the new Penal Code] who by exercising job duties restricts the exercise of a right of a person or creates a situational inferiority for that person on grounds of nationality, race, ethnic origin, language, religion, sex, sexual orientation,

[*] Ph.D.Lecturer "Dunarea de Jos" University of Galati, Legal Faculty of Social Policy
ivan_gheorghe_p@yahoo.com, ivan.gheorghe@ugal.ro

1. Published in the Official Gazette, Part I, no. 510 on July, 24th 2009. The new Penal Code will be in force at the date decided upon by the law establishing its enforcement.

partisanship, fortune, age, disability, noncontagious chronic illness or HIV infection is an offence.

2. The main special legal object is made up by the social relations connected to the work environment. *The adjacent special legal object* refers to the social relations related to the capacity of exercise of natural persons and public or private legal entities, on the one hand and the equality of citizens' rights[2], on the other hand.

3. The material object of this offence consists in the objectification of the job duties, the material acts that include the attributions of the active subject.

There can also appear a concrete value corresponding to the adjacent legal object, such as the existence of a right.

4. The active subject is qualified by its being a civil servant according to the provisions of article 175, the new Penal Code. As such, according to the first paragraph of the legal text previously mentioned, the active subject of the abuse of office offence can in the first place be the person who either permanently or temporarily, either remunerated or not:

A. Exerts attributions and responsibilities, legally established so as to apply the legislative, executive or legal power, with special regard for the deputies, senators, president of the country, prime minister, ministers, members of the Supreme Defence Council, presidents of the County Councils, county counsellors, mayors, prefects, deputy prefects, judges, prosecutors and members of the Higher Council of Magistrates.

B. Exerts a function of public dignity or any other public function. By definition, the *public function* is regarded as the "legal dimension of the natural person- legally invested with attributions entailing competency of a public authority-which consists in the rights and obligations that make up the complex legal content between the natural person and the investing entity"[3]. According to the legal definition provided in Law no. 188/1999 regarding the Status of the civic servant[4], article 2, paragraph (1), the public function refers to the attributions and responsibilities, legally assigned, in order for the central and local administration and the autonomous authorities to fulfil the prerogatives of public authority". The civic servant is the person who is legally assigned a civic position. The person who is dismissed from the civic position and is part of the reserve staff keeps the quality of civic servant [article 2, paragraph (2) of Law no. 188/1999].

The activities of civic servants that entail prerogatives of public authority are:

a) Enforcing the law and other normative acts;

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2. Gheorghe Ivan, *Criminal Law. Special Part*, C. H. Beck Publishing House, Bucharest, 2009, p. 347.

3. Antonie Iorgovan, *Treaty of Business Law*, vol. 1, All Beck Publishing House, Bucharest, 2001, p. 554.

4. Published in the Official Gazette, Part I, no. 600 on December, 8th 1999.

b) Drawing up of drafts of normative acts and other regulations related to the authority or the public institution, as well as approving them;
c) Drawing up of draft of policies, strategies, programs, studies, analyses and statistics necessary to produce and implement public policies as well as the necessary documents for enforcing the laws so as to carry out the competency of the authority or of the public institution;
d) Counselling, control and internal public audit;
e) Human and financial resources management;
f) Collecting the budgetary debt;
g) Representing the interests of the public authority or institution in relation with Romanian or foreign natural persons or public or private legal entities, within the boundaries imposed by the chief administrative officer of the public authority or institution as well as representation in court of the public authority or institution where he/she is employed;
h) Working according to the computerisation strategy of public administration [article 2, paragraph (3) of Law no. 188/1999].

Public positions are mentioned in the addendum to Law no. 188/1999 and are as follows:

"I. General public positions

- Public positions corresponding to the category of high civic servants
  a) Secretary-general of ministries or other specialised institutions of central public administration;
  b) Deputy secretary-general of ministries or other specialised institutions of central public administration;
  c) Prefect;
  d) Sub-prefect;
  e) Governmental inspector;
- Executive public positions:
  a) Chief executive of autonomous administrative authority within the ministries and other specialised institutions of central government;
  b) Deputy chief executive autonomous administrative authority within the ministries and other specialised institutions of central government;
  c) County secretary or of Bucharest municipality;
  d) Executive of autonomous administrative authority within the ministries and other specialised institutions of central government, executive director of decentralized public services within ministries and other specialised institutions of central government as well as local government authority and the institutions directly subordinated;
  e) Deputy executive of autonomous administrative authority within the ministries and other specialised institutions of central government, deputy executive director of decentralized public services within ministries and other specialised institutions of

central government as well as local government authority and the institutions directly subordinated;
f) Secretary of the municipality or of local government authority or other subordinated institutions;
g) Head of service;
h) Head of office;

- Public administration office
  a) Counsellor, legal advisor, auditor, expert, inspector;
  b) Specialised clerk;
  c) Clerk.

II. Specific public positions

- Executive public positions:
  a) Chief architect;
- Public administration office
  a) Competition officer;
  b) Customs officer;
  c) Work inspector;
  d) Delegate checker;
  e) Telecommunication and informatics expert;
  f) Commissioner;
- Other specific public positions
  a) Public manager".

Civic servants working in the following public services can be granted special status:

a) Specialised structures of the Romanian Parliament;
b) Specialised structures of Presidential Administration;
c) Specialised structures of the Legislative Council;
d) Diplomatic and consulate services;
e) Customs authority;
f) The police and other structures of the Ministry of the Interior and Legislative Reform;
g) Other public services legally appointed [article 5, paragraph (1) of Law no. 188/1999].

This legal provision entitles us to consider that the status of civic servants does not exclusively apply to persons in a public position within government authority and institutions but also to active staff of the army, police force, customs, forestry and teaching staff, etc. These categories are under the regulation of special laws, as well as the corresponding general provisions of the Constitution and the Statute of the civic servant.

It is worth mentioning that the public, civic or military office, as stated in the Romanian Constitution in article 16, paragraph (3),is not to be exerted by a civic servant as there are significant differences between the civic servant and the public dignitary (the president of Romania, deputies, senators, ministers, presidents of county councils, county counsellors, prefects, mayors, local counsellors). Law no. 188/1999, article 6 states that the persons appointed or elected as public dignitaries are not objects of the scope of its

provisions but of another, Law no. 330/2009 regarding the unitary salary concerning the staff remunerated from public funds[5], which defines in Addendum IX the position of *public dignitary* as the public position filled by direct mandate, election, or indirectly, by appointment, according to the law. Public dignitary positions are chief executive positions in public institutions subordinated to the Government and nominated by it. The *elected public dignitaries* are: the President of Romania, the president of the Senate and of the Deputy Chamber, the vice-presidents of the Senate and the Deputy Chamber, secretaries and quaestors of the Senate and the Deputy Chamber, presidents of the permanent commissions of the Senate and the Deputy Chamber, presidents of the parliamentary groups of the Senate and the Deputy Chamber, leaders of the parliamentary groups of the Senate and the Deputy Chamber, vice- presidents of the permanent commissions of the Senate and the Deputy Chamber, secretaries of the permanent commissions of the Senate and the Deputy Chamber, deputies and senators, ministers, presidents and vice-presidents of county councils, mayors and deputy mayors. The *appointed public dignitaries* are: the Prime-Minister, the vice-prime-minister, state ministers, delegate ministers, state secretaries members of the Government, state secretaries and sub-secretaries, the president and the judges of the Constitutional Court, the president and the department president of the Legislative Council, the People's Attorney and his deputy, the president, vice-presidents and department presidents of the Court of Accounts, the president and the vice-president of the Audit Authority within the Court of Accounts, accounts counsellors, the secretary general and the deputy secretary general of the Government, state counsellors with the Secretary General Office of the Government, presidential counsellors, state counsellors with the Presidential Administration, Secretary General of the Senate and the Deputy Chamber, the deputy secretary general of the Senate and the Deputy Chamber, the president and vice-president of the Competition Council, competition counsellors, the president, vice-president, members and secretary of the National Council for Studying Security Archives, the president and members of the National Audiovisual Council.

Positions related to positions of public dignity are filled by: the chief executive of the public institutions under governmental control (president, chief executive, chief of department) and their deputies (vice-president, deputy chief executive, etc).

The provisions of the Law no. 188/1999 do not apply to:

a) Staff under contract paid by the public authorities or institutions themselves, who perform secretary, administrative, protocol, management, maintenance-repairing, safety duties as well as other staff categories that do not exert prerogatives of public office. Persons filling these positions do not have the status of civic servants and the labour laws are applied in their case.

b) Paid staff employed on grounds of confidence by the dignitary's office;

c) The magistrates;

5. Published in the Official Gazette, Part I, no. 762 on November, 9th 2009.

d) The teaching staff.

C. Exerts, on his/her own or together with other persons within a Government Business Enterprise, a different business operator or a governmental linked company or a legal entity self-proclaimed of public utility, duties related to the achievement of its functioning purpose. Only persons exerting attributions related to the achievement of the functioning purpose of the legal entities previously mentioned are taken into account, such as: managers, engineers, technicians, economists, etc. Excluding the persons performing various technical, administrative duties such as drivers, security guards, typists. On the other hand only the legal entities mentioned in the legislative text are taken into account: government business enterprises, governmental linked companies or legal entities self-proclaimed of public utility. The phrase "another business operator" refers to another legal entity similar to the governmental business enterprise, such as the National Company the Romanian Post Corporation, Metrorex Corporation, etc.

Second of all, according to article 175, paragraph 2 of the new Penal Code, an active subject of the abuse of office offence is he who exerts an office of public interest, invested by the public authorities or under their control or supervised by these as to the accomplishment of the specific public office. The notion of public office yields two dimensions: in the former, the public office is the body taking part in the legal aspects connected with the public services, in the second, it stands for the activity of serving that body performs for the public's benefit in order to account for a general necessity in a regular and permanent manner. For instance, primary, secondary and university education, post or medical services etc.[6] This category includes the notaries public, teachers, court enforcement officers, medical doctors, etc.

Finally, the active subject is qualified by his status as a clerk, as stated by the provisions of article 308, paragraph (1) of the new Penal Code. As such, an active subject of the abuse of office offence is he who exerts, permanently or temporary, with or without payment, any sort of assignment serving a natural person of those mentioned in article 175, paragraph (2) of the new Penal Code or a legal entity.

The status of civic servant or clerk, held in either of the two dimensions previously mentioned, must be existent at the time the offence is committed.

Participation is possible in all forms. In case of co-authors it is necessary for the offender to have the status required by law (civic servant or clerk) and to partake first-handedly, simultaneously (committee, team, council) or successively (checking, control or approval) in the offence whereas any other person, even a civic servant or a clerk may be the instigator or an accomplice.

5. The main passive subject is the entity the immediate outcome according to the law had repercussions upon.

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6. Gheorghe Ivan, *Fraud management, abuse of trust or thievery? Ffew considerations in the light of the decision of the Plenum of the Constitutional Court* no. 1/1993, Dreptul no. 1/1996, p. 86.

The secondary passive subject is the natural person or the private legal entity whose legal capacity was infringed or who was placed in a context of inferiority.

6. The constituent content. The material element of the offence displays two alternative aspects: infringement of the exercise capacity and generating a context of inferiority for the secondary passive subject.

Infringement of the exercise capacity is done by comissive or omissive actions. For instance, an underage person who gets married after the age of 16 is prevented by the action of a civic servant to draw up a document of disposition regarding his property.

Another hypothesis of the material element of the offence consists in placing the secondary passive subject in a context of inferiority in relation with other persons on specific grounds. For example, the cessation of the labour agreement of a person on grounds of nationality, race, ethnic origin, language, religion, sex, sexual orientation, partisanship, fortune, age, disability, noncontagious chronic illness, HIV infection.

The immediate outcome mainly consists in generating a dangerous environment for the work relations in the institution where the active subject is employed. Nevertheless, this outcome is conditioned by the damage of a right of a person by infringement of the exercise of that right or by generating a context of inferiority. The damage can be both moral (omission of a person's name from voting lists affects the right to vote of the citizen) and material (the civic servant's refusal to issue a document affects the employment opportunities of a person).

The causality connection resides in the material dimension of the offence itself. (*ex re*).

The subjective side is complex, in that in addition to the form of guilt, which is the intention, either direct or indirect, the law also provides a certain motive. The direct intention is possible because, the offender, driven by such a motive, may accept the endangering of the work relations (the main special legal object) without premeditating it.[7]

7. Forms of the offence. *The preparatory actions* and *the attempt* are not considered offences. The offence is *consummated* when the actual damage of the exercise of a right of the secondary passive subject is inflicted or when

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7. In the same sense, Octavian Loghin, Avram Filipas, *Romanian Penal Code*, "Sansa" S.R.L. Publishing House, Bucharest, 1992, p. 188; Costica Bulai, Avram Filipas, Constantin Mitrache, *Institutions of Criminal Law. Selective course for the Bachelor examination* the 3rd edition reviewed and improved, Trei Publishing House, Bucharest, 2006, p. 438; Gheorghe Ivan, *Criminal Law. Special Part*, the cited work, p. 349. In a contrary sense (there is no indirect intention with thif offence), to be seen, Siegfried Kahane, *Abuse of office or connected to the office*, in Vintila Dongoroz (coordinator), Siegfried Kahane, Ion Oancea, Iosif Fodor, Nicoleta Iliescu, Constantin Bulai, Rodica Stanoiu, Victor Rosca, *Theoretical explanation of the Romanian Penal Code, Special Part*, Vol. IV, the 2nd edition, The Romanian Academy and All. Beck Publishing Houses, Bucharest, 2003, p. 247; Alexandru Boroi, *Criminal Law and si Criminal Procedure, Selective course for the Bachelor examination*, the 2nd edition, C.H. Beck Publishing House, Bucharest, 2009, p. 457.

it is placed in a state of inferiority contrary to the equality of rights of the individuals.

8. Sanction. According to the law, the sanction is imprisonment from 2 to 7 years and interdiction of exercise of the right to fill a public position.

If the offender is one of the persons mentioned in article 308, paragraph (1) of the new Penal Code, the special limits of the sanction are reduced by a third [article 308, paragraph (2) of the new Penal Code].

9. The aggravated form. According to article 309 of the new Penal Code, the offence is aggravated if the actions mentioned in the article 297 of the new Penal Code caused serious consequences, as seen by article 183 of the new Penal Code. According to this article, by extremely serious consequences it is entailed that a material damage, over 2,000,000 lei was inflicted.

In this case, the special limits of the sanction are doubled.

The provisions of article 309 of the new Penal Code does not apply if the offender is one of the persons mentioned in article 308, paragraph (1) of the new Penal Code.

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ROMANIAN CROSS-BORDER ECONOMIC COOPERATION WITH NON EU COUNTRIES

Alina Angela Manolescu*

Abstract

In relating with neighboring states, Romania is representing the European Union itself. By building its foreign policy based on the concept of good neighborliness, cooperation through cross-border relations between Eastern European states will be improved.

Keyword*: instruments of cross-border, regional cooperation.*

Introduction

Eastern European area is considered a region of tensions especially between Romania and Hungary, Romania and Ukraine, Slovakia and Hungary, Poland and Ukraine, Russia and Baltic States. One way of solving these conflicts lies in the effort to avoid borders to turn into fronts through the promotion of cross border co-operation with non-EU states.

The instruments of cross-border cooperation

Cross-border relations following the accession of Romania suffered a transformation imposed by its new statute. Romania is developing integrated relations with the 5 neighboring countries in 3 different modes of cross-border cooperation: with Hungary and Bulgaria as part of a Union Member States - a partnerships of internal borders - the European Regional Development Fund (Phaedrus), with Serbia - a pre-accession instrument (SPA) and with the Republic of Moldova and Ukraine - a European Neighbourhood and Partnership Instrument (ENPI).

Cross-border cooperation of EU at its borders is accomplished in two main directions: Cohesion Policy and European Neighbourhood Policy. The Cohesion Policy is aimed at reducing disparities between the regions of the EU member states and the least developed, while the Neighbourhood Policy has a new approach that goes beyond the traditional one based on cooperation. This tool provides funding for joint programs for the regions, Member States and third countries which have common borders. The EU is also developing other programs through the Cross-Border Cooperation Operational Programme 2007-2013 in the area of South-Eastern Europe.The funds are intended for some areas that are intended to protect the environment, regional development, administrative capacity, technology, transport and economic cooperation.

EU cross-border cooperation with the Republic of Moldova, is part offered by the Neighborhood and Partnership Instrument. The European Commission follows the continuing implementation of the Strategic Document

* PhD. Candidate Assistant Alina Angela Manolescu, AGORA University, Romania

[1] www.europa.eu.

on the CBC developed for 2007-2013[2],which contains a list of states and areas that have the possibility to be financed by ENPI and a group of joint programs. The later analyzed by the European Commission that Romania will provide development cooperation activities financed under the ENPI cross-border with the Republic of Moldova and Ukraine as part of a trilateral, while for Serbia recommends a bilateral approach. The trilateral approach with the Republic of Moldova and Ukraine will dominate the future with the implementation of the ENPI and will also influence the future evolution of the accession process. The Strategic Document of cross-border cooperation in the period 2007-2013 identifies the activities that will be funded to meet certain targets of the European Neighbourhood and Partnership as: the promotion of economic development, social insurance and secure borders, promoting for certain Community actions of common interest between the parties, the common line of action in environmental protection. The three types of joint projects that receive funding from the SPA and ENPI are: simple projects, which take place in most or only one side of the border but in the benefit of both partners; symmetrical projects where the activities on the one hand of the border are accompanied by similar activities across the border, integrated projects in which partners from each side of the border contribute different elements to achieve the same project.

The SAP Co-operation across borders, "Romania - Serbia"[3] is funded by the EU through the Instrument for Pre-Accession and co-funded by member partners. It has as main objectives the growth of economic competitiveness, improving the quality of life and socio-economic development of the border area. On 27 March 2008 the European Commission approved the Program of SAP Cross-border cooperation between Romania and Serbia on 8 May 2008 was launched in Timisoara with a budget of € 23 million to be used by the end of 2009. The program contains three provinces of Romania, and Serbia's five districts with four priorities: economic and social development, environment and emergency situations, promoting cooperation between people and technical assistance. For the management of aid programs were set up Authority management that works in the Member State but have responsibility for implementing and insuring the correctness of financial operations.

Court of Accounts of Romania, representing the Control Authority. The results of the structural organization were published in late 2006 as a result of bilateral and trilateral consultations. Were identified by cross-border cooperation projects for financing under the program through SEVP Romania-Ukraine-Moldova-Romania-Serbia and SAP for the period 2007-2013. The analysis of the types of projects as well as the analysis of statistical data corresponding to the eligible area, are the basis of priorities and measures funded under the programs.

[2] www.europa.eu.

[3] www.cooperazione.formez.it/programma SAP _ Romania.

Cross-border cooperation through the Neighbourhood Policy have specific characteristics that have occurred both before and after the accession of Romania to the European Union. With regard to the economic and social development, this is achieved through the protection of the environment and nature, local economic development, tourism and teaching, social services, land management and the border.

Arguments clearly show that through reciprocal measures partners can boost economic ties are an example of the Romania-Serbia relations. At the end of 2007 the total volume of trade between Romania and Serbia was $ 762,810,000, of which exports and imports $ 423,400,000 $ 329,410,000. From here it appears that $ 93,990,000 were received by Romania. On 30 July 2008, the total value of trade between Romania and Serbia was $ 630,160,000, of which exports and imports $ 417,640,000 $ 212,520,000, $ 202,120,000 for Romania. You can also see a growth in total trade volume in the first seven months of 2008, with 50.37% over the same period of 2007[4].

There is also a proposal by the European Commission to manage the Neighbourhood Programmes in a tripartite formula Romania - Moldova - Ukraine. A bilateral approach is considered more efficient because Romania has separate programs for cooperation with the two neighbors, which are as diverse as the rate of implementation and points of interest. As for the bilateral approach with the Republic of Moldova and Ukraine, the proposed projects are various and affecting tourism, transport, research and education, local communities, civil society, the environment, economic development, social and border management. In the area of the provinces bordering with the Republic of Moldova have been identified 40 projects for cooperation between the Moldovan and Romanian organizations. The larger amounts were allocated to projects designed to transport 55%, 21% environmental protection, economic development, social and tourism 14% 7%. The Rumanian government has allocated substantial sums from 2007 to the border and regional cooperation. For example, in the Regional Operational Programme have been completed projects worth 374 million euro, while the Ministry of Labour and the Ministry of Teaching has prepared more than a thousand projects funded. In the state budget in 2007 was 455 million provided as part of the financing, a sum that has enabled the initiation of programs in value of € 3 billion for a share of co-financing of 15%. From 1 January 2007 these costs are now eligible for Structural Funds and the Operational Programmes have been approved in the second half of the year[5].

Regional cooperation for economic growth

Not only the financial aspects affecting cross-border relations, but also other factors derive from the position of Romania as a NATO member state, as well as the EU. With the activities and plans in developing countries, presents the danger of easing of border control measures of the competence of the state entering € regions. In addition it facilitates the entry and expansion of

[4] www.mie.ro, sito web del Ministero dello Sviluppo dei Lavori Pubblici e delle Abitazioni.
[5] Idem.

terrorism, organized crime, gangs, drug trafficking and arms trafficking, illegal migration of people outside the Union.

The participation of neighboring countries on regional cooperation in Romania offers real economic benefits, presenting a special interest for the authorities involved. This is due to the fact that Romania has territorial administrations higher than a potential economic partners. The liability approach of regional economic relations can be the cause of some negative factors: the local administrative structures do not have the expertise to promote the policies of autonomous cooperation, participation in regional cooperation partner has an uncertain nature both at central and local strategies or plans of regional cooperation for concrete action to enhance the benefits of cooperation for border territories materialize, local resources used to finance cross-border projects are reduced, but also access sources of foreign financing is limited, especially for partners who are not EU members such as Serbia, Ukraine and the Republic of Moldova.

An analysis of multilateral specialists from Romania and neighboring states have been revealed a number of opportunities for cooperation. Among them: the correlation of regional programs of development of road infrastructure and inland river navigation, the establishment of joint structures for the control of goods, employment of manpower, promotion and development of the economic potential existing coordination of efforts on 'supply of drinking water and natural gas, development of infrastructure to facilitate the border crossing, construction of new border crossing points and modernization of existing ones, enhancing and developing the potential of tourism, organization of events and competitions regional coordination of joint programs on environmental protection, joint implementation of projects and monitoring of pollution factors of the regions.

A number of eligible projects initiated by the local public administration in Romania for financing by EU funds certainly affect cross-border relations with its neighbors. These include: the transport infrastructure with a total budget of € 4,902,540,000 of which 81.79% European funding, 17.52% and 0.69% from public funds, private funds, infrastructure, environment, with a total funding of € 4903.10000000, for 80, 77% European funds and 19.23% for public funding, regional development with a total budget of € 4,030,760,000 81.25% with 12.75% European funds, 6.00% public funds and private funds[6].

Cooperation between Romania and Ukraine, in 2004-2006 took place on the basis of the Neighbourhood Programme 2004-2006. The overall objective has been to improve cross-border integration in the social and economic cross-border infrastructure modernization and growth of living standards, human resource development, rural economic development, strength development local and regional work. The program had a budget of €

[6] Idem.

35.5 million, Romania and Ukraine taking part with € 29 million with 6.5 million € [7].

The European Commission has adopted the Common Operational Programme Romania - Ukraine - Republic of Moldova, financed by ENPI CBC 2007-2013[8]. This docuemnt creates the framework for cooperation in cross-border, within the ENP, not create new differences between the EU and its neighbors. The area eligible for the program covers an area of 176.6 km2 and includes the root zone and adjacent regions. The program is co-financed by ENPI funds. The European Union's financial contribution is € 126.7 million and the partner countries contributing at least 10% of the European contribution. The regions that constitute the central part of the program are the provinces Botosani, Galati, Iasi, Suceava, Tulcea and Vaslui Romania, Ukraine and Odessa and Chiernivetska throughout the Republic of Moldova. The administration of the program involved the following common structures: the Authority of City Manager, the Technical Secretariat of the Municipality, the Joint Monitoring Committee and the Authority's control. All these structures are intended to meet the operation and purpose of the program.

Conclusions

Good neighborly relations between states is one of the most important factor both for international relations and for economic growth of the countries involved. They ensure peace, security and economic progress.
Through cross border cooperation Romania can continue the EU foreign policy with the future members of the Eu, but also with non candidate countries. In this sense, the cooperation will lead to economic growth by sharing the emergent tasks with its neighbors.

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[7] Idem.
[8] www.europa.eu/regional_policy.

NONSTATE ACTORS AND TRANSNATIONAL RELATIONS IN THE NEW GLOBAL SYSTEM

Alina Angela Manolescu*

Abstract

The present article defines the concept of transnationalism and the main characteristics of the different actors of civil society. The global civil society plays an important role within the global governance, as international relations are extended to transnational actions.

Key-words: *transnational relations, governance, globalization, nonstate actors.*

Introduction

Globalization has undermined the order based on territorial control of states, and is deeply stirring the concepts of sovereignty. Legitimacy of states is sometimes undermined, but sometimes expanding. In a globalized world, sovereignty is divided among several entities, while sovereign powers are not rigidly defined.

A globalized world

There are three elements we should consider in studying globalization: interests, equity and governance. The first one is referring to the engine of globalization, that is the force of powerful interests that motivate globalizers. The second one gives us the picture of an important uneven distribution of costs and benefits. The last one is the crucial element, that of the governance. From one hand globalization undermines the legitimacy of states, and from another one states have bigger responsibility, as citizens facing crisis rely more on national institution. Globalization drives people to the reassurance of the national institutions. Therefore, states are strengthened as governments collaborate to extend their influence across frontiers and around the world.[1]

In this context of crisis of the nation-state, a new link can be made between democracy and law, through the concept of sovereignty. This concept should be re-considered, since sovereignty related to the territory results inadequate. It is evident than, that a transnational legal order arises, available to incorporate the contribution of new players in a dynamic manner.

* PhD candidate, LUSPIO University of Rome

[1] Ferrarese Maria Rosaria, *Le istituzioni della globalizzazione. Diritto e diritti nella società transnazionale*, Ed. Il mulino, 2000.

The role of nonstate actors in the international relations

There is a large number of partners involved in the legal and economic process of globalization. They have the ability to give voice to a new kind of public interest, and civil society recognize their authority. These include big corporations, NGOs, intergovernmental organizations, social movements, civil society, policy networks, issue networks and communities of experts.

While the international actors of the modern society were sovereign states, nowadays the coordination of actors is broader and includes three types of subjects: states and international intergovernmental organizations; nonstate transnational actors (non-profit organizations, multinational financial), peoples, individuals; mixed subjects: religios movements, national liberation movements etc.

Transnational relations are defined as to constitute a dynamic that has its own character and originality of autonomy in the international politics. Transnationalism is a dynamic process that defines the roles, structures and institutions that are at the origin of nonstate actors able to act in the functional space independently of the international centers of power of political government.

The process of transnationalization in the area of human development shows a dual trend. The first is towards the consolidation of a genuine transnational system, with characters of originality and autonomy, in which the values, objectives and activities qualify, an original and distinctive, functional reality. The other trend is the effect of bringing new characters such as pluralism and popular participation in the old interstate system of international relations.[2]

In the international law the mix of public and private sphere creates the transnational law. International relations must take into account the significance of non-state actors, since they interfere with the public sphere. The increased number of these actors produce an increasing complexity of international interactive processes, with direct impact on the functions and the very structure of the international system. The pluralization of subjects in the global scene is especially enriching quality of life of international relations: the nature of new international actors is different from that of state actors.

This actors have the ability to develop transnational contacts by reducing their costs. Their main ability is to operate in most countries apart from the typical criteria of the traditional international relations - territoriality.

A good governance in the security field

Recent studies[9] have pointed out three categories of failure of governance in a globalized world. These are: *the jurisdictional gap* ("Policy issues are global, but policy-making is still primarily national in focus and

[2] Ando Salvo, Sbailo Ciro, *Oltre la tolleranza. Liberta religiosa e diritti umani nell'eta della globalizzazione,* Ed. I saggi, 2003.

[9] Inge Kaul, Isabelle Grunberg, and Marc Stern , *Global Public Goods: International Cooperation in the 21st Century* , Oxford University Press, 1999.

reach."), *the participation gap* "We live now in a multi-actor world. But, despite the pace of change, international cooperation is still too preeminently intergovernmental."), the *incentive gap* ("Cooperation works only if it promises a clear and fair deal to all parties, but today's cooperative attempts are often stymied in quarrels over distributions of costs and benefits."). The most important challenges for the governance of a globalized world are: preventing deadly conflict, providing opportunities for the young, and managing climate change.

Instability requires prevention of conflict and in a globalized world where national instability influences the security and the development of an entire region, there is the need to a preventative strategy through identifying the signs of crises. As various international actors are envolved in conflicts there is the need to envolvement of various actors in prevention stages.

Conclusions

In global civil society nonstate actors can develop the emerging issues on a global level, using appropriate methods of considering specific interest. The international system is therefore not only a community of states, but a a network of states and non state actors.

In the era of worldwide interdependence and internationalization of policies, nonstate actors seem to incorporate, more than any other organized structure, the request to act along a continuum of roles in the system of international relations.

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PROTECTION OF THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITY

Laura-Dumitrana Rath-Boşca*

Abstract

After the Second World War, the minority protection regime imposed on certain countries, through the peace treaties, including Romania, and protection procedures established by the League of Nations, legally ceased.

We see today a trend in our age of uniformity of human society. However, the national consciousness, consciousness of belonging to a certain community exists.

Key words: *free movement, migration, protection of minorities, pluralist society*

Introduction

The right to free movement eases migration of a large numbers of people from one region to another, which leads to the formation of new ethnic, religious and linguistic communities.

It is natural that contemporary society to be concerned and willing to find as many ways to provide legal protection of minorities of any kind these would be: ethnic, religious, linguistic and even sexual.

Permanent Court of International Justice (PCIJ) has given the term „minority" the following explanation: "a group of people who live in a country or a locality having their own race, religion, language and traditions, united by their identity in a feeling of solidarity to preserve their traditions, religious forms, providing education and raising children in accordance with the spirit and traditions of their race and helping one another." [1]

International law has given a great attention to this problem, the protection of persons belonging to minorities, at the end of World War I, through peace treaties of Versailles, Saint-Germain, Neuilly and Trianon, signed by the Allied and Associated Powers with Czechoslovak State, Poland, Serb-Croat-Slovene State, Romania and Greece. These treaties contain identical clauses regarding minorities, seeking to defend the interests of people in terms of race, language or religion.

* Teaching Assistent., AGORA University, Law and Economics Faculty dumitra1970@yahoo.com

[1] Permanent Court of International Justice.

”In the plan of international organizations, in the League of Nations, a procedure was introduced to guarantee the rights of persons belonging to minorities, that they had a right to petition and committees for minorities were established, an important role in this field being achieved by the Permanent Court of International Justice.“[2]

Peace Treaties of 1947 did not restore the conventional commitments agreed at the end of World War I, and the United Nations did not take over the protection system of minorities organized by the League of Nations.

Some international instruments which give a true picture of the evolution of minorities' problem after the Second World War are: International Covenant on Civil and Political Rights, Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities adopted by UN General Assembly and the European Framework Convention for the Protection of National Minorities (FCNM).

Article 27 of the Covenant on Civil and Political Rights has the following wording: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right to share with other members of their group, their own culture, to profess and practice their own religion or use their own language." [3]

If we interpret this text, we note that the holders of the rights mentioned above are individual members of minority groups, minority groups not being separate entities. We talk about individual rights not collective rights, collective right being the right to self-determination. Was stated that the granting of rights to minorities as a whole could increase the danger of friction among them and the State, if we would consider a minority group, as such, could be invested with the authority to represent the interests of a community to the State, that is representing the interests of the entire population.

International Covenant on Civil and Political Rights places and integrates the rights recognized to persons belonging to minorities in the UN system of protection of human rights.

Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities adopted by UN General Assembly in December 1991, reaffirming the principle of non-discrimination and equal treatment of minorities, contains both the provisions on the rights of which they can benefit of, and about the obligations of States to protect the existence and identity of minorities.

Declaration provides that States should ensure measures for minorities to develop their culture, language, religion, traditions and customs, except for practices that could violate national law or are contrary to international standards. Minorities have the right to fully participate to economic progress and development of their country.

One of the most comprehensive international documents about minorities is the Framework Convention for the Protection of National Minorities,

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[2] Raluca Miga Belteliu, Catrinel Brumar, "*International protection of human rights*", Ed. Universul Juridic, Bucureşti, 2007.

[3] Art. 27 from Covenant on Civil and Political Rights.

adopted by consensus by the Committee of Ministers of the Council of Europe, on 10th of November 1994. In the introduction to the Convention it is stated that "a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but, also create appropriate conditions enabling them to express, preserve and develop this identity".

The Framework Convention for Protection of National Minorities states that "the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent", considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but, also create appropriate conditions enabling them to express, preserve and develop this identity, considering also that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society.

Conclusions

Fundamental rule of regulation in any situation relating to minorities is equal treatment and non-discrimination. Persons belonging to minorities (different in race, language, religion, ethnic or social origin, birth or other status) should be placed on an equal footing with other nationals of the state. States must prevent any actions that deny individuals or groups of people equality of treatment, to suppress or prevent any conduct which would deny or restrict a person's right to equality.

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ROMANIA`S ROLE AS A MEMBER OF THE EUROPEAN UNION IN THE IMPLEMENTATION OF EUROPEAN LAW

Rath-Boşca Laura-Dumitrana*

Abstract

Romania's Accession Treaty to the European Union is the fundamental act that lines up the Romanian state with other states of the European Union, because it adds to the existing EU treaties, making up with them the primary European law. Effects of the Treaty have been numerous, because it determines which rules will be applied to Romania, but the most important effects of accession are the affection of its sovereignty, as the transfer of certain attributes of sovereignty to European institutions, and it is making this issue of principle of primacy of community law to the national law, in the case when, following accession, on state's territory two legal systems coexist - the European and national.

Key words: *principle of primacy, authority of case law, prejudicial matter*

Introduction

„The essence of the principle of primacy of European law to the national, is that where there is a discrepancy between the two, the national court is obliged to implement European law. The principle includes the prohibition for Member States to create a law contrary to European law or adopt legislation in areas which are strictly reserved for it." According to the constituent treaties of the European Union, Member States give to the European Union the powers necessary to achieve its common objectives.

Law, adopted by the EU institutions, takes precedence over the law of Member States, the latter being required to take any measure necessary to ensure enforcement of the obligations arising from treaties, and they would refrain from any action that would jeopardize the objectives of the Union.

This principle has been judicially held over several years, during which the Court of Justice of European Communities (now, the Court of Justice of the European Union), has faced a series of requests made by the courts of the Member States, which demanded the interpretation of Community rules conflicting with national rules. The first formulation of the primacy of Community law was made in the decision Costa v ENEL in 1964, followed by

* Teaching Assistant AGORA University Law and Economics Faculty dumitra1970@yahoo.com

other decisions in other cases (there are cases in which the Court of Justice held that Community law prevails even against the rules of constitutional law). In the Treaty of Lisbon, Declaration no. 17 concerning the primacy of Community law, it is stated that, in accordance with existing precedents of the Court of Justice of the European Communities, treaties and laws, adopted by the Union, take precedence over the law of the Member States.

According to art. 10 TEC, „Member States shall take proper measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from actions that are taken by the institutions of the Community. They shall ease the achievement of the Community's tasks. They shall abstain from any measure which could jeopardies the attainment of the objectives of this Treaty."

The role of Member States in carrying out Community law is reflected in three principles: [1]

a) participation of national authorities in the implementation of Community law is reflected in three areas: legislative, administrative and judicial,

b) the principle of community loyalty and sincere cooperation, which obliges Member States to act, thus being a positive obligation[2], which corresponds to realization of the principle of primacy of Community law;

c) the principle of institutional and procedural autonomy which ensures the fact that the measures for applying the Community rules are taken into state systems by national institutions according to the existing procedures in these systems.

a) On the legislative front, the role of Member States depends on the nature of the community text to be applied, some treaty provisionsobliging the Member States to adopt their own legislation (on tax measures, for the elimination of quantitative restrictions on free movement of goods between Member States). Regarding the implementation of Community rules of derived law, the intervention of Member States depends on the act (regulation, directive, decision).

For example, „Community Regulation does not require a legislative intervention from the national state, but, often, even the Community Regulation contains provisions obliging Member States to adopt legislation, particularly regarding determining penalties for breaching it (community institutions not having, in general, the power to determine penalties, particularly penal), in the tax field (which requires national legislation for its integration in national policy). [3]"

Court of Justice has shown that regulatory enforcement of regulations is not contrary to Art. 249 TEC, as the direct applicability of a regulation does not constitute an obstacle to the very text that a Community institution to be empowered or a Member State to take measures for implementation.

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[1] Ovidiu Ţinca, „*General Community Law*", Lumina Lex Publishing, Bucureşti 2005.

[2] Ibidem.

[3] Angela Miff, Rodica Diana Apan, „*Elements of Community Law*", Sfera juridică Publishing, 2008.

For directives, the intervention of the Member States is necessary because they determine only the results to be achieved, leaving to the reach of states to choose the means by which to achieve them. Also, decisions may need, to put into practice, national legislative measures, when they are addressed to Member States.

„On the administrative level, Member States shall take measures to carry out the community rules in particular in the fields of competition, customs, trade, common agricultural policy. Communities' financial revenues are collected by financial administrations of Member States, and Community expenditures, for the most part, are achieved through national administrative institutions[4]**".**

It is excluded that the Community institutions to transmit orders or instructions to national administrative bodies during the enforcement of Community law on the subject.

On the judicial level, national courts are seen as community courts of common law, unlike the Court of First Instance and Court of Justice who have only conferred powers (decision on 10 July 1990 in the case of Petra Park). The national court is the one empowered to apply Community law, to hear cases which arouse from the application or non-application of Community law, and decisions taken on the base of these rules have the authority of case law (res judicata).

b) The requirement of cooperation of Member States arises from the provisions of art. 10 TEC. In the national measures, it is obvious the obligation to refrain from taking any liable measures that can jeopardize the achievement of the objectives of the Treaty. Court of Justice has referred to this obligation of states in several cases, to limit the use by Member States of powers to the detriment of the Community.

c) In the institutional and procedural autonomy principle, states comply, to bring into force the community rules, national rules, especially those of constitutional law to establish the competent bodies and the process is to be used. „The Court of Justice decided that when the Treaty's provisions or the regulations recognize the power (jurisdictions) of Member States or require them obligations for the enforcement of Community law, the question, how the exercise of these powers and enforcement of these obligations may be assigned by the state to special bodies, is up to the constitutional system of each state (decision on 15 December 1971 in case of International Fruit Company)[5.] With reference to the Directives, the Court of Justice decided that each Member State is free to allocate as they deem appropriate the jurisdictions on national level and to enforce a directive by measures taken by regional or local authorities (decision on 25 May 1982 in case of Commission v Netherlands).

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[4] Ovidiu Ţinca, „*General Community Law*", Lumina Lex Publishing, Bucureşti 2005.

[5] Tudorel Ştefan, Beatrice Andreşan- Grigoriu, „*Community Law*", C.H.Beck Publishing House.

Court of Justice, consequent to the principle of enforcement of Community law by Member States, considered that „belongs to the Member States, under art. 10 of the Treaty, to ensure enforcement of Community rules within their territories carrying out the implementation of national regulations based on formal and fond rules of national law ... these rules must be reconciled with the need for uniform enforcement of Community law to avoid unequal treatment of economic operators."[6]

The principle of institutional autonomy is applied in the area of jurisdiction, the Court of Justice ruling that „in the absence of Community rules, it is up to domestic law of each Member State to determine the competent jurisdictions and to state procedural rules of court actions, designed to ensure the rights which individuals have gained from the direct effect of Community law[7]."

Under conditions in which the European Union does not have an own court (similar to that created by the Council of Europe - Strasbourg Court), for full and direct enforcement of the Community rules, relative to all subjects of law covered by these rules, the only communication between the national judge and the Court of Justice of European Communities, currently the Court of Justice of the European Union, is made by „the prejudicial matter". In disputes with a community component, prejudicial matter occurs during the process, which is submitted for resolution to the Court of Justice of the European Union, which is ensuring only the interpretation of Community rule, and not its application in the dispute that caused it, the application remaining to the sovereign appreciation of the national judge. Prejudicial matter may be raised before any national court, but the initiative to send it belongs only to the national judge. In the decision, which is given by the Court, it is not about the case law (res judicata), but about the authority of decision in interpretation, meaning the jurisprudence of the Court of Justice of the European Union.

Application of the principle of primacy of European law by Romania as a result of provisions from the Accession Treaty was not one without obstacles, especially in terms of finding ways to ensure it to be in compliance with the Constitution. One issue remaining open is how the judge interprets the possible conflict between national and community rules, and if the judge is open enough to ask, when is being unable to take a correct decision, for the interpretation of the Court of Justice of the European Union.

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[6] Ovidiu Ţinca, „ *General Community Law.*", Lumina Lex Publishing, Bucureşti, 2005.
[7] Ibidem.

Regarding the European Union, in 2009, through Stockholm Programme for Justice and Home Affairs, supported by the European Parliament in November and adopted at their summit in December, sets the priorities for justice, freedom and security for the next five years - the rights of citizens, protection and promotion of a more integrated society. Its objective is to improve the security and the rule of law to promote individual rights.

This program envisages a more effective police cooperation through a more effective recourse to Europol and a more carefully prepared plan for future exchange of information. Following the entry into force of the Treaty of Lisbon, it is required that the European Union to adhere as soon as possible to the European Convention on Human Rights, and the enforcement of the Convention to be monitored rigorously and systematically. „Roadmap" (adopted during the Swedish presidency) „to strengthen the rights of defendants in criminal cases will be carried out in parallel, increasing the attention paid to crime victims' rights. A solid data protection will be established[8]."

In „General Report on the Activities of the European Union" in 2009 states „The proper functioning of the internal market depends on judicial security in case of litigations." In April 2009, the Commission launched a consultation on ways to enhance clarity on jurisdiction, recognition and enforcement of judicial decisions in civil and commercial matters, based on mutual recognition of decisions by the Member States. In October, the European Commission presented a proposal for a regulation on the succession, given that, increasingly, more people live and own properties in other EU countries, this proposal contains provisions on jurisdiction, applicable law and introducing a European certificate of inheritance. Also, because the contracts are legal instruments most frequently used by individuals and companies, in their daily work, the Council has established guidelines on a common frame of reference for European contract law, in order to obtain an improved legislation in this area.

Commission adopted a proposal on providing a better assistance to victims and more stringent actions against criminals guilty of abuse against women and children, consisting of trafficking and sexual exploitation. The proposal includes measures such as telephone tapping by the police, providing accommodation, care and legal advice to victims, and stricter penalties against those who indulge in sex tourism.

The Commission also proposed that to combat terrorism and serious crime, law enforcement authorities can consult the database of

[8] „General Report on the Activities of the European Union", 2009.

digital fingerprints Eurodac, established as part of EU asylum policy. A series of accompanying measures will ensure protection of personal data and will tutelage the right to asylum.

In art. 67 (former art. 61 of TEC and former art. 29 of TEU) align. 1 it is stated: „The Union is a space of freedom, security and justice with respect for fundamental rights and different legal systems and judicial traditions of the Member States[9].”

Conclusions

Applying the principle of primacy of Community law in Romania is very keen on the interpretation of the Romanian judge. In the national court the parties may invoke the relevant Community rule, and its priority application to a national rule is a condition sine qua non for the implementation of the Community objectives.

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[9] Art. 67, align. 1 Treaty on European Union.

EDUCATION ON THE PROTECTION OF MINORITIES

Luca Refrigeri*

Abstract

In the current social context not only the European minority protection through law is considered to be the most effective way to ensure peaceful coexistence between different ethnic groups and civil, more likely, only through education for tolerance and mutual respect is it possible to integrate the different ethnic groups.

Key words: *Minorities, Immigration, Education, Integration, Tolerance.*

Introduction

Compared to the natural difficulties of man to live in a peaceful and civil area, the instrument of legal protection of minorities, which appeared since ancient times and established itself firmly in the seventeenth century, is today the form of protection which international and Europe in the belief that the fundamental freedoms should be protected by law. In the context of multi-ethnic, conversely, the legal protection of minorities, which seems less and less to ensure peaceful coexistence in one nation-state, must run alongside the general education intervention as a means to ensure coexistence.

1. The legal protection of minorities

The protection of groups of people united by characteristics of an ethnic, racial, religious, linguistic, or any other nature, who live permanently in a local context where they represent a minority compared to other, has an ancient origin, presumably the same with the establishment of the earliest forms of social life. Faced with the need to conduct their lives together in the same area shows the difficulty of their living together for mutual natural tendency to defend their status and values, ethnic, racial, religious, linguistic, social and economic. Although this difficulty to the coexistence of man is ancient, natural, only recently has found the will to adopt forms of protection to minority groups, recognizing the need to ensure that they have fundamental rights, civil

* Associate Professor of Social Pedagogy, University of Molise, Department of Human, Historical and Social Sciences, luca.refrigeri@unimol.it

rights and political namely the right to life, personal identity, freedom of thought, religion, voting, privacy, etc.., and social, economic and cultural rights, in particular the rights to food, housing, education , work, health care, etc. This will is manifested through actions that have a relevance, however, mainly from the legal point of view. Despite some cases of different legal treatment of minorities have been found in antiquity and the early forms of legal protection relevant to the contemporary international law are traced back to the second half of the seventeenth century, when it is initiated the creation of many modern states, it is only in the second half of the twentieth century that the international community has adopted positive norms concerning this matter[101]. The first references to the normative issue of legal protection of human rights, understood this without any distinction of race, ethnicity, religion, language must be given to the "Universal Declaration of Human Rights".

The UN, a few years later, he set out for the first time at international level the principle of promoting and encouraging respect for human rights and fundamental freedoms for all[2] putting the need to support the fundamental premise as creating conditions of stability and well-being and security of the principles of equal rights of peoples: "the universal respect and observance of human rights and fundamental freedoms for all without distinction of race, sex, language or religion. "[3]

Such statements can be found also in the European context. The Council of Europe, in fact, dealt with the issue of human rights and minorities to the European people from the middle of the twentieth century with the "European Convention for the Protection of Human Rights and Fundamental Freedoms".[11] Considering core values in European Union Constitution said that the social life: "... is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men "[12] Recently it has also been enshrined the principle of respect for cultural, religious and linguistic diversity and prohibits "all forms of discrimination, in particular, sex, race, skin color or ethnic origin or social characteristics , language, religion or belief, political opinion or any other opinion,

[1] P. Simone, 2002, p. 3).
[2] (ONU, 1954, p. 3).
[3] ONU, 1954, p. 3 art. 55, p. c).
[11] (European Council, 1950).
[12] (UE, Lisbon Treaty, 2007).

membership of a national minority, property, birth, disability, age or sexual orientation.[13]"

In essence, the many acts of the United Nations, Council of Europe, the European Commission and many other international organizations, together with the numerous actions of humanitarian intervention during the last decades in favor of the persecuted communities, even in the home country, are a clear signal of the established will of the international community to protect, in every aspect of institutional and legal needs of minority groups, whether internal or external to a territory to them.[14] There is, however, the need to be noted that these acts are well founded on the belief that the guarantee for a democratic life lived only for actions steps with legal significance, this, however, according to the difficulty of the current context, there seems to be regarded as sufficient to guarantee the rights fundamental of all social groups should therefore be more.

2. The problems of minorities in the current European Social context

The major migrations of recent decades have resulted in political territory delimited to a population increasingly characterized by multiple "minorities." If the past actions of legal protection could be considered sufficient, at least in intent, to achieve the conservation objectives of their roots, maintaining their own culture, profession, the practice of their religion, the use of their language origin, in the current European social, not just those same prove to insufficient efficacy and difficult to apply in everyday life. In particular, are proving difficult to achieve respect for the rights of the maintenance of their origins in the field of education, use of minority languages, of formal relationships with institutions in the host country taking into account that there is already a social life and organized a official language. The law alone does not seem to be able to protect the growing number of minorities who settled in the more affluent. In particular, the legal instrument by its very nature, cannot protect the cultural, ethnic, religious and linguistic, because of the nature of the values and characteristics generally considered the traditional concept of minority in international documents show.[15]

Considering the recent data published by Eurostat, the population in many countries of the EU has a shape and characterized by increasingly diverse immigrant populations, foreign citizens living in member countries are 6.4% (31.9 million) of total population and of these 11.9 million are citizens of another EU country, while the rest (20 million) are

[13] (Carta dei diritti fondamentali dell'Unione Europea, art. 21).
[14] S. Bartole, 1998, p. 12.
[15] C. Conetti, 1998, p.73).

citizens of countries outside Europe: among them, 7.2 million come from another European country outside the EU, 4.9 million Africa, 4 from Asia and 3.3 from the American continent.[16]

Faced with these significant demographic and social configuration of the new multiethnic and multicultural in the various countries it is necessary to address the issue of protection of minorities in accordance with a different perspective as the legal alone is not enough. The new way to tackle the issue of different ethnic groups should have as its criterion the formulation of a law that guarantees everyone the chance to lead a dignified life, regardless of ethnicity, race and culture in what is now part of that territory for which, however, also contributes financially. However, this is possible if you go over the law, it also involves the moral social awareness that only through the intervention of education can achieve

3. The advent of new values in the common life

The demographic and social structure of today, then, puts the EU and all European countries the need for different welfare policies, that consider the multi-ethnicity, the main feature of the new social system, which because of the configuration of multi minorities should be to achieve co-existence in all its aspects on the same territory. One must be convinced that the new welfare state must increasingly take into account the changing population in Europe, which will become increasingly composed of many different ethnicities and cultures. These feature to stay in the place of landing will lead to new issues of common life, which even now are different, but in future generations could assume a character more complex than those of today. In fact, following the intra-European mobility and immigration to Europe that you believe should be considered as from today is the phenomenon of cultural change.

In this perspective, in which the rights enshrined as a fundamental civil and political rights may be secured by new forms of protection to rethink the legal completion, which should be the basis for the coexistence of cultural change. The second generation of foreigners and even more the third, having different needs from those of the first will put the issues on which the attention and the forms of protection will be different and the new ethnic and cultural forms that will be created will lead to forms of cohabitation with characteristic features of today may not even imaginable.

In any case, any form of cohabitation faced with the need for a new conception of education and a new set of traditional values and new, including the habits of tolerance, respect for beliefs, the acceptance of

[16] (Eurostat, 2010).

diversity, dialogue between cultures and so on. These values are based on processes of social change, change and redefinition of the constitutional principles and the constitutional rights of many major European countries.[17]

In fact we are in the mature stage of transition from a utopian conception of impossibility to achieve a common life of different communities, hidden behind the conviction of the impossibility to change the nature of man and even more of its entire community, for a realistic view of actual possibilities as natural and simple invevitabile coexistence among different ethnic groups in the belief that we are all men to be similar in nature or even brothers in God for those who have faith.[18] The new objective to be pursued must be cultural, more specifically, moral, even before the legal means to achieve a match between the rights of those who arrive in a new territory for those in need and those who are already living on the territory. The commitment must be to deal with the spread of these values, as are those inherent in human relationships typical of daily life in communities of different ethnicity, race, religion, language, culture, tastes and uses.

The value of tolerance must be understood as an attitude towards the other's availability in a man's behavior to be there a while not sharing it just to respect the freedom of others, even if only for reasons of practical convenience or power distance from the error of others. The tolerance must be, therefore, recognize the right of others to live, even though it was completely different, or contrary to their own ways. Moreover, the tolerance in the political and social is the idea behind all forms of liberal democracy because it is the principal value: freedom of opinion and thought in order to allow everyone to participate in public affairs and respect the fundamental rights of every man beyond the legally recognized right.

The value of respect, in turn, had a theory in Kant acceptable. For the German philosopher, in fact, is the feeling from the outset, produced by an intellectual principle, for which the moral law becomes a motive for the will direct. Respect, that is, is the conscience of a liberal law for submission to the will, due to an act of will by the natural inclination of man's reason.[19] Respect must be understood as a feeling of connection that leads us to recognize the rights, dignity of someone or something.

The values of tolerance and respect must be placed as the mediation of the different needs of those arriving and those already living a territory, and whoever comes, in fact, find the value of freedom from the most

[17] L. Medica, 1998, p. 191-192.
[18] L. Refrigeri, 2007, p 501.
[19] (Kant, 1787).

urgent existential needs, from forms of social slavery, of oppression political, religious and ethnic persecution and the improvement of their status, who is in the territory, the majority group, seeks to maintain the value of security, ie the need to secure life, peace of life, limb movement and action of existence without being involved in acts of violence and trauma.

The creation of these values provides the basis for the achievement of peaceful relations and civil rights, respect for the identity of each group, which becomes a valuable resource for the society in which minorities can make the strongest countries, rich and full[20].

4. The indispensability of education for the integration of minorities

The behavior of man according to the values of tolerance, respect and dialogue is not spontaneous and natural, but must be induced with an awareness that man is important, be likely to change for good and evil. In men, that is, the willingness of certain pipelines, in our case those of tolerance, respect for others and the dialogue does not come spontaneously, nor for the merits of the law, but only through a process of induction from the external side of justice and of persuasion. Therefore we must intervene with education and training in the various formal and non formal, informal and to guide man to take feelings and behaviors of everyday life based on tolerance and respect towards others, especially to the weakest as those who come to the need for freedom, and only an educational widespread in all educational agencies, together with the monitoring and enforcement of the law, will begin a process of integration between different ethnic groups in a territory.

The most complete integration is possible only through the initiation of a social education project that has as objective a multicultural society, at least in the medium term and longer-cultural. The conviction behind this target but does not represent that of any European country, but surely the Italian one, is based on the belief that the protection of minorities in its classic form of legal protection of fundamental rights and freedoms, can no longer be the way teacher positions for the containment of adverse respect for minorities. In essence, today after several years of significant immigration, it is clear that the fight against discrimination of all kinds sought legal means does not have the desired effectiveness, since it has arrived at a composition varies, but of peaceful people in various states Europe. It is desirable to share a mutual interplay between different

[20] (Z. Kedzia 1998, P. 58).

people, which may also lead to the formation of social relationships advantageous since it may be more of a social capital.

Certainly it is a long and complex process that will involve several generations, but which should, at least be possible to predict today, a mutual completion by the different groups. This process of induction and guidance to the encounter between different ways of thinking and living, should lead to the common desire to eliminate conflicts of living together in built-in recognition of the right to difference as a right of everyone to develop on their own projects life in a framework of rights and a certain logic of relations between different subjects.

If the school, then, is the engine of the new companies, a process of genuine integration can not merely be implemented only in it, but must extend to every context and learning environment of the company. Has become increasingly important, in fact, a new educational principle to be understood as the universally recognized right of each individual to develop in every area of life, from what is, on the basis of their needs through their own projects, with a view to actual social and professional integration, but in a framework of rights and a certain logic relationships appropriate to compare and exchange with others who may also have other values, other habits, other cultures[21].

Besides its appeal to the fundamental role of education in promoting a truly common life and integrated than that of legal protection is found in many proclamations and resolutions of international bodies that have adopted the forms of legal protection currently in force.

In the European context, in fact, more than twenty years ago the Council of Europe stated that "understanding the lived experience of human rights is, for young people, an important element of preparation for life in a democratic and pluralist society"[22] considered that in school the knowledge of the rights enshrined by the international declarations and conventions form the basis for ensuring the launch of an educational rights understood as the common values of respect, tolerance and solidarity towards others in general as well as the duties and responsibilities of man.

For the European Union in 2008 was a year of great attention to the issue multiethnic *European Year of Intercultural Dialogue, by adopting the Green Paper on Migration and Mobility: Challenges and opportunities for European education systems, as well as the resolution education for the children of migrants*. In these, as in other pronouncements, including the *Treaty of Lisbon*, there is the belief that education enables them to reassess the minorities in accordance with the

[21] F. Susi, 1999, p. 19).
[22] (European Council, 1985).

values of integration by allowing them to acquire all the opportunities for their conversion and for a repositioning of society in which all groups are able to live together.

Conclusions

The tendency of the composition of mixed populations are increasingly giving birth to a new concept of population in which some aspects of cultural, ethnic and social are leading to the need of facing the protection of minorities with a different approach, which, along with the legal instrument, inevitable at some times and circumstances, places and above all the cultural and moral. The intervention must be induced moral universe through intentional interventions in cultural education and training, which shall be from school, first meeting between new generations of diverse populations and other agencies should continue in non-formal (church, cultural associations, civil, political and sports) and informal (customs, habits, traditions, etc.). Only the new values of tolerance, respect and dialogue, mutual understanding, may lay the foundations for a social life built in an area, leading to a de facto natural protection of minorities.

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RECOMMENDATION 1333/1997 – A RESULT OF MACEDO-ROMANIAN ORGANIZATIONS STEPS TOWARDS THE COUNCIL OF EUROPE

Ioan Stan*

Abstract

Within the current international context, when events tend towards a united Europe and towards a uniform regulatory legislation on minority rights, more and more Macedo-Romanian leaders have started their international approaches for the benefit of all rights and freedom arising from this position.

Their request is based on the fact that in most Balkan countries, where they have been living for centuries, they do not have the minimum rights which could allow them preserve the language, traditions and habits. They are threatened with the loss of national identity and assimilation.

In order to revive the ethnic feeling of belonging, there were established Macedo-Romanian foundations, cultural associations, and leagues, all in Balkan countries and other countries in Europe, U.S. and Australia.

Key words: *minority rights, ethnic belonging feeling, Macedo-Romanian organizations, heritage, linguistic identity.*

Introduction

In the current international context, when events tend towards a united Europe and to a uniform regulatory legislation on minority rights, more and more Macedo-Romanian leaders started their international approaches to be recognized as a dis tinct national minority for the benefit of all rights and freedom arising from this position.

Their request is based on the fact that in most Balkan countries, where they have been living for centuries and are local, they do not have the minimum rights which could allow them preserve the language, traditions and habits, being threatened with the loss of national identity and assimilation.

In order to revive the ethnic belonging feeling, there were established Macedo-Romanian foundations, cultural associations, and

* Ph.D., Lecturer of International Law „Agora" University, Oradea

leagues, all in Balkan countries and other countries in Europe, U.S. and Australia.

The stated aim was to contribute to the preservation and conservation of ethno-cultural heritage and linguistic identity, and to create conditions for their distinguishing as "distinct national minority, both in the Balkan countries where they live in compact communities, (Greece, Albania, Republic of Macedonia, Serbia-Montenegro) and in Romania.

Among countless organizations (foundations, leagues, cultural associations), established to defend and protect the rightsof Aromanian people, a decisive role had the Union for the Macedo-Romanian Language and Culture, registered on July 8th 1985 in the Court of Freiburg, Germany, under no 1737, having Professor Basil G. Barba as founder and president. We also have to mention the founding of the publishing house and journal "Zborlu a Nostru," in 1984, distributed in all Macedo-Romanian communities aimed at the revival of the national consciousness.

Since its founding, the Union for Macedo-Romanian Language and Culture (UMRLC), was involved in a coherent and organized way in the developing of a strategy for slowing down the process of national disintegration of Macedo-Romanians. This process started after the Peace of Bucharest of August 10th, 1913, when they were divided arbitrarily, within the borders of the Balkan successor states of the former Ottoman Empire.

If by the year 1990, the activities and actions of UMRLC were limited to Western Europe, after the democratic changes occurred in the late '80s of the last century, the scope of the Union expanded in the political system of most countries in which Macedo-Romanians live (Albania, Serbia-Montenegro, Romania and Bulgaria), by attracting the objectives of most Macedo-Romanian organizations in South-Eastern European area.

The first Congress of UMRLC was held in 1985 in Mannhaim, Germany and had a great international visibility; for Macedo-Romanians was a great moment of pride and national revival. The second Congress was held in August 1988 in Freiburg, Germany. Although they have addressed pressing problems and identified appropriate measures to be taken to save Macedo-Romanians , they had more of a scientific nature.

Only at the 3rd Congress of UMRLC, held from 20th to 24th July 1993 in Freiburg, Germany under the patronage of the University of Freiburg, Macedo-Romanian personalities and representatives of Balkan countries in which they live in compact communities, Romania included, participated. At the event, delegates presented the actual situation of the

Macedo-Romanians in the countries from which they came and sought to identify the most effective ways and means for legal action for Macedo-Romanians to be considered "national minority" and to enjoy all rights arising from this position. The 3rd Congress of UMRLC unanimously adopted a Resolution on minimum cultural rights, which must be guaranteed to Macedo-Romanians in all states where they are native; we quote the content of this Resolution in full:

RESOLUTION ADOPTED AT THE 3RD INTERNATIONAL CONGRESS FOR MACEDO-ROMANIAN LANGUAGE, LITERATURE, HISTORY AND CULTURE (University of Freiburg, Germany, July 3rd, 1993)

In order to prevent the language extinction of the Southern branch of Eastern Romanism, the following minimum measure are required:

1. In localities where Macedo-Romanians live in greater numbers, kindergartens for their children should be organized in their native language .
2. Macedo-Romanian schoolchildren at secondary education level should have the choice of studying in their mother tongue (at least 3 hours per week) in official state schools.
3. Macedo-Romanian seminars should be held at the main universities in all Balkan states and in some Western European universities for the training of specialists and teachers who can teach Macedo-Romanian in Balkan official schools.
4. There should be secure conditions in churches built by Macedo-Romanians to serve in their mother tongue.
5. The use of the mother tongue on the radio, TV, press in all the Balkan states should be guaranteed and secured.

In the practical application of these rights it is required that Aromanians be recognized by the legal provisions that they are a separate nation in all the Balkan states, where they are native.

Such an appeal has been made to all Macedo-Romanian associations and organizations identity, and they were instructed to request from their governments these minimum rights.

Participants also had a mandate for UMRLC leadership and Prof. Vasile G.Barba to make the necessary interventions in addition to officials of both the Balkan states and the Council of Europe, to stop "the forced assimilation of Macedo-Romanian people" and assure the minimum rights included in the Resolution adopted by the Congress.

As we can notice, at this event, the leaders have first used the phrase ”Macedo-Romanian people”, realizing that saving Macedo-Romanians from extinction is possible only in light of their declaration

as "a distinct national minority.

Under the mandate, the management UMRLC started the necessary arrangements with governments in the Balkans and the Council of Europe, calling for implementation of the Resolution adopted at the 3rd Congress.

In an Appeal to the European Parliament and the European Council, President UMRLC, Professor Vasile G. Barba, presented the difficult situation of Macedo-Romanians in the Balkan countries, especially in Greece, a member of the European Union and Aromanian seeking recognition as "a linguistic community distinct in all the Balkan states, where even natives have now become a minority", being threatened with assimilation.

The steps taken have been well received by European bodies so that the Council of Europe Parliamentary Assembly commissioned the Italian parliamentarian Ferrarini - member of the Culture Board, to do research in those states and to conclude with a resolution. After extensive research and mobilities in several Balkan countries, on May 3rd 1994, the draft resolution "Ferrarini" was adopted by the Council of Europe Parliamentary Assembly, in defense of the Macedo-Romanian language and culture, signed by representatives of five countries (France , Italy, Portugal, San Marino and Romania).

Following the adoption of the resolution, the Spanish MEP Luis Maria de Puig, was appointed special rapporteur on the issue of identity, and after a thorough documentary for three years in the domain, has compiled a special report of the Culture Board, which was submitted to the Parliamentary Assembly of the European Council on June 24th, 1997, when it was voted unanimously.

The report officially became "Recommendation 1333", which addresses the Balkan states, to facilitate the learning and use of Macedo-Romanian schools, churches, newspapers, radio and television.

In section 8 of the "Recommendation 1333", the Assembly recommends that the Council of Ministers:

I. should encourage Balkan states where Macedo-Romanians live, to sign and implement the European Charter for minority languages, and invite them to support Macedo-Romanians, especially in the following areas:

a) education in their mother tongue;

b) religious services in Macedo-Romanian in their churches;

c) newspapers, magazines, radio and television in Aromanian;

II. should invite other member states to support Macedo-Romanian language, training and creating university departments and disseminating the most exciting products Macedo-Romanian culture

products via translations, anthologies, courses, exhibitions or theatrical productions.

III. should create scholarships for artists, writers, researchers and students from Macedo-Romanian minority groups from all Balkan countries, to enable them to work and to help create the Macedo-Romanian language and culture.

IV. to ask from the Council of Cultural Cooperation, in collaboration with academic centers to co-ordinate Macedo-Romanian cultural activities at European level;

V. should seek for cooperation and partnership of organizations, foundations and other private sector bodies concerned to carry out the recommendations resulted

VI. should consider Macedo-Romanian culture according to the measures set out under Recommendation 12o1 (1996), especially in terms of "dispersed ethnic minorities laboratory".

Conclusions

The adoption of Recommendation 1333 on June 24th 1997 by the Council of Europe Parliamentary Assembly, is an important step in affirming the Macedo-Romanians as "national minority" in the Balkan countries in which they live in compact groups. However, having no leadership and organizational structure able to design strategies to push for this purpose, its implementation is difficult.

In our opinion, it is necessary first, to clarify their position against the Romanian state, where they are regarded as an ethno-linguistic minority of Eastern Romanism and not as a distinct ethnic minority. The involvement of Bucharest diplomacy may be an appropriate and effective support for the affirmation of Macedo-Romanians as "national minority" and for enjoying all the rights that might arise from this quality.

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MACEDO-ROMANIANS - A DISTINCT ETHNO-LINGUITSIC ENTITY

Rodica Stan[*]
Ioan Stan[**]

Abstract

The current paper sets forth the endeavors of Macedo-Romanian ethnics to maintain their language and spirituality along centuries. The spoken and written language as well as the unaltered traditions represents the identity card of Macedo-Romanians all over the world. Lately the European thinking has evolved towards an appropriate resolution of less spoken language rights, including the Macedo-Romanian language.

Key words: *mother tongue, ethnic identity, mentality, spirituality.*

Introduction

The concept of Identity has become emblematic of human destiny, summarizing integrity, deep humanity and authenticity. For this cultural identity, especially religious, ethnic, linguistic issues, lives are sacrificed daily in numerous difficultly remediable conflicts. Identity is frequently reported to globalization, as both are deeply interdisciplinary.

Obviously, the most debated type of identity is the ethnic identity, that which belongs to both the individual, the inner man, and to the community of people no matter the number of individuals comprised, all connected by the fact that they speak the same language.

Macedo-Romanians are a typical example of ethnicity whose identity is demonstrated by itself and is supported through their mother tongue, Aromanian, a language spoken by them for more than 2000 years.

Language give the Macedo-Romanian a clear feeling of his identity, the feeling of being someone else than X or to not be just X, but somebody else. It is obvious that, no matter how some would define this type of communication used between them (language or dialect),

[*] PhD Professor USAMV Cluj-Napoca
[**] PhD Lecturer Agora University, Faculty of Law and Economics

Macedo-Romanians persevere and manage to maintain it even in present days, because it is theirs, it is their identity document in this world.

For at least two hundred years, renowned historians or scholars – Byzantines, Dacians, Macedo-Romanians, Germans, English, Austrian, and others from various European countries – identified Macedo-Romanians and Aromanian, wrote about them and their language.

The cognizance of Romanists throughout the world does not leave room for doubts, vouching for a definitive identification of Macedo-Romanians as a distinctive ethnic group, in the Balkans, through their mother tongue.

Generally speaking, we cannot speak about a "national consciousness" of Macedo-Romanians, but about a "ethnic consciousness" because an ethos, not so more a national idea has always ruled over Macedo-Romanians, the idea of ethnic identity, the pride to be free, individualized, without any bondages, living a dignifying life. He who leaves his language, Aromanian, will face an awful punishment as the Macedo-Romanian bard, Constantin Belimace, says:

Care ş'lasă limba lui/Care-şi lasă limba lui
S'lu-ardă pira focului,/Arză-l para focului
Si s-dirină yiu pri loc,/Sfâşie-se viu pe loc
S-l'i si frigă limba'n foc./Frigă-i-se limba-n foc!

(He who leaves his mother tongue will be burnt by fire, picked to pieces and his tongue will be thrown into the flames).

The right of a distinctive ethnic group to oral and written manifestation in their mother tongue is a natural and elementary right. Nevertheless, important representatives of Macedo-Romanian spirituality, due to thrown off track and in desperation due to the ever-growing decrease of speakers of Aromanian, issued pessimist predictions with regard to this language. The scholar Tache Papahagi for instance, the author of some fundamental papers in Aromanian wrote the in the introduction of a dictionary: "this twentieth century will be the century when Macedo-Romanians will become extinguished" Fortunately, this prophecy has proved false. During the 3rd Congress for the Union for Aromanian Culture and Language that took place at Freiburg in 1993, the delegates tried to identify the most effective means and legal methods of action so that Macedo-Romanians will be considered a "national minority" and to enjoy the rights ensued from this status. Participants mandated the management of U.A.C.L and Prof. Vasile G. Barba to make the necessary interventions to officials from Balkan states and to the European Council to cease the "forced assimilation" of the Macedo-Romanian nation" and to ensure them minimal rights foreseen within the Resolution adopted by the Congress. Later, in June 1997 pending the Report advocated in front of the Council of Europe, by Lluis Maria de

Puig a unanimous acceptance of intercessions made for Aromanian to be considered the language of a minority was obtained; this date marks the recognition of the legitimacy of Macedo-Romanians and of Aromanian in Balkan countries.

There was a fear of a more general, European character, a fear regarding globalization that may "sweep-out" identities, languages, traditions, and cultural customs all over, but especially in those places where these features are less consolidated.

From this perspective, the Aromanian language and identity may have been endangered again. Luckily, pessimist forecasts did not become true this time either. In the last few years, European thinking developed towards an adequate resolve of rights for less spoken, minority languages.

The future of the Aromanian language depends on the young population: they must speak it, write it, nurture it, cultivate it, enrich it and respect it. Only in this way linguistic and orthographic standards will come into place as the work of a collectivity, of the Macedo-Romanian community in general".

Aromanian will not die, that which is comprise in Diaro is not a dead language, but a live, beautiful, thrilling one. Of course, the role of the state in which they live, of peers speaking the same language is huge, but not less important is the role of speakers of Aromanian, in other terms, their will to maintain their mother tongue.

Conclusions

The Macedo-Romanian ethnic group has arrant contributions to the progress of civilizations in Balkan countries. We will encounter them in Albania, Greece, Bulgaria, Turkey, in all states of the former Yugoslavian Republic and of course, in Romania. Wherever they might be, Macedo-Romanians respect and observe with sanctity the traditions inherited from their ancestors. For example, the ceremony of a wedding that lasts for an entire week, it starts on a Wednesday and ends the following Wednesday. During a wedding, a distinctive symbol is the pendant, a flag adorned with three red apples. A gourmet dish always present at weddings is the "pita", a type of pie. It seems the traditions of Macedo-Romanian weddings originate in the old Byzantium and were maintained even by the Ottoman Empire due to the peaceful character of the wedding cortege. A surprising fact: Macedo-Romanians were the only Christians in the Ottoman Empire who had the right to bear arms and own horses.

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PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE. LEGAL MARKS

Tudor Tănăsescu[*]

Abstract

Participation of national minorities in public life results from the principles of equal rights and discrimination and it is closely related to exercise their rights of identity (in its own culture, to use their mother tongue, to practice their religion and profession). Exercise of this right creates favorable conditions to persons belonging to national minorities to exercise their rights of identity and thus to protect their national identity, ethnical, linguistic, cultural and religious.

In reference to that law, the international documents provide the rights of persons belonging to minorities to take part in political, economical, social and cultural life.

Participation in public life of persons belonging to national minorities or ethnic, religious and linguistic diversity is part of the fundamental human rights which apply to all persons without discrimination.

Keywords: *national minorities, participate in public life, basic human rights system, the framework convention.*

Introduction

Issues concerning minorities, namely the preservation and development of ethnical, linguistic and religious identity for persons belonging to minorities can only be satisfactorily resolved in a democratic political framework based on rule of law, since it is the only way to ensure full respect for the rights and fundamental freedoms, equal rights and status of all citizens, free expression of all legitimate interests and aspirations.

In the context of the above, the new international documents provide the rights of persons belonging to minorities to take part in political, economic, social and cultural.

Thus, document C.S.C.E. of the Copenhagen Reunion since1990[1] *stipulates that the participating states will respect the rights of persons*

[*] Lecturer PhD BioterraUniversity of Bucharest, Faculty of Law

belonging to minorities to participate effectively in public affairs, especially in activities relating to the protection and promotion of minority identity in question. Subsequently, the Declaration on the rights of persons belonging to national or ethnical, religious and linguistic adopted at the UN 1992 [2] provides that persons in that category are entitled to participate effectively in cultural, religious, social, economic and public life(Article 2 paragraph 2).

Developing this concept, the Declaration provides (Article 2, paragraph 3) that those persons entitled to participate effectively in decisions at national and where appropriate, regional, minority issues relevant to which they belong or regions where they live, in a manner which is incompatible with national legislation. However, the same act stipulates that states will consider appropriate measures so that persons belonging to minorities may participate fully in economic progress and development of their country and national policies and programs, and programs of cooperation and assistance between states, be planned and implemented taking into due account the legitimate interests of persons concerned (Article 4 and Article 5, paragraph 5).

Similar directives include the framework-convention for the protection of national minorities in 1994, adopted by European[3] Council which among other provides that states parties shall create conditions necessary for effective participation of persons belonging to minorities in cultural, social and economic public affairs in particular those affecting them directly (Article 15).

The same document provides the commitment of states parties to promote all areas of economic, social and cultural rights, full and effective equality between persons belonging to the minority and those belonging to the majority. They will take due account in this regard, the specific conditions under which persons belonging to national minorities (Article 4, paragraph 2).

In politics, the participation of persons belonging to national minorities involve the states which are necessary conditions for people in that category should be able to say the word, in a normal, legislative and executive bodies of state. In this context, those people can organize their own political party (in countries where the law allows the existence of ethnic-based political parties) or participate in activities of political

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[1] Adopted on 29 June 1990 at the Reunion from Copenhagen Conference on Human Dimension of the CSCE, also signed by Romania.

[2] United Nations General Assembly adopted (18.XII.1992) no.47/135 Resolution.

[3] It was adopted on November 10th, 1994 and opened for signature on February 1st, 1995. Romania ratified by Law 33 of April 29, 1995, published in the Official Gazette, Part I, no. 82 May 4, 1995.

parties with other citizens according to their political choices. Such persons may send their representatives in parliament and other elected bodies of the state, based on participation in elections (at central and local), or due to a number of seats allocated by the constitution or by law electoral. [4]

Moreover, they can attend including the formation of the government when entering into alliances with political parties that won elections. We mentioned that in the absence of direct participation, parliament and government must create mechanisms for consultation of persons belonging to minorities (by representatives of associations or their political parties).

Locally, participation of people belonging to minorities, in areas where they have a significant weight requires their presence in decision-making bodies and implementation of local government and hence their access to any public office.

In the economic sector, persons belonging to minorities have the right: to engage in economic activities as other citizens, have initiated national economic programs and have access to them on an equal footing.

Regions where they live in greater numbers must benefit the same attention in terms of measures and development projects. In certain circumstances, special measures may be needed for certain disadvantaged or backward regions.

In reference to cultural life, in addition to preserving and developing its own culture, persons belonging to minorities have the right to manifestations and forms of cultural expression in the country, nationally and locally.

In the context presented, the rights of effective participation in public life of persons belonging to national minorities do not have differences from the similar right of others, such as those belonging to the majority population. Its approach in the context, I did it because it can behave some way apart from the exercise by persons belonging to minorities and sometimes require special measures taken by states to ensure these people's willingness to pursue playing with other people (providing representation in parliament or other representative bodies, regardless of the election).

In conclusion, we think that the right persons belonging to minorities to take part in public life stems from the principles of equal rights and discrimination and is closely linked to the exercise of their identity (n.n. to its own culture on language use in practice their religion and profession). Participation in political life, creating favorable

[4] To be seen Ion Diaconu, Minorities. Status. Perspectives, Bucharest. IRDO, 1996, p. 123.

conditions to persons concerned to exercise their rights and hence identity, to protect their national identity, ethnical, linguistic, cultural and religious.[5]

Moreover, this participation in public life is the next best way of promoting the rights and interests of any person and a real way to solve problems related to protection of identity of persons belonging to minorities (creating conditions necessary to ensure parliamentary representation regardless of election results, the establishment of consultation structures of minorities, etc.).

Giving expression to international documents provide for the right persons belonging to minorities take part in political, economic, social and cultural, Romanian Constitution of 1991 (Title III, chapter I, Article 62 paragraph 2), republished,[6] provides that members of national organizations that do not obtain the number of votes for representation in Parliament, are entitled to one deputy seat in election law. It is also stipulates that citizens of a national minority can be represented by one organization.

The Law on election of the Chamber of Deputies and the Senate - Law nr.375 of 24 September 2004[7] - the constitutional provision is taken and regulated in Article 4.

Thus, under this law, organizations of citizens belonging to national minorities (as defined in paragraph 1 of article 4, as that ethnic group is represented in the Council of National Minorities) legally constituted, not the choices made at least one deputy mandate or Senator, together entitled, under Article 62, paragraph 2 of the Romanian Constitution, republished a deputy mandate if obtained, the entire

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[5] .

[6] Amended and supplemented by Law Review no.429/2003 Romanian Constitution, published in the Official Gazette, Part I, no.758 of October 29, 2003, republished by the Legislative Council under Article 152 of the Constitution, by updating the names and the texts a new numbering (Article 152 became, as republished, art.156).

Law Review no.429/2003 Romanian Constitution was approved by national referendum of 18 to 19 October 2003 and entered into force on October 29, 2003, its publication in the Official Gazette, Part I, no.758 of October 29, 2003 the Constitutional Court Decision no. 3 of October 22, 2003 for confirmation from 18 to 19 October 2003 national referendum on Revising the Law of the Romanian Constitution.

In the revised form Constitution of Romania was republished in the Official Gazette, Part I, no.767 of 31 October 2003.

Constitution of Romania in the original form was adopted in the Constituent Assembly meeting of November 21, 1991, was published in the Official Gazette, Part I, no.233 of November 21, 1991 and entered into force following their approval by national referendum in August December 1991.

[7] Published in the Official Gazette of September 29, 2004 no.887.

country, a number of votes equal to at least 10% of the average number of valid votes the country to elect a deputy (article 4, paragraph 2).

Under that law, members of national organizations involved in election law are equivalent in the electoral operations, with political parties.

Noteworthy that those provisions and benefits of members of national organizations which participated in elections on a common list of two or more organizations, in this case if no candidate on the list was not particularly common, will be assigned to list all organizations have proposed a deputy mandate with respect to paragraphs. (2) of article 4.

Applying the legal framework that persons belonging to minorities (most of the minorities in Romania) and formed their own organizations, this participated in elections and gained parliamentary representation since the first elections in May 1990.

Based on the set of provisions of international documents regulating the issues dealt with, we consider that the participation of minorities in public life, as is the identity for their rights (right to use their mother tongue, the right to own culture, right to practice and practice their own religion) must be respected and guaranteed as part of universal human rights. Exercise this right, which is the guarantor of/exercise identity rights of persons belonging to minorities, is an individual process possible, usually in a political democracy based on the principle of equal treatment and non-discrimination between citizens belonging to the same state.

Conclusions

Therefore, to ensure minority rights are of paramount importance, observance of two fundamental principles: the principle of non-discrimination and equality of all citizens of a State, in exercise of the rights and fundamental freedoms. No person shall be in an unfavorable position, the mere consideration that it belongs to a minority group.

Also, in the same plan we undermark[8] that: to develop regulations on national minorities, the determining role is currently of states (Document of the Copenhagen Reunion of the CSCE in June 1990 stipulate: "The participating States express their conviction that defending and promoting human rights and fundamental freedoms is one of the essential tasks of the state and reaffirms that the recognition of these rights and freedoms constitute the foundation of freedom justice and

[8] To be seen Tudor Tanasescu, Public international law. University course, Sitech Publishing House, Craiova, 2009, p. 98 and minorities. Institutional and legislative marks, Sitech Publishing House, Craiova, 2006, p. 117; Niciu Martian, Public International Law, Publising House Servo-sat, Arad, 1977, p. 175, 183, 184.

peace - item 1), and they have a role and international organizations, including political parties, unions, rights organizations human. All international documents underlines the significance of ensuring minority rights for peacekeeping, international collaboration and democratic life of the Member (Copenhagen Document states that "States also reaffirms that, respecting the rights of persons belonging to national minorities' rights considered universally recognized human rights is an essential pillar of peace, justice, stability and democracy in the participating States' - chapter, pct.30, al.3) and discusses the identity of minority rights, including their right to participate in public life, institution as an integral part of human rights and fundamental freedoms.

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The Romanian Constitution.

THE MINORITIES AND THEIR RIGHT TO PRACTICE AND PROFESS THEIR OWN RELIGION

Tudor Tănăsescu[*]

Abstract

The Constitution is based on the fundamental principles of liberty and autonomy of the cults , as well as those regarding the law of discrimination and the equality of all the citizens of state in practicing the fundamental rights and liberties of the human being.

One of the main elements of the legislation in force is that of the entire equality of 18 religious cult witch function in Romania ,there aren't minoritary churches discriminated ascending to the number of believes or to their ethnic or confessional affiliation.

Key words: *minorities, religion, rights, believes, afflilation.*

Introduction

In the work "Droit des minorities" published by O.N.U. in 1982, it's presented that by minorities generally speaking, one care understand: "a national ethnic, religious or lingvistic group different from another groups inside a sovereign state."[1] *It also presents the following criteria for establishing the minorities:*

a) *The minority must be inferior in number comparation with the rest of the population of the State in which it lives;*
b) *The minority group must be prevalent in that State, to be protected;*
c) *The minority is distinguished by features which are not common in the those of the majority of the population of the respective country.*

At the same time, the members of the minority group must be citizens of the State in which they live.

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[*] Associate Professor, Doctor's Degree, "Bioterra" University, Bucharest – Law Faculty

[1] See Niciu I, *Martian- Public International law* , Servosat Publishing House Arad, 1997, p. 175.

The right at faith or religions conviction for the minorities is stipulated express in the 27 article of the `` International Agreement regarding civil and political rights``.[2]

It stipulates that ''in the States in which there are ethnic, religious, lingvistic minorities, the people belowing to these minorities can't be deprived of the right to have, in common with the others members of the group their own life, to profess and practice their own religion or to use their own language''.

Out of this stipulation of the agreement it results first of all, that in his conception the individual who belongs to a minority of a state it the beneficiary of some right for the minorities among which the right to profess and practice his own religion , rights he can share with the other members of the minority group. (so, it isn`t about the recognition of some collective right for the minorities).

Subsequently the right to profess and practice their own religion in confirmed by the international documents regarding the rights of the people belowing to minorities and the identity protection of them.

So `` The document of the Reunion of Copenhaga of the Conference of the human Dimension of C.S.C.E. in 1990[3], estabilishes the recognition and protection of religious identity of the people belowing to national minorities and its development. It also stipulates the right of the people belowing to minorities to profess and practice their religion, also to get, own and use religions objects , as well as to practise a religious education in their nature language .

The Document in Copenhaga stipulates the people`s right of the above mentioned category to mentain and establish contact between them in their country, as well as abroad in the citizens of other countries they share their religions faith. Similar stipulations ,but more restricted as fields, the ONU declaration comprises, about the rights of the people belowing to national, ethnic, religions , lingvistic minorities[4], which inspiring from the nr 27 stipulation in the International Agreement regarding the civil and political rights in 1966, provides the recognition and protection of the religions identity and development , as well as the right to profess belonging practice to minorities (national, ethnic, religions, lingvistic).

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[2] Adopted at the O.N.U. General Assambly in 16th December 1996 – by 2200A(XXI) Resolution .The Agreement was ratified by Romania in the Decree nr. 212 in 31st October - 1974 – Official Gazette nr 164/1974.

[3] Adopted in 29th june 1990 – at the Copenhaga Reunion of the Human Dimension Conference of C.S.C.E., notified by Romania, too.

[4] Adopted at the O.N.U. General Assembly (18th December 1992) by nr.47/135 Resolution.

The problems of the right of practice and profess religion is debated, not in the least by the Convention – in 1994[5] regarding national minorities protection, document that stipulates, among other things the fact that both states undertake to promote the conditions which allow the people belowing to minorities to mentain and develop their own religion as are of the main elements of their identity .

Also, the same international agreement stipulates that both states admit to recognize each person belowing to a minority the right to reveal the religion or faith and that of initiating religious institutions , organizations and associations. We must focus own attention on the fact that the religious identity protection and the assurance by both the states involved of the necessary conditions of preserving the religion of the persons belowing to minorities, are stipulated in the charter from Paris for a New Europe6[6] adopt by C.S.C.E. and of the Declaration in Viena of the high level Conference of the States and Governments leaders of the States belowing to the Eurpean Council in 9th Octomber 1993.

The conclusion is that religion isn't a compulsory element for discrimination of a group from majority or for another groups, so for a minority existence, but it's considered to be essential for the ethnic identity of people who belong to minorities.

We also specify, that out of the stipulations of the mentioned documents it doesn't derive the obligativity of the states involved to support the religious activities financially.

It wouldn't be enough only the theoretical grant of this right, to assure its practicing and the states implied must adopt positive measures for the rights protection of the people we are talking about to practice the religion[7].

An important number of states support, in different ways, the practice of religious liberties.

These documents don't solve a series of problems in this field, as religious marriages, conscience objections at the military service. The main aim of the international documents is of preserving the religious values of the people and minorities they belong to.

We specify that for the religious minorities, generally speaking, it's very important to be recognized in the states where the law imposes this demand, as well as in the states where recognition doesn't exist.

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[5] It was adopted in the 10th November 1944 and open for signing at 1st February 1995 - Romania ratified the Convention in the nr 33 low in 29th April 1995, published in the official Gazette, part I, nr 82 in May 1995.

[6] Adopted at 21st November 1990, signed by Romania too, official Gazette nr 181/1991.

[7] See the comment of the human rights Committee – art.nr.27 – of the agreement, p. 45.

No matter, if it's about religious minority or an ethnic a national one, which is different from another groups of the population by its religion, the people bellowing to both categories of minorities must have the rights, to practice and profess their own religion for avoiding discriminating situations in some churches and to ensure equality of rights of the citizens, no matter what religion they practice, most of the states apply the principle of separation of the church from the state. In spite of these, some differences in the practice of this right or acts meant to prevent some people to practice it all or partially, way appear.

In proportion to the state, the religious liberties may be applied with discriminations compared to a faith or another, a religious minority or because that minority practice a certain religion.

Also, these liberties may be altered by religious intolerance, of a complete denial , of expulsion of a certain religious faith in a country or another.

Religious liberties, practiced as a rule together with another people, supposing some conditions an organized environment (attending the religious reunions, maintenance of religion institutions and places, respecting religions feasts) while the conviction liberty is practiced individually.

We specify that in the religious liberties practice of the minorities there are the some limits as in the achievement of the other groups bellowing to the people bellowing to minorities and, generally as the situation of practicing the religious rights and of other rights by people belowing to majority or another ethnic groups, the limits are these stipulated in the agreement about civil and political rights (art.18 line 3) the protection of public security of public order and health, of morality and fundamental liberties and rights of another people.

Regarding the terms between the state and minority religious, the situations are very different. In some countries the interval legislation stipulates the separation of religion from the state, leaving the religions organization and practice to different communities.

There are also states which don't pronounce opinion from the judicial point of view.

We can draw the conclusion, theat the international documents stipulate a minimum standard that the states must obey, consisting in faith liberty, the liberty of embracing any religion, the right to a free practice of it and at the religious education.

According to the some international document, the states are obliged not to make discriminations among the people under their

jurisdiction, because of religion or conviction and allow the maintenance and development, practice and profess of their own religion[8].

In Romania, according to Constitution (art. 6)[9], the state grants the people bellowing to minorities the right to preserve, develop and express their religious identity.

The Romanian state also grants, the liberty of religious education, according to the demands proper for every religion.

As for a liberty of religion, the Constitution stipulates that this cannot he altered by any means. Nobody can be obliged to adopt an opinion or to embrace a religious faith against his beliefs.

Religious cults are free and they organize themselves according to their own rules, after the conditions imposed by the law.

They are autonoms in their relationship with the state and have its support.

In Romania, there are churches and religious cults which include believers bellowing to national minorities.

The revision law for Romania Constitution nr. 429/2003 was approved by the national referendum in 18th 19th October 2003 and it can into force on the 29th October 2003, the date of its publishing in the Official Gazette of Romania ,Part.I, no. 758 from October 29th 2003,of the Decision of the Constitutional Court no. 3 from October 22 nd 2003 for the confirmation-of the result of the national referendum from October 18-19 2003 regardind the Law for revising the Romanian constitution.

Romania Constitution revised was republished in Romania official gazette - Part I nr. 767 – in 21stOct. 2003.

Romania Constitution in its initial form was adopted in the meeting of the Constitment Assembly in 21st Nov. 1991, was published in Romania, official gazette -Part I nr. 233 – in 21st Nov 1991 and came into force by the notional referendum in 8th Dec 1991.

With the participation of religious cults it was issued and later adopted by the Parliament the law nr. 489 in 28th dec 2009 about the religious liberty and general function of the cults, that came into force in 8th January 2007[10].

This law was meant to create the corresponding background of faith liberty manifestation according to Romania Constitution and the international regulations orders our country is part of it .

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[8] See Tudor Tanasescu – minorities – Institutional and Legislative – Sitech Printing House Craiova -2006 – p. 110.

[9] constitution,with the re-updating of denominations and the texts being numbered in a new manner (art. 152 has become , as republished, art. 156).

[10] published in the Official Gazette nr.11 – 8th January 2007.

The Constitution is based on the fundamental principles of liberty and autonomy of the cults , as well as those regarding the law of discrimination and the equality of all the citizens of state in practicing the fundamental rights and liberties of the human being.

One of the main elements of the legislation in force is that of the entire equality of 18 religious cult witch function in Romania ,there aren't minoritary churches discriminated ascending to the number of believes or to their ethnic or confessional affiliation.

In Romanian all the cults develop their activities with no restriction, according to their own traditions, beliefs , religions doctrines and specific rituals to each of them.

So, the clergy and the believers of Romania confessions, have the possibility to use their native language in all the fields of their specific activities: religions services, cult acts, administration and theologic education.

The religious life is developed mainly in the cult buildings . Their existence and function is the expression of the believes right to practice their cult.

The religious education is extended for different confession.

In order to offer normal conditions for the religious life, the Romanian state give from the budget a part from the clergy salaries and pay the salaries for the didactic staff in the theology schools, as well as funds for building and fixing the churches.

The churches with believers bellowing to national minorities have relationship with churches from abroud and attend interconfessional dialogues and activities.

As in the international regulations (ex. The international agreement regarding the civil and political rights) in the national legislation there are stripelated dispositions about some constraints in the religions rights practice and of the religious liberties where these are necessary to assure public security or the protection of the fundamental liberties of the human being (ex. Nr.487 law – regarding the religions liberty and the general function of the cults – art.2 – line 2) .

Conclusions

The conclusion is that religion isn't a compulsory element for discrimination of a group from majority or for another groups, so for a minority existence, but it's considered to be essential for the ethnic identity of people who belong to minorities.

We also specify, that out of the stipulations of the mentioned documents it doesn't derive the obligativity of the states involved to support the religious activities financially.

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FUNDAMENTAL HUMAN RIGHTS IN EUROPE PAST AND PRESENT

Cezar Tită[*]
Dana Tită[**]

Abstract

In Europe, the legal systems are almost totally rooted in the Roman Law system, during their evolution, the legislator inserting different rules confirming fundamental rights to the individuals and practical means for their protection.

In the twentieth century, ideas were developped, especially in the political area, ideas leding to the foundation of ideologies that were the basis of the totalitarian states,which did not offer the individuals those specific means to exercise, grant and defend them, denying the existence of the fundamental human rights.

Such was the the Soviet totalitarian system, which is a standard for the other similar systems.

After the fall of these systems , it seemed that the human rights would be homogeneously imposed to the legal systems of all the states, but the emergence of the terrorism, with its consequences, involved a rethinking of the way of approaching the issue of the individual's fundamental rights, and now, for safety and security reasons, these rights must be under a certain limitation.

Keywords: *human rights, ideology, terrorism, globalisation.*

Introduction

In Europe, the legal systems are derivatives of the Roman legal systems, as, each of them, are real examples of adapting it to different socio-economic situations. Within each legal system, the legislator has placed various instruments through which the individual freedom is guaranteed in opposition with the state influence, the rights and interests of each person are respected and the limition of the state's intervention can also be accomplished in the relations between individuals.

[*] University lecturer PhD., Faculty of Law and Public Administration Rm. Valcea, Spiru Haret University; c.tita.dvl@spiruharet.ro

[**] Lecturer (Trainee for a Doctor`s Degree), Faculty of Law and Public Administration Rm. Valcea, Spiru Haret University; d.v.tita.dvl@spiruharet.ro

"The individual must be able to move freely, to have full access to education, to decide the economic area into which he or she will act, not to be under the authority of the administrative authorizations"[1].

In a total opposition to this conception about the rights of the individual, which must be protected, especially in relation to the state, as a controlling power, there are the concepts which are the basis of the law systems of the totalitarian states.

Any victorious revolution aims at the achievement of an immediate denial of the past and beginning of achieving own guiding ideas and the events underlying the establishment of Soviet regime in Russia and the Nazi regime in Germany, brought to nothing else. Ideologies, namely the totalitarian ideologies, contain an idea into themselves, an idea developed inside their inherent mechanism, which seems sufficient. " The totalitarian ideologies though, using the purely negative constraint of the logic system as the movement of thinking, prohibited the opposites, opening a line of thought imposed by the force of mind (aiming at the nature, as in racism, or history, as in communism), by the processes of bringing arguments that could not be interrupted by any idea or any new experience, as <<ideologies always accept the assumption that a single idea is sufficient to explain everything in the development process and starting from a premise that no experience can learn anything because everything is included in the coherent progression of the logical deduction>> "[2]. Once that totalitarian regimes come to power, "these ideologies of the respective movements (racism, communism) replaced the hostility concept with the conspiracy concept, need << political soldiers >>, the << professional revolutionists>>, post-Stalinist / post-Leninist communist regime announced riots, the<<disappearance of the politics>> (tacitly assuming a general policy of standardizing the human society), in which the ideas of the communism, totally including the masses, became an exclusive and unique force"[3]. In the totalitarian regimes, ideology tends to replace the positive laws, substituting them, leading to a total terror, as the final result of achieving movement, the regime claiming that its entire activity is objective, beyond any doubt, having an explanation for each action.

As regards the judicial power, the totalitarian regimes acts towards the cancellation of magistrate independence by the principle of

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[1] Losano, G., Mario, *Great Judicial Systems. Introduction to the European and Extra European Law*, All Beck Publishing House, Bucharest, 2005, p. 66.

[2] Ardent, H., *Origins of Totalitarianism*, Humanitas Publishing House, Bucharest, 1994, p. 609, cited in Boldurean, C. M., *Law and Rationality*, CH Beck Publishing House, Bucharest, 2007, p. 214.

[3] Boldurean, C. M., *Law and Rationality*, CH Beck Publishing House, Bucharest, 2007, p. 215.

purification and abolishment of the immovability principle, the career of a judge being solely in the hands of the executive power. However, the law applicable at that time knew specific characteristics[4]: class character, secrecy, ideological character. The human rights were not obviously denied by any totalitarian state constitutions, but their defense and their enforcement were purely formal, without any rules to ensure their effective protection. " The constitutional rule does not provide concrete means to guarantee the exercise of such rights. Nor the legislation based on inferior judicial force establishes any system of practical granting the fundamental rights. Many of the repressive actions - the deportation law, the nationalization law. – did not allow the control of their enforcement by the court, leaving room for any form of abuse in their application (...) the Communist regime did only established but a formal procedure to grant the fundamental rights, which could not produce any real results"[5].

A. The Law System in the U.R.S.S.

After the victory of the revolution of October 1917, the forces of Marxist origin faced with the national reality, in the achievement of guiding ideals. " The Marxist theory - a theory which regards taking power and not its exercise - was useful to the abolition, for a longer period of time, of the Law and State. Concretely, the Bolsheviks had to find that both the Law and the State were indispensable in an initial transition period whose length can not be specified"[6].

In order to eliminate the traces of the Tsarist society, the Bolsheviks who were in office, used even legal instruments created by Tsarist society, thus realizing a transfer of a part of the past, refused by the new rulers, towards the future society.

The human spirit is pure freedom, without material needs, hovering above reason. Science, ethics, aesthetics are not moral or aesthetic science in itself, but ways of translation into reality of the fundamental opposition between the bourgeois and the proletarian civilization. The absolute freedom, the one close to miracle, is exiled, for the first time, by the spirit. Thus, the Marxism is not only in opposition to the Christianity, but to all the idealistic liberal ideas, for which the human being does not determine serious consequences, but consequences or reason determine the human being. Therefore, the Marxism is in

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[4] After *The Final Report of the Presidential Commission for the Analysis of the Communist Dictatorship in Romania*, Humanitas Publishing House, Bucharest, 2007, p. 202.

[5] *The Final Report of the Presidential Commission for the Analysis of the Communist Dictatorship in Romania*, Humanitas Publishing House, Bucharest, 2007, p 208-209.

[6] Losano, G., M., [1], p. 146.

opposition with the European culture, affecting the smooth curve of its development.

On the other hand, the break with liberalism is not all, and from one point of view, the Marxism continues the traditions from 1789, Jacobinism seeming to inspire the Bolsheviks to a large extent.

Both legally and scientifically, the Bolsheviks claimed that their adopted legal system is completely new and unrelated to the bourgeois legal system, but this is impossible as long as using the concept of "law" leads to the idea of history of law and to the specificity of the national law.

Starting from the wrong premises, of breaking all links with the previous legal system, the Bolsheviks committed several errors, one of which is trying to eliminate any relationship with the country's history (seen as that of the vicious and exploitative social class) and the second one being the recovery of the tsarist history to explain the dictatorship of the proletariat, as a continuation of the autocracy of the tsar[7].

Although the Soviet law has its merits, in agreement with the ideology which promotes it, and thus it's main source of positive law is the rule of law, a general and abstract law, on the one hand, and secondly, and there is the need, and it is put into practice, of encoding, the difference between the systems of the capitalist countries as a result of different relationships coming out from the production activities.

The Soviet legal system adopted several codes, labor, criminal, etc., which clearly shows the accession of the USSR codes to tradition, which is truly active into the Western European, but the content the Soviet codes was full of political ideology. The purpose and the nature of the Soviet law is in full agreement with the governmental policy, its task being to contribute to a society in opposition to the Western Imperial one, but also being an imperial law, because, with the inclusion of other states in the Soviet Union it imposed its models on to these states too, no matter if they were in agreement with the national nature and traditions.

In the area of the private legal relations, the individual ownership of a property was replaced by a state ownership, and in the public relations area, the state, with all its powers and components was replaced by a single party, these specificities contributing to a social organization in opposition with the Western European one.

According to Mario Losano [8] we can identify six stages in the evolution of the Soviet law: the War Communism, the New Economic Policy (NEP), the first five-year plans, the Stalinism, the thaw. The first stage was a chaotic one, as the Soviet Union tried a transition to the new

[7] Apud Losano, G., Mario, [1].
[8] Losano, G., Mario, [1].

law, without being able to substantiate the interpretation and enforcement of the legal system on the old Tsarist sources. "The judge - who had to give sentences in legal cases despite all the legal vacuum - could refer to his own revolutionary consciousness"[9], especially that after 1922 the judges were forbidden to use laws or judicial practice of the Tsarist period.

The next period, during which the new economic policy was applied, was marked by multiple changes, especially in the legal area of the individual, bringing prejudices to the protection of fundamental human rights. Both in the area of the criminal law and civil law at limitations of individual rights occurred, which could be exercised "in contradiction with their socio-economic purpose"[10], a purpose identified by the party and state organs, leading to arbitrariness and violation of the individual's legal area.

The private trade was completely abolished, together with the implementation of the five-year plans, apart from the nationalization of the industry and the collectivization of the agriculture, which meant another limitation of individual rights. In the area of private individual relations, the solution of any disputes was given in agreement with the requirements of the five-year plans, not with the provisions of the Civil Code rules.

After the Second World War, a high concentration of political power was recorded, and the Secret Police actions were used more than the legal standards, in the area of the social control. During this period of time, marked by the leadership exercised by Stalin, we can notice a return to the Russian nationalism, through which the law system was reevaluated.

In the Stalinist era, at least in appearance, legal instruments were restored, codes were enacted, the arbitrariness in economic relations between public institutions was eliminated. However, the will of the party-state and the political system were ubiquitous, while the individual fundamental rights were overlooked. The main characteristic of this period is that the Soviet law, in the context of the end of the war, is also imposed to other states than those who belonged to the Union, thus replacing the legal system of each state with the one of Soviet origin, leading to massive and serious violations of fundamental human rights.

After Stalin's death, the Soviet law ceased to be a model for other socialist states, and the Marxist ideology itself became unitary. Later on, in 1991, in the European general context of the fall of the totalitarian regimes and democratization of the former Marxist countries , the Soviet

[9] Losano, G., Mario, [1], p. 165.
[10] Article 1 of the Soviet Civil Code, quoted in Losano, G., Mario, [1], p. 166-167.

law was replaced by one in agreement with the realities and the requirements of the modern world, into which we can find, in abundance, the guiding principles of the natural law.

B. The Human Rights in the Context of the Current Fight Against Terrorism

Although it may have started long before, that moment of "September 2001" can be considered the starting point of a reverse process which gave rise to the fall of the communism in Eastern Europe, namely the growing importance of the human rights and their protection.

War is a miserable event, which can only make a certain power to compete and thus to act against another one by intervening into its affairs, at its sole discretion. When a party is wrong, uses force to impose its will, a true situation both in the individual relation area and the one of the relations between states.

"Always or almost always, the great changes were triggered by events leading to devastating effects: wars, famine, threatens of the human and natural forces, acts of terrorism, arming races, nuclear threats, uncontrolled technology and biotechnology, development of the organized crime, economic, financial and environmental crises etc..

In other words, the societies responded only after the occurrence of such events with profound negative effects on their normal status. The occurrence of such events reduces optimism and hope"[11].

Nowadays, a universal standard time is on the verge of coming into being: before and after Ground Zero - the destruction of the World Trade Center. Starting from this point we need to adjust our clocks, to see this moment as a new Greenwich meridian to regulate our mental pendulum. After September 11, freedom became a "sine qua non" requirement for the protection of peace and the future development of humanity. Freedom is now an international imperative, the pin of the coexistence of peoples into the borderless terrorism era. If we want to get rid of it, we must urgently unite people and not to let it die.

In the name of freedom, each state tries to take the best steps for the protection of its citizens and their property. In the name of freedom decisions are taken to limit the fundamental rights recognized by the international instruments of protection. In the name of freedom, freedom itself is limited. The whole process of recognition and standardization of the individual rights seem to face a setback, due to the invisible and impossible to locate the danger of terrorism. "The symbolic effectiveness of the legal rule must be understood as its ability to produce certain

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[11] Voicu, C., „*Terrorism and Globalization*", *Globalization and national identity* in volume, The Ministry of the Interior Publishing House, Bucharest, 2006, p. 301;

individual or collective representations, some reactions and answers to a phenomenon. This symbolic function, in its turn, has a double dimension:

On the one hand, the adoption of incriminating rules produce a strong reaction in connection with the fact that the claims or social needs, covered by these rules, will be met, regardless of the actual possibilities of their practical application.

On the other hand, the adopted rule induces confidence to the population in connection to the government decisions, meant to protect the legitimate interests of the citizens, by creating an arsenal of a regulatory, procedural and organizational type, whose main purpose is the effectiveness of the repressive apparatus against the phenomena and obviously dangerous individuals"[12]

International organizations are powerless in facing the danger, unable to protect against terrorism, due to the fact that war is not against a particular state, but against individuals, which are anywhere located on the globe, communicating among themselves through the Internet, with all the products of democracy to destroy it.

The United States built a national security strategy, whose purpose is to fight and win the war against terrorism and to promote and defend freedom, as an alternative to dictatorship and despair[13]. "The most powerful idea, coming out of the contents of this document is thus formulated:" America is now facing an alternative of choosing between *fear* and *confidence*, America chose the path of *confidence*. " This excludes isolationism and protectionism, retreat and budget restrictions, this means taking the lead instead of isolation, and encourage further development of free trade and conduct the fight against all major challenges, firstly against terrorism"[14].

In the area of the human rights, all this struggle against terrorism is grafted on limitations of the exercise of certain recognized human opportunities: the right to life, the freedom of movement, the freedom of conscience and expression, the right of privacy.

The European Convention of Human Rights, in Article 2, § 2, "contains an exception clause, which does not appear in the similar general conventions, that "the use of force became absolutely necessary" to protect the public order (in some cases) and if it caused death, it is not a violation of the Convention"[15]. This exception was used in practice, checking whether the use of force was excessive or not, but strictly

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[12] Voicu, C., *General Theory of Law. University course*, Legal Univers Publishing House, Bucharest, 2008, p. 321.
[13] Voicu, C., [11], p. 302.
[14] Voicu, C., [11], p. 302-303.
[15] Sudre, Fr., *European Law and International Human Rights*, Polirom Publishing House, Iasi, 2006, p. 215.

proportionate to achieving the authorized purpose[16]: terrorists, suspected of intending to commit an attack were killed by the security forces during their arrest.

As regards the restrictions relating to the freedom of movement, each state is able to regulate how they apply and to whom, but "these restrictions must be" necessary in a democratic society "and to satisfy the requirement of proportionality"[17]. In the area covered by this right, we can mention those law restrictions and limitations that the citizens of certain countries are subject to, people who wish to enter the territory of another state, who need to acquire an entry visa before leaving the national territory, and the interdiction of certain people from entering the territory of another state.

The right to private life and family protection is also influenced by a series of prejudices and limitations, in the same context of the fight against terrorism. Knowing that the terrorists use the most modern means of communication, the tapping of phones, the interception of pager messages, messages sent over the Internet, or the conversations of prisoners at the speaker, are considered as legal. All these prejudices and limitations of the human rights must subordinate, firstly, to the principle of proportionality, and, secondly the need of their performance, for the national security, to be proven with certainty. Likewise, " the national authorities are obliged to take positive steps to prevent their disclosure (to the media) "[18]

The terrorism, the one that requires the states to limit the measures of exercising the fundamental rights of their citizens, is an important issue in respect of the individual legal area. As long as the terrorist - the one who deliberately kills civilians, on the grounds of defending a cause - can not be clearly identified in order to maintain the safety and security of each and every citizen, the states limit the rights and freedoms previously acquired by the citizens.

Given the purpose for which these limitations are imposed, namely the annihilation of the terrorist networks and the regain of freedom, we believe that it is necessary, with the only amendment that, the principle of proportionality between the measure taken and limited rights should always be respected. The fight against terrorism seems to have two phases: *on the short-term*, the fight involves the use of the military force and other instruments of national power to "kill or capture

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[16] *Mac Cann cause against Great Britain*, September 27, 1995, cited in Sudre, Fr., [15], p. 215.
[17] Sudre, Fr., [15], p. 248.
[18] Sudre, Fr., [15], p. 319.

terrorists. *On the long term*, winning the war is conditioned by winning the battle of ideas"[19].

Conclusions

This battle of ideas, of imposing those that are man centered, with its fundamental rights and freedoms, arising from the natural law, can only be won in full democracy and "democracy can not be imposed by the help of a gun ... "it does not rise from the ashes of the war and a history of endeavors, civic action and economic development. It is unlikely that democracy can be built with materials exported by a conquering army, a liberating one, or in the shadow of the U.S. private companies and the American NGOs. Democracy grows slowly and needs an indigenous struggle, the cultivation of local civil institutions and a healthy civic spirit, which mainly depends on education"[20]. Last but not least, observing the reality, it is clear that the current global society started in a direction that is not that of humanity, morality, natural life, its place being taken by the television, internet, overwhelming technologies, the purpose of all being the accumulation of goods, money playing the most important role. Nowadays the "traditional European man, balanced, grown into an anthropological culture disappears or turns into a commodity or a show. The place of the natural life coordinated by justice, truth and beauty, is taken by the scientific super-specialized culture, the mediocre mass culture or consumer culture"[21].

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[19] Voicu, C. [11], p. 308.
[20] Idem, p. 311-312.
[21] Popa, I., I., *Moral Substance of the Law,* Universul Juridic Publishing House, Bucharest, 2009, p. 399.

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THE ROLE OF THE SECURITY COUNCIL IN THE MAINTENANCE OF PEACE AND INTERNATIONAL SECURITY

Ina Raluca Tomescu*

Abstract

The Security Council has primary responsibility, under the Charter, for the maintenance of international peace and security. When a complaint concerning a threat to peace is brought before it, the Council's first action is usually to recommend to the parties to try to reach agreement by peaceful means. In some cases, the Council itself undertakes investigation and mediation. It may appoint special representatives or request the Secretary-General to do so or to use his good offices. It may set forth principles for a peaceful settlement.

Key words: *Security Council, international security, international disputes, threats against peace.*

Introduction

Crises which humanity is facing have their origin, usually in breach of the principles enshrined in the United Nations Charter and the difficulties that the Security Council encounters in accomplishing missions of ensuring international peace and security are due mainly to lack agreement between states.

Today we realize - more than in previous years – the tendency of some ephemeral leaders of countries to use force, firstly armed force to impose their views and to punish political leaders, states and peoples which refuse to be subordinated.

Functions and powers of the Security Council

The Security Council is one of the principal United Nations organs[1], to whom the authors of the United Nations Charter have reserved a special place in the institutional system of the organization, as a body with restricted composition invested with the main responsibility of maintaining international peace and security [2] .

The reserved special position and role of this body in the global organization structure are revealed by its composition, functioning,

* Lecturer phd., University Constantin Brâncuşi" of Târgu-Jiu, ina.tomescu@gmail.com

[1] P. Weiss, *Le systeme des Nations-Unies*, Ed. Nathan, Paris, 2000, p. 32.

decision-making system and components which they exercise. To deal with, by "rapid and effective actions", of some conflict situations, the composition of this body, in the vision of UN's founders had to meet a double requirement: on the one hand, to be confined to a small number of members, and on the other hand, to have in its composition, binding and permanent, the powers of World War II allied, their cooperation is considered a main guarantee for maintaining peace and security in post-war period.

To carry out this responsibility, the Charter gives the Security Council special powers of decision and action in preventing and resolving international conflicts, is organized to be able to function continuously, and in taking its decisions entrusts with a greater responsibility the powers, permanent members of the Council[2].

In discharging its duties stipulated in Art. 24 of the Charter, the Security Council shall act in accordance with the purposes and principles of the United Nations. Thus, the Council have been conferred the following functions:

1. *Resolve international disputes peacefully*, which is successfully accomplished only with the support and participation of all Member States based on equal chances. It is known that the fundamental reason that led to the formation of the organization was and is to protect future generations from the scourge of war, to ensure a peaceful settlement of international disputes[3].

According to Art. 34 of the UN Charter, the Council may investigate any dispute or situation which might lead to international friction or give rise to a dispute in order to determine whether the continuance of the dispute or situation is likely to endanger the peace and security. Upon completion of investigation, based on findings, the Security Council recommended to the parts that are in dispute, an appropriate method of adjustment or, if all parties in dispute so request, we recommend practical solutions. From a legal perspective, Council's recommendations have a "statement" value. But if the situation requires, may make decisions with binding effect, exercising its prerogatives and authority invested with the attributes of collective self-defense law[4].

2. *The finding of threats against peace, of a breach of peace or act of aggression*. In this situation, the Security Council may adopt these measures:

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[2] Art. 24 alin. 1 din Carta ONU.

[3] R. Miga Beşteliu, *Drept internaţional – Introducere în dreptul internaţional public,* Ed. All, Bucureşti, 1997, p. 337.

[4] D. Mazilu, *Drept internaţional public,* vol. II., Ed. Lumina Lex, Bucureşti, 2002, p. 226.

a) interim measures (Article 40 of the Charter), which shall be necessary and useful and not prejudice the rights and obligations of the parties (e.g. decision to cease-fire);

b) coercive measures without the use of force by using the army (Article 41 of the Charter), which consist of complete or partial interruption of economic relations (embargo) and of rail, sea, air, and the severance of diplomatic relations;

c) use coercive measures by using the force of the army (Article 42 of the Charter), which consists of operations performed by the air force, marine or terrestrial members of the organization[5]. *

Measures for implementing these decisions may include demonstrations, blockade and other measures of operations performed by air forces, marine or terrestrial made by the members of the United Nations, which, under art. 43, are required to provide the Security Council at its request in accordance with an agreement or special arrangements "the forces of the army, assistance and facilities, including the rights of passage, necessary for maintaining international peace and security".

d) for peacekeeping operations, which are determined by resolution of Security Council and relates to the use of military personnel under the authority United Nations in other purposes than those of coercive measures: surveillance ceasefire, respect the armistice, border controls, the interposition force UN as a buffer between hostile forces (Cyprus, Yugoslavia), maintenance of legality and order in a country at the government request (Congo), the temporal administration of a territory (Western Iran), maintaining order in areas where elections or plebiscites are made (Namibia)[6].

As noted by some authors[7], such transactions, the lack of universally accepted rules of procedure, imposed a number of peculiarities of their formation and development:

- Each of these missions is the result of an initiative of the UN Security Council or General Assembly;
- Quotas are made up of military missions, provided by Member States and / or, where appropriate, observers;
- Their mandate and its duration are defined by the UN, taking into account the peculiarities of each situation and having to have the agreement of the states on the territory of which they carry the action;

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[5] I. Cloşcă, *Despre diferendele internaţionale şi căile soluţionării lor,* Ed. Ştiinţifică, Bucureşti, 1973, p. 5-90.

[6] C. Gh. Balaban, *Securitatea şi dreptul internaţional. Provocări la început de secol XXI,* Ed. CH Beck, Bucureşti, 2006, p. 127.

[7] D. Popescu, A. Năstase, Fl. Coman, *Drept internaţional public,* Casa de editură şi presă Şansa, Bucureşti, 1994, p. 248.

- Are always placed under the authority of the UN Secretary General.

Council will be assisted and advised (according to art. 46 and 47 of the Charter) by a committee of staff in all military matters, to the employment and command of the forces placed at its disposal, to the regulation of armaments and a possible disarmament. These provisions of the Charter was followed the establishment of a global system of effective and collective security.

This system has not been done because there could not reach an agreement on general principles to lead the organization of armed forces made available to the Security Council by the UN Member States[8]. Recourse to armed forces to maintain and restore international peace is an exceptional measure, which should be used only if other ways of regulating the dispute have been unsuccessful[9].

3. *Making recommendations or decisions for peace and international security*. Recommendations on them can be made by the Security Council concerning mainly peaceful means of resolving the dispute, is essential not to resort to other means.

Besides these established functions of the Council, there can be identified other functions, as follows:

- Trust Territories supervision for functions assumed by the United Nations in the political, economic, social and education policy areas (Article 93 of the Charter);

- Provide measures for the enforcement of decisions of the International Court of Justice (Article 94 of the Charter).

Also, the Security Council meets, together with the General Assembly, positions in the field of admission of new members, members of the organization sanctions, appointment of Secretary General of the General Assembly is made at the recommendation of the Security Council, the election of the judges of the International Court of Justice etc.[10]

Jurisdiction of the Security Council in resolving international disputes peacefully

To fulfill its mission conferred by the Charter, peacekeeping and international security, but also in applying the provisions of the Charter on peaceful settlement of international disputes, Council adopted

[8] C.S. Dumitrescu, M. Stoica, *Sistemul organizaţiilor internaţionale guvernamentale şi al organizaţiilor internaţionale nonguvernamentale,* Ed. Sylvi, Bucureşti, 2005, p. 57.
[9] D. Mazilu, *Tratat privind dreptul păcii,* Ed. Lumina Lex, Bucureşti, 2006, p. 219.
[10] D. Mazilu, *Drept internaţional public,* vol. II., p. 224.

resolutions which, in reality, have the character of recommendations and, therefore, are not binding on the parties involved in conflict.

However, according to art. 34 of the Charter, states cannot prevent the Security Council to investigate "any dispute or any situation which might lead to international friction or give rise to a dispute in order to determine whether the continuance of the dispute or situation likely to endanger the maintenance international peace and security ".

Parties are obliged to work for a peaceful solution of disputes between them by peaceful means provided by art. 33 of the Charter and in cases which fail to solve one way, then they will submit to the Council of Safety. States Parties may not refuse the invitation of the Council, whenever it deems necessary to resolve the dispute by peaceful means, through one of the means stipulated in the Charter or "other means of their choice "[11].

Any initiative of a third state, which may contribute to peaceful resolution of disputes, must be considerate the parties to the dispute as being made with good will and not as an unfriendly act. Although the resolutions adopted by the Security Council are binding worthless, they are of a certain political significance. They must take into account resolutions and consider in good faith the possibility of cone shape. It is natural for states to comply with resolutions adopted by the Security Council, considering that they are the ones who gave it its role in maintaining international peace and security.

Security Council can take decisions and, unlike recommendations, these are mandatory[12]. Decisions are taken if, according to art. 39 of the Charter, the Council sees the "existence of a threat to the peace, a breach of peace or an act of aggression". In such situations can be arranged either measure which do not imply the use of armed force (Article 41 of Charter), or measures which imply the use of armed force (Article 42 of Charter).

Measures involving the use of military force can be applied only by the Security Council and no stipulation of Charter, according to art. 51, " will not impair the inherent right of individuals or collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security.[13]"

Measures taken by Member States in exercising their right to self defense must be made immediately to the knowledge of the Security

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[11] L. Dragne, *Rolul Consiliului de Securitate în menţinerea păcii şi securităţii internaţionale,* Ed. ProUniversitaria, Bucureşti, 2008, p. 64.

[12] A. Pellet, *Droit international public,* Presses Universitaire de France, Paris, 1981, p. 131.

[13] L. Dragne, *op. cit.,* p. 104.

Council, but they "will not affect in any way the power and duty of the Security Council" to act as necessary to maintain and restore international peace and security. Exercising the legitimate right to self defense is strictly determined by the provisions mentioned which limit it to produce an armed attack against a State. Such a right cannot be used in case of economic aggression or of any other type and cannot be used for prevention purposes[14].

Therefore, under the Charter, force made be used, only under a decision adopted by the Security Council, under the procedure established in the Charter for the repression of acts of aggression and in exercising the inherent right of individuals or collective states in case of an armed attack.

UN Security Council reform

The actual configuration of Security Council is that given by the UN Charter and the amendments from 1963, Articles 23 (number of members) and 27 (votes), increasing the number of members from 11 to 15.

Reforming the Security Council unanimously accepted as a necessity in the overall effort to adapt to new realities of the XXI century, has a very complex character, taking into account the proposals made would change the original concept that stood at conception of the UN Charter, namely the granting of special status of the five great winning powers from the second world war regarding political decision-making on peace and security in the world.

At the UN in 1993, there was established a working group with opened participation for all states, trying to agree a solution - package to include the change of the composition and the decision mechanism and take the working methods. If the cases of the latter, there have been some modest progress, accepting that the Council sessions should be more opened to increase the transparency of its activities and a better communication of the Member States.

Eminent personalities Panel for Threats, Challenges and Change, noted above, arrived in report submitted in December 2004 to the conclusion that the Security Council reform must meet the following criteria:

a) lead to greater involvement in decision-making of those states that contribute more in financial, military and diplomatic activity of the United Nations

[14] *Idem,* p. 105.

b) to ensure the inclusion of representative countries for the composition of the United Nations - especially developing ones - in making decisions;

c) not diminish the effectiveness of the Council of Safety;

d) to strengthen democratic and accountable nature of this body.

Upgrading Security Council "is one of the biggest challenges for the United Nations and also a decisive test in terms of its ability to reform, since behind this reform proposal is hiding, in reality, all the problems of some changes at an institutional level[14].

Even the Secretary General of the organization at that time Kofi Annan said it required "a clear vision to redefine the place of the United Nations in the era, to reaffirm their place and their role in the international community. Should restate their objectives and to redefine the means to achieve them, tending to fill the gap that exists between aspirations and achievements "[15].

Although the UN Summit agenda, in September 2005, included several provisions related to development, security, institutional reform of the United Nations (especially members of the Security Council expand the number of members of the Security Council to 25), the five permanent member states of the Council did not wish to give up their privileged role and to admit in their circle other states, which would have resulted in reducing their political influence they exert in the world.

So, on institutional reform of the Security Council it can be said that the 2005 Summit was a failure because of how states interpret the notion of reform. Permanent members will not give up the special position they hold within the Council, offered by their right to veto, and the small and medium enterprises are looking for a democratization of their organization by accepting them the Security Council.

It is obvious that, in terms of international law, the institution violates the right of veto, strictly speaking, the principle of sovereign equality of states. Enlarging the composition of the Security Council and giving a right of veto, with all its powers, to Germany and Japan or some third world countries, would help restore balance between permanent members of the Board, stable equilibrium from which will benefit the smaller members of the international community[16].

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[14] S. Moise, *Reforma Organizaţiei Naţiunilor Unite – între deziderat şi realitate,* în vol. "Geopolitica şi istoria militară în perioada post război rece", Ed. Academiei de Înalte Studii Militare, Bucureşti, 2003, p. 41.

[15] K. Annan, *We the peoples – The role of the United Nations in the 21-st Century,* U.N., 2000.

[16] V. Duculescu, *Reforma ONU – o cerinţă imperioasă a zilelor noastre,* în Caiete de drept internaţional, nr. 1/2005, Ed. Vis Print, Bucureşti, 2005, p. 23.

Conclusions

In recent years the Security Council faces a new kind of threats such as terrorism and proliferation of weapons of mass destruction. Therefore, the relevant Council in the current global security field should be expanded on aspects that reveal new international terrorism, to be enshrined in the Charter of the Council for explicit tasks, on the one hand, to give a legal framework for counter-terrorism actions, on the other hand to prevent the attitudes and possible actions that some states under the pretext of fighting terrorism.

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COMMUNITARIAN REGULATIONS ON DISCRIMINATION AND PROTECTION OF MINORITIES IN THE EUROPEAN UNION

Elise-Nicoleta Vâlcu[*]

Abstract:

The European Union was based on the principles of freedom, democracy, rule of law, respect for human rights and fundamental freedoms that are common for all Member States.

It was significantly proven that the EU made from the protection of minorities one of the main subjects of its expansion policy. The Member State's Governments efforts to fulfill the criteria of protecting the minorities imposed in Copenhagen. According to the "Conclusions of the European Council in Luxembourg on December 12-13, 1997, the compliance with the political criteria in Copenhagen is a precondition in starting the negotiations for the adhesion to the European Union".

In mid 2000, the European Council made an major step on combating ethnic and racial discrimination by adopting the Directive anti-discrimination[1] No 2000/43/EC on implementing the principle of equal treatment between persons irrespective of their ethnic or racial origin and Directive No 2000/78/EC[2] on the creation of a general framework for the equal treatment in employment and occupation.

The Charter of Fundamental Rights, proclaimed by the European Commission, the European Parliament and the European Council, following the European Council in Nice on December 7, 2000 and entered into force in 2009 alongside with the Treaty of Lisbon, which is a useful instrument in the ensemble of the mechanisms adopted by the Union to protect and promote the rights of minorities.

***Key words**: minorities, protection, European Commission, directives, implementation norms.*

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[*] Lecturer PhD, University of Pitesti, Faculty of Law and Administrative Sciences, elisevalcu@yahoo.com

[1] The European Council's Directive No 2000/43/EC on the appliance of the principle of equal treatment between persons, irrespective of their racial or ethnic origin was adopted by the European Council on June 29, 2000 and was published in the *Official Journal* of the European Communities (OJEC) No221 L180/ July 19, 2000.

[2] The European Council's Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, was published in the Official Journal of the European Communities (OJEC) No L303/December 2, 2000.

I. Introduction

The protection of minorities[3] *in Europe implies, on the one hand, the appliance of the anti-discrimination norms, and on the other hand, supporting the rights of minorities*[4].

According to Art 6 of the Treaty on the European Union, the Union engages itself to protect the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms, as well as the ones enshrined in the constitutional traditions of the Member States.

Specifically, Art 6(1) of the Treaty on the European Union (TEU) defines the "principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law", "principles which are common to the Member States". In the same meaning Art 49 of the TEU expressly states that "any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union".

II. Brief considerations on the implementation of the principle of equal treatment between persons irrespective of their ethnical or racial origin in the European Union

Art 13 of the Treaty on the European Union provides regulations on the protection against discrimination based on religion or faith, as well as on racial or ethnic origin, being an unequivocal statement of the engagement of the European Union for the promotion of a society without discrimination. The above mentioned article, allows the Council of the European Union to adopt the necessary measures for combating discrimination based on sex, racial or ethnic origin, religion or faith, disabilities, age or sexual orientation.

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[3] Regarding the institutional framework in the European Union, we note that the European Union's Monitoring Center of Racism and Xenophobia founded in 1997 with the purpose to monitor the public attitudes and those of the media regarding racial and ethnic minorities. On June 26, 2001, the Committee for Citizens Rights and Freedoms of the European Parliament adopted a report signed by Thierry Cornillet (EPP-ED, France), requesting the creation of a permanent work group who will continuously monitor the situation of the fundamental rights within the European Union.

[4] The rights of minorities are established explicitly in a number of international standards, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (called the UN Declaration); the UNESCO Convention against Discrimination in Education in its Art 5 Para 1 recognizing "the right of members of national minorities to carry on their own educational activities"; the Framework Convention for the Protection of National Minorities in its Art 14 (which, among others, prohibits discrimination based on "national or social origin", as well as the discrimination based on the "association with a national minority"); the European Charter for Regional or Minority Languages; the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (called the Copenhagen Document).

In the same manner, the Treaty of Nice amends Art 7 of the TEU[5], stating that "the Council… may determine that there is a clear risk of a serious breach by a Member State of principles mentioned in Article 6(1), and address appropriate recommendations to that State… The Council shall regularly verify that the grounds on which such a determination was made continue to apply".

The European Council in Copenhagen on June 1993 settled the so-called criteria of Copenhagen for the states that wish to become members of the European Union. Among these, the first set of criteria is known as the political criteria and emphasizes the protection of minorities with a condition that must be accomplished by the candidate states:

a) The stability of the institutions guaranteeing democracy, the state of law, human rights and protection of minorities;

b) The existence of a functional market economy and the capacity to handle the competition pressure and the forces on the European Union's market.

c) The capacity of assuming the obligations as a Member State, including the ones regarding the adhesion to the objectives of the political, economical and monetary union.

In 2000 each Member States had its own legislation on equal treatment, but the objectives, content and appliance degree of these laws varied a lot. Thus, were adopted two directives prohibiting the discrimination at the working place and in other areas such as professional training, education, access to goods and services, namely the Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of their ethnic or racial origin and Directive 2000/87/EC on the creation of a general framework for the equal treatment in employment and occupation.

After the 50th anniversary since the proclamation of the Universal Declaration of Human Rights in December 1998, the European Council decided to draw up a Charter of the fundamental rights[6] applicable for the citizens in the EU. The pursued objective was the consolidation in a single document of the fundamental rights applicable in the Union, being a political message for the citizens by reaffirming the fundamental rights at the base on the European construction. The Charter of the fundamental rights of the European Union was proclaimed by the European Commission, the European Parliament and the Council of the European Union, as a result of the European Council in Nice on December 7, 2000.

[5] Treaty of Maastricht.

[6] The Charter is founded on the communitarian treaties, international conventions, such as the European Convention on Human Rights (1950), the European Social Charter (1989), the constitutional traditions common to all Member States and the numerous declarations of the European Parliament.

Now, the Charter is annexed to the Treaty of Lisbon offering him the same legal force as the reforming treaty itself. The Charter defines the fundamental rights regarding dignity, freedom, equality, solidarity, citizenship and justice, also affirming the equality of all persons in front of law (Art 20), prohibits the discrimination on any base (Art 21) and asks the Union to protect the cultural, religious and linguistic diversity.

The anti-discrimination measures[7] are thought as to insure the equal treatment of persons while the purpose of the protection of the rights of minorities is allowing persons and communities to preserve their differences as to avoid the forced assimilation in the majority culture.

Anti-discrimination and the rights of minorities can be considered complementary answers to their issues when face the danger of exclusion and that of assimilation. It can be thought as complementary dimensions of a single comprehensive approach, called in the European Commission's reports "the protection of minorities". Thus, the Copenhagen criteria that have in view "the respect for and protection of minorities" necessary imply the protection against discrimination as well as the traditional rights of minorities.

Both the issue of the anti-discrimination measures and the one of the minorities' rights reflect issues of content faced by the minorities in different contexts, European Union-wide, mainly in Center and Eastern Europe[8].

The European Commission's reports define the "rights of minorities" as being the rights of the minority groups' members to preserve and cultivate their own identity, language and culture, as it is shown by the Framework Convention for the Protection of National Minorities and by other relevant documents.

Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of their ethnic or racial origin aims the elimination of any direct or indirect discrimination based on ethnical or racial reasons in certain areas in which are expressly stated the employment and labor conditions, access to professional training, social protection and advantages. The Directive materializes the anti-

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[7] See in this respect the European Commission against Racism and Intolerance (ECRI), General Recommendation No 1/October 4, 1996; General Recommendation of ECRI No 4/March 6, 1998; the European Parliament's "*Report on the Communication from the Commission Countering Racism, Xenophobia and Anti-Semitism in the Candidate Countries*" (COM 1999) 256-C5-0094/1999-1999/2099(COS)), on February 28, 2000, Para 13.

[8] Such subjects may be the Roma groups, but also the Russian speakers in Estonia and Latvia; see in this respect R. Wright, "*Prodi in Warming for Budapest*", Financial Times, April 6, 2001, p.2 .

discrimination norms which are comprised in various European and international instruments.

The same communitarian regulation states specific and comprehensive conditions regarding discriminatory treatments all over the European Union, including at the working place, in the social protection area (including social aid and medical care), education and in the area of the access to goods and public services, including houses.

The Directive expressly prohibits the direct or indirect discrimination based on race or ethnicity committed by the public or private organisms. We hereby mention the direct discrimination as the situation in which a person is treated in a manner less favorable than other person, was or shall be treated in such a manner based on her race or ethnicity; while indirect discrimination represents the situation in which a provision, a criterion or a practice apparently neutral would place a person of a certain race or ethnicity in a disadvantage, in comparison with other persons.

The text of the communitarian norm states a reversal of the burden of proof in the civil matters started for discrimination, as well as imposing "efficient, proportional and dissuasive" penalties, including "the payment of a compensation for the victim".

The Directive requests to the states not only to take legislative measures, but also to found organisms that will insure assistance for the victims of discrimination who have submitted complaints, to organize investigations and monitors and to publish periodical reports. The Directive recognizes the validity "of some specific measures that will impede or compensate for the disadvantages raised from the racial or ethnic origin".

III. The implementation at the national level of the principle on combating discrimination

Regarding the application at the national level, the Directive is transposed in the national legislation by the adoption of the Government Injunction No 137/2000[9]. The Romanian regulation in its modified and

[9] Government Injunction No 137/2000 was published in the Romanian Official Gazette, Part I, No 431/September 2/2000 and was approved with amendments and completions by Law No 48/2002, published in the Romanian Official Gazette, Part I, No 69/January 31, 2002. The Government Injunction No 137/2000 had another amendment and modified by: - Government Injunction No 77/2003 for the modification and completion of the Government Injunction No 137/2000 on the prevention and sanction of all forms of discrimination, published in the Romanian Official Gazette, Part I, No 619/August 30, 2003, approved with modifications and amendments by Law No 27/2004, published in the Romanian Official Gazette, Part I, No 216/March 11, 2004; - Law 324/2006 modifying and completing the Government Injunction No 137/2000 on the prevention and sanction of all forms of discrimination, published in the Romanian Official Gazette,

republished shape authorizes the initialization of litigations as an effect of ascertaining some facts or acts representing discrimination and empowers the courts to offer compensations, to withdraw the authorization of functioning of the persons discriminating, or to restore the previous situations existent before the discrimination. The institution responsible with the ascertain and appliance of contraventions against any form of discrimination, stated by the G.I 137/2000, is the National Council for Combating Discrimination[10].

Part I, No 626/July 20, 2006. Injunction No 137/August 31, 2000 on the prevention and sanction of all forms of discrimination was republished in the Romanian Official Gazette, Part I, No 99/February 8, 2007 based on Art IV of the Law No 324/2006, published in the Romanian Official Gazette, Part I, No 626/July 20, 2006, renumbering the texts. "The actual law transposes the Directive 2000/43/EC on implementing the principle of equal treatment between persons irrespective of their ethnic or racial origin, published in the Official Journal of the European Communities (OJEC) No L180/ July 19, 2000, and the provisions of the Council's Directive 2000/78/EC on the creation of a general framework for the equal treatment in employment and occupation, published in the Official Journal of the European Communities (OJEC) No L303/December 2, 2000".

[10] The National Council for Combating Discrimination (NCCD) is the autonomous state authority, which activates in the area of discrimination. In its activity, the NCCD confronted with a series of lacks and limitations of the legislative framework, issues that lead to the situation of a partial functioning of the institution, and on the other hand, were identified some needs coming from the vulnerable groups and from those who have faced issues regarding discrimination. Thus, the legal framework in the area of combating and prevention of discrimination suffered some modifications, namely: the Government Injunction No 137/August 31, 2000 on the prevention and sanction of all forms of discrimination, Government Decision No 1194/November 24, 2001 on the organization and function of the National Council for Combating Discrimination, Law No 48/January 16, 2002 approving the Injunction 137/2000 on the prevention and sanction of all forms of discrimination, Government Decision No 1514/December 18, 2002 modifying and completing the Decision 1194/2001 on the organization and function of the National Council for Combating Discrimination, Injunction No 77/August 28, 2003 amending and completing the Injunction No 137/2000 on the prevention and sanction of all forms of discrimination, Government Decision No 1279/October 4/2003 modifying and completing the Decision No 1194/2001 on the organization and function of the National Council for Combating Discrimination, Law No 27/March 5, 2004 approving Injunction No 77/August 28, 2003 which amended and completed Injunction No 137/2000 on the prevention and sanction of all forms of discrimination, Government Decision No 1258/August 13, 2004 approving the National Plan of Action for Combating Discrimination. Latest modifications brought to the legal framework were made by Law 324/July 14, 2006 modifying and completing the Government Injunction No 137/2000 on the prevention and sanction of all forms of discrimination and subsequent by the republished Injunction No 137/2000. The most important elements that have suffered changes were the ones in the area of the independence of the National Council for Combating Discrimination, its structures and attributions, by reorganizing the National Council for Combating Discrimination and its definition as an autonomous institution under parliamentary control, guarantor of the public interest and of the persons in the area of respecting the principle of non-discrimination.

Restating the communitarian regulation, Art 2 Para 1 defines the term of discrimination, for that in Para 2 and 3 to state, each on a row, the two forms and the communitarian text, respective direct[11] and indirect[12] discrimination.

The amended form brings as a novelty element the concept of "mediation" in the debated issue, thus in the meaning of the present injunction, the elimination of all forms of discrimination is achieved by:

a) The prevention of any discriminating action, by establishing special measures, including some affirmative actions, for the protection of the disadvantaged persons who do not enjoy of equal chances;

b) Mediation by amicable settlement of the conflicts rose after committing certain discriminating actions.

For combating the discrimination[13], the Council exerts its attributions, at the application of a natural or legal person or ex officio in the next areas:

a) preventing discrimination
b) mediation of discriminating actions
c) investigation, recording and sanctioning discrimination
d) monitoring the discrimination actions
e) special assistance for the victims of discrimination

Specifically, according to Art 20 the person who considers discriminated can inform the Council within a year since the committing of the offence or since the moment in which she could have known about the offence, her application being finalized with a decision stated by the Directorate[14]. By the submitted application, the person who considers discriminated has the right to request the elimination of the consequences of the discriminatory actions and the restoration of the previous situation. The Directorate establishes specifically measures to ascertain the existence of discrimination, with the mandatory summon of the parties, without the missing of the parties to hamper the Council to solve the litigation.

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[11] Any active or passive behaviour which, by its effects, favourites or disadvantages unjustified or subjects to an unfair or degrading treatment a person, a group of persons or a community towards another persons, group of persons or communities attracts the civil liability according to the actual injunction, if it does not fall under the incidence of the criminal law.

[12] Are discriminatory, according to the actual injunction, the provisions, criteria or practices apparently neutral which disadvantages certain persons… towards other persons, outside the case in which these provisions, criteria or practices are objectively justified by a legitimate mean, and the methods for achieving this purpose are appropriate and necessary; see Art 2 Para 3.

[13] Art 19.

[14] See Art 23 Para 1.

Regarding the burden of proof, the person interest has the obligation to prove the existence of some actions that allow the presumption of the existence of a direct or indirect discrimination, and the person against who the application was addressed has the burden of proving that the facts are not discriminating. In front of the Directorate of the Council can be invoked any mean of proof, including audio or video records and statistic data. The decision of the Directorate of solving an application is adopted within 90 days since the notification and comprises: the names of the Directorate members who have issued the decision, names, domicile or residence of the parties, the object of notification and the statements of the parties, the description of the action of discrimination, the *de facto* and *de iure* reasons that found the decision of the Council, the means of paying the fine, if necessary, the attack ways and the term in which this right can be exerted. The decision is communicated to the parties within 15 days since adoption and become effective from the moment of communication. The decision of the Directorate can be attacked in the administrative court.

In the meaning of the provisions of the injunction consolidated by Law 324/2006, the person who considers discriminated can submit, in front of the court, an application for compensations and the restoration of the situation previous the discrimination or the annulment of the situation created by the discrimination, according to common law. The term for submitting the application is up to 3 years and starts from the moment in which the discrimination was committed or from the moment in which the interested person could have known about the offence. The litigation is judged with the mandatory summon of the Council.

The person interested has the obligation to prove the existence of some actions that allow the presumption of a direct or indirect discrimination, and the person against who the action was started has the burden of proving that the facts are not discriminating. In front of the court it can invoke any mean of proof, including audio and video records or statistic data.

On demand, the court may dispose the withdrawal or suspension by the competent authorities of the authorization of function of the legal persons who, by a discriminatory action, cause a serious prejudice or, who, even if cause a minor prejudice, constantly break the provisions of the actual injunction. The decision of the court is communicated also to the Council.

The non-governmental organizations that have as purpose the protection of human rights or which have a legitimate interest in combating discrimination:

- Have an active procedural quality in case in which the discrimination manifests in their area of activity and prejudices a community or a group of persons;
- Have an active procedural quality also in the case in which the discrimination prejudices a natural person, at the latter one's demand.

Conclusions

There are notable differences between the Member States regarding their availability to recognize minorities, to protect their rights and to guarantee their political implication. With all this, we can talk about a standard regarding the protection of minorities at the EU's level, even if are considered the international engagements assumed in the past few years by the Member States, the communitarian initiatives in combating discrimination and the European Union's policy.

Also, the Member States should insure a greater consistency in their own legislation and practices for the protection of minorities, thus assuming the firm engagements towards the European Union's institutions in this respect.

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The European Council's Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, was published in the Official Journal of the European Communities (OJEC) No L303/December 2, 2000;

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BRIEF CONSIDERATIONS ABOUT THE LEGAL PROTECTION OF THE ROMA COMMUNITY IN THE EUROPEAN CONTEXT

Elise-Nicoleta Vâlcu[*]
Florin-Anton Bota[**]

Abstract

The majority of Romany population today confronts with a pretty serious situation in most European states. Discrimination is widespread in the public and personal life, including the access to public places, education and employment, health care and housing services. The European Council and the European Union can and must play an important role on the improvement of their legal status, of the level of equality and life conditions.

In the European Council's Recommendation No 1203 (1993) on the Romany population in Europe, the Parliamentary Assembly emphasized the necessity of their social protection and convicted the different forms of discrimination in the Member States of the European Council. Though the international organizations, national governments, local authorities and non-governmental organizations laid serious efforts, the purposes established by this Recommendation were fulfilled in a limited measure.

The Council of Europe's Recommendation No 1557 (2002) on the legal situation of the Romany population in Europe offers a new approach regarding the Romany, based on the significant changes that took place in Europe.

In view of the fact that the issues of the Romany in the area of education are the result of the educational policies, at the level of the Council of Europe was adopted the Recommendation[1] *(2000)4 of the Committee of Ministers to Member States on the education of Roma/Gypsy children in Europe.*

[*] Lecturer PhD, University of Pitesti, Faculty of Law and Administrative Sciences, elisevalcu@yahoo.com

[**] Lecturer PhD, University of Pitesti, Faculty of Economic Sciences,

[1] Adopted by the Council of Ministers on February 3, 2000, at the 696th Assembly of the Delegates of Ministers.

In 2006, under the care of the Council of Europe was drafted the Recommendation[2] (2006)10 of the Committee of Ministers to Member States on better access to health care for Romany in Europe.

Key words*: minorities, convention, education, health care, recommendation.*

I. Introduction.

Since the end of the 19th century, the majority of the Roma communities were pushed to the outskirts of the modern society, by the economic, political and social life standard.

Despite the efforts laid in the social sector, the market economy, especially its neoliberal version marginalizes the social disadvantaged groups, including the Roma groups.

Legally[3], the Romany was not treated as an ethnical or national minority in all European states, before 1993. Until the present, this issue was solved by many European states.

The protection of the national minorities was on the agenda of the Council of Europe even since the beginning of its activity, and in the present the issue of the protection of minorities is one of the main activities of this international organism.

The fundamental document applicable to all minorities recognized by the Council of Europe is the Framework Convention for the Protection of National Minorities[4] representing the first international legal instrument designed for the protection of the rights of national minorities. This convention defines a series of objectives which the parties engage to achieve by their national legislations and policies, namely:

a) Equality in front of the law

b) Protection of their identity, religion and language. In this regard, Art 5 of the Framework Convention states that the "parties engage themselves to promote the conditions allowing for the national minorities

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[2] Adopted by the Council of Ministers on July 12, 2006 at the 971st Assembly of the delegated Ministers.

[3] Romany are legally recognized as a ethnical or national minority group in Austria, Croatia, Czech Republic, Hungary, "Former Yugoslav Republic of Macedonia", Norway, Poland, Romania, Slovakia, Sweden, Ukraine and the Federal Republic of Yugoslavia; b. as a traditional national minority in Finland; c. as a racial group protected by the Racial Relationship Act in 1976, in the United Kingdom of Great Britain. Romany do not have a special legal status in Belgium, Denmark, Germany, Greece, Italy, Holland, Sweden, Slovenia and Switzerland. Romany's political parties are registered in Croatia, Czech Republic, Hungary, "Former Yugoslav Republic of Macedonia" and Slovenia.

[4] The Convention was adopted in Strasbourg on February 1st, 1995 and entered into force on February 1st, 1998. Romania ratified the Framework Convention by Law No 33/April 29, 1995.

to maintain and develop their culture, as well as keeping the essential elements of their identity, namely their religion, language, traditions and cultural heritage".

II. Theoretical approaches on the Romany minority's legal status and the special rights recognized for them

As to what regards, specifically, the legal situation of the Romany in Europe, at the level of the Council of Europe were designed certain documents solving the issue on the improvement of their legal status, the equality level that they should enjoy and of life conditions.

Specifically, creating the Recommendation 1557 (2002) on the legal situation of Roma in Europe, the Parliamentary Assembly calls Member States' attention on the priority given to the issues of the Roma minority in the following general conditions, necessary for improving the European situation of this minority:

a) To resolve the legal status of Roma[5].

b) To elaborate and implement specific programs to improve the integration of Roma as individuals and Romany communities as minority groups into society and ensure their participation in decision-making processes at local, regional, national and European levels.

c) To guarantee equal treatment for the Romany minority as an ethnic or national minority group in the field of education, employment, housing, health and public services.

d) To develop and implement positive action and preferential treatment for the socially deprived strata, including Roma as a socially disadvantaged community, in the field of education, employment and housing.

e) To take specific measures and create special institutions for the protection of the Romany language, culture, traditions and identity.

f) To combat racism, xenophobia and intolerance and to ensure non-discriminatory treatment of Roma at local, regional, national and international levels.

On the protection of the language of the Roma minority, the international standards emphasize that the states should take measures in order to ease the use of the minorities' languages in contact between public servants and the Roma individuals. These standards also emphasize the right of the persons belonging to a national minority "to

[5] Are had in view the following aspects: to recognize Romany individuals as members of an ethnic or national minority group; to acknowledge the minority group status of Romany communities; to guarantee individual and community minority rights for Roma; to provide for Roma, legally residing in the country in which they live, with the full opportunity to obtain an identity card, in the countries where it exists; to provide Roma with the social rights protected by the revised European Social Charter.

use freely and without interference their minority language, in private and in public, orally and in writing"[6].

In the same respect, at the level of the Council of Europe was drafted the European Charter for Regional or Minority Languages[7] with the purpose of guaranteeing, protecting and promoting the minority languages as a decisive element of the European cultural patrimony.

The Framework Convention for the Protection of National Minorities also states the right "to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public"[8] – fact interpreted as a requirement for the states to not restraint the use of the language in the administration of private agents[9].

Art 14 of the European Convention on Human Rights (ECHR) and Art 26 of the International Covenant for Civil and Political Rights (ICCPR) explicitly prohibit discrimination based on language.

Romania has a legislative framework which allows the use of minorities' language in official relations in the counties in which the minority represents at least 20% of the population[10].

An important subset of the linguistic rights has in view the usage of the language in education and the education received in areas with a special interest for the members of the community.

In this respect, Art 12 of the Framework Convention on National Minorities stipulates that its member states have the obligation to offer the appropriate conditions for training the teachers, access to manuals, thus facilitating the contacts between students and teachers of different

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[6] Art 10 Para 1 of the Framework Convention for the Protection of National Minorities (FCPNM).

[7] The document was drafted in 1992 and entered into force in 1998.

[8] Art 11 (2) of the Framework Convention for the Protection of National Minorities (FCPNM).

[9] The Oslo Recommendations, p. 26.

[10] In the same meaning states also the Slovakian law in the use of national minorities' language, No 184/1999 adopted on July 10, 1999. Also, the European Commission stated in "2000 *Regular Report on Slovakia*", p.20 that "Apparently in many areas the national minorities do not use their rights stated by the law because of the lack of information. For example, in no Roma village is used the Romany language". The Slovak Government drafted a list of 656 villages in which the minorities represent at least 20% of the population, including 57 villages where this criterion is fulfilled by the Roma minority". In Czech Republic, the legal provisions state similar rights regarding the language in the areas where minorities represent 10% of the population. In Hungary each person must use freely his or her maternal language anywhere and anytime he or she wishes. In Slovakia the right of using the minorities' rights in relations with public servants is granted only to Hungarian and Italian minorities. In Poland, the relations with the authorities must be developed only in Polish "except the cases in which the detailed regulations state differently".

communities. The Convention recognizes the right of the minorities to create and administrate educational institutions.

According to Point 41 of the Recommendation 1557 (2002) on Legal Situation of the Roma in Europe, the Member States should consider the Roma education as being a primordial issue. Thus, the national Governments must make concentrated efforts to fight the ethnical discrimination in schools. The national legislation must include appropriate provisions prohibiting discrimination in education and must place at the victims' disposal effective compensations. States must make efforts in order to eradicate the segregationist practices in schools regarding the Roma children, especially, practices regarding their orientation towards schools or special classes for children with deficiencies. Equal opportunities in education must be offered for the Roma children.

Recommendation No R (2000) 4 establishes the directive principles of an educational policy for the Roma children. Specifically, it is recommended that the educational policies designed for the Roma children should be accompanied by appropriate resources and flexible structures that will reflect the diversity of the Roma population in Europe and to take into account the existence of certain groups with a mobile or semi mobile life style. In this meaning, it is recommended for the states to resort to a distance educational system, based on new communicational technologies.

Therefore, the scholar programs and the didactical materials should be conceived as to respect the cultural identity of the Roma children.

Thus, it should be inserted the Roma history and culture in the pedagogical materials to reflect the cultural identity of the Roma children. Also, it should be encouraged the participation of this community's representatives to the elaboration of the didactical materials on the Roma history, culture and language.

The Czech, Hungarian, Lithuanian, Polish, Romanian and Slovak legislations allow the establishment of classes and schools with teaching in minorities' language. The Slovenian law provides these rights only for Italians and Hungarians, but not for Roma.

In practice, in all these states, except Romania, there are few classes with teaching in Romany. The Hungarian Roma minority has a number of schools supported by a combination of private and national sponsorships. The Czech Government allocated financial support to a number of private educational initiatives and supported the placement of assistances for Romany in primary schools all over the country to ease the study for the Roma children.

At the university level, Bulgaria recognizes a university degree for the study of the minorities' language, among which Roma. In Estonia and Latvia, the state finances schools with teaching in Romany, though the educational policy in both countries favorites the transition to bilingual schools.

In Romania, universities can create faculties, departments and groups for minorities' languages and the minorities have the right to create private institutions.

The right to print and disseminate publications, radio and television programs, as well as the access to public/national media is the fundament for the protection of the rights of minorities[11].

The lack of documents is one of the serious problems affecting the capacity of the Roma communities to effectively participate at the public life. The identity documents, birth certificates, identity cards or marriage certificates are a condition for the access to goods and most services, including education, social rights, health services, housing and property rights.

The lack of birth certificates, identity cards and marriage certificates among Roma was described as a "mass phenomenon"[12]. National and international organizations expressed their concern towards the increasing number of the unregistered Roma children, who do not have an identification form.

Regarding the effective participation to the public life, the international legislation[13] forces the states to "respect" the rights of the persons belonging to minorities[14] including regarding the identity of minorities[15], as well as in the decisional regional and national process.

The Framework Convention on Protection of National Minorities requires the states to "create" the necessary conditions for such

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[11] The relative growth in the past few years of the mass-media volume among Roma is encouraging. In certain states, as Slovakia and Slovenia, the state financially supports, totally or partially, the publications of the Roma minority (sometimes published in Romany), or the inclusion of Roma editorial teams in the public radio, as happens of Czech Republic. Since 1999 until now in Slovakia have appeared five new Roma newspapers, while in Poland there are three such publications. The first Roma independent radio was founded in Hungary, "Radio C" and started broadcasting in February 2001.

[12] V. Burtea, *Documente de identitate si cetatenie in comunitatile de rromi*, The Diagnose of the communitarian issues, Case studies, Expert Publishing house, 2000, p. 412.

[13] See for further details The Lund Recommendation on the Effective Participation of National Minorities in Public Life – September 1999.

[14] For a general debate on the relevant rights see The Lund Recommendation on the Effective Participation of National Minorities in Public Life, Foundation on Inter-Ethnic Relations – June 1999.

[15] UN Declaration, Art 2 Para 2-3.

participation[16]. The International Covenant for Civil and Political Rights state the right of every citizen to be elected in fair elections periodically organized, without any type of discrimination, in the same time guaranteeing the freedom to expression of the voters[17].

Roma and participation in public life. According to "The Lund Recommendation on the Effective Participation of National Minorities in Public Life" the effective participation of national minorities in public life is an essential part of a peaceful and democratic society. The European and experience and that of other countries around the world show that, sometimes, to promote such participation, the Governments must state specific regulations for the national minorities. These Recommendations have the purpose to ease the integration of minorities in the state and to offer them the possibility to keep their own identity and characteristics, thus promoting the good governance and the integrity of the state.

Point 51 of the Recommendation 1557 (2002) on legal situation of Roma in Europe, settle that every person, irrespective of belonging or not to a minority group, must have the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. This right is applicable also to the use of the maternal language in publications, in the audio-visual areas or, in the regions in which there is a great number of Roma, in the relation with the administrative authorities, in the legal proceedings and in front of the courts.

Regarding the participation in the political life we notice that the European states have taken numerous innovative measures with the purpose of creating participation forms for the minority groups.

The low level of national representation of the Roma in the European states reflects the dimension of marginalization and exclusion. Very few important political parties adopt public position favorable for the Roma because of the fact that in each state the Roma issue is considered politically unpopular among the majority. This is why the "The Lund Recommendation on the Effective Participation of National Minorities in Public Life" settles regarding the participation in the decision making process that states should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, depending upon the circumstances:

• Special representation of national minorities, for example, through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed

[16] See Art 15.
[17] See Art 25.

participation in the legislative process. In this regard, the Romanian Roma community has as guaranteed a place in the Parliament. In Romania, besides the "reserved place", the Roma candidates can be elected in Parliament on the lists of non-ethnical political parties;

• Formal or informal understandings for allocating to members of national minorities government positions… or other high-level organs;

• Mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g., personnel addressing minority concerns or issuance of standing directives;

• Special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.

In the same manner, Point 9 of the Recommendation 1557 (2002) on the legal situation of Roma in Europe states that the Member States of the Council of Europe should encourage Roma to set up their own organizations and/or political parties and participate in the political system as voters, candidates or members in national parliaments.

Also, Point 30 of the Recommendation encourages the implication of elected Romany representatives in the regional and local legislature process especially in those states in which there are great Roma communities. In this regard, governments should involve the Roma in all the stages of the decisional process, essential fact in efficient and legitimate policies and programs launched for improving the Roma's situation.

The implication must not only be limited to consultation, but it must be seen as a real partnership. Specifically, the above-mentioned document recommends for the states to set up the institution of a European ombudsman for Roma to deal with the violation of the individual and community minority rights of Roma, but also to supervise the implementation of certain initiatives.

Concerning the health measures, Point IV Para 1 of the Recommendation Rec(2006)10 on a better access to health care for Roma in Europe states that the "Governments of the Member States should ensure:

a) physical access to health care including emergency care, through the provision of adequate roads, communication, ambulances and services for Roma communities of the same standard as for the general population;

b) access to health care for mobile populations, with consideration for portability of client-held records under the same conditions as for the general population;

c) geographically accessible and affordable health care;

d) access to health services for Roma lacking documentation to access mainstream services;

e) access to health care for Roma who are refugees or asylum seekers in accordance with binding international conventions."

An essential component settled by the Recommendation Rec(2006)10 on a better access to health care for Roma in Europe is the policy in the area of health of children by applying a numerous preventive measures, such as, vaccines and pre and post natal care. A special attention must be paid to underage female children.

Several European states, among which Bulgaria, Hungary, Lithuania, Slovenia, Romania have legislative provisions prohibiting discrimination in the area of access to health care. Also, it is known the fact that Roma are facing serious health problems because of the inappropriate life conditions, to which is added the large scale exclusion from the public health system and from a series of social services. In many communities, the Roma have a life hope shorter and a rate of infantile mortality greater than the majority population, while the frequency of the cardiac and asthmatic diseases, as well as tuberculosis is higher.

Practically, most Roma persons do not have access to medical care because of the physical isolation of their communities, of the lack of transportation, of the low level of education and of their impossibility of paying for medical care. The inappropriate documentation, the lack of citizenship and that of a permanent residence[18] deprives them in a disproportionate measure from the access to public health care systems.

Recommendation 1557 (2002) on the legal situation of Roma in Europe states that it is necessary the improvement of the situation of the Roma women, because they play a determinant role in the improvement of their families' existence conditions. The Roma women support a triple discrimination, because of their ethnicity, their female sex and their belonging to a disadvantaged group.

III. Conclusions

Roma, as citizens belonging to their residential states, must enjoy the same rights and obligations as the others. The social responsibility measures depend on the political, economical, cultural and social abilities both of the majority population as well as of the Roma minority.

The majority population should accept the Romany in society, without assimilating them and to support them as a disadvantaged social group.

[18] Periodical medical supervision is rare and children in numerous communities are not vaccinated properly against diseases.

On the other side, the Romany must accept the rules that coordinate the society. They can be called to play an active role in the improvement of their own condition, and the state must watch the creation of conditions and adopt encouraging measures.

The right to choose his own identity is a basic demand of autonomy and individual freedoms. Self-identification as a Roma or nor must be an issue of personal choice, and the national governments must guarantee the fact that there will not arise disadvantageous situations after such an election. Roma are an ethnical minority group, but they are, in the same time, citizens with full rights in their countries of residence Europe-wide.

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