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Relevant Aspects of National Minorities in Romania

Crina Mihaela VERGA[1]

Abstract

The issue of national minorities must contribute to the correct treatment and understanding of this phenomenon, given the respect for human rights for all individuals and the principles that must be observed in inter-state relations. The topic addressed in this paper has overlapping points with history, politics, sociology, psychology and law. It presents various points of view on the protection of minorities, but without claiming to have exhausted such a complex subject. Thus, we will refer first, to some directions in defining the concept of "national minorities". Then, we will analyze the controversial issue of whether or not the rights of minorities are recognized individually or collectively. We will continue by making a succinct presentation of the legal framework on the protection of national minorities in Romania and we will conclude this study with some synthetic comments on the subject under debate.
The subject is of a particular importance in the context of delaying the adoption of appropriate legislation on the matter in Romania.

Keywords:
National minorities, rights, legal regulation, Romania

1. Introduction

The issue of national minorities should contribute to the correct treatment and understanding of this phenomenon, given the respect for

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human rights for all individuals and the principles that must be observed in inter-state relations.

The theme addressed has interference with history, politics, sociology, psychology and law. We will first examine some orientations of defining the concept of "national minorities", as well as the controversial issue regarding the recognition or not of the individual or collective nature of the rights belonging to national minorities. We will make up a summary regarding the regulations on the protection of national minorities, as it is consecrated in Romania. We conclude these remarks with some synthetic observations on the theme under discussion.

2. Theoretical Background

2.1. The definition of the concept of "national minority"

We are bound to notice, from the outset, the lack of consensus on the content and scope of the notion of "national minority" [1].

It is important to note that neither the UN Charter nor the Universal Declaration of Human Rights contain specific provisions on national minorities. The documents subsequently adopted by the UN show that the basic principles applying on national minorities are those of equality of rights of all individuals and of their non-discrimination based on race, color, language, religion, national origin. These principles must be corroborated with those of respect for the sovereignty of states and the inviolability of their territories. A special regulation on minorities is found in Article 27 of the International Covenant on Civil and Political Rights of 1966, which provides that: "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

A number of provisions in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 [2] and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 [3] enshrine the protection of minority communities.

At European level, the pursuits focusing on national minorities as well as their protection measures, imposed by the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE), are complementary. In terms of concepts, the regional documents in this field are similar to the international ones. Thus, within the Council of Europe there were adopted: The European Convention on Human Rights (1950),

The Framework Convention for the Protection of National Minorities (1995) [4], The European Charter for Regional or Minority Languages (1992) [5], Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe [6], The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities [7], The European Charter of Local Self-Government [8]. Also, at OSCE level, the following were drawn up: The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE of 1990, The Charter of Paris for a New Europe and The Document of the Helsinki Conference on Security and Co-operation in Europe of 1992.

At international level, some attempts have been made to define the concept under review. Thus, according to Recommendation no. 1134 on the rights of minorities, adopted by the Parliamentary Assembly of the Council of Europe on 1 November 1990, "national minorities are 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" [9].

A more detailed outline of the notion of *minority* is provided in Article 1 of Recommendation 1201 (1993) adopted by the Parliamentary Assembly of the Council of Europe. Thus, the expression "national minority" refers to "a group of persons in a state who: 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 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".

International law, however, has not provided a generally-accepted definition of the concept of "national minority". It has therefore rightly been found that: "the legal concept of minority rights is yet to be determined by international law; consequently, although the minorities exist *de facto*, they do not exist *de jure*" [10].

Legal literature supports the idea of defining the notion of *minority* starting either from a sociological or a political criterion, both of which would then be transposed into a valid legal definition in the current internal and international normative system. It has come to the conclusion that national minorities must be defined based on a criterion that ensures the mobility of persons between minorities and the majority, in relation not only to the principle of equality, but also to that of free participation in the

exercise of the normative function. Therefore, the sociological criterion is replaced by a political-normative one [11].

2.2. The individual or collective character of rights belonging to national minorities?

It is characteristic to certain rights that they can not be exercised by the isolated action of a single person, but necessarily they involve concurrent manifestations of the will of other subjects enjoying the same right. For example, fundamental rights such as *the right the association, the freedom of assembly and the right to vote appear as individual rights exercised collectively.*

Another opinion is that the so-called "collective rights" are not rights belonging to each individual and which are exercised together with others, but prerogatives recognized to legal entities, formed by their grouping. In support of this view, some regulations are quoted. Thus, the provisions of Article 27 of the Covenant on Civil and Political Rights cited above are relevant. To the same end, reference was made to Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, Article 3(2), according to which: "every person belonging to a national minority may exercise his/her rights and enjoy them individually or in association with others", as well as Article 11, stating that: "in the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state".

The same approach is also found in the Framework Convention for the Protection of National Minorities of 1 February 1995. The first article of this document refers to the fact that national minorities are granted protection, but they are not recognized any rights as human communities.

It should be noted that all the rights to which these texts refer are prerogatives belonging to the individuals taken individually, but they can also be exercised in community with others. Therefore, they are individual rights and not the rights of a particular group. In order for these individual rights to become the rights of a national minority, it would be necessary to determine, by internal or international legal regulations, the procedural conditions for their formation and organization, the majority required for this purpose and the activities they are empowered to perform in the exercise of these rights [12].

It is to be noted, at this point, that the existing international regulations are far from guaranteeing national, ethnic and linguistic minorities certain group rights and even farther from establishing all

conditions under which they are exercised. International provisions are limited only to guaranteeing fundamental rights and freedoms to individuals belonging to national minorities.

3. Argument of the paper

The key idea of the paper refers to the lack of appropriate legislation on the matter. This fact has been manifested itself in two directions. The first of these relates to the delay of the adoption by the Parliament of the National Minorities Statute.

The second inadequate orientation is the elaboration, in an extraordinary session, of the Administrative Code, which is not in conformity with the existing legislation in the field, namely with the provisions of Law no. 215/2001 regarding national minorities.

The rapidity of adoption of the Code aforementioned aims at the same time satisfying the interests of the ruling ethnic parties.

In Romania, there are provisions on national minorities in various normative acts, starting with the fundamental law, which outlines the general framework. Also, these legal norms adopted in the field cover multiple areas such as education, local public administration, non-discrimination, political rights, use of mother tongue, rights to practice one's own religion, children's rights etc.

In this respect, the Constitution of Romania contains some references to national minorities. Thus, it is stated that "Romania is a sovereign, independent, unitary and indivisible National State" (Article 1, paragraph 1). It also stipulates that "Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, gender, opinion, political affiliation, wealth or social origin" (Article 4 paragraph 2).

These provisions need to be corroborated with Article 6: "the State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity" (paragraph 1) and "the measures taken by the Romanian State for preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens" (paragraph 2).

In this area, the Constitution also enshrines equality before the law, freedom of conscience, including freedom of religion, freedom of expression, the right to information, to education, including education in the

mother tongue and religious education, the freedom of assembly and association, as well as the obligation to exercise these rights in good faith, without infringing the rights and freedoms of others. To the same end, we also mention Article 32 paragraph 3, according to which "the right of persons belonging to national minorities to learn and their right to be educated in this language are guaranteed. The ways to exercise these rights shall be regulated by law".

With the 2003 revision of the Romanian Constitution of 1991, a number of provisions regarding national minorities were introduced. Thus, Article 73 paragraph 3 letter r stipulates that "the status of national minorities in Romania is regulated by organic law". In the same sense, according to Article 120 paragraph 2, "in the territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shal be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the deconcentrated public services, under the terms stipulated by organic law".

The same legal regulation is also detailed in Law no. 215/2001 on local public administration, as subsequently amended and supplemented [13]: in the territorial-administrative units where citizens belonging to the national minorities represent over 20% of the inhabitants, the local public administration authorities, the public institutions under their authority and the deconcentrated public services also ensure the use of their mother tongue in relation with them, in accordance with the provisions of the Constitution, of the hereby law and of the international treaties to which Romania is a party. Thus, a minority language, whose speakers exceed the 20% threshold at the level of the territorial-administrative unit, has the following functions: a) it can be the means of communication between citizens and administration; b) it can be used in debates of official affairs; c) it can act as a medium for public information; d) it can be the language of public or private manifestations having ceremonial character.

Similarly, the Constitution also states that "citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts of law, under the conditions of organic law" (Article 128 paragraph 2).

The right of citizens belonging to a national minority to use their mother tongue in relation to the local public administration, included in Law no. 215/2001 on local public administration, is detailed in Decision no. 1206 of 27 November 2001 [14]. In this respect, citizens belonging to a national minority, who account for more than 20% of the inhabitants of an territorial-administrative unit, are recognized multiple rights: the right to be

informed, in their mother tongue, of the agenda of the local or county council meetings as well as the decisions adopted by these bodies; the right to also address in their mother tongue, either orally or in writing, the local public administration authorities and the local and county council bodies, and to receive a reply both in Romanian and in their mother tongue; ensuring the inscription of the name of localities in the mother tongue of the citizens belonging to the respective minority; displaying information of public interest also in the mother tongue of citizens belonging to that minority; the right of citizens to receive a response both in Romanian and in their mother tongue; the right to use, in addition to Romanian, the minority language at official ceremonies organized by the local public administration authorities; the right to also officiate the marriage ceremony, upon request, in the mother tongue of the persons to be married if the officiating civil servant knows that language; the placement in the local or county councils, in the public relations departments, of persons who also know the mother tongue of the citizens belonging to the respective minority.

In local or county councils where councilors belonging to a national minority account for at least one third of the total number of councilors in office, the mother tongue may also be used in the ordinary and extraordinary meetings of the council. The documents of the local or county council meetings will be drafted only in Romanian, the official language of the state. The final texts of the decisions and other documents submitted to the deliberation and approval of the local or county council shall be drafted in Romanian and translated into the language of the national minority.

Significant provisions on the status of national minorities are also included in Law no. 1/2011 on education, as subsequently amended and supplemented [15]. Thus, Article 3 letter i enshrines the principle of recognizing and guaranteeing the rights of persons belonging to national minorities, the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity. Article 10 states that, in Romania, education is a service of public interest and it is carried out, under the present law, in Romanian as well as in the languages of national minorities. It is also stated that "any Romanian citizen can be enrolled and educated at all forms of alternative education in Romanian, in the languages of the national minorities or in languages of international circulation" (Article 59 par. 4).

4. Arguments to support the thesis

This subject is of particular importance in the context of delaying the adoption of appropriate Romanian legislation in the field. From this point of

view, the issue addressed is of great importance, first of all, for the national minorities existing in Romania, but it is also useful for both theoreticians and politicians, who could establish an adequate normative framework for national minorities, which would meet the constitutional and international requirements.

At present, no law has yet been adopted in the field under consideration. The Bill on the Status of national minorities in Romania, initiated by the Government in 2005, was rejected by the Senate as *first notified Chamber* and sent to the Chamber of Deputies as *decision-making Chamber*, under Article 75 paragraphs 1 and 3 of the Constitution.

The forthcoming law on the matter would also have to include the observations received from the Venice Commission [16]. This body has shown that the document contains some unclear aspects and some conditions which are likely to restrict, among others, the freedom of association.

The definition of the "national minority" is among the most important issues highlighted by the Venice Commission. In this respect, the Commission considers that the list of 20 communities that can be considered national minorities and which was included in the bill is too strict and could prevent other groups from acceding to this status, even if, over time, they would managed to meet all the conditions in the definition. It has also found that there is no correlation between the draft law and the existing legislative framework on national minorities.

Similarly, the text under consideration does not refer to the threshold of 20% minority presence in an territorial-administrative unit for conferring certain rights to a national minority (as expressly provided by Law no. 215/2001), but uses, arbitrarily, only the phrase "a significant percentage". Therefore, the Commission asks the Government to establish some limitations on the use of minority language in the administration.

Likewise, the provisions of the bill do not provide sufficient protection of personal data. In the same context, the Commission emphasizes that there is a contradiction between Chapters I and II of the draft law (which enshrine the rights of persons belonging to national minorities) and Chapter V (focusing mainly on "collective" rights). In this respect, the Commission refers to paragraph 13 of the Explanatory Report to the Framework Convention, which states that the implementation of the principles of the Framework Convention "does not imply the recognition of collective rights".

The Commission also recommends to better circumscribe the meaning and purpose of the rights of minorities guaranteed in the bill as well

as to strengthen their legal protection, which would provide additional safeguards for the persons concerned.

It also pertinently criticized the exclusive establishment of a monopoly of parliamentary and local representation by the minorities and organizations already represented in the Chamber of Deputies and the Council of National Minorities.

Another legislative proposal on the Status of National Minorities was rejected in 2006 first by the Senate and then by the Chamber of Deputies.

Again, in 2007, 2008 and 2009, a procedure similar to that described above took place.

In 2017, the debate on the draft law initiated by the Government on the Status of National Minorities was resumed in the Parliament of Romania and in April 2018, this draft was first adopted by the Senate and will then be debated and voted by the Chamber of Deputies.

Therefore, for reasons mostly related to immediate partisan interests, many of the observations contained in the 2005 Opinion of the Venice Commission were not taken into account in drafting the relevant legal document in this field.

The draft of The Administrative Code, which contains references to national minorities, was adopted by the Senate as first Chamber on 11 June 2018 and was to be sent for adoption to the Chamber of Deputies as decision-making Chamber on 27 June. However, the bill had not passed the plenum of the inferior Chamber and had been sent back to the Joint Special Commission of the Chamber of Deputies and the Senate for the drafting of the Administrative Code, which reconvened to debate the draft law and draw up a report. Among the controversial provisions under discussion there were: the elimination of the 20% threshold for the use of the mother tongue of national minorities in prefectures, town halls, county and local councils (provided in Law 215/2001); the manner the bilingual plates will be fixed. On 28 June 2018, it was decided to convene the Chamber of Deputies in an extraordinary session on 2 July 2018, the adoption of the draft law on the Administrative Code, with the amendments that would be proposed by the Special Commission, being also on the agenda.

The celerity in the adoption of the above-mentioned normative act shows clear ethnic partisan interests and its content is obviously inconsistent with the similar regulations contained in Article 19 of Law no. 215/2001.

5. Arguments to argue the thesis

Adopting the appropriate legislation is difficult in the context of widespread and controversial negotiations between the ruling parties and the ethnic party that has been part of the ruling coalition since 1990.

The issue of national minorities is a delicate one, which requires extensive analysis and debates. For this reason, the elaboration of a framework law in the matter has been delayed.

In the same sense, a future Statute on National Minorities must observe all the international framework regulations in the field to which Romania is a party.

6. Dismantling the arguments against

The delay in adopting an organic law on national minorities was determined by permanent disputes and interests between the ruling parties, including the Hungarian ethnic party. The latter, to support of the ruling coalition, has come up with multiple requests in this regard.

It is possible to elaborate a Statute on National Minorities, which is in accordance with the existing international framework legislation if there is political will in this respect.

The obvious solution to the issues of national minorities is to recognize and respect the general framework for their protection, set out in international legal documents, which are aimed at: equality of rights, the elimination of all forms of discrimination, rights regarding culture, language and religion, the protection of the identity of those communities. However, it is the exclusive competence of states to promote these standards through an appropriate legislative policy, which should not be influenced, under any circumstances, by the interests of ruling ethnic parties, as is the case in Romania.

The legislative framework in the field must also strike a balance between the interests of the minority communities and the general interests of the state, regarding the preservation of its territorial integrity.

7. Conclusions

From the aspects presented above, we can deduce a series of pertinent conclusions regarding the subject under discussion. Thus, a still unclear issue is the lack, at international level, of a unanimously offered and accepted definition of the notion of "national minority", which, however,

did not constitute an obstacle to the recognition of minority communities and the elaboration of international documents that would provide them protection. It is therefore up to the states to interpret and apply the provisions of the Framework Convention on National Minorities, which guarantees the rights of persons belonging to national minorities, but does not recognize the rights of minorities as human communities.

In light of the current international normative provisions, the legal category of "rights of national minorities" appears twofold: either as individual rights, which the citizen can exercise independent of other persons or as individual rights, which are exercised collectively.

At the level of the EU Member States, there are prominent differences in the recognition and legal regulation of the status of national minorities.

Furthermore, the Venice Commission noticed the lack of correlation between the above-mentioned bill and the domestic law in force and also the imprecision of the wording, followed by the phrases "according to the law" or "under the law". Therefore, it is expected that the Romanian legislator will comply with the received observations, with a view to drafting a coherent text on national minorities. However, the proposed bills on the field since 2005 have not complied with the suggested recommendations.

It is also necessary to underline that the doctrine considers the provisions of the Bill on the Status of National Minorities in Romania as unclear, lacking legal foundation, contrary to the Constitution, to the norms regarding the unitary and national character of the Romanian State and to the norms regarding the administrative organization of the country [17].

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