

OMBUDSPERSONS for NATIONAL MINORITIES

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ROMANIA

SHADOW REPORT: JANUARY 2005

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PART I

As follows from Article 25 paragraph 1 of the Framework Convention the report is to contain full information on the legislative and other measures taken to give effect to the principles set out in the Framework Convention. The aim of this outline is to facilitate both the work of those providing the information and that of the Committee of Ministers and the Advisory Committee.

2. This outline pertains only to the first reports to be submitted by Parties following the entry into force of the Framework Convention.

The report is to consist of two parts, and is to be submitted in one of the official languages of the Council of Europe as well as in the original language version. It should in its first part (Part I) contain an introduction on the way in which the Party has sought to implement the Framework Convention. This introduction should provide a coherent global overview and framework for understanding the specific information provided in the second part (Part II) of the report. Part I should therefore include:

- (a) recent general statement(s) on the policy of the State concerning the protection of national minorities;
- information on the status of international law in the domestic legal order;
- information on the unitary or federal character of the State;
- a summary overview of the relevant historical development of the country;
- relevant information on the demographic situation in the country;
- information on the existence of so-called minority-in-minority situations in certain areas;
- basic economic data such as Gross Domestic Product (GDP) and per capita income.

States are invited in this part to highlight measures, practices and policies which they consider to have worked particularly well in promoting the overall aim of the Framework Convention.

Furthermore States are requested to indicate the efforts they have made to promote awareness among the public and the relevant authorities about the Framework Convention.

States are also invited to indicate issues on which they would particularly welcome the support and advice of the Advisory Committee.

COMMENT PART I

By comparison with the state of affairs prior to the Advisory Committee's Opinion, the background of the enforcement of the Framework Convention by Romania has suffered several important changes: the constitutional amendments in 2003; the adoption of a strategy for the fighting of discrimination; the carrying out of the 2002 census, and the developments in Romanian immigration; the considerable pressures on internal democracy within national minorities.

The first reports criticized Romania for the lack of transparency in the elaboration of the national report on the enforcement of the Framework Convention for the Protection of National Minorities: the hierarchical and horizontal obstacles of communication between specific institutions; the absence of dialogue and co-operation of the authorities with the organizations of national minorities.

In 2004-2005, the elaboration of the national report is going through similar birth throes: its finalization is being pushed back, so that the report had not been finished

by April; the Department for Inter-ethnic Relations has yet to be involved in its drafting; minority organizations and the public opinions have not been invited to debate the enforcement of the Framework Convention.

It is worth noting, on the other hand, that the Department for Inter-ethnic Relations organized in 2002 and 2003 a series of seminars on the Framework Convention with participants from the minorities' cultural associations. Over the past years, many organizations referred to and used the Convention in their activities (among them, Ombudspersons for National Minorities,¹ RomaniCRISS, the Pro Europe League,² APADOR-CH). In the case of organizations which militate for minority rights such as the above, the Framework Convention is a familiar instrument and has been constantly put to use. The Convention is approached in detail in a course offered by the Political Science Department at the SNSPA, Bucharest. A book on minority rights published in 2004 by Romania's most important publisher includes a large chapter on the Framework Convention.³

1. The 2003 Amendments to the Romanian Constitution

The 2001 Shadow Report highlighted the issues raised by the Romanian Constitution adopted in 1991, with respect to Art. 1 (1) and Art. 4 (1). In particular, Art. 1 (1) states that "Romania is a sovereign, independent, unitary and indivisible National State". Art. 4 (1) reads as follows: "The State foundation is laid on the unity of the Romanian people."

These formulations suggested an ethnic interpretation of the constitutional text and were in fact used as such in the 1990s by nationalist political forces in a campaign against national minorities. Art. 4 in particular was amenable to a nationalist vision on the identity of the Romanian state. Many political leaders, governmental bodies, and even the Romanian Parliament have taken positions in this sense.

The Constitution revised in 2003 changed Art. 4 as follows: "Art. 4 (1) The State foundation is laid on the unity of the Romanian people and the solidarity of its citizens." This change suggests that Romanian public authorities considered the criticisms of the older text of Art. 4 to be in accord with the guarantees of the Framework Convention. Although during the debates preceding the constitutional revision the UDMR/DAHR, the political organization of Hungarians in Romania, asked that Art. 1 be modified as well, as it was considered inappropriate given the country's multicultural and democratic life, the Romanian Parliament refused the modification.

¹ The ONM elaborated analyses on the opinions of the Advisory Committee and on changes in the interpretation of the Framework Convention.

² The Pro Europe League undertook to elaborate a shadow report for 2004.

³ Gabriel Andreescu, *Națiuni și minorități*, Polirom, 2004

2. The 2002 Census and Romanian immigration

The results of the 2002 census were as follows:

Total population: 21,698,181

Ethnic groups: Romanians: 19,409,400 (89.5%); Hungarians: 1,434,377 (6.6%); Roma: 535,250 (2.5%); Germans: 60,088 (0.3%); Ukrainians: 61,091 (0.3%); Serbs: 22,518 (0.1%); Turks: 32,596 (0.2%); Tartars: 24,137 (0.1%); Slovaks: 17,199 (0.1%); Jews: 5,870; Russian-Lippovans: 36,397 (0.2%); Bulgarians: 8,092; Czechs: 3,938; Croats: 6,786; Greeks: 6,513; Polish: 3,671; Armenians: 1,780; Slovenians: 175; Ruthenians: 262; Carashovians: 207; Chinese: 2,249; Albanians: 520; Gagauz: 45; Slav-Macedonians: 731; Csangos: 1.370

Religious affiliation: Orthodox: 18,806,428 (86.7%); Romano Catholic: 1,028,401 (4.7%); Greek Catholic: 195,481 (0.9%); Reformed: 698,550 (3.2%); Evangelical Augustan: 11,203 (0.1%); Evangelical Lutheran: 26,194 (0.1%); Unitarian: 66,846 (0.3%); Armenian: 775; Old-Rite Christian: 39,485 (0.2%); Baptist: 129,937 (0.6%); Pentecostal: 330,486 (1.5%); Seventh-Day Adventist: 97,041 (0.4%); Gospel Church: 46,029 (0.2%); Evangelicals: 18,758 (0.1%); Muslim: 67,566 (0.3%); Other: 87,225 (0.4%); None: 13,834 (0.1%).

During 2000-2005, asylum requests and the asylum-seekers' shaped new problems related to the ethno-cultural diversity of the country. Romanian authorities dealt with this new aspect by adopting Emergency Ordinance no. 194/2002 on the Legal Status of Aliens in Romania, and establishing the Authority for Aliens. A National Migration Strategy was adopted.

Table below indicates the number of asylum requests and the asylum-seekers' main countries of origin:

No. of asylum requests 2000-2003

Country	Afghanistan	Bangladesh	China	India	Iraq	Iran	Pakistan	Palestine	Somalia	Sudan	Turkey	Other	Total
2000	282	226	0	40	250	34	225	33	39	71	28	138	1366
2001	777	22	43	157	626	101	84	42	171	43	33	181	2280
2002	35	77	92	127	398	55	36	39	34	54	43	161	1151
2003	16	6	204	157	329	66	23	26	63	10	36	141	1077
Total	1110	331	339	481	1603	256	368	140	307	178	140	621	5874

As regard to the developments in Romanian immigration see Art. 3

3. Pressures on the internal democracy within national minority communities

There is currently no provision restricting abusive running for the office of representative of a national minority in the parliament. Romania still lacks regulations compelling the associations within the National Minorities Council to give out the public funds they manage on the basis of project bidding. The privileges that national minorities enjoy have engendered an interest in stifling internal competition for political representation. As a result, the deputies in the parliament have been trying to impose a monopoly on national minority representation.

The first attempt of this kind came in the form of the “Bill Amending Government Ordinance no. 26/2000 on associations and foundations”. During November 2002, the National Minorities Parliament Group drafted a bill regarding the organizations set up by members of the national minorities. The Bill is preceded by an “Exposition of motives” which offered the following argument:

(1) The legislative void in the matter of the recognition of a national minority by the Romanian state requires limiting regulations, which should take into account the fact that the law grants national minorities rights such as parliamentary representation;

(2) The conditions for the establishment of an organization set by Government Ordinance 26/2000 prove to be inappropriate for organizations of national minorities, which have country-wide representation and are legitimized by the important number of members;

(3) In such conditions, a new legislative chapter should be adopted on the establishment and functioning of organizations of national minorities.

Thus, the Bill Amending Government Ordinance 26/2000 introduces a number of new requirements, applicable only to national minorities and their organizations:

- National minorities should be „attested to be present on Romanian territory for at least a century” (Art. 37.1). Art. 37.2 of the same document acknowledges, on the basis of their representation in the National Minority Council (CMN) or/and the Parliament, the following national minorities: Albanians, Armenians, Bulgarians, Croats, Czechs, Germans, Greeks, Hungarians, Italians, Jews, Lipova Russians, Polish, Roma, Ruthenians, Serbians, Slav Macedonians, Slovaks, Tartars, Turks, Ukrainians.

- The organizations of citizens belonging to national minorities become „subject to the enforceable laws” only if they represent at least „30% of the total number of citizens registered as members of the minority during the latest general census, but to more than 30 000 people” (Art. 37.4). The application for the registration of an organization of citizens belonging to a national minority is to be submitted to the Bucharest High Court and to be registered into a Record book of the organizations of citizens belonging to national minorities.

- The Bill subsequently defines the documents needed for registration and certain elements regarding the organization and functioning of the organizations. The Bill stipulates that „The organizations of national minorities which, before the coming into force of the present Ordinance, were part of the National Minority Council or were represented in the Parliament shall maintain their juridical personality” (Art. 37.10), while all the others „shall lose their juridical personality and shall be under obligation to set up again”, according to the abovementioned provisions.

A number human rights organizations expressed their opposition to the “Bill Amending Government Ordinance no. 26/2000 on associations and foundations” drafted by the National Minorities Parliament Group. Below are some of their arguments:

A legitimate concern

A. The solution suggested by the National Minorities Parliament Group, consisting in an acknowledgement of national minorities by explicit enumeration, is a legitimate one and may be also found in other countries’ legislation. But the implications of such regulations go beyond the scope of an “Bill Amending Government Ordinance no. 26/2000”. Thus, a definition for national minorities should be sought only in connection with other ethno-cultural groups which are entitled to protection by the Romanian state, such as refugees, asylum seekers, migrant workers, but not to affirmative action, as enjoyed by the national minorities. It must be added that so far Romania has not agreed to the idea of acknowledging national minorities through enumeration, and therefore it did not sign any such declaration on the occasion of the signing and ratification of the Framework Convention for the Protection of National Minorities, as other member countries did.

The place for the regulation

The natural framework for solving the questions raised by the National Minorities Parliament Group is a law for the protection of national minorities and ethno-cultural communities. The initiators might also include an open procedure for the recognition of new minorities, in case such a request is filed by a minimal number of people who maintain they belong to a minority. In any case, defining national minorities does not belong in a draft bill of the type promoted by the Parliament Group.

Unacceptable amendments

a. The obvious reason for the Bill Amending Government Ordinance no. 26/2000 is to limit the access to the Parliament and to the National Minority of other organizations of the national minorities than the ones already represented. The solution offered by the National Minorities Parliament Group was to restrict the

creation of organizations by citizens belonging to national minorities. Such an initiative, however, is due to create confusion and may easily become the source for the infringement of rights and freedoms.

b. The first confusion results from the overlapping of the notions of “organization” and “association”. The Romanian Constitution, under art. 59, par. (2), Law no. 70/1991 on local elections, Law no. 68/1992 on the election of the Chamber of Deputies and the Senate, Law no. 27/1996 on political parties, all regulate the right of minority members to create structures assimilated to political parties by referring to “organizations of the citizens belonging to a national minority”. The Romanian Constitution mentions, under art. 37 on the right to freedom of association, political parties, unions, associations and “other forms of association”. The old Law no. 21/1924 and Government Ordinance no. 26/2000 regulate two associative types: associations and foundations. It is clear that in referring to “organizations of citizens belonging to a national minority”, the legislative body has identified the “associations” created by the respective citizens, in accordance with the two abovementioned legal norms. This is the case of all minority organizations represented today in the Parliament or the CMN.

c. But if, as required by the Bill of the National Minorities Parliament Group, a distinct associative form is created under the name of „organizations of citizens belonging to a national minority”, confusion may easily arise. But besides that aspect, the Bill sets conditions for the establishment of organizations (of citizens belonging to national minorities), that is for the exercise of a fundamental human right – the right to freedom of association, contradicting thus the very principle of regulations on the matter. The legislative body is not allowed to place restrictions other than necessary “in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others” (art. 11, European Convention of Human Rights). From that point of view, the restrictions to association based on a minimum level of representation (30%) and on a maximum number of members (30.000) are both unacceptable and contradictory.

d. A second confusion may arise between the right to freedom of association and the democratic rights. The initiative of the Parliament Group finds legitimacy by ensuring the optimal voting conditions and by responsible management of the public funds, or, as it is the case, by preventing persons or groups to take advantage of certain provisions of domestic legislation. In this context, certain conditions may be placed on the participation to the election process, but not in a bill which grants the freedom of association and regulates the exercise of this right.

B. Even if the provisions of the Bill Amending Government Ordinance no. 26/2000 on associations and foundations were limited to restricting the

participation to the elections process of the organizations of citizens belonging to a national minority, they would still infringe upon fundamental rights and freedoms. Thus, they discriminate between the citizens who have founded the existing cultural unions, as associations, and those who, in the future, will want to create similar associations. The former would exercise their right to freedom of association and democratic rights in much more appropriate conditions than the latter. Moreover, the regulations imposed to these new association forms dubbed “organizations of citizens belonging to a national minority” are unjustified, in many cases prohibitive and in two of them even impossible.

Conclusions

The solution proposed by the National Minorities Parliament Group creates confusions and infringes upon fundamental rights and freedoms of human beings and of members of national minorities. By its *de facto* implementation, the Bill would create a monopoly in favor of the existing cultural organizations in the life of the national minorities, mainly with regard to political activity and access to public funding. The adoption of such a solution would seriously disturb the internal life of national minorities and would undermine the solidarity needed to assert national identity, thus endangering the system created for that purpose.

Eventually, the slightly modified proposal turned into an 2004 amendment to the Local Election Act. Several organizations protested the changes, which they considered anti-democratic and discriminatory. There were several lines of criticism:

(i) The candidates of national minority organizations represented in the parliament are accepted without any special conditions being set. On the other hand, the other national minority organizations which may want to support their own candidates have to submit a list of members to the Central Electoral Office consisting of at least 15 percent of the total number of citizens having declared themselves as members of the national minority in question in the last census.

Should the 15 percent account for more than 25,000 individuals, the list of members submitted must include at least 25,000 names of persons residing in at least 15 counties (out of a total of 40) plus Bucharest, but not fewer than 300 individuals for each of the counties and Bucharest. Two minorities are subject to this special qualification: the Hungarians and the Roma.

These provisions severely hamper the democratic access to the electoral competition of national minority organizations other than the ones already represented in the national legislature. They are arbitrary, and completely opposed to the principle of equality of opportunity.

(ii) The additional terms imposed upon the Hungarian and Roma communities (15 percent of which amount to more than 25,000 individuals) are downright

prohibitive. They have to submit lists of at least 25,000 founding members residing in 15 counties and in Bucharest, but containing not fewer than 300 persons for each particular county. There is absolutely no objective argument in favor of such a condition, especially since the law in question concerns *local* elections.

As a result of these restrictions, no national minority outside those already in the parliament participated in the local elections. The Roma were the most seriously affected group, as they sent much fewer members of their community to the local councils.

See below the protest letter of the Hungarian Civic Alliance, which highlights the stake of the new elections rules

SOS democracy 2004
Local elections, Romania, June 2004

The story of exclusion of the Hungarian Civic Alliance from the Romanian local elections

Background

The Hungarian Civic Alliance is an organization of safeguarding interests of the Hungarian national community in Romania. As an association, it is a legal entity registered in August 2003.

The Hungarian Civic Alliance came into being due to the demand for self-determination of the Hungarian national community, because the Democratic Alliance of Hungarians in Romania (DAHR) gave up many community objectives otherwise included into its program and seriously restricted its internal democracy.

This way, the representation of the Hungarian national community has been expropriated by an uncontrollable group. The DAHR entirely disposes on the budget items provided by the Hungarian state and the Romanian state for the Hungarian community in Romania. These funds are spent to support its institutional forms and to preserve its political influence, even if the costs are that local civic initiatives, Hungarian-speaking media, professional organizations or institutions are wasted away.

The Hungarian Civic Alliance intended to put an end to this monopolistic status of the DAHR. The Hungarian Civic Alliance has not intended to pose a threat to the representation of the national community, on the local and national level. By introducing political competition, a higher level of participation in the political life could be achieved, strengthening and increasing in this way the number and the influence of the Hungarian councilors in local and county decision-making

bodies. Due to the existence of the 5 % threshold for admittance to Romania's Parliament, the leaders of the Hungarian Civic Alliance have announced that they are ready to cooperate with other Hungarian political forces in order to not jeopardize the presence of the Hungarian representatives in the legislative body.

Political pluralism, freedom of choice would have been established if they had participated at the local elections – instead of compact ethnic voting. This is against the interests of the DAHR, thus it is intending to hinder competition with the modification of the Election Law.

However this goes beyond the expropriation of representation of the Hungarian national community. Prominent Romanian personalities and human rights organizations also spoke up against this kind of violation of democratic rights.

Chronology

In **January 2004**, the Special Committee to examine the bill on local elections completed its task and forwarded the bill to the Parliament.

On **24 February 2004**, in an open letter seven NGOs (Open Society Foundation, Institute for Public Policy, Law Resource Center, Roma Community Resource Center, Ethno-cultural Diversity Resource Center, League Pro Europe, Ombudspersons for National Minorities) are asking the members of the chamber of deputies to eliminate Article 7 of the bill and to allow for all organizations representing historic minorities in Romania to run at the local elections. They stated that Article 7 is unconstitutional because violates the equality of rights (Art. 16 of the Constitution of Romania), violates the right to be elected (Art. 37 of the Constitution of Romania) saying that in case any organization would be excluded from the local elections they will attack the law by exception of unconstitutionality. The letter had no effect.

Between **16 and 18 March 2004**, Certain Members of Parliament (Mona Musca PNL, Ioan Oltean PD, Pécsi Ferenc, Toró T. Tibor, Szilágyi Zsolt, Kovács Zoltán UDMR) representing different parties initiated amendments regarding the elimination/modification of the above discriminatory articles. Their initiatives and argumentation was not successful. Article 7 was adopted as proposed in the draft.

Law No. 67/2004, on the election of local authorities, which was adopted by the two chambers of the parliament and announced by the president of Romania, was published in the Official Monitor of Romania on **29 March 2004**. Article 7 of this Law describes the criteria for participation of national minorities at the local elections.

Even if the law is discriminatory the legal framework claimed by the Hungarian Civic Alliance to run at the local elections were paragraphs 2, 3, 4 and 5 of Article 7.

Paragraph 2 states that national minorities with parliamentary representation may run at local elections.

Paragraph 3 and paragraph 4 state that other organizations of national minorities may also run at local elections if they meet the following requirements:

- organization members are at least 15% of the given national community;
- if this number exceeds 25,000 people, the members of the organization should be at least 25,000; coming from 15 administrative counties and the capital Bucharest; each county should give at least 300 members; personal data should also be included on the membership list next to the signatures of the members.

Paragraph 5 describes the personal data to be included on the membership lists: surname, first name, address, date of birth, identity card number, signature, as well as name and signature of the person who collected the signatures.

On **16 April 2004**, the Government Decree No. 505/2004 was published in the Official Monitor of Romania. This Decree provides the form and contents of the member lists of minority organizations. The model prescribes that the date of the local elections – 6 June 2004 – should appear in the headers of the lists. This prescription was not included into Article 7 of the aforementioned Law. By issuing this decree, the Government practically diminished the timeframe for the fulfillment of the very strict and discriminatory requirements to 7 days.

On **22 April 2004**, the Hungarian Civic Alliance submitted the requested membership list to the Central Election Committee, due to the orders of paragraph 5 of article 7 of Law No. 67/2004. The lists numbered 54,115 members to the Hungarian Civic Alliance. It also met the prescriptions of area restrictions: members came from 15 administrative counties and the capital Bucharest; each county gave at least 300 members.

On **23 April 2004**, the president of the Hungarian Civic Alliance requested the publication of their election logo in the Official Monitor of Romania, due to the orders of paragraph 2 of Law No. 67/2004. This request was registered at the Central Election Committee. The request Law No. 67/2004 paragraph 8 prescribes that only political organizations with name and logo published in the Official Monitor of Romania can participate the local elections. The Hungarian Civic Alliance requested a response to this submission on 24 April 2004.

On **23 April 2004**, the Central Election Committee rejected the submission of the Hungarian Civic Alliance, in their Resolution No. 7. They argued as follow:

- the lists were rejected of shortages in form, referring to articles 4 and 5 of Law 67/2004;
- the Central Election Committee stated that the date of the local election, June 6, did not appear on the lists.

Paragraph 5 of Article 7 did not prescribe the date of the elections, since membership does not refer to one single day.

The Central Election Committee also disapproved that the authentication of the lists was not always done by the person collecting the members. The authenticity of the signatures was not however doubted. On **28 April 2004**, the shortages claimed by the Central Election Committee were completed.

On **24 April 2004**, the Central Election Committee rejected the publication of the election logo of the Hungarian Civic Alliance in its Resolution No. 13. They referred to their Resolution No. 7 of the previous day, and that the Hungarian Civic Alliance is having no parliamentary representation as a minority organization.

Resolution No. 7 of the Central Election Committee was appealed by the Hungarian Civic Alliance at the Superior Court of Bucharest on **26 April 2004**. On this day the Hungarian Civic Alliance officially requested the Central Election Committee to return the 54,115 original signatures.

On **27 April 2004**, fifteen representatives of the Council of Europe submitted a draft resolution to the Parliamentary Assembly of the Council of Europe on the exclusion of the Hungarian Civic Alliance from the local elections. The motion proposed that a report to the Assembly on the case of this law (and the accompanying administrative practices should be prepared).

On **27 April 2004**, the Central Election Committee officially stated that the original signatures shall not be returned. They will remain at the archives of the Central Election Committee and can be studied on request at their headquarters.

On **28 April 2004**, the hearing at the Superior Court of Bucharest resulted that the decisions of the Central Election Committee can not be appealed.

On **30 April 2004**, during the debate of the second action at law, the Superior Court of Bucharest accepted the exception of unconstitutionality, sending in this way the case to the Constitutional Court. Decision of the Court has not yet been made. It is important to mention that 8 May 2004 is the deadline to stand candidates for local elections.

On **30 April 2004**, the Hungarian Civic Alliance requested the invalidation of the resolution of the Central Election Committee, which excluded the Hungarian Civic

Alliance from the participation at the local elections. The request was based on the fact that the Central Election Committee was not set up as prescribed in the law, paragraph 32, article 1. The way of setting up of the Central Election Committee has not even respected the law, which regulates the local elections: the president of the Permanent Election Authority was not included into the Central Election Committee.

On **3 May 2004**, the Hungarian Civic Alliance requested the Constitutional Court to discuss the case in urgency due to deadline of submission of candidate lists. No reply has arrived yet from the Constitutional Court. Paragraph 117 article 1 prescribes extraordinary urgency (like presidential ordinance case) for all juridical procedures concerning application of the law.

On **4 May 2004**, the Central Election Committee rejected again the request of the Hungarian Civic Alliance regarding the participation at the local elections. The request has been formulated on the completed formal shortages of the member-lists.

The Local Elections Act was criticized domestically, but also by the Venice Commission, the ODIHR and the OSCE.

In early 2005 the national minorities bill promoted by the UDMR/DAHR and the National Minorities Parliament Group introduced the very same provisions – with one single exception – in the area of elections *within* national minority groups. As of this writing, internal conflicts have reached serious proportions. They affect the very representation of national minorities and dilute the system of protection in place.

PART II

Article 1

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, and as such falls within the scope of international co-operation.

2000 Shadow report

expressed the concern on the attitudes of the public authorities which placed Recommendation 1201 and the Framework Convention in opposition. Included in its mutual treaties with Hungary and Ukraine, Recommendation 1201 has become a legally binding document whose provisions are important for the situation of national minorities in Romania, such as the provision related to the right of local councils to decide on the introduction of bilingual inscriptions in various localities, irrespective of the ratio of minority population.

In its 2001 Opinion on Romania, the Advisory Committee noticed that Romania has ratified a wide range of relevant international instruments and that the implementation of this article does not give rise to any further observations.

Comment

The issue of the Recommendation 1201 lost its significance, compared with two major evolutions: the development of the doctrine of the Framework Convention, which deepened this European instrument; the dialogue established between Romania and European Union in the process of enlargement. With regard to the right of local councils to decide on the introduction of bilingual inscriptions irrespective of the ratio of minority population, see Art. 10: Cobadin case and the Tatars community

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

2000 Shadow report

and

the 2001 Opinion on Romania

declared that the implementation of this article does not give rise to any specific observations.

Comment

Romania made the reference to the Article 2 in its dispute with Hungary with regard to the Law on Hungarians Living in Neighbouring Countries. See the opinion of the Romanian Party: "The implementation of the principles of Article 2 ... renders minorities a subject of discussion between sovereign States in one equation: <home-State – minority – kin State> ... No provision of the Framework Convention may be interpreted as allowing the possibility for persons belonging to kin-minorities to establish and maintain contacts with the kin-State. Such provisions would have infringed the sovereignty and jurisdiction of the home-State. Any attempt of subordination by some States, of kin minorities, especially of those living in neighbouring countries and the taking over of the control upon such minorities along with their utilisation for political interests, accompanied by support of separatist tendencies, <may become an inadmissible interference in domestic affairs, a permanent source of tension in the inter-State relations, and a factor of domestic and international destabilisation".⁴

⁴ See Adrian Năstase, Raluca Miga-Beșteliu, Bogdan Aurescu, Irina Donciu, *Protecting Minorities in the Future Europe. Between Political Interest and International Law*, Monitorul oficial, București, 2002, pp. 95-96.

The diplomatic dispute was solved by Romania and Hungary which signed on 22 December 2001 the Memorandum of Understanding between the Government of Romania and the Government of the Republic of Hungary concerning the Law on Hungarians Living in Neighbouring Countries. Establishing derogatory conditions for implementing the Law with regard to Romanian citizens of Hungarian ethnic origin, the two Parties eliminated the extraterritorial effects of the law and also set forth the obligation of the Hungarian authorities to initiate the necessary amendments of the Law.

Article 3

1 Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2 Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

2000 Shadow report

stated that: some investigations proved that the 1992 census in Romania had certain shortcomings, related to the lower number of Roma, and other small communities reported; there are no procedures to grant the status of national minority to a group and at least Csangos need to apply for such recognition; the solution is to complete the actual Romanian legislation by a law on national minorities.

In its 2001 Opinion on Romania, the Advisory Committee noted that: given the historic presence of the Csangos in Romania and the specific elements of their identity, the Romanian authorities should favorably consider the extension of the Framework Convention to persons stating that they are members of this community and should explore this question in consultation with the representatives of the Csangos; in the application of the Framework Convention on an article-by-article basis, the Romanian authorities should consider the situation of other groups in consultation with those concerned; in the context of the census of 2001, persons belonging to national minorities should be encouraged to make use of the possibility to identify themselves, recruiting and training observers from minority groups.

Comment

There are no yet procedures to grant the status of national minority to a group; persons belonging to national minorities were not recruited as observers for census, as it was suggested.

The provisions of Framework Convention's Art. 3 raise novel issues for the period 2000-2005 as compared to the previous decade (1990-2000): the dangers faced by parliamentary representation due to various forms of abuse; the imbalance affecting the internal democracy of minority communities due to ethnic business; the impact of immigration, and the emergence of "new minorities".

1. Endangering parliamentary representation

The Romanian constitution guarantees parliamentary representation for the recognized national minorities. Acknowledged national minorities are members in the National Minorities Council and manage budget funds set aside for the preservation and promotion of their respective ethnic identities. A number of 12 minorities were represented in 1990. By 1992 their number had increased to 14. Later on, Albanians and Jews received official recognition, bringing the total number to 16 in 1996. In 2000 and 2004 19 minorities enjoyed parliamentary representatives as Croats, Ruthenians and Slav Macedonians were added to the group.

As for the Hungarian minority, it secured parliament representation through the UDMR/DAHR, which has consistently obtained the necessary percentage of votes required of ordinary political parties. The group had 41 senators and deputies in 1990, 39 in 1992, 37 in 1996, and again 39 in both 2000 and 2004.

This system of parliamentary representation has proven its utility, as it enabled national minorities to make their voices heard in the country's legislative. Starting with the end of the 1990s, however, this system, originally designed to offer national minorities protection, has started to erode. A consequence of this process is the considerable fluctuation in votes received during the general elections.

The table below points to the cases where this fluctuation was relatively marked:

National / ethnic minority	No. votes 1996 elections (number of deputies)	No. votes 2000 elections (number of deputies)	No. votes 2004 elections (number of deputies)
Roma	159,521 (5)	83,597 (2)	71,117 (2)
Germans	23,888 (1)	40,844 (1)	36,166 (1)
Bulgarians	9,474 (2)	34,597 (4)	25,588 (3)
Ukrainians	11,297 (2)	15,427 (2)	10,888 (1)
Russian Lippovans	11,902 (1)	11,558 (1)	10,562 (1)
Croats	486 (1)	14,472 (3)	18,100 (2)
Armenians	11,543 (1)	18,341 (1)	9,810 (1)
Macedonians	---	8,809 (1)	25,689 (3)
Jews	12,746 (1)	12,629 (1)	8,449 (1)
Turks	4,326 (1)	10,628 (2)	21,638 (3)
Greeks	9,972 (2)	19,520 (4)	7,161 (1)
Serbs	6,851 (1)	8,748 (1)	6,643 (1)
Tatars	6,319 (1)	10,380 (1)	6,452 (1)

Italians	25,232 (7)	37,529 (2)	11,349 (2)
Slovaks	6,531 (1)	5,686 (1)	5,950 (1)
Poles	1,842 (1)	6,674 (2)	10,632 (2)
Albanians	8,722 (1)	18,341 (2)	5,159 (1)
Ruthenians	---	6,942 (1)	2,871 (1)

Several reasons for the erosion of parliamentary representation are apparent:

(a) The invention of „artificial” national minorities

In some cases, the important difference between the number of individuals who declared themselves to be members of a particular national or ethnic minority in the census and the number of votes in elections is readily observable: 695 individuals stated they were Slav Macedonian ethnics, but their association received 25,689 votes; 257 persons declared themselves Ruthenian, yet the minority’s association received 2,871 votes.⁵ Following the elections of 2000, representatives of these “recent minorities” made it on the list of candidates to the parliament: Vasile Ioan Sava of the Association of Slav Macedonians, and Gheorghe Firczak of the Cultural Association of Ruthenians. Initially, the National Minorities Parliament Group failed not recognize these representatives. The members of the House however validated the respective deputies’ mandates eventually with 196 votes in favor, 60 against, and 11 abstentions.

On the other hand, requests for official recognition which should have been the subject of serious analysis were never responded accordingly. The Advisory Committee specifically referred to the case of the Csangos; another relevant group is that of the Aromanians.

(b) Parliamentary business

- The Italian identity of candidate Ileana Stana Ionescu, a well-known actress, was contested in the 2000 elections. She responded by referring to a grandfather of her father-in-law who was said to have been of Italian descent. During the 2004 elections, Ileana Stana Ionescu in turn contested the Italian origins of Gina Nazaritti, a candidate on the slate of a different organization.
- Deputy Vasile Savu represented the Slav Macedonian minority between 2000 and 2004. There have been reports that Mr Savu, a union leader in the Jiu Valley, was able to run on the ticket of the Cultural Association of Slav Macedonians as a reward for having betrayed in 1999 the leader of the miners’ crusades, Miron Cosma.
- The Cultural Association of Slav Macedonians, established in September 200X, supported for the 200X elections an individual who publicly denied being a Macedonian.

⁵ The same discrepancy appears however in the case of traditional minorities, such as the Albanians (477 members, 5,159 votes).

- Deputy Gheorghe Firczak, the representative of the Cultural Association of Ruthenians was, originally, a Hungarian ethnic. In the 1996 and 2000 elections he ran on the ticket of the Hungarian Free Democratic Party.
- After former Social Democratic Party (PSD) deputy Ion Vela failed to enter the parliament because the position he occupied on the electoral slate of his party was too low, he established a “Croat Democratic Association”.
- Similarly, as Mihai Florin Lucian, formerly the prefect of Bucharest, occupied an inferior position on the PSD slate, he became a candidate for the newly established Bulgarian Cultural Association. He publicly referred to a “Bulgarian Bessarabian” grandfather.⁶
- An association of “the French in Romania” insisted that the authorities acknowledge it as a representative of the historical French community, although the artificial character of such a community was readily apparent.

2. Threats to the internal democracy of minority communities and ethnic business

The organizations of national minorities in the National Minorities Council (NMC) qualify for public funds made available for the preservation and fostering of their national identities. So far, the amounts have consistently increased: 6 billion ROL in 1997; 12 billion in 1998; 32 billion in 1999, 63 billion in 2000; 90 billion in 2001; 126 billion in 2002; 190 billion in 2003; 240 billion in 2004. The increase overcomes the inflation. The table below shows how these amounts were distributed in 2004:

Organization	Amount (billion ROL)
Association of Armenians in Romania	10,6
Democratic Association of Slovaks and Czechs	8,6
Ukrainian Association	20
German Democratic Forum	19,5
Community of Russian Lippovans	13,45
Hellenic Association	9,3
Association of Serbs	9,6
Social Democratic Roma Party	35,85
Turkish Democratic Association	7,9
“Dom Polski” Polish Association	5,55
Italian Community	4,7
Federation of Jewish Communities	8
Albanian League	4,7
Bulgarian Association in Banat	8,6
Croat Association	6
Democratic Association of Turkish-Muslim Tatars	9,95
Communitas Foundation / UDMR	50
Cultural Association of Slav Macedonians	4,7
Cultural Association of Ruthenians	3

Minority organizations also participate in other state-funded programs, as well as in programs financed with European money or by the kin-state. The Department

⁶ CRDE, “Minorități în tranziție”, 2004.

for the Protection of National Minorities / Department for Inter-ethnic Relations also directly allocates additional funds for inter-ethnic programs. The table shows the amounts allocated starting 2000:

Year / Fund (ROL)	2000	2001	2002	2003	2004
European Campaign against Racism, Anti-semitism, Xenophobia (RAXI)	900,000,000	800,000,000	2,660,000,000	3,170,000,000	--
Inter-ethnic projects and programs	3,900,000,000	4,000,000,000	4,400,000,000	6,052,000,000	15,000,000,000
Contribution to international programs	1,221,000,000	1,221,000,000			
Total available to the Department	6,021,000,000	6,021,000,000	7,066,000,000	9,222,000,000	15,000,000,000
Organizations	62,600,000,000	90000000,000	126498000,000	190000000,000	240000000,000

These amounts are used to an excessive extent by the organizations member in the NMC. Although, as the Advisory Committee noted in its previous opinion, they should be disbursed democratically, they seem to be monopolized by the representative association. The UDMR/DAHR was the only national minority association to have created a special foundation (Comunitas) to distribute the funds on the basis of competitions among projects. A flagrant example is that of the Social Democratic Roma Party (PRSD). The table below shows how the funds were used by the PRSD in 2003:

Budget for 2003	Media (%)	Organization (%)	Actions (%)	Book publishing (%)	Equipment (%)
24 billion	8.94%	68.72%	6.57%	0	15.77%

This distribution of the funds shows that of the 24 bn received in 2003, the PRSD used some 84.5% for organization and equipment. Most of the “activities” – which accounted for a mere 6.57% of the budget – consisted in events organized by the party, such as a 10-year anniversary celebration since the establishment of the Turda branch; or the re-organization of the Sibiu branch etc. The Roma Party publishes the *Ace of Clubs*, which serves the PRSD alone. No penny was spent on book publishing, although, in principle at least, this is more relevant to the promotion of cultural values and to community building. To conclude, the PRSD spent the money of the Roma community almost exclusively for its own purposes. In 2003, the organization owned 10 different offices and rented an additional 106, while hundreds of Roma organizations are constantly struggling to find funding for their headquarters.

In other words, the budget is being used in such cases to secure the entry of a Roma representative in the Parliament so that the organization having supported him may secure offices for its own members on the list of local councilors or in other public institutions. The PRSD has been consistently preventing open competition for offices for which its members are supposed to run against other Roma organizations, some of which enjoy a much better

professional and ethical reputation. As a result, at this date the current system is supported by each and every cultural association in Parliament. The Local Elections Act and the national minority bill are trying to legislate a monopoly of national minority groups currently in the parliament.

3. The application of the Framework Convention on an article-by-article basis and foreign nationals in Romania

At the end of 2002, a number of 67,221 foreign nationals resided or were domiciled in Romania.⁷ Among them, 29,925 were partners in mixed-capital or foreign-owned companies and were employed with a work permit; 7,273 were experts and technical support staff; 16,739 were involved in educational activities (students, doctoral students, teachers); 3,421 resided in Romania for other purposes (including humanitarian aid and religious activities).

The number of EU citizens employed on Romanian territory as of December 31, 2002 was 1,441; a total of 426 active work permits had been issued by that date. A number 1,730 requests for permanent domicile in Romania were registered in 2002; 548 of them were approved. Other 724 individuals were issued work permits and 870 were accepted for studies.

In 2002, 8,963 Chinese citizens, 6,054 Turkish citizens, 5,148 Italian citizens, and 8,641 Moldavian citizens had temporary residence in Romania.

Asylum seekers

The list below offers an image of asylum-seeker requests and approvals during 2000-2003:⁸

Asylum requests

Year	Requests	Approved
2000	1,366	171
2001	2,280	205
2002	1,151	188
2003	1,077	206
Total	5,874	770

To tackle specific issues, the authorities adopted Emergency Ordinance no. 194/2002 on the Legal Status of Aliens in Romania, established the Authority for Aliens and adopted the National Migration Strategy. A twinning process with Dutch partners is currently under way. The policies on aliens is undergoing systematic development also because of the involvement of the European Union, which is very interested in this particular field.

⁷ See http://www.ces.ro/romana/politica_imigratiei.html.

⁸ Data from the National Office for Refugees.

Article 4

1 The Parties undertake 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.

2 The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3 The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

2000 Shadow report

noted the proliferation of hate speech and the discrimination of Roma especially in the labour market; it documented the hostile attitude of the Romanian Intelligence Service towards the issue of national minorities.

In its 2001 Opinion on Romania, the Advisory Committee stated that: it strongly welcomes the recent adoption of the Ordinance on Preventing and Punishing All Forms of Discrimination; hopes that the National Council for the Prevention of Discrimination will be set up by the Government; notes with satisfaction the significant action programme to speed up full integration of the Roma minority within the community; considers that the Government should seek to identify ways and means of obtaining reliable statistical data about the number of the persons belonging to national minorities; is concerned by complaints of discrimination, hostility and harassment in some local authorities' treatment of Roma and how local authorities implement Act No. 67/1995 on social welfare with due respect for the principles of equality and non-discrimination; the Roma are seriously disadvantaged in relation to health care.

COMMENT

After entering into force, the anti-discrimination legislation substantially worked against the proliferation of hate speech and the discrimination of Roma. No specific effort for obtaining reliable statistical data about the number of the persons belonging to national minorities could be noticed during 2000-2005.

The Government Strategy for the Improvement of the Condition of Roma

The most important policy undertaken so far by the Romanian authorities to ensure equality of opportunity for the Roma community is the Government Strategy for the Improvement of the Condition of Roma. The preparations for the strategy started in 1999 and the program was launched in 2001, as the Advisory Committee was finalizing its Report on Romania. There have since been several attempts to monitor and assess the government strategy by RomaniCRISS, APADOR-CH, or the Resource Center for Ethno-cultural Diversity. Yet the most serious analysis of this type was carried out by the Resource Center for Roma Communities and the Open Society Institute. The report was brought to completion in 2004. The document entitled "Monitoring Local Implementation of the Government Strategy for the Improvement of the Condition of Roma. 2004 ROMANIA" (Resource Center for Roma Communities, Open Society Institute), reaches the following conclusions and makes the following recommendations, which should be used as a reference point in any analysis:

"EXECUTIVE SUMMARY

"The Strategy was adopted in April 2001. It includes ten general sections and a Master Plan of Measures detailing more specific actions to be carried out by both central and local government bodies. In the three years since its adoption, the majority of the administrative structures called for in the Strategy have been established. These include Prefecture-level County Offices for Roma; local experts at the town level; and the organisation of Joint Working Groups at all levels where appropriate. However, local monitoring revealed that while most of these bodies now exist in form, they lack the resources and authority that would enable them to carry out constructive activities at the local level.

For the County Offices for Roma (hereafter, BJR), a lack of real collaboration with other local bodies has hampered efforts to bring a coordinated approach to local policy for Roma. Monitoring indicates that participation in local working groups has been poor in some counties, with participating institutions delegating only low-level staff to attend. There are concerns about the politicisation of the selection process for the BJR staff in some areas, as the nationally dominant Roma Social Democrat Party (RSDP) has been the only organisation consulted in the nomination process, although there are many other active NGOs representing Roma interests.

In the specific areas addressed by the Strategy, few broad-based initiatives have been carried out in the five counties monitored. A number of small-scale initiatives, many funded through the EU's Phare programme, have been successful, notably in assisting Roma in acquiring identity papers, offering family planning advice, increasing access to schools, and job training. However, the resolution of issues such as the legalisation of property, low education levels, and high unemployment will require much more sustained and far-reaching efforts than have been made so far.

Based on the monitoring carried out at the local level, this report contains a series of specific recommendations, to the national Government, to local authorities, to Roma organisations, and also to international organisations and donors. These recommendations highlight the importance of consultation and cooperation with a wide range of Roma organisations at the central and local levels; of mapping out specific tasks and responsibilities of all participating bodies; and of increasing the resources available to carry out implementation of the Strategy goals. In particular, the recommendations urge international donors to enhance opportunities for Roma to participate directly in all phases of planning and implementing projects intended to benefit their communities.

While recent international initiatives such as the Decade of Roma Inclusion bring new focus to the areas of life where Roma face obstacles and inequality throughout the region, the Romanian Government Strategy remains a relevant document. Even as many of its measures are carried out, the need for additional human and financial resources and a reiterated commitment to the Strategy's principles are more important than ever. Broadbased Roma participation, both through the employment of more Roma staff in official bodies, and through collaboration with civil society, is a critical element in ensuring that the implementation of the Strategy meets the needs of Roma communities at all levels.

RECOMMENDATIONS

To the national Government:

Participation

- The Government should set a good example by consulting with a broad spectrum of Roma civil society representatives in the development and implementation of the Strategy.
- In the elaboration of the National Action Plan for the Decade of Roma Inclusion, the Government should draw upon the Strategy and consult with representatives of Roma organisations to ensure that Strategy objectives are not abandoned in the development of new policy.

Coordination

- The Government should take steps to promote the implementation of the Strategy at the local level, including through the allocation of resources specifically targeted to the experts and bodies established at the county and city level, to ensure that they have the capacity needed to address the needs of Roma in their area.
- The Government should continue to work closely with the European Union and other international institutions to support capacity development among local authorities, contributing financial resources accordingly.
- The Government should encourage collaboration between Roma NGOs and local authorities, to take advantage of expertise that civil society has developed and to ensure that local projects meet the needs of Roma communities.

Training

- The Government should ensure that all County Offices for Roma receive

training on anti-discrimination legislation and on the role of the National Council for Combating Discrimination.

To local governments:

Administrative measures

- Where county strategies have not yet been developed, local authorities should take the initiative to draft a local plan for implementation of Strategy objectives, in accordance with the Master Plan of Measures activity 13. Where county plans have been elaborated, there should be annual revision and updating, to include schedules, specific objectives, and periodic reporting by the responsible bodies.
- Local authorities should provide adequate support for the County Offices for Roma, including appropriate office space, transport and administrative support, to enable the office to carry out the tasks assigned to it under the Strategy (Section VIII. 3.).
- Where a Local Joint Working Group has not been established at the county or local level in line with activity 10 of the Strategy's Master Plan of Measures, local authorities should take immediate steps to organise such a Working Group. In all counties, Working Groups should contribute directly to the county strategies and establish specific terms and objectives, including methods for implementation and reporting requirements.
- All local institutions participating in Local Joint Working Groups should delegate representatives with appropriate decision-making authority and a clear mandate to fully participate in the working groups' activities.
- The Prefectures should establish the responsibilities of the County Office for Roma and the local joint working group in the implementation of programmes at the local level.
- All county and local bodies should undertake measures to hire Roma professionals as civil servants, particularly within the County Offices for Roma, ensuring that selection is based on fair competition and professional merits, not political affiliation.
- Local authorities should ensure that budget requests to the Government include sufficient allocations for the implementation of the Strategy at the local level.

Participation

- Local authorities should ensure that input and participation from a variety of Roma groups is incorporated into all activities that have an impact on Roma communities, helping to de-politicise the implementation of the Strategy at the local level.
- Local authorities should take steps to increase the number of Roma working in local institutions for Roma issues, drawing from the substantial pool of qualified and experienced Roma activists.
- Local authorities should approach Roma civil society groups for cooperation and collaboration in Strategy implementation, as these groups possess extensive expertise and experience in planning and carrying out projects to benefit Roma communities.

Training and communication

- In cooperation with civil society, local authorities should elaborate programmes to inform all civil servants about the Strategy's objectives and their role in implementing its measures.
- Local bodies should develop programmes for raising the awareness of the Roma population regarding fundamental human rights, and for civic education regarding the role of institutions, their rights and obligations to the local administrative institutions.
- Local authorities should organise courses for civil servants on minority rights and official responsibilities at the level of local administration institutions.
- Local authorities should elaborate programmes in collaboration with the Roma NGOs to inform the Roma community about the content of the Strategy.

To Roma organisations:

Coordination and cooperation

- Wherever possible, Roma organisations should formulate a joint approach to common problems, and advocate for issues of mutual interest.
- Roma NGOs should maintain open communication and cooperation with local and national authorities to help ensure that the expertise developed in the civil sector is accessible for Strategy implementation.
- Roma organisations should continue to work with the National Council for Combating Discrimination towards combating all forms of discrimination.

Monitoring

- Roma organisations should continue to monitor the implementation of the Strategy at both the local and national level, and follow up any negative trends with the appropriate authorities.

To international organisations :

Monitoring

- International organisations should promote the regular assessment and evaluation of Strategy implementation by supporting the preparation and discussion of domestic monitoring reports and critiques.

Participation

- Where possible, donors should promote capacity-building programmes for Roma organisations, as well as programmes for monitoring the implementation of public policy. Roma participation in all aspects of design and implementation of public policy should also be a priority, according to the principles elaborated in the Decade of Roma Inclusion and the Roma Education Fund.
- International donors should adopt eligibility criteria and application procedures that increase the access of local-level Roma NGOs to funding opportunities.
- Participants in the Decade of Roma Inclusion and Roma Education Fund should encourage the incorporation of Strategy goals and measures into the programmes elaborated under these international initiatives."

Article 5

1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

2000 Shadow report

noted that: there are issues related to the property that some national minorities have raised, namely those related to the properties their traditional churches used to own; the solution must have in view the situation of the Greek-Catholic Church properties; there is the specific case of the tartars and the responsibility of the Romanian state to protect these persons from any action aimed at assimilation.

In its 2001 Opinion on Romania, the Advisory Committee

stated that: is pleased that the Government has, in recent years, stepped up its efforts to make it easier for members of national minorities to preserve and develop their culture; is concerned by the negative image which Roma identity often has in Romania today, and which makes members of the community conceal their identity, instead of affirming and asserting it.

COMMENT

See PART 1

Article 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2 The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

2000 Shadow report

noted: the use of hate speech, either as the racist, chauvinistic and xenophobic propaganda of political leaders or as dissemination through the media of negative stereotypes related to national minorities; the Roma are the most common target of discrimination, but Hungarians are also discriminated, with regard to the opportunity to be appointed in high positions in the army, the police and the intelligence services

In its 2001 Opinion on Romania, the Advisory Committee:

recognises that, as a result of the regulations adopted and policies pursued by the Romanian authorities, inter-community relations have become markedly less tense in recent years and that a climate of greater tolerance has developed; is convinced that a better understanding of Roma culture by the public at large and by state employees would help to prevent discriminatory actions and attitudes; is deeply concerned about reporting crimes mentioning ethnic origin, following information from the police; notices that anti-Semitic slogans have been reported; expresses the hope that the Romanian authorities will strengthen their efforts to promote a political dialogue based on the principles of respect and tolerance and eradicate any form of anti-minority rhetoric; is deeply concerned about the persistence of numerous acts of discrimination in Romania, many of them directed at members of national minorities, especially at Roma; notes that members of the Roma community are still, proportionally, exposed to police brutality far more often than members of other minorities or the majority. considers that the Government has still not done everything it can to protect persons exposed to intimidation, discrimination, hostility or violence because of their ethnic, cultural, linguistic or religious identity.

COMMENT

Preventing and sanctioning discrimination

(a) The Emergency Ordinance no 137/2000 on preventing and sanctioning all forms of discrimination

The non-discrimination legal framework is constituted against the background of a constitutional provision stating the equality of rights, without privileges or discrimination (Constitution, art. 16).

The main legal framework concerning anti-discrimination was thereafter provided by means of Law no 48/2002 for approving the Emergency Ordinance no 137/2000 on preventing and sanctioning all forms of discrimination.⁹

The Emergency Ordinance reaffirms the principle of equality among citizens and guarantees the elimination all privileges and discrimination regarding the exercise of fundamental rights (art. 1 paragraph 2). Any natural and legal entity has the obligation to observe this fundamental principle.

The importance of the Emergency Ordinance resides also in defining the very term of *discrimination* as a concept encompassing “any difference, exclusion, restriction or preference based on race, nationality, ethnic appartenance, language, religion, social status, beliefs, sex or sexual orientation, appurtenance to a disfavoured category or any other criterion, aiming to or resulting in a restriction or prevention of

⁹ Distinct anti-discrimination provisions, regulating special fields, are to be also found in other special laws. Thus, Law no 148/2000 on advertising explicitly prohibits the use of discriminatory statements in public advertising.

the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life” (art. 2 paragraph 1). This legal definition is comprehensive and creates the background for an effective equal treatment, in accordance with requirements of requirements of the Protocol no 12.

The Emergency Ordinance equally defines the term of *disfavoured category*, as a status quo of a position inequality towards the majority of citizens; therefore, the EO implicitly admits that equal opportunities are not to be taken for granted, but created through means of special rights such as no minority is disadvantaged.

A legal distinction is made between discrimination per se and all measures undertaken by public authorities aiming at ensuring effective achievement of equal opportunities. Thus, the Emergency Ordinance states the effective means to achieve eliminations of all forms of discrimination, i.e. affirmative action.

A distinct chapter of the Emergency Ordinance is dedicated to special provisions concerning the effective exercise of fundamental rights, such as equality in the economic activities, employment and profession, access to public services (justice, administration and health), access to education, and the right to personal dignity.

The Emergency Ordinance is also instituting a set of sanctions for any infringement of its provisions by natural and legal persons and entitles the persons that are discriminated to claim damages, proportional with the prejudice generated and to ask re-establishment of the status quo prior to the discrimination. The legal procedures in front of the courts are exempted from judicial taxes, thus creating an easy access to justice.

The institutional arrangement for oversight of enforcement of the Emergency Ordinance is the National Council for the Prevention of Discrimination.

The Romanian legal system encompasses provisions that are sanctioning as criminal deeds severe infringements of the general principle on anti-discrimination based on nationality and race, inter alia.¹⁰

It seems safe to say that the actual legal framework reflects and encompasses the anti-discrimination general principles in international legal instruments. The EO no 137/2000 has harmonized the internal legislation with the *acquis* in the field, mainly with The Race Directive 2000/43/EC, by adoption of the minimum

¹⁰ The Penal code sanctions both the abuse of restricting the use or the exercise of fundamental rights and the nationalistic and chauvinistic propaganda. Thus, art. 247 provides that “restricting the use or the exercise of a citizen’s rights by a public servant or creating a situation that put the citizen in an inferior position on ground of nationality, race, sex or religion shall be punished by imprisonment between 6 months and 5 years”. According to art. 317, “nationalistic and chauvinistic propaganda or incitement to racial or national hatred ... shall be punished by imprisonment between 6 months and 5 years”.

requirements in term of combating race discrimination. Nevertheless, effective enforcement of the law still constitutes a problem.

(b) The activity of the National Council to Combat Discrimination

The National Council to Combat Discrimination was created against the background of the anti-discrimination Emergency Ordinance. According to EO no 137/2000, the Council was supposed to be established within 60 days from the publication of the EO, namely prior to end October 2000. However, Governmental Decision no 1194/2001 on the creation, organization and operation of the National Council to Combat Discrimination (NCCD) was only adopted in December 2001, and started to effectively function only mid 2002. The importance of the creation of this institutional structure is directly linked to effective enforcements of special provisions provided by the anti-discrimination EO.

NCCD is an executive structure within the central administration, subordinated to the Government (art. 1 paragraph 1). Nevertheless, the GD provides that NCCD is exercising its mandate independently, without interference from other public institutions or authorities. NCCD is led by a board, encompassing a President and other 6 members.

According to legal provisions, NCCD has the main role to implement the principle of equality among citizens. To this purpose, it was empowered with the following main competences:

- to make proposals on instituting special actions or measures aiming at protecting disfavoured persons and groups;
- to present to the Government draft laws in the field;
- to cooperate with other public authorities for the harmonization of the internal legislation with international norms in the field of non-discrimination;
- to cooperate with other public authorities for guaranteeing prevention, sanctioning and elimination of all forms of discrimination;
- to monitor the enforcement of non-discrimination legal provisions;
- to receive petitions and complaints regarding infringements of the principles of equality and non-discrimination, to analyse and review them, to take the appropriate measures and to communicate the answer to the petitioner. It is important to mention that petitioners may be not only discriminated persons, but also other legal persons activating in the field of protection of human rights;
- to elaborate studies on principles of equality and non-discrimination, to edit publications in the field;
- to cooperate with NGOs active in the field of human rights;

- to take act and sanction contraventions, as regulated by EO no 137/2000.

The Government decision failed to clearly state:

- a transparent procedure for access to NCCD;
- the procedure through which the NCCD take appropriate measures in notified cases of discrimination;
- to provide sanctions for those legal entities that do not comply with the would be NCCD requests for information, most probably needed for a comprehensive review of the cases;
- the procedure to complain against decisions of NCCD;
- to provide publication of the NCCD findings.

Only very limited budgetary resources were made available to the CNCD. As a consequence, the Council concentrated most of its efforts on sanctioning, and in particular on sanctioning speech. Policies targeting education and the fostering of the values of ethno-cultural diversity were, in effect, almost completely ignored. In 2004, the CNCD analyzed 353 complaints, of which 217 were resolved. Their distribution according to the criterion of discrimination is worth noting: 1 on the basis of race, 21 on nationality, 45 on ethnicity, 1 on language, 9 on religion, 59 on age (of which 45 received from groups of elderly persons), 13 on homeownership, 3 on refugee status, 2 on statelessness, 23 on conviction, 13 on gender, 6 on sexual orientation, 18 on disability, 6 on non-contagious chronic disease, 15 on HIV infection, 10 on membership in an under-privileged group.

A look at the CNCD jurisprudence reveals the following:

(a) The CNCD focused mostly on sanctioning statements and in particular those made in press articles. The fighting of acts of discrimination properly speaking – e.g., in employment, access to services etc. – has remained marginal.

(b) As a rule, the CNCD applied similar fines in most of its sanctions, whether the acts sanctioned consisted in the expression of offending or insulting opinions, or in calumnious incitements. At other times, however, the fines reached inexplicable levels, without any objective motivation being offered.

(c) The sanctions have been applied in a highly arbitrary fashion: for comparable acts of expression the CNCD sometimes found sanctions in order, while at other times it failed to sanction the authors.

(d) There is concern with respect to the discrepancy between the dangers posed by the anti-minority, racist or xenophobic messages in the mass media and other institutions and the cases considered by the CNCD.

This lack of consistency generated averse public reactions, which may eventually result in the wholesale compromising of the fight against discrimination. The most important of these responses came from a large number of well-known publishers, writers, editors and other public intellectuals against the sanctioning (and the fine of ROL 40 mn) of the publication of the pamphlet “Metuselaha at the voting booth”. The protest titled “Solidarity with

Mircea Mihăieș” notes the following: “The CNCD decision ... may generate justified concerns in the world of Romanian media – indeed, it already has, judging by the countless positions expressed in the press and on television channels. The ambiguous government decision regulating the activities of this body does not merely encroach on the freedom of expression, it positively threatens it. For this reason, we add our names to this protest against the CNCD decision and urge that it be immediately withdrawn. The sanction applied by the CNCD is an act of censorship against the political *opinion* of an author well-known for his democratic militancy.”¹¹

(c) The Emergency Ordinance 31 on fascist, racist and xenophobic attitudes

In March, 2002, the Romanian Government adopted the Emergency Ordinance 31 on fascist, racist and xenophobic attitudes. The Ordinance 137/2000 regards as offences actions, which in the sense of extreme right ideology, prevents persons' access to labor market, social entitlements, access to public, administrative and legal services, the freedom of movement and of choosing residence. The ordinance also concerns discrimination against personal dignity and regards as such acts of instigation to racial or national hatred, or the creation of an intimidating, hostile atmosphere against a person or a group of persons. The sanctions set by the Emergency Ordinance 31/2002 in the case of promoting the these ideas and behaviors range from 5 to 15 year imprisonment and denial of certain rights.

Threats, hostility or violence as a result of the ethnic identity

Threats and hostility initiated by political groups and involving public authorities were also manifest at the end of 2001. They incited the public opinion to chauvinistic attitudes and generated a major falling-out between the representatives of the Hungarian community (UDMR/DAHR) and the ruling party (PSD), which had previously concluded a co-operation protocol. Starting with 2002, however, acts of chauvinistic incitement involving state agencies, and in particular the Romanian Intelligence Service (SRI), which had been responsible for the interethnic tensions in the period between 1999 and 2001, practically disappeared. Nevertheless, it is worth exploring the logic of the acts of incitement at the end of 2001 in order to outline their pattern.

1. The norms regarding the hoisting of Romania's flag, intonation of the national anthem and use of insignia with Romania's stamp

On November 27-th 2001, Romania's Government passed the Norms on the hoisting of Romania's flag, intonation of the national anthem and use of insignia with Romania's stamp. Thus, Law 75 of 1994 which seemed to have become obsolete was updated.

¹¹ Solidaritate cu Mircea Mihăieș”, *Observator cultural* nr. 260, 17-23 martie 2005.

The norms rule out the hoisting of foreign flags and intonation of the national anthem of other states, with the exception provided for in the law. Law 75/1994 and its regulations of implementation are measures of a xenophobic and also chauvinistic character, to the extent to which the state flag and anthem can represent cultural signs of a national community. Obviously, Law 75/1994 and its regulations infringe freedom of expression. The main target of the November 27-th 2001 norm was obviously the Hungarian community.

2. Observations on the Harghita-Covasna Report of the Control Commission of The Romanian Intelligence Service

A Report of the Control Commission of the the Romanian Intelligence Service brought to the public opinion knowledge in November 2001 stated that “counties Harghita and Covasna got out of the state authority”. The signal given to the Romanian society and institutions meant to protect its sovereignty was that the Hungarian minority and its organizations represent a threat to the Romanian state.

The Report of the Control Commission of SRI included these allegations:

- (a) assertions in which rights and liberties included in the Romanian legislative system are contested;
- (b) assertions which contest the right of persons - either belonging to a minority or not - to want to formulate opinions about changing of the constitutional-legislative framework in the sense of extension of their rights;
- (c) assertions which, if they are true, represent a clear violation of the Romanian legislation and, in this case, compels the authorized bodies to intervene;
- (d) reference to a process of ethnic discrimination against the Romanians in the area, with the intention to make them leave the counties with a majority Hungarian population;
- (e) reference to actions pursued by the local authorities -majority Hungarian - to obtain a hegemonic state;
- (f) reference to risks on sovereignty, institutional risks and threats.

The evaluation of the Control Commission Report of SRI

At the end od 2001, Liga Pro Europa and APADOR-CH started their investigation in Harghita and Covasna in order to verify SRI allegations.

- (a) No manifestation of protest or urges to civic insubordination or any reference to them was found. It should be underlined that incrimination of such acts by SRI violate art.4, paragraph 1 of the Law on the national security of Romania: "*The provisions of art.3 on defense of national security cannot be interpreted or used for the purpose of restricting or forbidding the right to defense of a legitimate*

cause, of manifestation of a protest of ideological, political, religious or of another nature disagreement..."

The fact that SRI and the SRI Control Commission condemn the manifestations of the Hungarian population resulting directly from the rights - and at an institutional level, the obligations - sanctioned in the law: the Constitution, the Education Law, the Law on local public administration means a violation of the constitutional guarantees that the citizens of Romania enjoy.

(b) In all the discussions with the local authorities and the Prefecture of the two counties the association representatives have asked for examples of refusals of enforcement of the court ruling. All denied the existence of such cases.

(c) As far as the allegations on the process of "de-Romanianization" of the area by exclusion of the Romanian elements from the local decision processes and thus determining them to leave the counties where they live, imposing the knowledge of the Hungarian language as a selection criteria for the members of the respective structures, restriction of the possibilities of manifestation of the Romanian Orthodox Church in the area, the investigation of APADOR-CH and the Pro Europe League showed the following:

- (i) The data on the ethnic structure of the public authorities show a significant predomination of the ethnic Romanians in spite of the fact that they are a minority. Thus, the Administrative Commission with the County Covasna Prefecture has 33 Romanians and 3 Hungarians. On a list of 18 public institutions of national interest in the same county 11 are led by Romanians and 6 by Hungarians. In Harghita, the Administrative Commission with the Prefecture is made up of 24 Romanians and 19 Hungarians - at a ratio of about 84.7% Hungarians and 14% Romanians. In 1990, in the management of the commercial companies of Sfantu Gheorghe there were 12 Hungarian and 6 Romanian leaders. Today, there are 3 Hungarians and 15 Romanians. In the county library 47% of the books are in the Romanian language. Out of the 98 flats distributed between 1995 and 2001, 70 were received by Hungarians families, 28 by Romanian families. In other words, the Report of the SRI Control Commission misinforms.
- (ii) As regards the requirement of knowing the Hungarian language when being hired in a public institution in the area, this happens exclusively in the case of positions which presuppose contact with the public and consequently, the Law on local public administration has to be applied.
- (iii) The presence of the Romanian Orthodox Church in the region, this is based on the activity of the Harghita and Covasna Bishopric whose establishments and properties exceed substantially the country average.

(d) The reference in the Report on "*the speculative exploitation of the process of administrative decentralization with a view to obtaining control over some priority domains of social life in this area*" is ambiguous and impossible to be proved.

(e) *As far as the assertion regarding the loss of state control over an important zone of the national territory by the setting up of "a Hungarian border" inside the country, the representatives of APADOR-CH and the Pro Europe League had the occasion to see, during the investigation, how offending this was perceived by the civil servants in the area.*

(f) The Directorate for culture, religious denominations and properties of Covasna received in 2001 about 850 million lei out of which about 450 million lei were spent on cultural activities. In 2000 the Directorate was earmarked 313,289,395 lei, out of which 40-60% were spent for specific Romanian cultural activities.

Having in view that the Directorate is dealing with problems of culture, religious denominations and properties of the whole county and that the percentage of Romanians (36%), spending over 50% of the budget for specific Romanian manifestations is sharply in contradiction with the accusations in the Report of the SRI Control Commission.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

2000 Shadow report

noted that several cases of violation of freedom of conscience and religion have occurred in Romania, which represent also a violation of the freedom of association and freedom of expression. They have not been connected with the "national" feature of the respective persons, excepting Muslims.

In its 2001 Opinion on Romania, the Advisory Committee considers that the implementation of this article does not give rise to any specific observations.

Freedom of association: the case of the Szekler National Council initiators

A worrying case was the harassment against the Szekler National Council (SzNC) initiators, which represents a clear violation of the right to freedom of association.

On November 7th, 2003, Mr. Márton Lajos, member of the UDMR in Târgu-Mureș, sent APADOR-CH a complaint about pressures exerted by public authorities in Mureș County on members of the Szekler National Council. Mr. Márton Lajos declared: „On the evening of October 9th, 2003, after 9.00 PM, I was at a bus stop in Republicii Square in Târgu-Mureș with Andrassy Arpad,

member of the County Council, when I saw a police van coming straight towards the sidewalk, blinding us with headlights; then the police came out, surrounded us and asked to see our ID, on grounds that „Police has issued the ID cards and has the right to do take them away from anyone, any time, without any reason” (...) We were threatened and then taken to the Târgu-Mureş police station (...) where we were held for about an hour. While we were waiting for the investigator in the courtyard we were submitted to psychological pressures which reminded the methods of the former security: Why should we use prints in the Hungarian language? We were surely going to go to jail for 15 years! It was us, Hungarians, who were the enemies of this country, etc”. Mr. Márton Lajos declared that from the 9th of October on, “after being threatened by police and prosecutors that he was going to spend 15 years in prison”, the stress caused by their ill-treatment made him experience physical and psychological problems that have reduced his capacity to work.

On November 10th, Mr. Tökes Andras, a UDMR member of the County Council, was stopped on his way to Sovata and had his car searched, being accused of distributing posters in Hungarian promoting the ideas of the Szekler National Council.

A point to be made is that these events took place while on Thursday, October 9th, the deputy mayor of Târgu-Mureş, Fodor Imre, was detained. He was stopped on his way by a gendarme, then led by two policemen to the local police station in Sângeorzu de Pădure, where he was accused that he kept posters in his car featuring the map of the Szekler Region.

Mr. Márton Lajos also said that “following the correlated and repeated actions of the police and prosecutors during the month of October in several locations, the Hungarian population in Mureş, Harghita and Covasna Counties was noticed to be afraid to participate in the meetings for the local creation of the SzNC, which took place between the 12th and the 16th of October...”

The following facts were documented:

1. Imre Fodor, Márton Lajos, Arpad Andrassy and Tokes Andras were led to the police station and searched because of their activity as part of the Szekler National Council. The activity consisted of printing and distributing posters with the map of the Szekler Region or establishing local Szekler councils. The declared goal of the SzNC is to create an autonomous region.
2. The Statute approved by the Consultative Council of Szekler Seats during the meetings of 13.04.1995 and 23.05.1995, whose project has been reconsidered over the last months, stated the will of the Szekler communities to use the right to territorial autonomy of the Szekler Region and to seek legal guarantees to freely exercise this right.
3. Promoting the ideas of territorial autonomy and self-administration by the Initiative Group of the Szekler National Council is absolutely legal, and protected by the right to freedom of expression and of association. In what concerns the associative structures the SzNC plans to create, they would violate the Constitution only if their action were against “democratic pluralism, the principles of a state of law or Romania’s sovereignty, integrity or independence” (Article 37,

para 2 of the Romanian Constitution). It is clear, at this moment, that there is no evidence to suggest such threats.

4. One of the principles cited by the Mureş County authorities during their harassment actions is that the Constitution prohibits “urging to ... territorial separatism” (Article 30, (7)). Besides the fact that even the constitutional principle is – here - in breach of the general principles of international law protecting human rights and the freedom of expression, there is a total confusion between territorial separatism and territorial autonomy. While separation means taking a territory from under the national sovereignty, autonomy does nothing more than to define certain forms of organizations as part of the domestic administration and as a way of self-determination of that population, while confirming the state sovereignty. Or, for the SzNC, the meaning of autonomy of the Szekler Region is obviously not separatism. This aspect was made clear even in the draft statute of the SzNC: “The autonomy of the Szekler Region (Székelyföld – Terra Siculorum) does not bring damage to Romania’s territorial integrity or to the national sovereignty. The autonomy of the Szekler Region is based on the right to internal self-determination of communities and on the principles of subsidiariness and self-administration”.

5. It is significant that it was not the first attempt by the public authorities to discipline initiatives protected by constitutional and international guarantees for the freedom of expression and association, and to intimidate their authors. In 1994-1995, the Prosecutor’s Office launched investigations against the UDMR Council of Representatives and Council of Mayors and Local Councilor, maintaining that such forms of association were unconstitutional. Since, as expected, the authorities were unable to prove the violation of constitutional principles and of the laws, the investigations had to be stopped, as they proved to be ungrounded. The fact that, in 2003, the Prosecutor’s Office takes almost the same line of action suggests that there is a plan to harass Hungarians who promote administrative projects different from the existing ones.

6. The harassment on grounds of identity – against either members of the Szekler community or representatives of a specific Szekler identity project –, violating their rights to freedom of association is obvious when compared to the attitude towards other political options which do not (did not) comply with the constitutional frame. There was a relevant difference of attitude towards similar initiatives coming from members of the majority, or towards joint actions of the Romanians in Harghita and Covasna, aiming, equally, at changing the form of representation and administration for minorities.

7. The actions of the Târgu-Mureş Gendarmerie, Police and Prosecutor’s Office against members of the SzNC may be qualified as “*difference, exclusion, restriction (...), aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field*” (Ordinance 137/2000, modified, Article 2, para 1). Ordinance 137/2000 would sanction as contravention (when it does not fall under the incidence of the Criminal Code) the behavior of authorities which was tantamount to: “active (...) behavior that generates effects liable to (...) disadvantage, in an unjustified manner or (...) that subjects (...) to an unjust

or degrading treatment” (Article 2, para 2) the four SzNC members and other Szekler subjected to intimidation.

8. The common actions of the Târgu-Mureş Gendarmerie, Police and Prosecutor’s Office against the four members of the SzNC, including threats against persons in custody and statements regarding the unconstitutionality of the SzNC – including a comment by the Minister of Public Administration, Gabriel Oprea – shows that the actions were not mere routine operations of leading persons to the police station and conducting searches, as provided by the law. Rather, they were premeditated actions aimed at intimidating, through harassment, certain members of the Szekler community, Romanian citizens having a different identity than the majority, prevented to exercise their fundamental rights guaranteed by the Constitution and international conventions.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

2000 Shadow report

notices that between 1990 and 1999, a long list of violent acts from threats to physical assaults against the members of smaller religious communities were reported

In its 2001 Opinion on Romania, the Advisory Committee

considers that the implementation of this article does not give rise to any specific observations.

COMMENT

During 2000-2005, more several cases of violation of freedom of conscience and religion were reported in Romania. Their main target were Greco-Catholics. In that sense, the cases have not been connected with the “national” feature of the respective persons.

Article 9

1 The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.

2 Paragraph 1 shall not prevent Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.

3 The Parties shall not hinder the creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

4 In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.

2000 Shadow report

noticed the complains of national minorities of “inequitable” access to public media.

In its 2001 Opinion on Romania, the Advisory Committee

notes that the Romanian authorities have clearly tried to implement the essence of this article, but is concerned at the uneven distribution of resources, concerning both television and radio programmes, among the various minorities; is of the opinion that the Romanian authorities should ensure that the numerically smaller minorities also get adequate media attention.

COMMENT

The case of the Szekler National Council initiators – see Art. 7 - indicates not only the infringement of the freedom of association, but also the the infringement of the freedom of expression.

As regard to the uneven distribution of resources, concerning both television and radio programmes, among the various minorities, nothing essential changed since the 2001 Advisory Committee Opinion on Romania.

Article 10

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

3 The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

2000 Shadow report

argued that a substantial number that ensures the use of “the minority language in relations between those persons and the administrative authorities” is 20%, the figure used in the actual draft bill on local administration.

In its 2001 Opinion on Romania, the Advisory Committee welcomes the fact that the Law on local public administration expressly authorises the use of minority languages in dealings with local authorities in areas where minorities account for more than 20% of the population; is concerned by some strong negative reactions already expressed both at local and national level concerning the said Law.

COMMENT

A step forward for which the Hungarian community have been advocated much is the new version of the Constitution of Romania as ammended in 2003, with regard to the use of the monther tongue in the Courts.

The first 3 chapters of the new ARTICLE 128 are:

“(1) The legal procedure shall be conducted in Romanian.

(2) Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts of law, under the terms of the organic law.

(3) The ways for exercising the right stipulated under paragraph (2), including the use of interpreters or translations, shall be stipulated so as not to hinder the proper administration of justice and not to involve additional expenses to those interested.”

The right to use of interpreters or translations without imposing additional expenses to those interested expanded the former provisions valid only in criminal cases.

Article 11

1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including,

where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

*2000 Shadow report
highlighted the remarks already done with regard to the Art. 10.*

In its 2001 Opinion on Romania, the Advisory Committee notes that Law on local public administration adopted by the Parliament in early 2001 will consolidate the existing practice and expresses the hope that that it will enter into force soon.

COMMENT

In 2003 the Romanian Helsinki Committee conducted a lengthy correspondence with the local authorities in the Cobadin commune, invoking the provisions of Recommendation 1201 in order to *support* the request of the local Turkish-Tatar community to have bilingual public signs in the locality.

According to the membership records of the local branch of the Democratic Association of Turkish-Muslim Tatars in Romania, the organization that filed the request for bilingual signs, out of a total Cobadin village population of 6,424 inhabitants, 1,494 were Tatar and 582 Turks, amounting together to over 32 percent of speakers of Turkish/Tatar and desiring the promotion of Turkish language in local life. The 2,078 Tatars and Turks amount to 22 percent of the total population of the Cobadin commune, and thus exceed the threshold set forth by Law 215/2001. Finally, the percentage of Tatars in the Cobadin village of all village inhabitants is 23 percent, but they make up only 16 percent of the population of the Cobadin commune.

The final figure, which is below the statutory 20 percent standard, was the one used by the Local council of Cobadin commune in considering the request of the local branch of the Democratic Association of Turkish-Muslim Tatars in Romania. As a result, the local authorities refused any inscriptions in Turkish.

At the same time, in the city of Sibiu, where a German politician was elected mayor, German language public signs were introduced despite the fact that German ethnics in the city amount to less than 10 percent of all the inhabitants of Sibiu. Such comparisons suggest that the implementation of special measures favoring national minorities as provided in international legislation is not homogenous, and is rather a function of the openness of local authorities.

Article 12

1 The Parties shall, where appropriate, take measures in the

fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2 In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3 The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

2000 Shadow report

noted that Romanian textbooks “remove” the history of national minority from the country’s history; changes of the content of the “national” and “patriotic” education within the Romanian military system and of the intelligence services system is also required; affirmative action has already been applied in more universities – especially, for Roma.

In its 2001 Opinion on Romania, the Advisory Committee

notes of the considerable efforts made by the Romanian authorities concerning minority education; points out that it has learned that a shortage of minority-language textbooks and qualified teachers is still the rule for some minorities, in particular Armenians, Croats, Poles, Serbs, Slovaks, Turks and Tatars; is concerned at reports that history teaching does not sufficiently reflect Romania's ethnic diversity; is deeply concerned by the fact that a significant percentage of Roma children attend school irregularly or not at all.

One issue concerns the procedures whereby the diplomas of graduates having studied in the kin state and returned to work in Romania are recognized. School textbooks in minority tongues are published in a small number of copies, and they cost a lot. Publishing houses are not very interested in such publications. The leader of the Slovak community noted, "We, Slovaks, have the most important network of schools after the Hungarians and the Germans. Yet the Ministry of Education and Research will not comply with the provisions on national minorities in the Education Act. A single new textbook has been printed for Slovak schools after 1990; the rest have all been older editions. It has gotten so bad that parents with children in classes taught in Slovakian are asking us why they should bring their children to our schools if they receive Romanian textbooks anyway." The Croats have the same problems: "The textbooks create a vicious circle. The law must be observed, and it says it's the responsibility of the state to ensure that textbooks are printed. This is not the business of national minority organizations. Should we privatize education, because we might be better off on our own?"

In the field of textbooks, Hungarians and Germans enjoy support from their kin-States.

Article 13

1 Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2 The exercise of this right shall not entail any financial obligation for the Parties.

2000 Shadow report

notes that the principle is entirely fulfilled by Romania.

In its 2001 Opinion on Romania, the Advisory Committee

considers that the implementation of this article does not give rise to any specific observations.

Article 14

1 The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.

2 In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour 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.

3 Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.

2000 Shadow report

focuses on the requirements of the Hungarian community regarding to the possibility to establish a state university in Hungarian; argues that the stands taken against the possibility to establish, in principle, a state university in Hungarian represents a violation of the very spirit of the International Covenant on Civil and Political Rights.

In its 2001 Opinion on Romania, the Advisory Committee

welcomes the fact that the legislation expressly guarantee members of national minorities the right to learn and be taught in their mother tongue; is of the opinion that the authorities should ensure that classes where instruction should be given in minority languages are actually held particularly in Ukrainian and Croat schools; notes that no instruction in Roma language is available in Romania, and that teaching of this language is offered only to very few pupils; encourages the Government to facilitate exchanges of textbooks and qualified teachers, bearing in mind the positive experiences with Bulgarians and Poles in this respect.

The issue of the separation of Hungarian schools in 2000s: the Bolyai Farcas High School

An example which illustrates the question of the separation of Hungarian schools and its positive solution even in 2000s is offered by the events in Târgu Mureş in 2002 concerning the mixed Bolyai Farcas high school. Turning this school into an institution with tuition exclusively in Hungarian was an important point in the local co-operation protocol concluded between the PSD and the UDMR. The procedures for transferring children studying in Romanian language were to be carried out during the summer holidays so as not to disturb the instruction process.

Yet on April 9, 2002, a group of Romanian students protested in the school's courtyard against the separation process. The following day, about 200 of the 425 students in the Romanian program wore in school armbands with the colors of the Romanian flag. The national flag was hung on display in the classroom windows, and doors were painted in red, yellow, and blue. These events generated some commotion among politicians, president Iliescu included. On April 23, the latter spoke in favor the right of students who had chosen to attend the Farkas high school to finish it.

UDMR's position stated that at least some schools are not merely locales for instruction, but essentially cultural centers the spirit of which has to be conserved and perpetuated. The Bolyai Farcas high school was said to belong to this last group. It has its origins in 1556, when the Cluj Diet decided to establish a school in Târgu Mureş. The school was established the following year, was affiliated to the City's Reformed Church, and was later moved to its current premises. One of the institution's greatest personalities, Apáczai Csere János taught there starting with 1662. He was the author of a large encyclopedia and a disciple of Descartes. In 1718, the Târgu Mureş high school was turned into a higher education institution. In 1804, Bolyai Farkas, father of Bolyai János, a mathematician who revolutionized the domain by creating a variant of non-Euclidian geometry, started to teach there.

The school's buildings were expanded in 1908 and starting with 1924 oral examinations for the baccalaureate were held in Romanian. In 1960-1961, the high school was turned into a bilingual language institution as 11 classes with tuition in Romanian were brought from the Papiu Ilarian high school; 26 classes were still taught in Hungarian. In the meantime, the number of Hungarian classes decreased and in the 1980s the use of Hungarian reached an all time low.

For these reasons, the representatives of the Hungarian community argued, the separation of schools is a process with wider educational and cultural significance. But since political groups proved unable to reach a common

solution, the local Pro Europe League issued in a press conference the following statement of principles: (1) the Bolyai Farcas high school is an institution which carries symbolic significance for Hungarians in Romania and which was confiscated by the communist regime; (2) returning it to the Hungarian community is part and parcel of the restitution package; (3) the tensions in Târgu Mureş were masterminded by veteran extremist groups gathered under the protective wing of the PUNR (Party for Romanian National Unity); (4) PSD followed the right path and acted to protect the interests of the larger society; (5) at the same time, a gradual process of change would be preferable, as it would avoid correcting past injustices by present ones; (6) demands made by Romanian students in the Bolyai Farcas high school to finish their studies in the same institution is legitimate; (7) consequently, the process whereby the school is returned to its status as a Hungarian educational institution should be started and guaranteed, but Romanian students should also be enabled to graduate; (8) starting with 2002-2003, the school should only matriculate students in classes with teaching in Hungarian.

The logic behind the solution provided by the Pro Europe League was accepted by the leaders of the PSD and UDMR and the strategy was followed to the detail. As such, the case of the Bolyai Farcas high school constituted an exception which forcefully demonstrated the groundbreaking role of civil society in the resolution of interethnic issues.

Education for Roma

As a rule, Roma children receive instruction in mixed schools and mostly in Romanian. Instruction in the Romani language was provided in 2001-2002 in 102 schools for 12,650 Roma pupils. The teaching staff amounted to 164 full time teachers and another 96 who teach Romani either as primary school teachers or as part time employees. The chief issues in Roma education are attendance of the mandatory school program, segregated Roma classes, and affirmative action for Roma children.

Segregation in schools

In spite of the policy promoted by the Ministry of Education and Research in the field of education for Roma, there are still separate Roma classes or schools segregated according to ethnic criteria. An urgent problem facing the Ministry of Education and Research is discrimination against Roma children in local educational institutions. The quality of teaching in segregated classes is considerably lower than that of instruction received in mixed classes.

The achievement of Roma children in schools is conditioned by the promotion of an inclusive education. Separating Roma children on ethnic criteria generates an unfavorable state both for Roma children and for the society at large. This is confirmed by statistics indicating that the drop-out rate in institutions with Roma children is higher than the rate for the entire system. The largest disparity is

recorded in primary schools, where the rate is almost twice as high if all schools with Roma children are considered, and three times as high if only schools in which at least 50 percent of the students are Roma are counted.¹²

According to some researchers, while there is no *de jure* segregation Romania,¹³ there is local *de facto* segregation.¹⁴ *De facto* segregation is the aggregate result of individual or group acts carried out on the basis of ideology or mentalities that result in social separation. At the same time, the main feature of *de facto* segregation is that it does not result from deliberate government policies.

A report on segregation of Roma children in schools was concluded by Romani CRISS for the primary and lower secondary school in Cehei, Salaj county, in March 2003.¹⁵ The report was the subject of a complaint addressed¹⁶ to the National Office for the Fighting of Discrimination (CNCD). Later CNCD decided in Decision 218 of 06.23.2003 that the acts detailed in the report constitute discrimination and the Cehei School received an official warning.

The segregation of children in the Cehei school was the result of the decisions made by the Principal and which received the tacit agreement of the County School Inspectorate. Other segregation cases were documented by Romani CRISS for 2003. Such acts occur in spite of the ministry's December 1998 notification, which expressly prohibited ethnic segregation in schools. What the current state of affairs indicates, therefore, is that two processes are of crucial importance in the field of education for Roma: on the one hand, the institutional construction of affirmative measures for the community and, on the other, the part played by local actors in the understanding and implementation of coherent Roma policies elaborated and assumed politically by the central authorities.

Affirmative action in education

The program of affirmative action for Roma was commenced by the Ministry of National Education in 1992-1993, upon the initiative of the Social Assistance Department at the University of Bucharest, with a number of 10 places set aside for Roma candidates in the Department's social assistance program. Later on,

¹² Ministerul educatiei si Cercetarii, Institutul de Stiinte ale Educatiei, Institutul de Cercetare a Calitatii Vietii, *Participarea la educatie a copiilor romi: probleme, solutii actori*, Bucuresti, 2002, p. 50.

¹³ *De jure* segregation is the result or direct consequence of laws/norms issued by the state or a local agency thereof (see Mihai Surdu, *Desegregarea scolilor roma: un exercitiu de policromie*, available at www.policy.hu, p. 25).

¹⁴ *Idem*.

¹⁵ For additional details, see the Report by Romani CRISS at www.romanicriss.org, database, CRISS vs. ISJ Salaj.

¹⁶ Romani CRISS filed with the CNCD complaint no. 1704/12.05.03 on the basis of Art.2.1 and 2.2 of Law 48/2002 approving Government Order 137/2000 concerning the prevention and fighting of all forms of discrimination.

other institutions in Cluj, Iasi or Timisoara adopted similar programs (in 1993-1994). The Ministry's initiatives with respect to education for Roma became more coherent in 1998, when Ministry Order 3577/1998 allocated 149 places for young individuals of Roma origin in 8 university centers. This number later increased to 373 places in 23 higher education institutions in 200-2001, 397 places in 29 universities in 2001-2002, and 422 places allotted in 37 institutions in 2002-2003.¹⁷

Another goal of affirmative action strategies was to promote open distance learning in higher education institutions for Roma teachers without university studies (with merely a high school diploma), who were to obtain a university degree with double specialization as "teacher – Romani language teacher". The program started in October 2000 and matriculated 159 students in the 200-2001, 2001-2002, and 2002-2003 academic years.¹⁸ One of the reports on the program noted that some higher education institutions (the public universities of Cluj and Constanța, and the SNSPA in Bucharest) have acknowledged the necessity of affirmative measures for Roma by setting aside their own special places for Roma, independent of the Ministry's decision.¹⁹ This initiative increased the number of places allocated through the orders of the Ministry of National Education by 50 in each of the past two years. The universities' policies implementing affirmative action programs for Roma contributed to the shaping and development of a young Roma elite.

The series of affirmative action measures was extended by the Ministry of Education at the level of high schools and vocational schools. The first steps were taken through Ministry Order 5083 of 11.26.1998 and through later similar orders in 2000-2001 and 2001-2002²⁰. The number of Roma students who attended educational institutions (whether pre-school, primary, lower or upper secondary, or vocational) in 2002-2003 was 158,128 in the entire country, amounting to 4.23 percent of the number of students in the Romanian education system. Of them, 15,708 opted in favor of additional Roma curriculum (Romani language and Roma culture and traditions). In 2002-2003, Roma candidates in vocational schools and high schools benefited from 2 subsidized places per specialization per class, irrespective of the institution attended, which resulted in a number of 1,345 young Roma individuals admitted in the 9th grade through an affirmative action program.

¹⁷ Ministry Order 4120 of 06.09.2003, concerning matriculation in public higher education institutions, provided 422 special places to Roma candidates in admission exams in 37 public colleges and universities.

¹⁸ The program started at the initiative of Professor Gheorghe Sarau at the Directorate for Education in Minority Languages (Gheorghe Sarau, *Modelul romanesc. Scurt istoric al initiativelor si al tintelor strategice privind invatamantul pentru romi intreprinse de MECT si de ONG-uri in perioada 1990-2002*, available at www.edu.ro).

¹⁹ Gheorghe Sarau, *op. cit.*, www.edu.ro.

²⁰ Ministry orders 4562 of 09.16.1998, 4542 of 09.18.2000, and 4857 of 11.01.2002; see www.edu.ro

The impact of affirmative policies is reflected in a comparative analysis of statistical data in 1990 and today. Statistics of Roma attendance in 1989-1990 shows that the number of Roma pupils between 6 and 18 who attended school was 109,325 (58,325 boys and 51,000 girls), of which 61,143 spoke Romani.²¹ The latest similar statistics available concerns the 2002-2003 school year: of a total of 3,738,175 pupils, 158,128 (4,23 percent) are Roma. The number of Roma children attending school increased by 48,103 in the last 12 years, while the number of Romani-speaking children increased from 61,143 (1990) to 80,293 (2003).²²

Affirmative action supposes resources: this is one of the reasons which explain the importance of the European Union support for improving the status of Roma.²³ Some of the PHARE projects have as a part of their goal educational measures. The project approved in 2001 "The access at education of the disadvantaged groups, especially Roma" has a budget of 8.330.000 Euro, from which 7.000.000 Euro come through PHARE programme. The objectives of this project are the following: improvement of the quality of education for Roma by measures taken at the pre-school system; opening opportunities for pupils who are not attending the school; editing books dedicated to intercultural education.

Education in Romani

The study of Romani language is organized within the framework of general educational legislation in Romania and that of education for national minorities.²⁴ However, there have been initiatives to use Romani in education even before the emergence of specific norms.

Professor Gheorghe Sarau pioneered the trend in 1992-1993 with an elective course in Romani language at the Department of Foreign Languages and Literatures at the University of Bucharest. This initiative provided the basis for the establishment of an Indianist chair offering alternating programs in Hindi and Hindi-Romani. A Hindi minor degree was first offered in 1996-1997, and a Hindi-Romani major degree was offered to between 7 and 10 students in the fall of 1997. Also as a part of its affirmative action program, the Ministry of National

²¹ *Parteneriatul Strategic dintre Ministerul Educatiei, Cercetarii si Tineretului si UNICEF in educatia copiilor romi – Realizari si prespective*, Bucuresti, 2003 , p. 72.

²² *Idem*, p. 73. The data was provided by county school inspectorates between September 2002 and June 2003.

²³ See other European Union support for improving the situation of Roma in Romania: PHARE RO9803.01 for 2000-2002: partnership between local public authorities and Roma communities (900.000 Euro); PHARE RO 0004.02.02 was launched in February 2002: developing civil society with Roma as a special category in need (1.000.000 Euro); PHARE RO 2002/000-586.01.02 was launched in 2003: support for a national strategy on improving the situation of Roma (6.000.000 Euro).

²⁴ Study in the mother tongue is organized under Education Law 84/1995 and Ministry Order 4646/1998

Education established in 1998 the Romani Language and Literature Section awarding 10 minor degrees to Roma and non-Roma students.²⁵

The first three experimental classes were established at secondary level in 1990-1991 in three teachers' schools in Bucharest, Bacău, and Târgu Mureș.²⁶ Their purpose was to train future Roma instructors. The school curriculum included the study of Romani language and literature (3 classes per week) and teachers' practical activities in the final years of study (the fourth and the fifth) in classes studying Romani language and literature.²⁷

Principles of education in Romani

One important question is whether, considering history and current circumstances, there is a clearly formulated strategy concerning education in the Romani language. In other words, do we have now, in 2004, a clear picture of the path to follow in the field of education for Roma? One of the pioneers of education for Roma, Gheorghe Sarau, synthesized 4 principles for a strategy targeting Roma education:

- I. An educational system must be ensured in preponderance by teachers promoted and instructed from among the ranks of ethnic Roma.
- II. Educational programs for Roma must be launched with the prior consultation of the beneficiaries.
- III. The educational system for Roma must be reconsidered using the contribution demonstrated in schooling projects of Roma and non-Roma NGOs.
- IV. The education of Roma must have at its base the concept of "integration".

Data, good practices and study cases will explain why education is one of the basic instruments for the improvement of the general status of the Roma community.

Article 15

The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular.

2000 Shadow report

noted the attempts of the Romanian Intelligence Service to intimidate those members of national minorities thinking to a specific understanding of the evolution of the country.

In its 2001 Opinion on Romania, the Advisory Committee welcomes the fact that organisations of citizens belonging to a national minority are

²⁵ *Parteneriatul Strategic dintre Ministerul Educatiei, Cercetarii si Tineretului si UNICEF in educatia copiilor romi – Realizari si prespective, Bucuresti, 2003.*

²⁶ Upon the initiative of the Inspector for Roma Professor Ioana (Ina) Radu.

²⁷ Gheorghe Sarau, *Scurt istoric al invatamantului pentru romi.*

given participation rights through a constitutionally guaranteed representation in Parliament; notes that the participation of minorities has led to significant achievements for the protection of national minorities and has contributed to the promotion of a climate of tolerance in Romania; notes that the institutional arrangements give considerable weight to one organisation for each minority, for instance the organisation represented in Parliament and/or the Council of National Minorities; this preferential treatment is reinforced by the fact that this organisation receives most of the financial aid allocated by the state to the minority concerned, creating a risk that other organisations representing that minority may to some extent be sidelined and may not receive adequate state support; notes that Roma are in a markedly worse position than the rest of the population with regard to the employment; within the Roma community, women face additional difficulties to access a certain economic independence; is concerned by the fact that Roma and, on a different scale, the Hungarians, are not integrated in the police and the army, but also other institutions in the field of justice and education

COMMENT

See COMMENT at Article 3 on Endangering parliamentary representation.

Article 16

The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.

2000 Shadow report

noted hostile measures taken against Hungarians in Odorheiu-Secuiesc.

In its 2001 Opinion on Romania, the Advisory Committee

considers that the implementation of this article does not give rise to any specific observations.

COMMENT

The implementation of this article does not give rise to any concern.

Article 17

1 The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

2 The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organisations, both at the national and international levels.

2000 Shadow report

referred to the case of the Austrian citizen Ana Maria Biro, declared person non grata by the Romanian state because she had asserted that Romania's federalisation is a prerequisite for the Hungarians in Romania to fully enjoy their rights.

In its 2001 Opinion on Romania, the Advisory Committee noted the plans to impose visa requirements and the concern to not cause undue restrictions on the rights of persons belonging to national minorities to establish and maintain contacts across frontiers.

COMMENT

The implementation of this article does not give rise to any concern.

Article 18

1 The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.

2 Where relevant, the Parties shall take measures to encourage transfrontier co-operation.

2000 Shadow report

asked the Romanian authorities to provide information on the activity of the inter-governmental bodies established through bilateral treaties; protect the right of local authorities to enter collaborations at the international level.

In its 2001 Opinion on Romania, the Advisory Committee welcomes that Romania is party to numerous bilateral treaties and cultural agreements touching upon the protection of persons belonging to national minorities.

COMMENT

Today, the implementation of this article does not give rise to any concern.

Article 19

The Parties undertake to respect and implement the principles enshrined in the present framework Convention making, where necessary, only those limitations, restrictions or derogations which are provided for in international legal instruments, in particular the Convention for the Protection of Human Rights and Fundamental Freedoms, in so far as they are relevant to the rights and freedoms flowing from the said principles.

2000 Shadow report

noted that Romania have made no limitation, restriction or derogation to the principles of Framework Convention

In its 2001 Opinion on Romania, the Advisory Committee did not comment Art. 19, 20, 21 and 22.

COMMENT

See COMMENT at Article 2 and the dispute with Hungary with regard to the Law on Hungarians Living in Neighbouring Countries.

Article 20

In the exercise of the rights and freedoms flowing from the principles enshrined in the present framework Convention, any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities.

2000 Shadow report

made reference to comments on Part I

COMMENT

See COMMENT at Article 6 and the SRI reference to a process of ethnic discrimination against the Romanians in Covasna-Harghita districts;

Article 21

Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.

2000 Shadow report

noted that the Hungarian minority in Romania has constantly been accused by various political forces in Romania that its requests for various forms of autonomy represent a violation of sovereign equality, territorial integrity and political independence of the state.

See COMMENT at Article 6 and the Report of the Control Commission of the the Romanian Intelligence Service brought to the public opinion knowledge which stated that “counties Harghita and Covasna got out of the state authority”.

Article 22

Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.

2000 Shadow report

highlighted the need to pay attention to the discrimination against the Roma community, as a minority group, but also the need to take actions on the discrimination within the Roma community, especially regarding Roma girls and women

COMMENT

The 2000 Shadow report reference to the need to take actions on the discrimination within the Roma community, especially regarding Roma girls and

women is as valid as it was 5 years ago. During EU monitoring on how Romania applies the Copenhagen principles, a special concern rised the traditon within some Roma communities to marry children at 13-14 years old.