

Individually free yet collectively limited?



**Minority rights and the status of the Hungarian minority
in Romania after EU accession.**

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Picture taken from website:
<http://wikitravel.org/en/Cluj>

Subscription:
St. Michael's Church, with the statue of Matthias Corvinus.

Comment:
Picture is taken during Funar's terms as a nationalistic mayor of Koloszvár; notice the flagpoles on both sides of the statue in the colours of the Romanian flag, including flags.

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Introduction

In this thesis, the status of minority rights that apply to the Hungarian minority in Romania will be described, from a political, legal, socio-economical, cultural and linguistic point of view. The historical developments concerning the Hungarian minority in Romania will also be taken into account; as will the international, European and Romanian legal framework of minority protection. The final focus will be laid on the current status of minority rights and the effects of Romania's EU accession on January 1, 2007. The research question therefore is:

To what extent has the accession of Romania to the European Union in 2007 influenced the status of the Hungarian minority in Romania?

The expectation is that the need to comply with the requisite of minority protection which was included in the political condition of the Copenhagen Criteria, and the pressure provided by the monitoring mechanisms of the European Union, created sufficient incentive for Romania to significantly improve the rights of its minorities, in particular for the largest minority in the country: the Hungarians.

Research will be carried out by means of a literature study; focused on both older as well as more recent literature, because not only factual situations change over time, but also the perception of a situation. Older books show different and (now often considered as) preconceived opinions on history and can therefore provide an interesting insight in why problems were dealt with in a certain way. More recent literature describes current events and provides practical, up to date information, but also offers new retrospective views on historical events.

Another thing one must keep in mind when writing on nationality or minority issues, is that sources can be biased. In a booklet as recent as 1996 by Romanian authors, Romanians are glorified and Hungarians are implicitly brought down as follows: 'The truth was that during the years following the unification, the Romanian ethnic element, with a wider demographical basis and biologically stronger, increased its majority, from 53.7% in 1910 to 57.8% in 1930; in the same period, the Hungarian minority decreased from 31.6% to 24.4%' (...).¹ On the other hand, Hungarian authors can be equally biased, and might be still focused on irredentism. As Shafir wrote in 1985: 'At best, Romanian *émigré* circles would acknowledge that minorities are mistreated, but would attribute this to the plight of all Romanian citizens in the *multilaterally developed socialist society*. Such lack of empathy for the sensitivities of minorities, to be sure, is matched by over-sensitivity on the opposite side. (...) Only rarely does one encounter a case where a 'former' Romanian or Hungarian strives to remain scientifically objective.'² This 'biasedness' of the issue has produced a heap of unscientific literature. The impression is, that only since the late nineties less prejudiced literature has become available. Nevertheless, Romania has received a lot of attention since it acceded to the European Union in 2007, and the amount of reliable literature on the country is growing.

In Chapter 1 of this thesis, the origin and history of the Hungarian minority in Romania will be sketched first. Next, the period from 1989 up to the start of the negotiations for accession of Romania into the European Union in 2004 will be assessed, followed by an overview of Romania's accession period. The 'Zeitgeist'³ of the 90's will be specifically described because this decade can be seen as a transitional period between repression and relative acceptance of the Hungarian minority and as the fundament on which the current situation of the Hungarians in Romania is built.

In Chapter 2, minority policy and protection on international and European level will be looked at, with a special focus on the difference between collective and individual minority rights.

In Chapter 3, the current situation in Romania concerning the status of the Hungarian minority will be studied, elaborating on political representation, economical options, cultural rights, and language

¹ Edroiu, N. & Puscas, V., 'The Hungarians of Romania', Fundatia Culturala Romana- Centrul de Studii Transilvane, Cluj-Napoca, 1996

² Shafir, 'ROMANIA – Politics, Economics and Society; Political Stagnation and Simulated Change', Frances Pinter Publishers, London, 1985, p 158

³ Concept introduced by Johann Gottfried Herder in 1769, meaning: the spirit of the age and its society.

policies in Romania. First of all, Romanian rules and legislation will be analyzed in order to get a clear view on the prevalence of restrictive (anti-minority) and protective (pro-minority) provisions for ethnic or national minorities. Secondly, the practical use of this framework by Hungarian minority organisations will be described, and thirdly monitoring of these rights will be looked at from an international, European and Romanian perspective.

Chapter 4 will focus on political representation of Hungarians from Romania on a European level and will assess whether advocating for a European minority policy is an option. Monitoring of the Copenhagen Criteria will also be discussed in relation to minority rights in Romania. Practical changes following Romania's EU accession affecting the Hungarian minority will be sorted out, followed by an assessment of the visibility of Hungarian Members of the European Parliament (MEPs) from Romania, compared to the activities of Hungarian MEPs from Slovakia.

By following this method of research, an attempt will be made to sketch the background, the current status and the future perspectives of the rights of the Hungarian minority in Romania, especially since Romania acceded to the European Union in January 2007.

Chapter 1 - The Hungarian Minority in Romania

Introduction

The history of the Hungarian minority is best explained in the context of the region of Transylvania. Over the course of history, Transylvania has been inhabited by a number of peoples with distinct ethnic origins.

According to the CIA World Fact book (2002 census)⁴, the 22.3 million inhabitants of Romania consist of: Romanian 89.5%, Hungarian 6.6%, Roma 2.5%, Ukrainian 0.3%, German 0.3%, Russian 0.2%, Turkish 0.2%, other 0.4%. In nominal terms: 1.4 million Hungarians, out of which more than 95% live in Transylvania (see Tables 1 and 2, Annex 1).

Romanians call the region Transylvania (after the Medieval Latin name ‘Ultra silvam’; over the woods), Hungarians speak of Erdély (Erdő-elve or Aerdal; ‘beyond the forest’, which also refers to the Latin name) when referring to it and Germans (Saxons) use the name Siebenbürgen, named after the seven Saxon fortified cities of:

(Hungarian:	Romanian:	German:)
Brassó	Braşov	Kronstadt,
Segesvár	Sighişoara	Schäßburg,
Medgyes	Mediaş	Mediasch,
Nagyszeben	Sibiu	Hermannstadt,
Szászsebes	Sebeş	Mühlbach,
Beszterce	Bistriţa	Bistritz,
Kolozsvár	Cluj-Napoca	Klausenburg. ⁵

To understand the position and social status of the Hungarian minority in more recent times, it is important to learn about its history.

First of all, an introduction is given to the history of Hungarians in Transylvania, also covering territorial disputes and Romanian claims concerning descent, and minority repression during the Ceausescu era. In the second and third part, the period between the fall of the Communist Regime and EU accession is discussed, focused on political events that affected the status of the Hungarian minority in Romania.

⁴ <https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html#People>

⁵ The historical region of Erdély that included the seven cities is smaller than the present-day Romanian province of Transylvania.

1.1 *History of the Hungarian minority in Romania until 1990*

Magyars

At the end of the 9th century AD, the Magyars (often called Hungarians) entered the Pannonian Plain in 896, led by the chief of the tribe Árpád. They were related to Turkic tribal people that originated from the Eurasian steppes but were driven off by the growing power of another tribal people, the Pechenegs. Hungarians in fact continuously entered the area between 850 and 1000 AD, a few of them possibly already arriving in the companion of the Avars, between the 7th and 9th centuries.

From their new home base Pannonia, the Magyars invaded large parts of Central Europe for strategic reasons. These were not random raids, but targeted attacks and organised expeditions to undermine the possible development of a unified power close to the Magyar territory. They often closed pacts with kings and princes who were not affiliated to the Holy Roman Empire, like Italian and Bavarian sovereigns.

Reminded of the violent raids of the Huns in the 5th century, the victims of the Magyars soon referred to them as the '*Hungarians*'. Although they were defeated by Holy Roman Emperor Otto the Great in 955 at Augsburg, the Magyars consolidated their newly won territory during the next four centuries. The territory roughly comprised (in terms of 21st century borders) Hungary, the southern part of Slovakia (Vojvodina), the south-west corner of Ukraine (Ruthenia), Transylvania and the Banat; the northern parts of Serbia (and Croatia). In the year 1000, their ruler (and later saint) King István (Stephen) received a hereditary royal crown from Pope Sylvester II. With this gesture, the Magyars were accepted as being part of medieval Christian European culture and the independent Kingdom of Hungary came into being.⁶

In that same century most Magyars converted to Catholicism and the tribal social and political system was replaced by a centrally organized county system. From that time on, Transylvania was continuously inhabited by the Magyars, and later probably accompanied by the Vlachs or Wallachians (later self proclaimed '*Dacians*', after the Roman province of Dacia). The Vlachs were herdsmen, peasants, serfs or soldiers and resided mainly in the mountainous areas, and were first mentioned in 12th century written document from Fogaras.⁷ The origin and time of arrival of both peoples was -and still is- debated; and the issue also plays a role in later territorial claims and contempt between Hungarians and Romanians, which will be discussed later on in this chapter.

In the following ages, Transylvania was attacked numerous times; by the troops of Holy Roman Emperor Henry III, by the Pechenegs, Cumans and in 1241 by the Mongols of the Golden Horde. Because of these attacks, the Hungarian Kings of the 12th and 13th centuries decided to fortify Transylvanian towns in order to enhance border defence. This initiative simultaneously enhanced economic circumstances; people were drawn (and even invited by the King to defend the borders; for example the Széklers and the Saxons) to the cities, guilds were founded and commercial trade started to flourish. Even the political instabilities following the fall of Constantinople in 1453 were withstood initially thanks to the fortified cities.⁸

Another minority group from the Székely, who consider themselves as being part of the Hungarian minority. They are also one of many Turkic tribes, but their precise origin is not known. They possibly arrived in the Carpathian Basin before the Magyars did, but fact is that they were hired by the Hungarian King to guard the eastern borders in the 10th and 11th centuries. The Székler were socially and politically integrated into the Hungarian Kingdom since then. Although they have a Hungarian identity, their language and culture has some distinctive features. Their numbers are most dense in

⁶ Hupchick, Cox; '*The Palgrave Historical Atlas of Eastern Europe*'; New York; 2001; Maps 9-46

⁷ Cadzow, Ludanyi; '*Transylvania – The Roots of Ethnic Conflict*'; Kent/Ohio; 1983; p 51-52

⁸ Gündisch, '*The History of Transylvania and the Transylvanian Saxons*'; <http://www.sibiweb.de/geschi/>

Csik County (or the 'Széklerland'), in the eastern part of the Carpathian Mountains.⁹ In this paper the Székely will be considered as being part of the general Hungarian minority. Transylvania and Hungary were conquered by the Ottoman Turks after the battle of Mohacs in 1526. In 1529 even Vienna was shortly sieged by the Ottomans. Transylvania however, became an independent principality and a vassal state that paid annual tribute or taxes to the Turks. Transylvania was governed by a native prince, mostly belonging to the Magyar nobility, which was one of the three *nationes*: the Magyars, the Széklers and the Saxons (Germanic people; present in the region since the 12th century). The region was granted political, social and cultural autonomy, as long as the monetary and trade obligations towards the Ottomans were met. After the death of Sultan Suleyman I in 1566 the Ottoman Empire weakened through internal corruption and external threat by Western naval developments and new weaponry.¹⁰ In 1648 at the Treaty of Westphalia, Ottoman power in Transylvania had already weakened severely and Transylvania was recognized as a sovereign state. A few military campaigns of the Turks, however, temporarily re-established Ottoman rule.¹¹ In 1683 the Turks besieged Vienna for the second time, but it turned into a failure and the Ottoman empire crumbled fast after this event. With the Treaty of Sremski Karlovci in 1699, the territory of the Ottomans was definitively pushed back by the Habsburg towards the regions south of the Danube, out of Transylvania, except for the Banat. Transylvania came with Hungary under Habsburg rule, but was governed as a separate unit.¹²

In 1848-1849 Hungarian liberals and nationalists revolted in Budapest, but were defeated after a War of Independence in 1849. Their aspiration was to construct a modern nation state based on a liberal, constitutional system and civil equality. In Transylvania both the Hungarian and the demographically expanded Romanian population supported the revolt, but for different reasons. For the Romanians unification with this new Hungary would at least mean an improvement in the still feudal social and economical order, from which they suffered mainly. But as became clear that it would become a unitary, centralized, Hungarian speaking nation-state, they turned around towards claims of Romanian nationalism and autonomy. The revolution was crushed in 1849; Transylvania was detached from Hungary and once again governed separately from Vienna, under intensified Habsburg rule. In 1867 a Compromise was reached and the Habsburg Empire was reorganised as the dual Austro-Hungarian monarchy, of which the Hungarian part fully included Transylvania. This remained the status quo until 1918 and the Treaties of Paris.

On the basis of Woodrow Wilson's idea of 'sovereignty of the people', the Treaty of Trianon (1920) assigned Transylvania to the newly formed state of Romania. Self-determination of the Hungarian people was fully ignored in this treaty, as the self-determination principle was only applied to the winners of the war, in other words: the countries that ended on the side of the allied forces. Between 1940 and 1944 the region was retaken by Hungary with German help, the Hungarians being tempted by Hitler's irredentist promises. Since the end of WWII, the area of Transylvania is one of three historical areas (the other two are Moldavia and Walachia) that constitute the Romanian state. And consequently, Hungarians form the largest minority within this multi-ethnic state.¹³

Minority issues from 1918 to the Communist Era

In the interwar period strong measures of nationalization were taken by the Romanian government that had lasting influence on the political and economical structure of Transylvania.¹⁴ By means of land reforms, the new 'state-owning nation' (the Romanians) reclaimed the land from the previous owners

⁹ White, *'Nationalism and Territory – constructing group identity in Southeastern Europe'*, Rowman & Littlefield Publishers, Oxford, 2000, p 97

¹⁰ Hupchick, *'The Palgrave Historical Atlas of Eastern Europe'*, 2001, Maps 9-46

¹¹ White, 2000, p 133

¹² Hupchick, 2001, Map 23

¹³ Brubaker, R., *'Nationalist Politics & Everyday Ethnicity in a Transylvanian Town'*, Princeton, 2006, p 59-63

¹⁴ Brubaker, 2006, p 70-73

(the principally Hungarian nobility). Secondly, cities and towns that were dominated by other nationalities than Romanians had to be 'recolonized' by creating a new Romanian urban middle class. Thirdly, the state apparatus was reformed by allowing only one administrative language: Romanian. And finally the educational system was Romanized, first secondary and postsecondary schools, and later primary schools as well.

These measures weakened the old Hungarian elite and promoted the emergence of a new, Romanian elite. Romanian presence doubled in the major towns, from 18% in 1910 to 34% in 1930. But the Hungarian language was still much used and although the division between the mainly Romanian countryside and the minority-inhabited towns became less sharp, it still existed.¹⁵ During WW II, parts of the Transylvanian territory were exchanged or retaken by Hungary and Romania; a clarifying map is provided in Annex 1 (Map 3 and 4).

After WWII, the Yalta Conference of February 1945 placed Hungary and Romania under Soviet control. In 1945 the Romanian government was somewhat forced to sign a nationality charter in which equality for the law regardless of race, nationality, language or religion was fostered. But in March '45 the communists curtailed King Michael and took over power under the leadership of Petru Groza. A few of their first measures were massive land reforms (expropriation of rich peasant, most of them being non-Romanians) and deportations of Romanian dissidents and members of the Hungarian, German, Jewish and Gypsy communities to Gulag-like camps. Moreover, a redistribution of the Romanian population over the newly won territories was made, partially by means of these land reforms.

On the 30th of December 1947 King Michael was forced to abdicate and emigrate, and on that same day the Peoples Republic of Romania was declared.¹⁶ Guided by the Stalinist National Policy, in 1948 the Romanian Politburo sent out a resolution on the national question, in which the Stalinist idea of 'equality and diversity amongst nationalities liberated from the class yoke' was promoted.¹⁷ Despite this, between '49 and '52, two important minority representatives in the Romanian Parliament Ana Pauker and Vasile Luca were purged and opposition parties disbanded. Moreover, many critical minds were arrested and imprisoned, like the Hungarian bishop of Alba Iulia Aron Márton and the leader of the Hungarian People's Union, Gyárfas Kurko.¹⁸ Other 'elements hostile to the Romanian People's Republic' were sent to 'temporary labor service' in 'work colonies', in which there were believed to be about 180,000 'voluntary workers'.¹⁹ In June of 1952 Gheorghiu-Dej consolidated his power by becoming President of the Council of Ministers (Prime Minister), next to his function as Secretary General of the Party.

A new Constitution was adopted in September of that same year. Included were some provisions that seemed to safeguard the cultural rights of minorities. Use of minority languages in education was allowed, as well as in administrative and judicial organs. Nánay argues here that it is obvious why the Romanian government organized massive population shifts, for there is a relation with the minority-majority principle. The provisions allowed for the use of 'the language of the majority nationality in their respective area'. In this way, the provision was only applicable up to the point where the Romanians would outnumber the other ethnic groups in the area; or until regions would be reorganised to enhance the relative numbers of the Romanian population and minimize the amount of other ethnic inhabitants.²⁰

Nevertheless, the 1952 Constitution did provide for the creation of the 'Hungarian Autonomous Region' in the Széklerland in the eastern part of Transylvania, along the old border. This autonomous administrative territory eased the demands of the Hungarians and avoided ethnic conflict, although in

¹⁵ Brubaker, 2006, p 74-76

¹⁶ Völkl, *'Rumäniën – Vom 19. Jahrhundert bis in die Gegenwart'*, Verlag Friedrich Pustet, Regensburg, 1995, p 162-170

¹⁷ Nánay, *'Transylvania: the Hungarian Minority in Rumania'*, Danubian Press, Florida, 1976, p 30

¹⁸ Deletant, *'Romania under Communist Rule'*, The Center for Romanian Studies, Portland, 1999, p 58-61

¹⁹ Deletant, 1999, p 74-75

²⁰ Nánay, 1976, p 38

practice the theoretical aims were not met. The idea came from the Soviet Union, where the 'national questions' of the ethnic borderlands (Eastern Europe) were thought to be solved by a new model of 'institutionalized multinationality.' All territories within states should be demarcated according to nationality, inhabitants should be counted and categorized by ethnicity and schools on ethnonational bases were promoted. According to Brubaker, the bottom line was to create so much ethnic heterogeneity that socialism would in the long run become the unifying, pacifying factor.²¹ In the meantime, autonomy in the Hungarian Autonomous Region seems to have been pretence, as the region did not enjoy more autonomy than any of the other 16 provinces and a large number of ethnic Hungarians were excluded. Also, the province was kept as small as possible and was located as far east as possible, away from the border with Hungary. It soon was denominated as the Hungarian 'reserve'. January 1953 Gheorghiu-Dej announced that the minority problem in Romania was solved.²²

In 1956, however, the Hungarian Revolution erupted in Budapest. It re-incited Hungarian nationalism in Transylvania and alarmed the Gheorghiu-Dej government that further de-Magyarization was necessary to keep the region united under Romanian rule.²³ After the October 1956 student demonstrations in several cities in Transylvania that showed solidarity with the Hungarians in Hungary, he accused the Hungarian minority of 'revisionism' and a 'counterrevolutionary attitude'. Gheorghiu-Dej started a renewed campaign against the Hungarians, in which many Hungarian language schools were closed (again) or merged with Romanian schools. The same was true for many Hungarian *kulturház* (cultural institutes), theatres and even folklore-groups.²⁴ In 1960, the Hungarian Autonomous Region was reorganised and renamed. The now called Mureş-Hungarian Autonomous Region lost most Hungarian populated areas and gained mainly Romanian inhabited areas, thus strongly diluting the Hungarian majority from 80 to 65% of the total. During the territorial reorganization of the country in 1968, the Region was dissolved altogether.²⁵

Gheorghiu-Dej's policy

In 1952 when Gheorghe Gheorghiu-Dej took up the highest position in the Romanian Communist Party, Romanian nationalism became a high priority. Gheorghiu-Dej designed several policies to 'force assimilation of ethnic minorities into the "mainstream" of Romanian life'.²⁶ Summarizing, over the course of his reign these policies included:

- Restriction on educational opportunities for ethnic minorities in their native tongue. (Many elementary German and Hungarian language schools were closed and in higher education the numbers of classes taught in minority languages were strongly reduced. Also, in 1959 the famous Hungarian Bolyai University of Kolossvár was united with the Romanian Babes University, which severely limited Hungarian instruction.²⁷)
- Attempts to limit the publication of books, newspapers, and journals in minority languages, as well as restrictions on theatrical performances in non-Romanian tongues
- Redistribution of apparat positions, both in the Party and the state bureaucracies, which tended to favour the Romanian nationality, in the Party top but also at regional and local levels.
- Strong repression of minorities in periods of crisis (for instance in the aftermath of the Hungarian Revolution in 1956 and demonstrations in Romanian Transylvania)²⁸
- Terrorization by means of the Securitate or security police, supported by a party controlled legal framework to defend its actions.²⁹

²¹ Brubaker, 2006, p (49-)53

²² Ramkema & Van Schaik (red.), *'Tussen recht en repressie – Minderheden in Oost-Europa'*, Instituut voor Publiek en Politiek, Amsterdam, 1994, p 116-117

²³ Nánay, 1976, p 39

²⁴ Ramkema & Van Schaik, 1994, p 117

²⁵ Brubaker, 2006, p 83

²⁶ Gilberg, 'Modernization in Romania Since World War II', Praeger Publishers, New York, 1975, p 213

²⁷ Nánay, 1976, p 45

²⁸ Gilberg, 1975, p 213

²⁹ Deletant, 1999, p 67

Minimalization of minorities under Ceausescu

Before discussing specific anti-minority policies, it is useful to look at some aspects of Ceausescu's rule as a whole. Soon after Gheorghiu-Dej's death in March 1965, Ceausescu became First Secretary of the Central Committee of the Romanian Communist Party and took over power. In August a new Constitution was adopted, which renamed the country (formerly called the Romanian People's Republic) as the 'Socialist Republic of Romania'.

Ceausescu did not follow his predecessor's line in dealing with national minorities. His tactics were based on the idea of Romania as a fatherland for all ethnic groups within its borders. In his first years he therefore resurrected nationality councils for Germans, Hungarians and Ukrainians, he allowed an expansion of the number of periodicals and newspapers in Hungarian and German, and improved educational facilities.

During the start of his reign he also underlined several general concepts that had to be incorporated into society. Three main concepts of those were 'Socialist ethics and morality', 'Building of Socialism' and 'Patriotism'.³⁰ The first concept was aimed at building new character traits such as honesty, commitment to community instead of individual goals, and willingness for hard work. The second concept advocated the creation of a 'New Socialist Man' model citizen. He was supposed to use his occupational skills to strengthen socialist economy, he had to morally educate others and denounce vicious minds, and he should assent to the claim of the RCP that its policies were by definition in the best interest of all (Romanian) citizens. The third concept denoted a commitment to the construction of a Romanian socialism, a denouncement of 'bourgeois nationalism' and the unification of all ethnic groups under that flag.³¹ Especially this concept of patriotism evolved into a new, nationalist historiography in which the theory of Daco-Roman continuity was embraced, which will be explained in the next paragraph.

The Romanian state under Ceausescu's rule suppressed not only its minorities, but all its inhabitants through a number of measures.

Disrespect of the law and human rights, for example by means of the repressive methods of the Romanian Security Police or Secret Service, the *Securitate*. People were locked up, interrogated, beaten, tortured and sometimes purged or executed. Also, numerous critics and dissidents were illegitimately and forcefully admitted to psychiatric wards.³²

Forced labor: since 1965 unpaid working days were established and referred to as 'voluntary service for the fatherland'. Paid holidays were shortened, working days lasted for 10 hours and working standards were continuously heightened.³³ Labor camps had been introduced by Gheorghiu-Dej's government. The highest concentration of labor camps was to be found between Bucharest and the Black Sea. Most deportations took place between 1951 and 1956 and affected people from all minorities and ethnic Romanians as well. During Ceausescu's reign some camps still existed and were used to finish the Danube Black Sea Canal Project.³⁴

Austerity measures on food and oil: from 1981 onward, rationing of first all meat and later also bread, flour, sugar and milk was introduced. Initially it applied only to some provincial towns, but by 1983 it was extended to most of the country. This was a result of the fact that in 1982, Ceausescu had announced officially that he would pay off the foreign debt by 1990 by introducing austerity measures. Up to 1989, monthly personal rations were gradually reduced to amounts that could not even feed one person for two weeks. Also from 1981 drastic measures to save energy were enforced; petrol, electricity and gas were rationed. In the winter of 1983 power and gas were cut off even during day time and even in a number of major cities.³⁵

³⁰ Gilberg, 1975, p 232

³¹ Gilberg, 1975, p 232

³² Amnesty International, 'Roemenie Vakantieland – 't is maar wat je wilt zien', Amnesty International, Amsterdam, 1978, p 5

³³ Amnesty International, 1978, p 19

³⁴ Deletant, 1999, p 74-77

³⁵ Deletant, 1999, p 126

Other measures: economic surrealistic planning included super fast industrialization, which demanded the utmost of the population. Extreme censorship and information restriction and reshaping affected intellectual freedom, as did terrorization by the Securitate. Birth control measures such as the abolition of abortion and contraception further restricted personal freedom.

Ethnic discrimination and persecution was common; and not only the Hungarian and German minorities were discriminated against, also the Ukrainian, Bessarabian, Macedonian, Bulgarian, Serbian, Russian, Slovak, Turkish, Jewish and Gypsy communities suffered from it. The next paragraph outlines legislative measures that were used to ‘minimalize’ and ‘Romanize’ minorities.

Minority law

Minority rights in Romania were provided for under the rule of Gheorgiu-Dej in the constitution of 1952. Even the new constitution of 1965 by Ceausescu generously guaranteed these rights. However, during this period there was a great and constant discrepancy between the *pays légal* and the *pays réel*.³⁶ If reality would have been as bright as it seemed on paper, Romania would have been a shining example for the rest of the world in its treatment of minorities. Yet this was not the case. De-Russification in the late Gheorgiu-Dej years was since the Constitution of 1965 followed by Romanization.³⁷

One of many ideological concepts that surfaced during Ceausescu’s rule was the theory of continuity of the Daco-Roman ancestry from pre-Roman times, which is explained in the following paragraph. This nationalist historiography provided the framework for Romanization on all levels of society. A new homogeneous social order was pursued through the elimination of social differentiation based on class, region, religion, gender, lifestyle, thought, and ethnicity. In Romania this goal of ‘omogenizare’ was openly proclaimed and was the starting point for subsequent nationalistic policies.³⁸

These nationalistic policies included many practical measures that acted ‘against’ minorities. But factual information remains scarce from this period of Romanian history; many measures were non-discriminatory in essence but could be applied in many different ways.

To start with, it is remarkable how the 1965 Constitution provided for the rights of minorities. In short, it guaranteed equal rights for all inhabitants, irrespective of nationality, race, sex or religion (article 17); and restrictions on these rights would be punished by law (article 17). These provisions were further defined by several Acts in 1968, 1971 and 1972 on respectively local people’s councils, education, and freedom of conscience, of religion, press and citizenship. And above all, “the free use of their own language and the right to have books, newspapers, journals, theatres, and education on all levels in their own languages” was guaranteed.³⁹

However, the greater part of these rights was applicable to the relation between the state and the individual, and not between the state and the national minorities. In this way the collective rights of the national minorities were not guaranteed and only individuals could legally contest discriminatory behavior by the state. Yet oppression was directed against the communities of the minorities and usually not against the individual, creating an obstructed legal situation for members of the minorities. Moreover, the national minorities as separate groups had not been granted an equal legal status as the majority nation of Romanians, which allowed further discrimination through ethnicity.⁴⁰

After Ceausescu’s denouncement of the 1968 Soviet invasion of Czechoslovakia, the Soviet Union was increasingly unsatisfied with Romania’s behaviour. To avoid Soviet intervention, Romania made its minority policies more subtle to keep the peace. Some concessions were made, amongst which the establishment of the Hungarian Nationality Workers’ Council and the German Nationality Workers’ Council. These council could be called alibi-institution, as they had no real power or influence and their suggestions were simply ignored. When Soviet threat diminished in the seventies, Romanization of the minorities was resumed fiercely; they had to assimilate.⁴¹

³⁶ Shafir, 1985, p 159ff

³⁷ Illyés, 1982, p 133

³⁸ Brubaker, 2006, p 83

³⁹ Illyés, 1982, p 133-134

⁴⁰ Illyés, 1982, p 134-135

⁴¹ Ramkema & Van Schaik, 1994, p 119

Systematization

The idea of 'systematization' was launched in 1972, but it was put into practice only in the late 80's after the 1977 earthquake. According to Brubaker, systematization can be defined as follows: *'a far-reaching plan for rural restructuring and resettlement that was designed to eradicate the distinction between town and country. The scheme (...) envisioned the abandonment or destruction of as many as half of Romania's 13,000 villages and the construction of hundreds of new "agrarian industrial centres"'. The plans generated an international outcry, in part because they were presented as a special threat to the rural Hungarian minority and its cultural heritage. In fact, there is no evidence that the plans targeted Hungarian villages specifically. The regime, in any event, fell before the plans could be implemented on a large scale.'*⁴² The plan was an attempt to destroy traditional heritage, a certain way of life that was linked to the land for ages, and the individuality of villages and its inhabitants.⁴³ Many villages were destroyed, but many still exist, although they all bear some scars of this plan.

Forced Assimilation

In 1987 an ethnic Hungarian (dissident) poet, named Geza Szocs, made a statement on forced assimilation during hearings of the Commission on Security and Cooperation in Europe. According to his statement, the policy of forced assimilation practised by the Romanian government manifested itself in the following ways:

- '1) the use of population transfers into and out of Hungarian regions in order to change the ethnic composition of Hungarian areas;
- 2) the "restriction of and elimination" of Hungarian-language education;
- 3) the "banishment" of the Hungarian language from public life;
- 4) the "liquidation" of cultural institutions and the harassment of minority churches; and
- 5) a campaign "designed to create in Hungarians a sense of shame toward their own history and to denigrate their feeling of identity".'⁴⁴

In general this policy was enforced by means of urbanization and industrialization. Hungarian workers were forced to work in factories outside of Transylvania, which cut them off from their social context and undermined the preservation of their native culture. At the same time huge numbers of Romanians were set to work in Transylvania, which decreased the percentage of Hungarian inhabitants.

Furthermore, Hungarians were prohibited from settling in Transylvanian cities and were thus forced to move to other parts of Romania to find appropriate work. Urban growth in Transylvania was therefore caused mainly by Romanian influx.⁴⁵ Between 1930 and 1992, the Romanian urban population increased tenfold from a third up to more than three quarters, while the Hungarian urban population barely doubled its net number and in relative terms decreased by nearly fifty percent.⁴⁶

Through the years, the policy of forced assimilation was pursued by specific laws and decrees:

1968 – The Education Act of May elaborated on educational rights but remained vague. It mandated minority instruction, not minority schools. On top of that, the threshold of the number of students required to allow minority language instruction was raised with regularity.

1969 - A new Criminal Code was introduced, which provided in several discriminatory decrees.

Article 166 convicted every citizen that made 'propaganda which is aimed at changing the socialist social order or which is dangerous to the security of the state'. Article 167 provided in capital punishment for those, who 'engage in a conspiracy'. This included having contact with people who are planning 'fascist deeds' or attempt to 'change the socialist order of society'. Article 245 was aimed at 'illegal transgression' and also punishes preparatory deeds that might lead to an attempt of crossing the border illegally.

⁴² Brubaker, 2006, p 83n114

⁴³ Deletant, 1999, p 155

⁴⁴ Helsinki Watch, 'Destroying Ethnic Identity: The Hungarians of Romania' – A Helsinki Watch Report, New York, 1989, p 3

⁴⁵ Ramkema & Van Schaik, 1994, p 119

⁴⁶ Brubaker, 2006, p 85 and p 86: Table 2.1

1970 – Decree No. 153 against youth criminality and ‘anarchistic’ group formation could also penalize ‘disturbance of the social order’. Since 1971, Hungarian prayer groups were charged for being anarchistic and many protestant Hungarian Sunday services were defined as social order disturbance, for which churchgoers could be arrested.⁴⁷ The protestant faith in Romania is for almost 100% connected to the Hungarian ethnicity; Romanians are generally Orthodox.

1971 – The Little Cultural Revolution was imposed, which furthered strict Romanization.

1973 - Educational decree law 278 determined that in primary schools a minimum of 25 students would be required in order to hold a minority-language class; in secondary schools a minimum of 36 students was required. Hungarian villagers tried to limit the problem and organized busses to send all Hungarian children to one school so that education would be guaranteed in that village, but the authorities halted this practice on the grounds of gasoline shortages.⁴⁸

1974 – According to this decree on press, all import and export of literature had to be approved by the state. Publications of religious communities were included, which meant that when in possession of a few bibles, a reverend or preacher could be arrested on grounds of ‘illegal sale of press items’.

1974 – A very important act was Act No. 63 on the protection of the national cultural treasures (including Decree Law 207 and 472). It created a situation in which confiscation of all documents, correspondence, drawings, writings, engravings and all other historically important items and material from religious or cultural institutions and private persons was made possible. This tool enabled the regime ‘to erase and/or censor the history of the Germans, Hungarians, and other nationalities in Transylvania’.⁴⁹ The implementation of this act had great affect on Hungarian and German minority education, as this was managed by the religious communities.

1975 – A decree was published which prohibited foreigners from staying overnight with Romanian citizens, except for first-degree relatives. It meant that all visitors had to stay in hotels, thus complicating family visits from Hungary, Austria, Germany, Yugoslavia or any country, and making the visits more costly.

1977 – An earthquake struck the region of Bucharest, which was the start of the policy and practice of geographical systematization. This is when ‘room was made’ in Bucharest for the Presidential Palace and the grand boulevards. In the region around Koloszvár it meant the demolition of numerous ancient villages and enormous construction works for concrete tower flats in the outskirts of the city.

1985 – An oral directive from the Ministry of Education dictated that Hungarian teachers and headmasters had to be replaced by Romanians, sabotaging the Hungarian educational system and contributing to the processes of homogenization and systematization.⁵⁰

1988 – April: the bull-dozing plan around Temesvár is announced and Hungarian Bishop Tökés László (dissident and critic of the communist regime) starts to act against the actual start of the demolition of Hungarian houses. His resistance eventually led to the Revolution of December 1989.

As becomes clear from the above mentioned measures, minorities were cut short in various ways; in religion, education, press freedom, social mobility, economically, politically, and even in the private sphere. In this way they were forced to assimilate into the Romanian unitary state.

One more practical example of linguistic discrimination of the Hungarian minority was the entry examination for universities. The government reasoned that only ten percent of students at the university were allowed to be ethnically Hungarian, as this corresponded with their percentage in the total population. Moreover, Hungarians who did not fully master the Romanian language (due to attendance of a Hungarian high school) were often refused in advance. This practice ended rather slowly in the years after the Revolution.

Unfortunately, the downfall of Ceausescu did not bring an end to the problem of the Hungarian minority. The city of Koloszvár for example has become famous for its very Romanian mayor Gheorghe Funar, who’s ‘reign’ will be described in Chapter 3. Also in that chapter, an overview of the current status and rights of the Hungarian minority in Romania will be given, with special attention to language issues.

⁴⁷ Amnesty International, 1978, p 8-9

⁴⁸ Helsinki Watch, ‘*Destroying Ethnic Identity*’, 1989, p 11

⁴⁹ Cadzow, 1983, p 35

⁵⁰ Helsinki Watch, 1989, p 13-14

Motherland Transylvania

There has been and still is a lot of debate on the origin of both Romanians and Hungarians and their claims to Transylvania as their motherland. The issue of Transylvania as the motherland for the different ethnic groups that live there is, however, not so much based on origin, but on cultural heritage. Both Hungarians and Romanians have fiercely claimed the region as being the cradle of their culture and the logical area for the establishment of national territory. Although the motherland question in terms of 'cradle of culture' is still very much alive and unresolved, the motherland question in terms of national territory has been resolved by the outcome of WWI.

Three *nationes*

In the 19th century the concept of nationalism developed, based on the premise of nationhood, which emerged in the 18th century but clearly manifested itself into political thought in the 19th century. After the French Revolution and the Napoleonic Wars, the principle of sovereignty of people was a major issue in politics, and the idea of a nation of people constituting a nation state was defined. The 1814 Congress of Vienna further defined the nationality principle, after which the conservatism of European monarchs and the subsequent revolutions of 1848 only added fuel to the nationalistic fire. Nationalism also gave rise to the 'Transylvanian question', especially in relation to the Romanian inhabitants of the region. Through the ages their number had grown into a majority but they had not enjoyed the same rights as the other three so-called *nationes*, the nobility (basically the Magyars), the Széklers and the Saxons (Germanic peoples who were invited in the 11th/ 12th century to defend, colonize and develop the areas along the southern borders of Transylvania). But the concept of three nations seems to have been misinterpreted during this period of upcoming nationalism.

Since the 13th century, Transylvanian society had not been organized according to ethnicity, but like most other societies according to *natio* (as in legal status). The *natio* comprised of those who enjoyed political rights and other privileges, liberties and immunities, and in Transylvania three *nationes* were recognized: noble, Saxon, and Székler.⁵¹ Different occupations could also be distinguished: noblemen, civilians, scholars, patricians or tradesmen, craftsmen, soldiers and farmers. Hungarians were represented in all positions; however they formed the main part of the nobility. The Székler were all noblemen, as they received this status in exchange for their border defence activities. The Saxons also belonged to all groups, but were mainly represented in the group of craftsmen and patricians. Romanians were present in all occupations as well, from farmers to noblemen, although most Romanians had rural occupations. These Romanian nobles were called the 'Boyers', and were accepted into the Magyar nobility by the Hungarian King, and often magyarized voluntarily afterwards.

Still, ethnic origin and language were neither sufficient nor necessary qualifications for membership of a *natio*.⁵² Speaking Hungarian did not make any peasant part of the Magyar *natio*, and Romanian ethnic origin was no bar to membership in that *natio*. The point is that although the Transylvanian *nationes* could be (mis)perceived through a modern national-ethnic lens, the core of these *nationes* was a legally privileged status, and not ethnicity. Therefore, the assertion that Romanians had always been repressed and deprived of rights is a later invention, which was created to support the nationalistic and territorial claims of the Romanians in the 19th and 20th centuries. The Romanian peasant revolts of the late 18th and early 19th centuries in the western parts of the Carpathian Mountains were therefore not an ethnic but a social, feudal conflict between Romanian peasants and Hungarian landlords. It is very plausible that the Habsburg used this conflict to emphasise ethnicity in this conflict and create an ethnic divide, in order apply the policy of 'divide and conquer'.

During the Hungarian Revolution of 1848, the Romanians were instigated by this modern idea of nationhood and led by Avram Iancu, they took their chance by demanding an autonomous Romanian national territory and equal rights like the other 'nations' of Transylvania. Their claims were not heard, which led to an evolvment of nationalistic sentiments into an ethno-national opposition between

⁵¹ Brubaker, 2006, p 57-58

⁵² Brubaker, 2006, p 56-59

Romanians and Hungarians. However, the Habsburg rule did encourage Romanians to take up executive positions, which gradually happened. Still, 1848 ethnicized Transylvania and the intensified Hungarian rule after the 1867 Compromise only added to the ethno national conflict.⁵³ In 1920, the matter was conclusively decided by the allied parties: the whole of Transylvania was assigned to Romania. Hungary lost more than 2/3 of its previous territory, 1/3 of it being Transylvania, the other half being the regions north and southwest of modern Hungary.

This partition of territory has greatly influenced the relation between the new ruling Romanian nation and the curtailed ex-ruling Hungarian nation that was now a minority. The land reforms and Romanization of the interwar period and after WWII, seemed (in Romanian eyes) to be necessary practical measures to redistribute the whole population in order to achieve a 'normal' ethnic division. But this assimilation process has over the decades created a clear ethnic division of Transylvania, which often culminated in severe ethnic tensions between Romanians and Hungarians, and eventually ignited the 1989 Revolution.

Theories on Romanian ancestry

The ethnic divide between Hungarians and Romanians was deepened by Ceausescu's concept of patriotism, which evolved into a new, nationalist historiography in which the theory of 'Daco-Roman continuity' was embraced.

This continuity theory stated that Romanians were direct descendants of the Roman (or Latinized) inhabitants of the Transylvanian region as far back as 271 AD, who stayed behind when the Roman troops abandoned the former Roman province of 'Dacia', and of the indigenous 'Dacians'. These Daco-Romans were 'identified' to be the ethnic foundation of the Romanian people⁵⁴ and were the 'proof' of a continuous presence of Romanian people in Transylvania, until they were allegedly 'expropriated by the Hungarian invaders and forced into the hills.'⁵⁵ By this statement, the theory automatically wiped all Hungarian claims of Transylvania as motherland off the table, as they arrived in the Carpathian Basin only 896 AD. In line with this theory, Cluj was 1974 renamed Cluj-Napoca; after the early Roman settlement of Napoca.

At the Party Congress of July 1965 this 'Doctrine of the Romanian Nation' was officially proclaimed. The doctrine was never abandoned during Ceausescu's reign and became one of the fundaments for his later policy of forced assimilation of the national minorities.⁵⁶



⁵³ Brubaker, 2006, p 59-65

⁵⁴ Völkl, 1995, p 186

⁵⁵ Brubaker, 2006, p 57

⁵⁶ Völkl, 1995, p 184-186, 257

The plaque under the statue of the Capitoline Wolf with Romulus and Remus in Cluj-Napoca (given to Cluj by city of Rome in 1921) reads:⁵⁷
ALLA CITTA DI CLVJ
ROMA MADRE
MCMXXI

Regarding the Romanian descent, there are many more theories that point in essentially different directions, and even disprove the Daco-Roman continuity theory. Du Nay⁵⁸ described in 1977 the improbability of the continuity theory and presented the 'roaming theory', or also called the 'migration theory' or the 'Rösler theory', named after the Austrian (Habsburg) scientist who described the theory in the 19th century.

In this theory the Romanians are considered to descend primarily from the Vlachs, who migrated from the Balkan Peninsula to the areas south of the Danube and later migrated further north. They acquired their Latin language before migration, in contacts and mixing with the Roman population from the Rome based empire. According to Du Nay, there are 'several circumstances that indicate that the ancestors of the Rumanians did not live north of the lower Danube before the 11th – 12th centuries.'⁵⁹ The basic ideas behind the roaming theory are:

- The number of Vlachs that still live south of the Danube (in Bulgaria, Greece, Albania, the Republic of Macedonia, Serbia and Croatia) and speak East Romance languages that are related to Romanian: Aromanian, Megleno-Romanian and Istro-Romanian. Their presence in those areas has been mentioned in several documents since the early Middle Ages.
- The lack of clarity about the term "Vlach", as mentioned in the medieval chronicles. Taking into account that modern Polish "Wloch" and "Wlochy" mean respectively "Italian" and "Italy", and modern Hungarian "olasz", deriving from "Vlach", means again "Italian", it is arguable that the "Vlach" references in the chronicles generally indicated Latin-speaking populations that were part of early Slavic settlements in the Carpathian basin.
- The common words in Romanian and the Albanian language which may be of Thracian or Illyrian origin, and a number of Romanian toponyms in current Albania and Bulgaria.
- The short time of Roman occupation, which lasted only about 165 years, which undermines a complete take-over of the language and full Latinization of the population.
- The lack of archaeological evidence of a continuously present, specific 'Romanian' (or Daco-Romanian) population before the 11th century.

These findings strongly contradict the Daco-Roman continuity theory and suggest that the Romanians are indeed a principally Vlach people, who migrated from the areas south of the Danube and the Balkans to the current Transylvanian area, and not presumably not in large numbers before the 11th century. The issue is still fiercely debated among both scientists and lay people; and the question of Transylvania as motherland in terms of the 'cradle of culture' is not concluded yet, as the ethnic divide between Romanians and Hungarians still influences daily interaction and relations.

Huntington

An interesting observation is the distinction that Romanians from Transylvania nowadays seem to make between themselves (Transylvanian Romanians) and Romanians from other parts of the country, whom they call 'Balkan-Romanians'.⁶⁰ In conversations between the author and several (ethnically) Romanian ladies from Sibiu, it turned out that Transylvanian Romanians do not identify with those 'Balkan-Romanians, and describe them as being corrupt, backward and non-Western. Whether these characterizations are true or false is not the point, but the general idea of the whole of Transylvania⁶¹ being different and more 'western' than other parts of Romania does coincide with Samuel Huntington's idea of a cultural divide between Western and Eastern Europe.

⁵⁷ Source: Brubaker, 2006, picture 14a

⁵⁸ An ethnic Hungarian scientist by the name Makkai László, who was a refugee in the US.

⁵⁹ Du Nay, A., 'The Early History of the Rumanian Language', Jupiter Press, 1977, USA, p 258

⁶⁰ Brubaker, 2006, p 207-216

⁶¹ Not only its Hungarian inhabitants but also its Romanian population.

In his 1993 theory 'The Clash of Civilizations', Huntington considers Romania to be part of the Orthodox world; opposite to the Western civilization; and Transylvania is located just on the western part of the fault line between these two.⁶² According to this theory; the divide between the Hungarians and the (non-Transylvanian) Romanians is therefore not solely based on an ethnic distinction but also on a different cultural-religious dimension. And the border of this partition does not follow the geographical boundaries of the Hungarian inhabited parts of Transylvania, but the Transylvanian region as a whole. Thus, the 'Western' hemisphere includes ethnically non-Hungarian inhabitants as well and underlines the overall cultural disparity of Transylvania in comparison to the rest of Romania.

Samuel P. Huntington



and Islam, on the other, has reemerged. The most significant dividing line in Europe, as William Wallace has suggested, may well be the eastern boundary of Western Christianity in the year 1500. This line runs along what are now the boundaries between Finland and Russia and between the Baltic states and Russia, cuts through Belarus and Ukraine separating the more Catholic western Ukraine from Orthodox eastern Ukraine, swings westward separating Transylvania from the rest of Romania, and then goes through Yugoslavia almost exactly along the line now separating Croatia and Slovenia from the rest of Yugoslavia. In the Balkans this line, of course, coincides with the historic boundary between the Hapsburg and Ottoman empires. The peoples to the north and west of this line are Protestant or Catholic; they shared the common experiences of European history—feudalism, the Renaissance, the Reformation, the Enlightenment, the French Revolution, the Industrial Revolution; they are generally economically better off than the peoples to the east; and they may now look forward to increasing involvement in a common European economy and to the consolidation of democratic political systems. The peoples to the east and south of this line are Orthodox or Muslim; they historically belonged to the Ottoman or Tsarist empires and were only lightly touched by the shaping events in the rest of Europe; they are generally less advanced economically; they seem much

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less likely to develop stable democratic political systems. The Velvet Curtain of culture has replaced the Iron Curtain of ideology as the most significant dividing line in Europe. As the events in Yugoslavia show, it is not only a line of difference; it is also at times a line of bloody conflict.

⁶² Huntington, Samuel P., "The Clash of Civilizations?", *Foreign Affairs*, 72:3 (1993:Summer) p 22-49, Map depicting European fault line and text: page 30-31

1.2 The Hungarian minority between 1990 and 2004

Hungarians in Romania 1990-2004: main issues

Between 1990 and 2004, a number of developments in politics and society can be listed, which illustrate the general situation of the Hungarian minority in Romania in those years.

Anti-Hungarianism

Very soon after the Revolution, fights broke out between Hungarians and Romanians in Marosvásárhely (Tirgu Mures) and people were killed. The issue was the ‘ethnic unmixing’ of high schools: Hungarians demanded the restoration of autonomous Hungarian-language high schools, which caused a spiral of mobilization against this drastic measure, ending in fights. The headquarter of the DAHR was attacked by a group of ethnic Romanians; the next day the riot reoccurred on the main square, this time involving larger numbers of people and the local police force. This incident of 16 March 1990 intensified mutual hatred and was one of the factors that brought about the harassment of Tökés during the nineties. During this period, Hungarians were often assaulted, with Tökés being the prime target, as he was repeatedly physically assaulted and threatened by means of threatening letters. Blackening of Hungarians in the Romanian media was very common, although vilification of Romanians was not uncommon as well in Hungarian newspaper in Transylvania.⁶³ Ethnic polarization entered a new phase when Gheorghe Funar, a candidate from the ultranationalist Party of Romanian National Unity (PRNU) was elected mayor of Koloszvár. For twelve years (three terms) Funar dominated the Koloszvári and Transylvanian political scene with aggressively anti-Hungarian rhetoric. He proposed many extremely discriminatory measures (against Hungarians), which for most part he was unable to implement, as he lacked the legal authority to do so and did not control the police. Funar's words were followed by deeds in one domain: the nationalization of public space, by neutralizing (or re-Romanizing) the Hungarian symbolism of Koloszvár's main square. The Hungarian St. Michael's Church and the equestrian statue of Hungarian King Matthias Corvinus both symbolize the Hungarian past and present of Koloszvár, the latter with an even more ethno national significance than the former, which is explained in Chapter 3.2, page xx.

Funar proposed to rename the square to ‘Daco-Roman Square’, obviously referring to the adjacent theory. Secondly, he had the plaques on the Church, the statue and the birth house of Matthias Corvinus rewritten in such a way, that Corvinus was claimed to be Romanian and Hungarian parts of history were ignored. Thirdly, Funar restarted in 1994 the excavations in the square, to uncover more Roman remains in order to further underline the ‘truth’ of the Daco-Roman ancestry theory. Not much was found but the pits remained open for the duration of him being mayor. And fourthly, Funar ‘redecorated’ the square in the national Romanian colors: six flagpoles were set up next to the church, about three thousand were placed all over town, benches were painted in red, yellow and blue, so were playground equipments, side walk trash bins and even some trams. His actions mobilized the Hungarian community several times, but no physical clashes occurred, and the significance of Funar's actions receded.⁶⁴

Education

From 1990 onwards, higher education was drastically reformed by means of a profound reorganization of teaching and research activities in Romania. Friction between Hungarian and Romanian educational and linguistic demands severely obstructed this process; an important example of this struggle is the development of the Babes-Bolyai University of Koloszvár.

The university was established on 12 May 1581, when István Báthory, Prince of Transylvania (1571-1586), ordered the creation of a university in Koloszvár. The University became an important Habsburg academic centre and was re-established in 1872 by Emperor Franz Joseph, who allowed only Hungarian as a teaching language, although Romanians had asked for education in their mother tongue. After WWI, the Romanian government took over the management of the university and

⁶³ Brubaker, 2006, p 127-135

⁶⁴ Brubaker, 2006, p 136-144

reorganized it into a solely Romanian university. As a result of the Vienna Diktat of 1940, the university fell into Hungarian hands again until 1945. After the war it was re-Romanized and in 1948 renamed after a Romanian bacteriologist Viktor Babes. In May 1945 another university –with Hungarian as its teaching language- was created by the state and named after the Hungarian mathematician János Bolyai. In 1959 the communist regime merged the two universities under the name Babes-Bolyai University. Initially the programme remained bilingual, but by 1989 most Hungarian courses had been abolished. A maximum percentage regarding the admission of members of minorities had also been established. As the Hungarians made out about 10% of the total population, the Hungarian university population was also limited to 10% of the total number of students, even though well over 20% of the population of Koloszvár was Hungarian.

After the fall of communism, the new Romanian constitution of 1991 guaranteed ‘to persons belonging to ethnic minorities the right to keep, develop, and express ethnic, cultural, linguistic, and religious identities.’ According to the newly established Democratic Alliance of Hungarians in Romania (DAHR), a re-establishment of the solely Hungarian Bolyai University was in line with this constitutional provision. The state disagreed, but the Board of the Babes-Bolyai University was in fact willing to correct the negative effect of communist practice on education of the minorities by proposing a university structure in which the needs of the Hungarians and Germans would be taken into account and teaching in these languages would be made possible. But the DAHR considered this measure insufficient and kept demanding the setting up of a separate Hungarian state university. After almost a decade of heated debates, the parties decided to preserve the unity of Babes-Bolyai University and to organize the teaching process along three distinct lines: a Romanian, a Hungarian, and a German taught line of instruction. The organizational structure was laid down in the “Charter of the Babes-Bolyai University”, which was adopted on 8 July 2000.⁶⁵ In the 2000–2001 academic year, the university provided ninety-six full study programmes in Romanian, forty-six in Hungarian, and thirteen in German. The university is now often credited for its multiculturalism, although not all parties will agree on this. The main website of the university contains a section in which the Romanian-Hungarian history is explained and the current structure is strongly defended. However, according to Becker (2001), Hungarian (and German) speaking specialists are lacking in the technical, medical, and agricultural sciences as well as in the visual arts and in music. Other universities in Romania will have to contribute to fulfil the demands for higher education in the mother tongues of minorities in all fields, by adopting a multi-cultural structure. But this strongly depends on funding priorities by the Romanian state. Also, a shift towards a more international orientation in education might change common interests towards providing instruction in English.

In spite of an improvement of educational possibilities for Hungarians, finding an appropriate or challenging job after graduation remained difficult. Partially for this reason, the late nineties showed a massive exodus of highly educated, young Hungarians leaving Transylvania and heading to (principally) Hungary, Austria, the United States, Sweden and Australia. The Hungarian intelligentsia in Transylvania shrank severely, but the absolute numbers of Hungarians living in Romania declined as well in this period (see Annex 1, Table x). However, not only Hungarians left the country; also the Romanian lower and middle class sought a better life in (mainly) France, Italy and Spain.

Uneven economic development

During the nineties, the distribution of state funds to support the recovery of the Romanian economy were mainly focused on the regions of Moldavia and Walachia, as these regions had most of heavy industry, which collapsed after the fall of the regime. Investments in infrastructure were also unevenly divided over the country, leaving Transylvania rather inaccessible for both tourism and transport. Highways were built between the main cities in Moldavia and Walachia, but only rarely in Transylvania, not to mention the Széklerland. After passing the Hungarian border, it seemed as if infrastructure stopped there. The most significant highway connection was between Koloszvár and Bucharest; the seat of the government. This lacking infrastructure has persisted until the early 2000s,

⁶⁵ Breckner, W.W., ‘The Multicultural Babes,-Bolyai University of Cluj-Napoca’, Higher Education in Europe, Vol. XXVI, No. 3, 2001, Carfax Publishing

and even now large areas in Transylvania are connected by secondary or even dirt roads. The Széklerland has above all been cut off in this way from the larger economic developments that were happening in the rest of the country. A positive result of this practice has lately been the increase of 'faluturizmus'; village tourism, especially in the Székler area, as it contains many old villages that seem to be rather untouched by Western influence and time.

DAHR activity

In the early transition period after 1990, Romania was still governed by an elite that was strongly connected to the former regime. The Hungarians were represented in the Romanian Parliament since 1990 but between 1992 and 1996 the ex-communists (led by Ion Iliescu) ruled in a coalition with radical nationalist xenophobes like Corneliu Vadim Tudor and Gheorghe Funar, who persistently refused to cooperate with the Hungarian minority.⁶⁶

Despite of the exclusion of the Hungarians in the early nineties, the Commission of Human Rights of the United Nations Economic and Social Council produced a quite positive report on the situation of human rights in Romania. One of the few comments made regarding national minorities is the one in Article 4: [The Commission on Human Rights] 'Takes note of the fact that respect for human rights in general is improving in Romania, although shortcomings remain to be overcome as regards implementation of constitutional and legislative rules by local authorities, inter alia relating to the protection of persons belonging to national minorities'.⁶⁷

In 1996 the DAHR was for the first time included in the ruling coalition and was an active part of the government until the next elections in 2000. This governmental participation meant for one the start of the process of restitution of private, commune and church properties which had been seized by the communist government from the Hungarian minority. The protection of civil rights and rights to freedom were guaranteed by the 1997 Ombudsman Law. Linguistic rights were also strongly advocated by the DAHR, which resulted in a gradual increase of multilingual nameplates for ethnically Hungarian villages. But above all, the new Education Law of 1999 guaranteed the right of education in the mother tongue from kindergarten to university. The demand for more linguistic rights also led to a number of provisions in the 2001 Law on Local Public Administration, which allowed for the use of the mother tongue in local administration when the minority counted over 20% of the population of the respective administrative unit.

Ideas on territorial autonomy

According to statements of Tökés László on his Romanian website, the Hungarian minority has voiced a claim for autonomy since the regime change of 1989. The DAHR has always been the safe guarder of the Hungarian interests, by including the autonomy claim in its programme, but not anymore since 1996. However according to Tökés, 'between 1996 and 2003, the period of participating in the government coalition and then signing a protocol-agreement with the governing party, the Democratic Alliance of Hungarians in Romania neglected its stated autonomy concepts. Its rhetoric and practice delegated communal self-government to local administrative autonomies. Dismissing its own foreign affairs tools, it supported the current Romanian foreign policy (...). Those Hungarian minority politicians who urged the dispensation of autonomy reforms were pushed out of the leadership of the Alliance. The Transylvanian Hungarians' struggle for autonomy arrived to a dead point.'⁶⁸

The DAHR had indeed adopted a moderate line since the adoption of the 2001 Law on Local Administration, which allowed for the use of minority languages in relations with local authorities. Tökés and others responded by forming the 'Reformist Bloc', which immediately proposed to change the constitution by abolishing Article 1; which defines Romania as 'national unitary state' and (according the Bloc) does not acknowledge the multicultural character of Transylvania. They also decided in December 2003 in Kolossvár to establish a new organization that was solely devoted to the aim of self-government of the Hungarian national community in Transylvania: the Hungarian National

⁶⁶ Noutcheva, G. & Bechev, D., 'The Successful Laggards: Bulgaria and Romania's Accession to the EU', East European Politics and Societies 2008; 22; 114

⁶⁷ UN Economic and Social Council, Commission on Human Rights, Report E.C.N. 4/1993/L98

⁶⁸ 'The chronology of establishing the Hungarian National Council of Transylvania', statement on the website of Tökés László, on <http://tokeslaszlo.ro/en/doc/05.html>, accessed 23/10/2008, 14:58

Council of Transylvania (HNCT).⁶⁹ On this forum, the president of the council declared that the autonomy could be achieved fastest through the establishment of 'Euro-regions' on the territory of the three counties that compose the Széklerland.⁷⁰ Preceding the creation of the HNCT, the Székler National Council (SZNT) was established by acclamation on 26 October 2003 in Sepsiszentgyörgy (Sfântu Gheorghe), in the Széklerland.

Interestingly, the article by Bucsa shows that the Hungarian territorial claims still evokes tension even in scientific circles, which is illustrated by the following quote:

'In addition, Tökés stressed that this [the Hungarian autonomy claim] would be in accordance with prevalent views within the EU regarding the future shape of the Union, in which diversity and the principles of multilingualism and *collective minority rights* should be encouraged and supported. This was not really an accurate description of the EU norms and policies; however, it is another instance that illustrates how Hungarian politicians used "linkage strategies" and adapted European themes either to press for autonomy, or to gain electoral contests.'⁷¹

To promote his autonomy ideas from grass-root level as well, Tökés created in 2004 another organization, which was a transnational body that included ethnic organizations from six neighboring countries, called the Hungarian Autonomy Council in the Carpathian Basin. By means of this council, autonomy claims from Hungarian minorities in other countries are combined with the claim in Romania, and presented on several European forums. The council focuses on obtaining a similar status as Catalonia in Spain, based on the principle of a Euro-region.⁷²

This reasoning of regional self-governance is based on real European policy, and refers to the 1985 European Charter of Local Self-Government from the Council of Europe, the Congress of Local and Regional Authorities of the Council of Europe, established in 1994, the Stability Pact and indeed the policy of Euro-regions. In fact, regional programmes form an important element of the vertical link between EU institutions and regional elites. According to Roach⁷³, self-determination and minority rights protection can help to stabilize and develop regions, but only in the form of cultural autonomy, not territorial autonomy. This cultural autonomy should be shaped in a framework of a multilateral treaty, because generally states remain unwilling to stimulate the rights of minorities, unless a guarantee is provided that their own territorial integrity will not be endangered. These Hungarian ideas on territorial autonomy have lately been partially 'relocated' to the context of EU membership, but especially in the years before accession these ideas did not improve ethnic Hungarian-Romanian relations.

Bilateral agreements with Hungary on minority issues

Kin-state, home-state and cross-border cooperation

These concept have been recently introduced by the Venice-Commission (or the 'European Commission for Democracy through Law' from the Council of Europe), which gives constitutional advice to member states and plays a role in European conflict prevention.⁷⁴

The concept of 'home-state' signifies a country in which a minority lives, where the dominant majority belongs to another ethnicity, in this case Romania. 'Kin-states' are states that pursue policies aimed at members of the same ethnicity but living in another country than the kin-state, in this case Hungary. From a kin-state point of view, such a minority that lives in another state but has the same ethnicity as members of the kin-state, is called a 'kin minority', in this case the Hungarian minority in

⁶⁹ Also called the 'National Council of Ethnic Hungarians from Transylvania'.

⁷⁰ Bucsa, L., 'European Intergration and ethnic mobilization in newly admitted countries: the case of Hungarian minority in Romania', Miami-Florida European Union Center of Excellence, European Union Miami Analysis (EUMA) Special Series, Vol.5, No. 7, March 2008

⁷¹ Bucsa, 2008, page 14-15

⁷² Source: <http://www.hhrf.org/html/en/?menuid=0404>

⁷³ Roach, S.C., 'Minority Rights and an Emergent International Right to Autonomy: A Historical and Normative Assessment', International Journal on Minority and Group Rights 11: 411-432, 2004.

⁷⁴ Information from website www.venice.coe.int

Romania.⁷⁵ Kin-state activism is often perceived as threatening or interfering with internal affairs of the home-state. The greatest fear that may develop is the fear ‘that the kin-state is exploiting minority issues in order to suit its geopolitical interests, or even to encourage the eventual separation and incorporation of a minority-populated region.’⁷⁶

Bilateral treaties are therefore helpful instruments in preventing conflict between states, because they provide a clear framework for contacts and contribute to transparency of actions undertaken by the kin-state in support of the kin minority.

1996: Treaty between Hungary and Romania concerning minorities

On 16 September 1996, the ‘Treaty between the Republic of Hungary and Romania on Understanding, Co-operation and Good Neighbourliness’ was signed. This bilateral treaty regulated the relations between the two countries regarding the protection of the rights of the Hungarian minority in Romania.⁷⁷ Most countries in Eastern and Southeastern Europe signed similar treaties in the context of the Balladur Plan of 1995. Recommendation 1201 from the 1993 Concluding Document of the Copenhagen Meeting was one of the most quoted texts in these treaties, and focused on local provisions for minorities.⁷⁸

The Romanian Government however, rejected any interpretation of Recommendation 1201 granting the Hungarian minority collective rights or the right to set up autonomous territorial structures based on ethnic criteria.⁷⁹ Hungary was at that point waiting for admission to join NATO, and to avoid any risk of being rejected,⁸⁰ it agreed on the restrictive interpretation of Recommendation 1201 given by Romania. Another point the states had difficulties agreeing on, was the mutual recognition of school certificates and academic degrees. The Hungarian-Romanian negotiations did not find a solution, which led to the inconvenient agreement that the issue would be handled with later.

Nevertheless, this somewhat cooperative attitude between the two countries did seem to affect the daily reality in Transylvania, as relations between Hungarians and Romanians relaxed.

According to Brubaker (2006) this was caused by the interpretation of the Treaty by the Romanian population. Romanians saw the Treaty as the first official acknowledgement by the Hungarians of the borders as set at Trianon, 1920. The Romanians regarded irredentism as defeated and approached Hungarians with much less suspicion. Relations between the two countries generally improved as Romania was likely to join Hungary as a full EU member. The Hungarian Status Law of 2001 however, spoiled the newly built trust.

2001: Hungarian Status Law

On June 19, 2001, the Hungarian parliament adopted a law that provided benefits or privileges to members of kin minorities, concerning transportation, education, cultural benefits, an entitlement to health care and a three-month employment eligibility *in Hungary*. The approximately 3 million ethnic Hungarians living outside of Hungary⁸¹ only had to apply for an ethnic Hungarian identification card. The law also offered educational benefits on the territory of the home states of these kin minorities, for example funding of tuition for Hungarian children who study in Hungarian schools in Romania.⁸² Most governments of the concerned countries declared not to be happy with the law, and the Romanian government emphasized that it regarded the law as ‘discriminatory’ and ‘un-European’.

⁷⁵ Kántor, (ed.), ‘The Hungarian Status Law: Nation Building and/or Minority Protection’, 2004, p vii

⁷⁶ Lantschner, E. & Edda, R., ‘Protection of National Minorities through Bilateral Agreements in South-Eastern Europe’, Draft report prepared by the European Academy of Bozen/Bolzano, May 2001, p 27

⁷⁷ Source: <http://ec.europa.eu/education/policies/lang/languages/langmin/euromosaic>

⁷⁸ Article 11 of the Recommendation 1201 states: “In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state”.

⁷⁹ Lantschner & Edda, ‘Protection of National Minorities through Bilateral Agreements in South-Eastern Europe’, May 2001, p 28

⁸⁰ The US had condemned any drive for territorial autonomy based on ethnic criteria, including Hungary’s support of Hungarians abroad who strived for autonomy and self-government.

⁸¹ Mainly in the surrounding countries of Romania, Slovakia, Ukraine, Serbia and Slovenia.

⁸² Kántor, 2004, p 65

Slovakia also condemned the law, as it feared it would cause Hungarian Slovaks to emigrate to their 'mother country'. The Hungarian government underlined that the aim of the law was to amend the conditions of life in the home state in such a way, that the kin minority of Hungarians would rather want to stay. Remigration to Hungary was to be halted by these measures, because the law would even out difference in living standard between the two countries and thus eliminate the impulse to move (back) to Hungary. The European Union agreed with the law as long as Austria was excluded from the measures.

But after many controversies, in June 2003 an agreement was signed between Hungary and Romania which officially terminated the Hungarian Status Law of 2001. In September of that year a drastically amended (the identity card was already cancelled) and thinned out version was signed by prime ministers Medgyessy and Nastase, but it was not much more than a summary of already existing understandings regarding minorities.

2008: 'Hungary-Romania Cross-Border Cooperation Program 2007-2013

During an intergovernmental meeting between Hungary and Romania held in Nagyszeben/Sibiu on November 15, 2007, the Prime Ministers agreed on several issues concerning culture, protection for ethnic minorities and infrastructure development. An express rail line linking Budapest, Bucharest and Constanta will be built, research on ethnic minorities will be supported, and EU funds will be obtained for joint projects. Also, Hungary would open its labour market to skilled workers from Romania from January 2008. Workers with a basic degree, secondary qualifications or a skilled workers certificate, are welcome without restrictions; a job permit will only be necessary for unskilled Romanian workers. In October 2008, a joint Romanian-Hungarian government meeting was held in Szeged, in the south of Hungary. During this follow-up meeting a 'Memorandum of Understanding on the implementation of the "Hungary-Romania Cross-Border Cooperation Program 2007-2013"' was signed. The programme is aimed at the cooperation between 4 Romanian counties (Timis, Arad, Bihor, Satu Mare, all bordering Hungary) and the corresponding 4 Hungarian counties (Csongrád, Békés, Hajdú-Bihar, Szabolcs-Szatmár-Bereg). Cooperation is financially supported (also by the European Commission) in the fields of transport, communication infrastructure, environmental protection, cross-border cooperation in business, research and innovation and economic and social development, by creating sustainable partnerships between actors on both sides of the border.⁸³



'Hungarians living in the neighbouring countries' in the Carpathian Basin⁸⁴

⁸³ Source: <http://www.rmdsz.ro/news.php?hir=63>

⁸⁴ Source: http://www.politaktika.hu/dosszie/hatarontuli_magyarsag

1.3 Main events during Romania's EU accession period

Romanian accession negotiations: 2000-2004

In 1993, Romania was granted membership in the Council of Europe. Romania signed an association agreement with the EU and a free trade agreement with the European Free Trade Association (EFTA). Romania was also granted Most Favored Nation (MFN) status in the trade relations with the United States. Romania became an associate member of the European Union in 1994. In July 1997, the Commission published the 'Commission Opinion on Romania's Application for Membership of the European Union' in which it concluded that negotiations for accession to the European Union should be opened with Romania soon. In this 1997 Opinion, the Commission wrote that *'the Hungarian minority seems well integrated, (...) new legislation extending the use of minority languages was approved. (...) The improvement now under way since the new government came to power suggest that Romania is on the way to meeting the political conditions laid down by the Copenhagen European Council.'* After two Progress Reports of 1998 and 1999, Romania was officially invited to membership talks in 1999 at the EU Summit in Helsinki. The accession negotiations for accession to the European Union officially started on February 15, 2000, and would be monitored by means of regular reports, which criticized the development regarding the Copenhagen Criteria.⁸⁵

Monitoring Reports⁸⁶

The first 'Regular Report on Romania's Progress towards Accession' was published in November 2000 and referred to minorities as follows: *'Romania actively promotes a positive policy to protect other [than Roma] minorities, and linguistic and cultural identities are safeguarded by the educational system. In 1999, amendments to the education law created the legal basis for improving the use of minority languages, including the possibility for linguistic minorities to establish state universities. (...) At present, 5% of educational units teach in a minority language. In the vast majority of cases this is Hungarian, although six other languages are also used.'*

The second Monitoring Report of November 2001 presented the following observation: *'There are over 1.6 million ethnic Hungarians in Romania and they represent the most politically active minority group. Romanian provisions for respecting the rights of minorities are well developed and existing policies provide extensive rights for education in minority languages. Further developments were made during the reporting period with the Law on Local Public Administration giving linguistic minorities, in localities where they represent more than 20% of the population, the right to receive services from local authorities in their mother tongue.'*

The October 2002 Regular Report mentioned: *'This legislation [the 2001 Law on Local Public Administration] is mainly applicable to the Hungarian minority and, in general terms, it has been successfully applied despite the reticence of some prefectures and local authorities.'*

During the October 2002 NATO summit in Prague; the heads of NATO member states adopted the decision to invite Romania to begin NATO accession talks. During the European Council meeting held in Copenhagen on 12-13 December 2002, the dates were set for 10 new Member States to join the European Union on the 1st of May 2004. It was also decided that the accession negotiations with Romania and Bulgaria would continue with the prospect of them joining in 2007.

⁸⁵ The criteria for accession to the European Union or 'Copenhagen Criteria' consisted of three core conditions, established by the European Council in 1993:

- political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
- legislative: acceptance of the Community acquis (legal framework); ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

Source: glossary of the EU, on http://europa.eu/scadplus/glossary/accesion_criteria_copenhagen_en.htm

⁸⁶ All Progress- and Monitoring Reports concerning Romania's EU accession can be found through the following archived website of the European Commission:
http://ec.europa.eu/enlargement/archives/romania/key_documents_en.htm

The November 2003 Regular Report commented on minority issues in only one paragraph (while issues concerning Roma filled several pages): *‘Relations with the Hungarian minority continued to be good and further progress was made during the reporting period. The revised Constitution enshrined the right of national minorities representing a “considerable proportion” of a local community to use their own language when dealing with local authorities. The constitutional revision also introduced the right for Romanian citizens belonging to national minorities to use their mother tongue in court proceedings. The law providing for bilingual signs in localities where minorities represent over 20% of the population has now been applied in the vast majority of cases.’*

In December 2003, the European Council stated that the common objective of the Union of 25 was to welcome Bulgaria and Romania as members in January 2007, if they were ready.

Three months later, in March 2004, Romania officially became a member of NATO, together with six other Central and Eastern European states.

In the October 2004 Regular Report, the European Commission concluded that the political criteria had been fulfilled by Romania. This included the respect for and protection of minorities. Issues that did deserve further attention concerning the economic and legislative criteria were justice, competition and environment. Although some remarks were made concerning minorities: *‘Further progress has been made in the area of human rights and protection of minorities. However, attention should be focused on the implementation of these reforms and on the enforcement of existing legislation.’*

In December 2004, the accession negotiations with Romania were officially closed. The accession criteria were not entirely fulfilled, but Romania was expected to meet all of the requirements of membership by the planned date of accession, if all efforts were continued, reforms were made and commitments accomplished.

Romanian pre-accession period: 2005-2006⁸⁷

After the closure of the accession negotiations with Romania, the Accession Treaty was signed on the 25th of April 2005 in Luxembourg, in which the recommended date of accession for Romania (and Bulgaria) was included: 1 January 2007.

In October 2005, the Commission published the Comprehensive Monitoring Report on Romania, again including only one paragraph on other minorities than the Roma: *‘As regards minority rights and the protection of minorities, a draft law on the statute of national minorities providing for forms of cultural autonomy of national minorities and setting up the principles of equality and non-discrimination was adopted by the Government in May 2005 but still needs to be approved by Parliament. The situation of the Hungarian minority has continued to improve, all the more so since the Democratic Alliance of Hungarians from Romania (UMDR) is part of the governing coalition. The enforcement of the legislation providing for access by the national minorities in one’s mother tongue to administrative and judicial procedures is satisfactory in the case of the Hungarian minority.’*

In May 2006, the Commission sent out a communiqué to the European Parliament on the entry of Romania and Bulgaria said it was still possible for Romania to enter on schedule but listed areas in which progress had to be made to meet the target date. Romania needed to demonstrate further results in the fight against corruption, to consolidate the implementation of the ongoing judicial reforms, set up a proper integrated administration and control system in agriculture to pay EU farm aids, and food safety had to be improved.

In September 2006, the final Monitoring Report on the state of preparedness for EU membership of Bulgaria and Romania was published, in which the two countries were both admitted to join the European Union on the first of January 2007.

⁸⁷ All Progress- and Monitoring Reports concerning Romania’s EU accession can be found through the following archived website of the European Commission:
http://ec.europa.eu/enlargement/archives/romania/key_documents_en.htm

Recapitulation

The early history of the Hungarians shows the interconnectedness of the current Hungarian minority of Romania with the Transylvanian region. They remained the dominant population (not in numbers but in culture) in the area until WWI. The interwar period was defined by Romanization of all minorities and the exclusion of Hungarians from socio-political life. During communism, the situation was not much different. Shafir posed an interesting question in 1985: are the minorities in Romania 'co-inhabiting or co-inhibited'?⁸⁸ According to the Romanian Constitution of that time they were co-inhabiting, but it can be argued that during the communist regime the minorities were treated as being co-inhibited. Some provisions for minorities existed, but these only contributed to further discrimination, above all of the largest and therefore most threatening minority: the Hungarian minority.

After the fall of Ceausescu's regime in 1989, conditions of life for the Hungarians started to change gradually. Between 1990 and 2004, the Hungarian minority in Romania experienced rough periods in which anti-Hungarianism prevailed, but overall their situation improved, especially in the political, educational and cultural field.

During the period of EU accession negotiations, Romania was addressed concerning its minority polity in the Regular Reports, but the emphasis was laid on economical stabilization, the fight against corruption and the reform of the judicial and administrative branches.

In short, the status of the Hungarian minority in Romania until 2007 has been mainly influenced by the historical relation between Hungarians and Romanians. This relation was influenced by territorial, diplomatic and mythological factors; next to the ethnic and linguistic differences that form the basis of it. First of all: territorial issues that were fought over before and during the two World Wars. The problematic relation was also caused by persisting Hungarian demands for territorial autonomy, resulting in both domestic tension between Hungarians and Romanians, as in disturbed foreign policy between the Romanian and Hungarian states. Secondly diplomatic issues have played a role: a tug-of-war between Hungary and Romania concerning the Hungarian minority (bilateral agreements and the controversial 2001 Status Law), and thirdly mythological issues: on the cradle of culture, who was there first, and disputable ancestry theories. These factors make clear that the status of the Hungarian minority is not only influenced by European accession, but also by long term historical processes.

⁸⁸ Shafir, *'ROMANIA – Politics, Economics and Society; Political Stagnation and Simulated Change'*, Frances Pinter Publishers, London, 1985, p 158

Chapter 2 - Minority issues on international and European level

Introduction

Minority rights in Europe have entered the stage roughly since the 1990's. Before that, rights for minorities were not explicitly formulated and were entrenched in general human rights clauses. A discussion of this matter will be provided in this chapter.

An important aspect concerning minority rights is the balance between individual and collective rights. In the field of human rights it is common that deliberations are made between the two, because positive action on behalf of the group might lead to negative effects for the individual and vice versa. In the case of child labour for example, a factory facilitating child labour might be closed down to serve the benefit of the group of children that was being exploited there. Yet, the child might have been relatively content to work there, as it was able to financially support its family and provide money for education. In the long run the abolishment of child labour should be a good development, but on the short run an individual child might experience negative effects because of the loss of employment.

When discussing minority rights, a different dilemma becomes visible concerning individual versus collective rights. A minority group is characterized by several elements that form the common basis of the group. Culture, traditions, life-style and especially language are principally enjoyed in community with others. Therefore, a person belonging to a minority group does not gain much advantage from the individual right to use one's minority language when it is not allowed for the whole group to use the minority language. The cultural identity of a minority group rests on group interaction; a community or collective provides the arena for the functioning of this common identity.

So, persons belonging to ethnic minorities need 'kin mates' to sustain an identity, traditions, a certain life-style, a common history and a community language. If there are no kin mates, there is no community. When there are kin mates, it seems logical that the rights of these people as a group should be protected in order to provide the foundation for their common identity.

When a person belonging to a minority group would go to court to fight for the free use of his language, in most cases he would be pointed out that there is no reason for him to complain because his individual rights are protected. But an individual has little use enjoying minority rights individually, as these rights have no meaning or merit when they cannot be enjoyed by the group as a whole.

In most legislative frameworks, conventions, agreements, pacts and treaties, these group rights are not protected. In short, individual rights are safeguarded; group or collective rights are not.

First an overview of international documents supporting human and minority rights will be given, then an outline of European texts and legal sources will be outlined, and finally the development of minority policy in the European Union will be described.

2.1 *International Human and Minority Rights*

International law is a form of cooperation between states that came into being only in the twentieth century. In classic international law, sovereign states do not recognize any authority above them; states coexisted in a “horizontal legal order”⁸⁹ therefore this system can also be described as ‘interstate law’. This law usually addressed recognition of and relations between government and states, borders, and issues of war conduct. National law and relations between inhabitants and governments were purely matters of internal affairs of states, and were in no way included in international law.

After the WWI, the **League of Nations** was established in 1919 at Versailles, creating for the first time a basic structure for ‘modern’ international law. The goal of the League was “to promote international cooperation and to achieve peace and security”⁹⁰, by means of organized cooperation, a secretariat to turn to and regular meetings; instead of the former displays of wealth at international congresses and conferences that proved to be little effective.

The League provided in a small number of minority arrangements that applied to some states in Central and Eastern Europe. These were based on the so-called Minority Treaties for Poland, the Kingdom of Serbs, Croats and Slovenes, Czechoslovakia, Romania and Greece. (Less binding minority ‘commitments’ were made by Austria, Bulgaria, Hungary, Turkey, Albania and the Baltic states, plus Iraq – on its Kurdish minority.) In this system, minority groups or individuals could send a petition to the Council of the League of Nations, after which the petition had to be brought as a case to the Permanent Court of International Justice (established under the Covenant of the League of Nations) by a state or the League, not by individuals or groups.⁹¹ During the 1920’s, a number of important decisions on minority issues were taken by the Court, but the League as a whole ceased to function after the onset of WWII, having been unable to prevent the outbreak of the War.

The **United Nations** was established in 1945 by the signing of the United Nations Charter by representatives of 51 countries. Romania became a Member State of the UN on 14 December 1955. From a minority rights point of view, Points 2 and 3 of Article 1 (Purposes of the UN) in Chapter I of the UN Charter are worth quoting:⁹²

2. *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;*
3. *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;*

These lines could be seen to implicitly concern minority rights, however, the General Assembly found it necessary to establish the Sub-Commission on Prevention of Discrimination and Protection of National Minorities to specifically deal with this subject. It was created in 1947 as the subsidiary body of the Commission on Human Rights.⁹³

In 1946 the United Nations **Commission on Human Rights** was established “to weave the international legal fabric that protects our fundamental rights and freedoms.”⁹⁴ It had 53 state members; it was allowed to respond to human rights problems of all kinds; and “it set standards to govern the conduct of States. It also acted as a forum where countries large and small, non-governmental groups

⁸⁹ Weller, *Universal Minority Rights*, 2007, p 4

⁹⁰ Source: <http://www.un.org/aboutun/history.htm>, accessed 3/10/2008 10:54

⁹¹ Weller, 2007, p 5, 53

⁹² Source: <http://www.un.org/aboutun/charter/index.html>, accessed 3/10/2008 11:23

⁹³ In 1999 its name was changed to Sub-Commission on the Promotion and Protection of Human Rights, but one of the six Working Groups is the Working Group on Minorities. Its function is: “To undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities;”

Source: <http://www.unhchr.ch/html/menu2/2/sc.htm>, accessed 3/10/2008 11:34

⁹⁴ Source: <http://www2.ohchr.org/english/bodies/chr/index.htm>, accessed 6/10/2008 14:32

and human rights defenders from around the world voiced their concerns.”⁹⁵ This Commission has been replaced in 2006 by the Human Rights Council; different in name, very similar regarding its mandate.

In 1948 the **Universal Declaration on Human Rights** (UDHR) was adopted by the General Assembly of the United Nations. In spite of the fact that it is a small document of just a few pages; its impact on international human rights law is enormous. The Declaration was proclaimed ‘as a common standard of achievement for all peoples and all nations’.⁹⁶

Minority rights are not included in the text; individual rights however are mentioned throughout the document and form the basis of it. Community rights applicable to minorities are described in Articles 18 and 27; one concerning religious practice and the other concerning cultural rights.⁹⁷

18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

27(1). Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

The Universal Declaration on Human Rights, the Covenant on Civil and Political Rights (and its two Optional Protocols), and the Covenant on Economic, Social and Cultural Rights form the **International Bill of Human Rights**, which is the collective term for these three documents.

Principles contained in the International Bill of Human Rights have been used occasionally by judges of the International Court of Justice as a basis for their decisions.⁹⁸

The **Covenant on Civil and Political Rights** (CCPR) was adopted in 1966 by the General Assembly of the UN and went into force 1976; Romania ratified the Covenant in 1974.⁹⁹ The Covenant is important in the sense that it is the international counterpart of the regional European Convention on Human Rights.¹⁰⁰ In Article 27 of the CCPR minority rights are mentioned separately:¹⁰¹

27. In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

These rights are explained by the Human Rights Committee¹⁰² to be an addition to and to be distinct from existing individual rights. Still, through the structure of the sentence, the right is guaranteed to single persons in communities, not to groups of persons or the community as a whole.

At the same occasion in 1966 the **Covenant on Economic, Social and Cultural Rights** (CESCR) was adopted by the General Assembly of the UN and went into force in 1976; Romania ratified it 1974.¹⁰³

As a starter, Article 2(2) stipulates: ‘The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 13(1) obliges signing parties to ‘agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all

⁹⁵ Source: <http://www2.ohchr.org/english/bodies/chr/index.htm>, accessed 6/10/2008 14:48

⁹⁶ Taken from digital version of original document, as available through the website of the OHCHR, <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement>.

⁹⁷ Official UN Universal Declaration of Human Rights Home Page; <http://www.unhchr.ch/udhr/lang/eng.htm>, accessed 6/10/2008 13:02

⁹⁸ Factsheet on the International Bill of Human Rights by the Office of the High Commissioner for Human Rights, page 9, source page: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

⁹⁹ Source: <http://www2.ohchr.org/english/bodies/ratification/4.htm>, accessed 6/10/2008 13:22

¹⁰⁰ Weller, 2007, p 27, 28

¹⁰¹ Source: http://www.unhchr.ch/html/menu3/b/a_ccpr.htm, accessed 3/10/2008 16:10

¹⁰² The Human Rights Committee is the international monitoring organ of the Covenant on Civil and Political Rights

¹⁰³ Source: <http://www2.ohchr.org/english/bodies/ratification/4.htm>, accessed 6/10/2008 13:23

racial, ethnic or religious groups,’. According to the UN Economic and Social Council, this means that *education shall be directed to the human personality's "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups.*¹⁰⁴

And in Article 15(1a), the right of everyone ‘to take part in cultural life’ is recognized.

In contrast to the Universal Declaration on Human Rights on which they are based, the CCPR and the CESCER are international treaties which are binding to its member states. However, the two Covenants are multilateral conventions and are therefore legally binding only to those states that have accepted them by ratification or accession. Both Covenants are monitored by the UN Human Rights Committee and the International Court of Justice. (Reprimands or punishment of ratifying states that do not adhere to the Covenants is not likely.)

Summarizing international law on human rights

There are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

		Date	Monitoring Body
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965	CERD
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966	CCPR
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	CESCR
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979	CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984	CAT
CRC	Convention on the Rights of the Child	20 Nov 1989	CRC
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990	CMW
		International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006
ICRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006	CRPD

Source: <http://www2.ohchr.org/english/law/index.htm>

Concerning minority rights, the two covenants (CCPR and CESCER) and the Universal Declaration are the most important ones.

The monitoring bodies mentioned in the table, are human rights treaty bodies called ‘committees’, that consist of independent experts that monitor implementation of the core international human rights treaties. There are two committees that directly influence issues on minority rights: the **Human Rights Committee** (HRC) as it monitors the implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols; and the **Committee on Economic, Social and Cultural Rights** (CESCR) as it monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (1966).

Next to the International Bill of Rights (UDHR, CCPR, and CESCER) and the above mentioned core human rights treaties; there are other instruments for human rights that vary in legal status. These instruments can be declarations, principles, guidelines, standard rules or recommendations. According to the UN website, these specific types “have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to States in their conduct.”¹⁰⁵ Other types like covenants, statutes, protocols and conventions are legally-binding for those States that ratify or accede to them.

Under the UN classification of ‘rights of indigenous peoples and minorities’ for example, three instruments (of two types) are mentioned, of which the last one particularly concerns minority rights:

¹⁰⁴ Comment of the UN Economic and Social Council on the Right to Education in the CCPR, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.1999.10.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.1999.10.En?OpenDocument) .

¹⁰⁵ Source: <http://www2.ohchr.org/english/law/index.htm>, accessed 6/10/2008 16:54

- Declaration on the Rights of Indigenous Peoples
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

In December 1992, the **Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities** (UN Decl. Min.) was adopted by the UN General Assembly. In its content¹⁰⁶, many kinds of rights for minorities are mentioned, from protection of territories and political representation to instruction in the mother tongue and cross-border cooperation on minority issues. However, it is a non-binding declaration.¹⁰⁷

Article 2(1) mentions that *‘Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.’*¹⁰⁸ With that it refers back to Article 27 of the CCPR (1966 International Covenant on Civil and Political Rights). By doing so, the legal status of the Declaration is not altered; however its legal basis is more stable.¹⁰⁹

In 1996 UNESCO issued a **Universal Declaration of Linguistic Rights** at the World Conference on Linguistic Rights in Barcelona, Spain. In its preamble references are made to the UDHR, to the CCPR (Art. 27, as described before), and to the UN Decl. Min. Interesting in this document are the definitions given for ‘language community’ versus ‘language group’, and ‘language specific to a territory’. Furthermore, the opening statement of Article 2 ‘This Declaration takes as its point of departure the principle that linguistic rights are individual and collective at one and the same time’¹¹⁰ provides an interesting point of view on the applicability of individual rights to groups or whole communities and vice versa.

In 2001, the **Universal Declaration on Cultural Diversity** was adopted by the General Conference of UNESCO in Paris. Article 4 on ‘Human Rights as guarantees of cultural diversity’ goes as follows: *‘The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.’*¹¹¹

On 15 March 2006, the UN General Assembly adopted a resolution to establish the **Human Rights Council** (HRC) that replaced the Commission on Human Rights (1946-2006). This is merely a change of name. The function of the new Council is reformulated as follows:

‘The Human Rights Council is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them.’¹¹²

The monitoring mechanism of the HRC is quite effective as member states can be reprimanded in the General Assembly of the UN.

In June 2008, a draft resolution on linguistic rights was presented at the UN, in which representatives of the UNHRC ‘call on the UN to approve a **Universal Declaration of Linguistic Rights**, as a necessary complement to the Universal Declaration of Human Rights.’¹¹³

¹⁰⁶ Source: http://www.unhchr.ch/html/menu3/b/d_minori.htm, accessed 3/10/2008 12:22

¹⁰⁷ Weller, 2007, p 28

¹⁰⁸ Source: http://www.unhchr.ch/html/menu3/b/d_minori.htm, accessed 8/10/2008 10:22

¹⁰⁹ Weller, 2007, p 219

¹¹⁰ Source: <http://www.unesco.org/cpp/uk/declarations/linguistic.pdf>, accessed 8/10/2008 10:54

¹¹¹ Source: <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>, p 13

¹¹² Source: <http://www2.ohchr.org/english/bodies/hrcouncil>, accessed 6/10/2008 14:46

¹¹³ Source: http://www.eblul.org/images/stories/hrc_resolution_proposal_linguistic_rights.doc

On the international level, there are two views on the position of minority rights within international law. One view includes minority rights in the body of universal human rights as a sub-category; the other views minority rights as a separate and/or additional category to universal human rights. Problematic within the latter view is that persons belonging to minorities seem to enjoy 'more' rights (in a quantitative sense) than others; and that such a specified, additional category is easily transformed into unjust political claims. Therefore it is often argued that minority rights are best understood as a sub-category in the body of general human rights, through which an element of specificity is added to the rights of communities and individuals in a minority situation.¹¹⁴ Thus, international human rights law does provide a basis for minority protection and presumes respect for minority rights, but there have not been many legal cases yet in which minority issues were addressed. It seems difficult to apply internationally accepted rights in daily and local legal practice.

¹¹⁴ Weller, 2007, p 31

2.2 European Human and Minority Rights

From the 1950's onward, regional systems for cooperation in the field of human rights started to develop. In May 1949 the Treaty of London was signed by ten member states, establishing the **Council of Europe**, with the aim 'to achieve a greater unity between its members (...)'.¹¹⁵ Romania became a member in 1993.

In November 1950, the Council of Europe at Rome put forward the **European Convention on Human Rights** (ECHR, or in its full name the 'Convention for the Protection of Human rights and Fundamental Freedoms'). Romania ratified the ECHR in June 1994.

In its Preamble, the final paragraph refers to the Universal Declaration of Human Rights with the following words: "Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,"¹¹⁶. In the text of the Convention minority rights are not mentioned explicitly, however, in Article 14 - Prohibition of Discrimination the following is written: '*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*'¹¹⁷ According to Weller this is not an independent right, but an accessory to the right set out in previous Articles 2-13¹¹⁸. So the Convention does not include specific rights for members of minorities, but it does prohibit discrimination on the ground of 'association with a national minority'.¹¹⁹ Nevertheless, through the jurisprudence of the European Court of Human Rights (set up in 1959), the rights in these articles have gained great significance in cases brought to Court by persons belonging to minorities.

In 1973 the Council of Europe adopted a resolution, in which the importance and the protection of cultural activities of minorities and cultural exchange in Europe were underlined. The Resolution was called '**Resolution 553** (1973) on violations of freedom of expression', and was a reaction to particular cases of violation of this right in countries of Eastern Europe and in the Soviet Union¹²⁰.

In 1975 the **Conference on Security and Cooperation in Europe (CSCE)** was created as a diplomatic conference and forum to keep the dialogue between East and West going. Its final act can be seen as a political commitment to a certain code of conduct and a negotiation programme. In practice it gave political dissidents in the East and countries in the West 'an instrument of protest and means of demanding human rights and fundamental freedoms'.¹²¹

After the fall of communism in Eastern Europe, EU relations with post-communist countries were influenced by concerns on ethnic conflict. The wars in Yugoslavia fuelled these concerns and underlined the need for (ethnic) minority protection and the regulation of majority-minority relations in Eastern Europe. Older EU member states had not been unfamiliar with minority conflicts (Basque country, Northern Ireland, etc.), but these states had been 'free' to handle this phenomenon in ways they found appropriate in their own country. These approaches did comply with international human rights agreements; therefore an EU-wide minority rights policy was not formulated.

¹¹⁵ Statute of the Council of Europe (Chapter I, Article 1a), London, 1949, through the official website of the CoE <http://conventions.coe.int/Treaty/EN/Treaties/Html/001.htm>, accessed 3/10/2008 15:10

¹¹⁶ Source: <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>

¹¹⁷ Article 14, ECHR, Rome, 1950, <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

¹¹⁸ Weller, 2007, p 23

¹¹⁹ Source:

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/4048c07522918e7fc1256e360035f4f3/\\$FILE/G0410576.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/4048c07522918e7fc1256e360035f4f3/$FILE/G0410576.pdf), p 22

¹²⁰ Council of Europe, through website of European Navigator, www.ena.lu, accessed 6/10/2008 12:13

¹²¹ Source: fact sheet on the CSCE/OCSE, in European Navigator, www.ena.lu, accessed 23/9/2008 14:36

During the CSCE **Copenhagen Meeting** in 1990 however, ideas on state sovereignty that included minority protection surfaced and were eventually used in the formulation of the first Copenhagen criterion in 1993. In that 1990 meeting on the 'Human Dimension' of the CSCE in Copenhagen, the focus was laid on human rights and humanitarian issues, linked to security.

The Document of the Copenhagen Meeting was a regulatory text, in which a long list of rights and freedoms was set out and a chapter (IV) on national minority issues was included; comprising Articles 30 to 40.7.¹²² Article 30 ends with the following sentence which clearly links minority issues to security: '*respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.*'

The idea of creating more explicit minority protection grew during the following years; several other projects and European treaties also contributed to the foundation of a framework for minority protection, for example the Central European Initiative.¹²³ Also the Maastricht and the Amsterdam Treaty both contributed to this process.¹²⁴ Specific minority rights are not defined, but are subsumed in both treaties. However, non-discrimination as an EU norm is rooted in both treaties, and is supported by Directives 2000/78/EC and 2000/43/EC and ECJ rulings.¹²⁵

On the 2nd of February 1992, the **Maastricht Treaty** (or the Treaty on the European Union, TEU) was signed, which entered into force on the 1st of November 1993 and created amongst other things a new structure with three pillars, called the European Union.

The treaty included an article (F TEU), in which fundamental rights are respected, as guaranteed by the European Convention for the Protection of Human rights and Fundamental Freedoms. Next to that, Article 128(1) TEC poses: '*The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.*'¹²⁶

One could conclude from the words 'national and regional diversity', that member states are not considered to be culturally homogenous. On the other hand, the word 'national' is positioned in front of the word 'regional', which might reflect the common international disposition towards the idea of territorial sovereignty of a nation as the basis of a state. Minority rights are not explicitly mentioned but an implicit reference is obviously made.

In June of 1992, the CSCE established the post of **High Commissioner on National Minorities** (HCNM). It was set up mainly as an instrument of conflict prevention, as well as a diplomatic tool to urge the implementation of rule of law and pluralistic democracy. The early identification and resolution of ethnic tensions is the main goal of the post; individual cases of persons belonging to national minorities are excluded from the High Commissioner's mandate. The High Commissioner is accountable to the CSCE (now OSCE) Member States.¹²⁷

High Commissioner Max van der Stoep (1993-2001) gave an interesting definition of the word 'minority' in his keynote address at the opening of the OSCE Minorities Seminar in Warsaw in 1994. 'The existence of a minority is a question of fact and not of definition. (...) First of all, a minority is a group with linguistic, ethnic or cultural characteristics, which distinguish it from the majority.'

¹²² Document of the Copenhagen Meeting, p 18-21,

http://www.osce.org/documents/odihr/1990/06/13992_en.pdf

¹²³ The Central European Initiative (CEI) is another example of such a project. It was established in 1989 and is composed of 18 Member States: Albania, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Italy, Macedonia, Moldova, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia and Ukraine. In 1994, the CEI Instrument for the Protection of Minority Rights was adopted. One of the areas of activity is Intercultural Cooperation including Minorities. After the last EU enlargements, the CEI's interest has shifted towards the 9 countries remaining outside the European Union. Source: www.ceinet.org

¹²⁴ Sasse, G.; 'EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy', 2005

¹²⁵ Sasse, 2005, p 12 and p 20, footnote 58

¹²⁶ Source: <http://www.eurotreaties.com/maastrichtec.pdf>

¹²⁷ Fact sheet on the HCNM, http://www.osce.org/publications/hcnm/2008/09/32905_1177_en.pdf

Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity.¹²⁸

At the request of the High Commissioner, groups of internationally recognized independent experts were formed around 1995 to reflect on minority rights in the context of general human rights principles. These studies resulted in the 1996 The Hague Recommendations regarding the Education Rights of National Minorities; the 1998 Oslo Recommendations regarding the Linguistic Rights of National Minorities; and the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life. These recommendations are expert reflections but represent relevant principles of international law that are applicable to minority rights and enjoy general acceptance.¹²⁹

In November 1992 the **European Charter for Regional or Minority Languages** was created by the Council of Europe, it entered into force on 1 March 1998.

Romania signed the Charter 17/7/1995, ratified 29/1/2008, and it went into force 1/5/2008.

One of the fundamental aims of the Council of Europe is to protect and promote the wealth and diversity of Europe's cultural heritage; regional and minority languages being an integral part of this.¹³⁰ The Charter is therefore a convention with a cultural purpose; it wants to facilitate and encourage the use of specific regional or minority languages in public life. The Charter is based on rights guaranteed by the European Convention on Human Rights.

In Article 1(a) the Charter provides in definitions of several terms, including 'minority language': *'regional or minority languages' means languages that are: traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and different from the official language(s) of that State;'*

In Part II Article 7, nine fundamental objectives for state conduct are formulated¹³¹:

In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:

1. the recognition of the regional or minority languages as an expression of cultural wealth;
2. the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;
3. the need for resolute action to promote regional or minority languages in order to safeguard them;
4. the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;
5. the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;
6. the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;
7. the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;
8. the promotion of study and research on regional or minority languages at universities or equivalent institutions;
9. the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

In the case of the Hungarians in Romania, the second point provides an interesting case study in relation to the 20% minority rule, and will be elaborated on in Chapter 4. Another interesting issue is the lack of a reference to the right to education *in* a minority language, not *of* a minority language (mentioned in points 6 and 8).

¹²⁸ Source: <http://www.osce.org/hcnm/13022.html>, accessed 8/10/2008 16:12

¹²⁹ Weller, 2007, p 327, footnote 9

¹³⁰ Introduction to the Charter for Regional or Minority Languages, Council of Europe

¹³¹ European Charter for Minority Languages, <http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

Monitoring of the Charter is achieved through several methods. Every ratifying state must submit a periodical state report to the Secretary General of the CoE once every three years, explaining their policies and the action they have taken to fulfil the commitments made in the Charter. A Committee of independent Experts examines the state's periodical report, addresses - if necessary - questions to the concerned state, visits the state, and writes an evaluation report. The first State Periodical Monitoring Report on Romania is due in May 2009.

With ratification, states were allowed to provide a declaration on which part of the Convention they decided applicable to certain minority languages, with 'a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.'¹³²

Interestingly, in the list of declaration of ratifying states, Romania declares that the provisions of Article 7, Part II (the above mentioned 9 principles for state conduct) of the Charter apply to only 10 of the 20 minority languages, the Hungarian language not included. Further on in the declaration, a list is provided of articles of Part III that do apply to the Hungarian national minority language specifically.

¹³³ When one examines the articles and paragraphs that do not apply, it becomes clear that this does not undermine the status of the Hungarian language, because the paragraphs that do apply provide ample supportive provisions. States are obliged to choose from a number of paragraphs concerning the following seven subjects: education, judicial authorities, administrative authorities and public services, media, cultural activities and facilities, economic and social life, and transfrontier exchanges.

Paragraphs are formulated slightly different, but the choices made by Romania provide adequate measures that support the status of the Hungarian minority language.

The reason why Romania declares that part II (containing the 9 principles for state conduct) does not apply to the Hungarian language is not mentioned. However, when one compares these principles to the provisions of the chosen paragraphs of part III, it becomes clear that the former are phrased in general wordings and the latter in much more specific wordings. As a result, when speakers of one of the 10 national minority languages to which Part II does not apply would start a legal case or would appeal on the Charter, they can only appeal to the more specific provisions from part III. The general principles from part II would give these persons much more room to manoeuvre and due to that a much bigger chance on success; perhaps too big for the taste of the Romanian state. So, the Romanian government seems to have chosen a more detailed approach for measures concerning the Hungarian language, possibly for reasons of legal 'self-defence'.

All in all, the European Charter for Regional or Minority Languages is an instrument that does not aim to defend minorities, but languages. It also does not acknowledge individual rights in this respect.

The ratifying 'authorities and society are required to respect certain cultural values, embodied in Regional or Minority Languages, rather than creating specific individual 'linguistic rights'.'¹³⁴

The Charter has in some cases risen above the expectations of ratifying states, in the sense that the assessment of their compliance with the Charter results in real evaluating reports from the Council of Europe. In these reports, specific recommendations are made that are expected to be followed through by the state, although some states may have presumed that ratification was merely a symbolic act.¹³⁵

In this regard, the Charter has the opportunity to expand its influence in Europe, and even beyond it, as Article 20 of the Charter also invites non-members of the Council of Europe to ratify or accede. In practice this might prove to be more complicated, but according to Kozhemyakov, the Charter might at least be used as a model for other continents, 'since the Charter has proved to be an efficient and successful instrument'¹³⁶.

¹³² Part I, Article 2 (2), European Charter for Regional or Minority Languages

¹³³ List of declarations made with respect to treaty No. 148 - European Charter for Regional or Minority Languages; status as of 22/10/2008.

¹³⁴ Kozhemyakov, A., *The European Charter for Regional or Minority Languages: Ten Years of Protecting and Promoting Linguistic and Cultural Diversity*, Museum International, 2008, Volume 60, Issue 3 (p 26-36), p 27

¹³⁵ Kozhemyakov, 2008, p 34

¹³⁶ Kozhemyakov, 2008, p 36

In June 1993, at the Copenhagen European Council, the basic relevant criteria for accession to the EU were established. The **Copenhagen Criteria** were strengthened by the Madrid European Council in 1995, and became the official accession criteria. The 1993 preliminary Copenhagen Criterion already included the protection of national minorities as a prerequisite for accession:

*Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.*¹³⁷ In Chapter 4, the Copenhagen Criteria will be further discussed.

In 1993 as well, the ‘**Vienna Declaration**’ was adopted by the Heads of State or Government of the member states of the Council of Europe, which set out new priorities on a pan-European level, including a plan for the creation of an instrument to assure the protection of national minorities, in close cooperation with the CSCE High Commissioner on National Minorities. The document is also called the 1993 Council of Europe Declaration on National Minorities, and is referred to in the 1996 Universal Declaration on Linguistic Rights.

Following the plan of the Vienna Declaration, the **Framework Convention for the Protection of National Minorities** (FCNM) was created in 1995 by the Council of Europe, which went into force in 1998. Romania signed 1/2/1995, ratified 11/5/1995, and it went into force 1/2/1998.

Section II is the main operative part of the document, and contains specific principles on a wide range of issues:¹³⁸

- * non-discrimination;
- * promotion of effective equality;
- * promotion of the conditions regarding the preservation and development of the culture and preservation of religion, language and traditions;
- * freedoms of assembly, association, expression, thought, conscience and religion;
- * access to and use of media;
- * linguistic freedoms:
 - use of the minority language in private and in public as well as its use before administrative authorities;
 - use of one's own name;
 - display of information of a private nature;
 - topographical names in the minority language;
- * education:
 - learning of and instruction in the minority language;
 - freedom to set up educational institutions;
- * transfrontier contacts;
- * international and transfrontier co-operation;
- * participation in economic, cultural and social life;
- * participation in public life;
- * prohibition of forced assimilation.

This treaty on minority rights and its provisions are formulated in general terms and as a result, according to Weller, leaves states a ‘wide margin of appreciation in its implementation’. Also, the Convention focuses on a framework for the protection of persons belonging to national minorities; not on the direct implementation of the provisions set forth in the text. Ratifying states are legally obliged to implement the legal principles proposed in the Convention, but they are not legally obliged to make the provisions directly applicable to their administrative and judicial authorities.¹³⁹ This is illustrated by the objective of the FCNM, mentioned in the Explanatory Report, paragraph 10:¹⁴⁰

¹³⁷ Conclusions of the Presidency - Copenhagen, June 21-22 1993,

http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf

¹³⁸ Council of Europe Activities in the field of Protection of National Minorities, Overview of activities, August 2006, http://www.coe.int/t/e/human_rights/minorities/1_GENERAL_PRESENTATION/PDF_Overview_en.pdf

¹³⁹ Weller, 2007, p 28

¹⁴⁰ Explanatory Report of the FCNM; <http://conventions.coe.int/Treaty/en/Reports/Html/157.htm>

10. The framework Convention is the first legally binding multilateral instrument devoted to the protection of national minorities in general. Its aim is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities.

Although the legally binding aspect of the Convention is mentioned again in this paragraph, another report by the Advisory Committee of the FCNM explains more clearly the legal limitations:¹⁴¹

Whilst a Framework Convention is a Convention in the sense that it is a really legally binding instrument under international law, the addition of the word "Framework" indicates that the principles contained in the instrument are not directly applicable in the domestic legal orders of the member States, but will have to be implemented through national legislation and appropriate governmental policies.

Nevertheless, there are some interesting Articles of the Convention that are worth quoting. For example Article 16, which seems to refer back to the second objective for state conduct in the 1992 European Charter for Regional or Minority Languages on the effect of municipal or geographical divisions on minority proportionality.

*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.*¹⁴²

This article is of interest for the Hungarian minority in Romania, as several rearrangements of municipal borders and/or district borders seem to have resulted in proportionally lower numbers of Hungarians in certain areas. This will be commented on in Chapter 4.

Another interesting article is 18(1), as it refers to agreements on minority issues between states.

*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.*¹⁴³ The Hungarian Status Law of 2004 (which is mentioned in Chapter 1) could be seen as an example of such an agreement.

Perhaps the most important aspect (or limitation) of the Convention is the fact that it is based on individual rights as an extension of general human rights, instead of collective or group rights. By means of Article 3, paragraph 2, the Convention does not provide for collective rights of national minorities, solely individual rights, whether or not in community with others.

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.

This statement is explained in paragraph 13 and 37 of the Explanatory Report of the Convention:¹⁴⁴

13. The implementation of the principles set out in this framework Convention shall be done through national legislation and appropriate governmental policies. It does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (see Article 3, paragraph 2). In this respect, the framework Convention follows the approach of texts adopted by other international organisations.

37. Paragraph 2 [of the FCNM] provides that the rights and freedoms flowing from the principles of the framework Convention may be exercised individually or in community with others. It thus recognises the possibility of joint exercise of those rights and freedoms, which is distinct from the notion of collective rights. The term "others" shall be understood in the widest possible sense and shall include persons belonging to the same national minority, to another national minority, or to the majority.

¹⁴¹ CoE, 'Introduction to the Framework Convention for the Protection of National Minorities', May 2002, [http://www.coe.int/t/e/human_rights/minorities/2. FRAMEWORK_CONVENTION_\(MONITORING\)/2. Monitoring_mechanism/1. Brief_introduction/PDF/BriefingDocument_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2. Monitoring_mechanism/1. Brief_introduction/PDF/BriefingDocument_en.pdf)

¹⁴² Framework Convention for the Protection of National Minorities

¹⁴³ Ibidem

¹⁴⁴ Explanatory Report of the FCNM

Monitoring of the Convention is carried out by the Advisory Committee of the FCNM. Within one year after entering into force, ratifying states must hand in a report containing full information on legislative and other measures taken to give effect to the principles of the Framework Convention. After that, Parties are required to hand in reports to the committee on a periodical basis of 5 years.¹⁴⁵

In general, the FCNM is aimed at protecting the rights of persons belonging to national minorities to maintain and develop their own religious, linguistic and cultural identity; but above all to prevent conflict and to increase tolerance and intercultural cooperation. Further related goals include peaceful resolution of disputes, reduction of social tensions, and a more equitable distribution of societal resources;¹⁴⁶ in order to create a more stable and economically prosperous society. However, these goals need appropriate political, social and economic measures taken and legislation implemented by signatory States, in order to be realized in societies of these states.

On the one hand the FCNM has often been criticized for being undefined or un-specific, on the other hand it is valued for its flexibility, which allows states to ratify the Convention more easily. In this sense, ratification reflects the political will to commit to the protection of minority rights.

The **Treaty of Amsterdam** of 1997 refers back to the first Copenhagen Criterion of 1993, but it leaves out the sentence in which protection of national minorities is ensured. Nevertheless, minority protection is subsumed by committing to the prevention of discrimination.¹⁴⁷

Article 2 (7) of the Amsterdam Treaty is an amendment to the Treaty establishing the European Community (insertion of Article 6a), and gives the European Union a legal base on which to develop “appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”¹⁴⁸. These grounds of discrimination are an expansion of the previously used grounds nationality and gender. According to Weller (2007), these were the original two grounds of discrimination mentioned in Treaties of the European Community and were clearly linked to the economic aim of the EC and the success of the internal market. The five additional grounds that were added by the Treaty of Amsterdam seem to ‘reflect a shift in the EU towards more social policy’¹⁴⁹, by means of more regulations against any kind of discrimination, including discrimination based on ethnic origin.

In October 2000, a **European Conference against Racism** was organised by the Council of Europe. The Political Declaration, which was adopted by the Ministers of the Council of Europe Member States, starts with the following sentence: “Europe is a community of shared values, multicultural in its past, present and future; tolerance guarantees Europe’s pluralist and open society, in which cultural diversity is promoted;”¹⁵⁰. Also, a commitment was made in the declaration to take legal, policy and educational measures to combat racism, racial discrimination, xenophobia and related intolerance. One of the policy measures aspired “to create conditions for the promotion and protection of the ethnic, cultural, linguistic and religious identity of persons belonging to national minorities where such minorities exist;”¹⁵¹. One could say that this commitment is an example of an increased tendency towards socially oriented policies, as mentioned before. However, the Charter of Fundamental Rights that followed two months later did not provide in new policy or legislation concerning minorities.

¹⁴⁵ CoE, ‘Introduction to the Framework Convention for the Protection of National Minorities’, May 2002

¹⁴⁶ Weller, 2007, p 69

¹⁴⁷ Sasse, 2005, p 4-5

¹⁴⁸ Article 13 TEC, source: <http://www.eurotreaties.com/amsterdamtreaty.pdf>, accessed 13/10/2008 10:54

¹⁴⁹ Weller, 2007, p 99

¹⁵⁰ Political Declaration adopted by Ministers of Council of Europe member States on Friday 13 October 2000 at the concluding session of the European Conference against Racism, p. 1

¹⁵¹ Ibidem, p. 6

2.3 *Minority policy in the European Union*

One could pose the statement that European policy concerning national or ethnic minorities does not exist. In effect, this issue is one of several issues that are still assigned to the individual member states. The reason why the task of dealing with minority issues has not been taken over by the European Union is not always clear. A possible explanation that is most often outlined refers to the objections made by member states, on the one hand against the curtailment of national sovereignty and on the other against extended domestic interference by EU bodies or policies. Nevertheless, since the late 1990's, more and more policy frameworks are developed within the European Union regarding minority rights, that (try to) affect or shape policies within member states concerning these matters.

The first to be mentioned is the 1999 **Stability Pact** for the Central and Eastern European countries. After the collapse of communism in Eastern and South-eastern Europe, the European Union and the international community wanted to create more ethnic stability in the region. One of the first initiatives was the idea of creating a Stability Pact for the SEE region, an idea that surfaced in the early 1990's. Bilateral agreements between these countries had to be promoted and in order to create mutual recognition of borders and minority rights. Although the idea was met with scepticism first, the Yugoslav wars made clear that a stabilizing pact was needed to prevent ethnic conflict in the region. It was also realized that the perspective of full integration to the EU was the only durable solution to problems of stability and security, both economic and political. On the 10th of June 1999 the Stability Pact for South-eastern Europe was launched.¹⁵²

The Stability Pact focused on three main issue areas: firstly Democratisation and Human Rights; secondly Economic Reconstruction, Co-operation and Development; and thirdly Security Issues (with two Sub-Tables: Security and Defence, and Justice and Home Affairs)¹⁵³. Over the years some core objectives have been Local democracy, Cross border co-operation and Fostering and Building Human Capital, which would 'result in greater economic convergence, social cohesion and reconciliation'¹⁵⁴. Partners of the Stability Pact were the countries of the SEE region¹⁵⁵, the European Union Member States and the European Commission; and 7 other countries, being: Canada, Japan, Norway, Russia, Switzerland, Turkey, and the USA.

The Stability Pact over the years has provided a neutral forum where common problems of partner's countries could be identified and common strategies could be devised to solve them. It also provided a framework for funding, in the sense that donors and recipients of funds to the region could co-ordinate and target the spending of the available funds more efficiently. Moreover, political, economic and social co-operation in the region has become an appreciated part of regional governance; and the European Perspective inherent to the Stability Pact has facilitated EU accession of many SEE partners. On 27th of February 2008, the Stability Pact for South-eastern Europe has been transformed into a successor organisation: the Regional Co-operation Council (RCC), which better reflects the current purpose and priorities of economic, social, civil, political and parliamentary co-operation managed by the region itself.¹⁵⁶

In December 2000, the European Council, the European Commission and the European Parliament 'solemnly proclaimed' the **Charter of Fundamental Rights of the European Union**. The Charter is a document that presents the fundamental principles of human rights for the EU; it does not have the status of Community Law although it is legally binding in all EU member states that signed the Treaty of Lisbon.

¹⁵² Batt, J., "Cross-border minorities and European integration in Southeastern Europe – The Hungarians and the Serbs compared", in: *European Integration and the Nationalities Question*, edited by John McGarry and Michael Keating, Routledge, 2006, New York, page 52

¹⁵³ Source: <http://www.stabilitypact.org/about/default.asp>, consulted on 9-9-'08, 13:34

¹⁵⁴ Document: 'Core Objectives of the Stability Pact and respective Achievables for 2005', <http://www.stabilitypact.org/about/TF2005SPforweb.pdf>, consulted 9-9-'08, 13:52

¹⁵⁵ Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, Romania, Serbia and the Former Yugoslav Republic of Macedonia (FYROM).

¹⁵⁶ Batt, in: McGarry & Keating, 'European Integration and the Nationalities Question', 2006, p 52

The Charter is also a confirmation of rights that are already declared in the Universal Declaration of Human Rights of 1948 and in the European Convention on Human Rights of 1950. A number of widely-accepted principles were added, including some provisions for national minority in Articles 21 and 22. However, these provisions were not based on the granting of specific rights, but on a prohibition of discrimination and a call for respect. Article 21(1), for example, prohibits discrimination on grounds of language and ethnic origin, and in article 22 respect for cultural, religious and linguistic diversity is demanded.¹⁵⁷

21 (1). Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

In this non-discrimination provision, the EU Fundamental Rights Charter adds various grounds to the ones that were already set out in the Treaty of Amsterdam; two of which concern national minorities. This indicates, according to Weller, that equality is not only an economic end anymore but is now considered as being ‘a value in its own right’¹⁵⁸. The Charter offers basic legal guidance for the unequal treatment of persons belonging to national minorities, but it needs increased support by rulings of the European Court of Justice in order to make the provisions more usable and solid. To shortly illustrate the situation concerning discrimination in Europe, the February 2008 Eurobarometer report on discrimination in the European Union¹⁵⁹ could be interesting to look at. When asked about personal experience of discrimination, less than one-fifth of EU citizens (between 8% and 19%) say that they (or someone close in their circle of family and friends) have been personally discriminated against on the basis of religion or belief, disability, age, sexual orientation, gender, race or ethnic origin, or a combination of any of these factors. Remarkably, when asked about the grounds for such discrimination -if experienced-, respondents most often mention race or ethnic origin (19%), then age and a combination of factors (both 16%), followed by gender and disability (both 14%), religion or belief (11%) and sexual orientation (with only 8%). Weller could be right that equality is a value in its own right from a top-down or institutional point of view, but almost 20% of European citizens seem to experience discrimination in daily life and in most cases on grounds of race or ethnic origin.

During the preparation of the Charter for Fundamental Rights of the European Union, which was declared in December 2000, an agency was set up to monitor the observance of fundamental rights in the European Union. The European Monitoring Centre on Racism and Xenophobia (EUMC) was established in Vienna in 1998 as an independent body of the European Union. It acted as a consultative body and information network on matters of racism, xenophobia, anti-Semitism, Islamophobia and related intolerance. Its activities were ended in February 2007, when it was replaced by the **European Union Agency for Fundamental Rights (FRA)**. The FRA is an independent body of the EU but works in close co-operation with the Council of Europe. It focuses on the situation of fundamental rights in the EU and its 27 Member States, collects data, co-operates with civil society and raises awareness on fundamental rights issues. The agency is not empowered to examine individual cases. But it's most important task is providing support to EU institutions and Member States on respecting fundamental rights of the EU when formulating policies or taking measures.¹⁶⁰ It is sometimes argued that the existence of the FRA is an EU attempt to fill a gap in the monitoring process of fundamental and human rights by the European Union, as most work in this area is being done by the Council of Europe and the OCSE.

¹⁵⁷ Source: http://www.europarl.europa.eu/charter/pdf/text_en.pdf, accessed 13/10/2008 10:34

¹⁵⁸ Weller, 2007, p 99

¹⁵⁹ Flash Eurobarometer on “Discrimination in the European Union - Perceptions and experiences of discrimination in the areas of housing, health care, education, when buying products or using services”, analytical report, fieldwork: January 2008, report: February 2008.

Survey conducted by The Gallup Organization, Hungary upon the request of Directorate-General for Employment, Social Affairs and Equal Opportunities (Unit G4), coordinated by Directorate-General Communication of the European Commission.

http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf

¹⁶⁰ Source: http://fra.europa.eu/fra/index.php?fuseaction=content.dsp_cat_content&catid=2, accessed 17/10/2008 12:07

In January 2004, the Open Society Institute (OSI) and the European Academy Bolzano (EURAC) organized a conference on Minority Protection and the EU, co-sponsored by the European Commission. As an outcome of the conference, the Bolzano/Bozen **Declaration on the Protection of Minorities in the Enlarged European Union** was presented. This document contains a number of policy proposals for minority protection in the enlarging EU. It focuses on the idea that the European Union should play a larger role in the protection of European minorities, as the main responsibility and monitoring mechanisms at present lie with the member states, the Council of Europe and the OSCE. The following proposals were submitted to the EU and its member states for ‘urgent consideration’:¹⁶¹

1. Improve monitoring of candidate states
2. Integrate minority protection into EU monitoring of human rights within member states
3. Strengthen the EU as a community of values
4. Improve the cooperation among the European Union (EU), Council of Europe (CoE), and Organization for Security and Cooperation in Europe (OSCE)
5. Bring to life the new constitutional motto “united in diversity”

The proposals illustrate the growing consensus in Europe on the need for enhanced and advanced instruments for minority protection. Also, the absence of an effective EU monitoring mechanism after accession is stressed, as well as the current discrepancy with the pre-accession focus on minority issues in the Copenhagen Criteria. This will be further elaborated on in Chapter 4.

In November 2004, the European Parliament created an **Intergroup for Regional and National Minority Languages**.¹⁶² The first of its two main functions is: to gather information and opinions on minority issues regarding their culture, traditions, and languages, in order to develop a wider perception of this phenomenon. Secondly: ‘the Intergroup means that the issue of minorities and language is important within the European institutions. Although the EU is based on States, they cannot ignore the reality that there are more nations, and regions in Europe that do not fit in very well in the scheme of an EU of States. (...) this Intergroup is the ‘microphone’ of the minorities.’¹⁶³

In October 2008, OSCE High Commissioner on National Minorities, Knut Vollebaek, launched the Bolzano/Bozen **Recommendations on National Minorities in Inter-State Relations**. In these recommendations advice is provided to representatives of States, national minorities and international organizations on how to address questions concerning national minorities that arise in the context of inter-state relations ‘in a way that protects and promotes the rights of persons belonging to national minorities, prevents conflict, maintains inter-ethnic harmony and strengthens relations between States.’ It is particularly emphasized that unilateral interventions of kin-states are not allowed under international law, including the exercise of jurisdiction over citizens of another state without that state's consent, except in limited areas such as education.¹⁶⁴ The document is interesting for this thesis in the sense that it reflects a persisting focus in Europe on trans-border minority issues, which is also relevant for the relationship between Hungary and Romania in regard to national minority issues.

Overall, on a European level, minority rights have progressed from political commitments to being treated as legal obligations, principally due to expanding jurisprudence in more recent years. Still, many authors mention the problem of *inconsistency*, in definitions, in policy and in monitoring. Definitions concerning minorities and minority rights differ quite substantially and are not followed through consistently within a European framework, and sometimes they are not even offered. In the Explanatory Report of the 1995 Framework Convention for the Protection of National Minorities for example, paragraph 12 mentions that a definition of ‘national minority’ is not provided, to avoid discord between states.¹⁶⁵

¹⁶¹ Source: <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016691.pdf>, ibidem, 12:12

¹⁶² Intergroups are cross-party parliamentary working groups that are recognized as an official way to work in areas of particular interest and are integrated into the wider framework of the European Parliament.

¹⁶³ Statement by Basque MEP Mikel Irujo Amezaga, European Bureau for Lesser-Used Languages, 15/9/2008, http://www.eblul.org/index.php?option=com_content&task=view&id=173&Itemid=37

¹⁶⁴ Source: http://www.osce.org/hcnm/item_1_33438.html, accessed 17/10/2008 10:22

¹⁶⁵ Explanatory Report of the FCNM; <http://conventions.coe.int/Treaty/en/Reports/Html/157.htm>

12. *It should also be pointed out that the Framework Convention contains no definition of the notion of "national minority". It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.*

European policy concerning minority rights seems inconsistent too, as there is no body, institute or authority that covers all European policy measures in this field. Nevertheless, statements on the importance of protection of minority rights are made more often and more explicitly.

For example in April 2007, the European Parliament has issued a report on the Annual Report on Human Rights in the World 2006 and the EU's policy on the matter (2007/2020(INI)) through the EP Committee on Foreign Affairs. In this report, The European Parliament *'Insists that all human rights and democracy discussions with third countries, instruments, documents and reports (...) need to address explicitly discrimination issues including the issues of ethnic minorities, religious freedoms including discriminatory practices towards minority religions, and explicitly the protection and promotion of the rights of ethnic and national minorities, (...), fully involving their organisations, both within the EU and in third countries, where appropriate;'*¹⁶⁶ In this statement the EP stipulates the importance of guaranteeing the rights of ethnic and national minorities.

Perhaps most importantly, the European Parliament adopted in 2005 a **'Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe'**. In this potent resolution, the EP clearly underlines the lack of monitoring of minority rights, literally calls European policy on this matter inconsistent and even provides a definition of what a minority is.

"[The EP] Points out the inconsistency of policy toward minorities - while protection of minorities is a part of the Copenhagen criteria, there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a minority; notes that nor is there a definition of minorities in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, or in the FCNM; recommends that such an definition should be based on the definition, laid down in Council of Europe Recommendation 1201(1993), of a 'national minority' as groups of persons in a state who:

- reside on the territory of that state,
- maintain longstanding, firm and lasting ties with that state,
- display distinctive ethnic, cultural, religious or linguistic characteristics,
- are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state,
- are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their tradition, their religion or their language;"¹⁶⁷

Even though the words 'sufficiently representative' pose some un-clarity, the intention is clear. It would be interesting to research what the impact of this resolution has been in the last three years, and what has been decided in the backrooms of the European Union on this matter.

¹⁶⁶ Report on the Annual Report on Human Rights in the World 2006 and the EU's policy on the matter (2007/2020(INI)), Committee on Foreign Affairs, page 22, point 106.

¹⁶⁷ European Parliament, 'Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe', Brussels, 2005

Recapitulation

Chapter 2 aimed at exploring the international and European context of minority rights, with special regard to the collective applicability of these rights. It has been shown that individual rights for persons belonging to ethnic or national minorities are well guaranteed by several international and European treaties, which for the most part have also been ratified by the Romanian state.

The difficulty is however, that these treaties do not protect collective rights of national minorities. The European Charter for Regional or Minority Languages for example, is an instrument that does not aim to defend minorities, but languages; it therefore does not acknowledge individual rights in this respect. The 2005 'Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe' of the European Parliament does show an increased interest in minority protection on a larger political scale. The 1995 Framework Convention for the Protection of National Minorities (FCNM) still promises to be the most comprehensive and most applicable treaty regarding the rights of national minorities. But regarding the maintenance and protection the linguistic aspects that bind minorities; the 1998 European Charter for Regional or Minority Languages is the main instrument, which might be expanded in the years to come. All in all, there is no solid international or European legal framework that guards the rights of national minorities in European countries, yet.

Chapter 3 – Framework of minority rights in Romania

Introduction

In the first part of this chapter, the legislative and institutional framework for minority rights in Romania will be discussed. Next, the current situation of Hungarians in Romania concerning minority rights is outlined, with an emphasis on political, social-economical, cultural, and linguistic aspects of minority rights. In this part, an answer to the research question will be sought. A list of internationally 'common' minority rights and principles will be presented, after which these will be discussed one by one. Subsequently, the way in which Hungarian minority organisations utilize this framework to reach their goals will be discussed. And finally, an overview will be given of international, European and national institutions that monitor the status of minority rights in Romania. But as an introduction, some statistics on ethnicity will be shown and a short outline of the political Romanian landscape in regard to ethnic representation will be provided.

But first of all, some minority statistics might be useful to sketch the general situation. In Chapter 1 it was already mentioned that the Hungarian minority in Romania makes up 6,6% of the total of the Romanian population. According to the 2002 census, the total population of Romania counted 21,680,974 persons. Of these are 19,4 million Romanians; 1,4 million Hungarians, approximately 0,5 million Roma, around 61.000 Ukrainians and about 60.000 Germans, followed by smaller ethnic groups.¹⁶⁸ (See Appendix 1, Tables 1, 2, 3). In Transylvania, the total population amounts 7,2 million in 2002 of which 1,4 million are Hungarians, who therefore account for 19,6% of the total population of the region.¹⁶⁹

The political landscape is another important element when providing an overview of minority rights, as it is (or should be) a reflection of society and the main stage for creating and changing minority policies. The Parliament of Romania has a bicameral structure, and consists of the Chamber of Deputies and the Senate. The representation norm for the Senate is one senator to 160.000 inhabitants, which results in 137 seats. The norm for the Chamber of Deputies (Camera Deputatilor) is one Deputy to 70.000 inhabitants, resulting in 345 seats. The seats of the Chamber of Deputies of the Romanian Parliament are filled through elections using a party-list proportional representation. Momentarily, 18 seats are taken by representatives of minorities¹⁷⁰, and 22 seats are held by the Democratic Alliance of Hungarians in Romania (DAHR). As part of the governing coalition, the DAHR is represented in the cabinet in four portfolios:

- Béla Markó as Minister of Culture, Education, and European Integration and is also the Deputy Prime Minister;
- Zsolt Nagy as Minister of Telecommunication and Information Technology;
- László Borbély as Acting Minister of Transportation, Public Construction, Territorial Planning, and Tourism;
- and Gyula Winkler as Acting Minister of Economy and Trade.

When minority groups have not formed representation through the normal procedure, seats will be granted to officially recognized minority organizations. But only if they fulfill the criterion of representing at least 5% of cast votes in Romania as a whole, which is a threshold that applies to all deputies that are chosen directly. The next parliamentary elections will be held on the 30th of November 2008.

¹⁶⁸ Census of Population and Dwellings, March 18-27, 2002, Romanian National Institute for Statistics, *Table 16: Population by ethnic groups, regions, counties and areas*; <http://www.insse.ro>

¹⁶⁹ Brubaker, 'Nationalist politics and everyday ethnicity in a Transylvanian town'; Princeton University Press, 2006, Table 2.1 (based on 2002 census), p 86

¹⁷⁰ These 18 representatives together form the 'Parliamentary group of the national minorities'.

3.1 Legislative framework

As discussed in Chapter 2, international and European agreements on human and minority rights generally focus on individual rights rather than group rights. This also applies to the Romanian framework of minority rights. Both the Romanian Constitution as specific legislation concerning minority issues do not provide for collective rights.

Constitution

The Romanian Constitution was adopted on December 8, 1991, and amended by referendum on October 18-19, 2003.¹⁷¹ Many changes were made, the most important ones concerning minorities are, firstly, the right for national minorities to use their native language when communicating with courts and with governmental administration, and secondly, the fact that private property is guaranteed the protection of the law (previously property was only "protected", not "guaranteed").¹⁷²

From a minority point of view the Constitution starts of with an interesting statement in the first article. Under Title 1, Article 1(1) the following is written: "*Romania is a sovereign, independent, unitary and indivisible National State.*"¹⁷³ Questions that rise while reading this article particularly concern the word 'unitary'. What does it mean in this article and in the context of a state that comprises multiple minority groups?

In the constitutions of the 27 member states of the European Union, only four countries use the word 'unitary' in the text of the document: Romania, Czech Republic, Bulgaria and Estonia¹⁷⁴; interesting is, that at least three of these countries host a large ethnic minority.¹⁷⁵

Article 1 paragraphs 2, 3 and 4 offer a more common description of the foundations of the state: 1(2) "*The form of government of the Romanian State is a Republic.*"

1(3) "*Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values (...) and shall be guaranteed.*" And paragraph 4 mentions that the organization of the state is based on the principle of the separation and balance of powers. When the Constitution was revised in 2003, the DAHR lobbied strongly for erasing the first article. The proposal of the Alliance was rejected with a majority of 238 against 23 in the Romanian Parliament.

Yet another article further specifies the unitary claim; Article 4, Paragraph 1: "*The State foundation is laid on the unity of the Romanian people and the solidarity of its citizens.*"

Other peoples or ethnicities are not mentioned, which implies that peoples or nations living in Romania other than the Romanian people are constitutionally not recognized. The second paragraph of Article 4 states that "*Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.*" This paragraph denounces discrimination, including discrimination on grounds of nationality or ethnic origin. Still, ethnicities or even their languages are not recognized in the Romanian Constitution.

However, according to Culic (2003) this way of constitution writing is typical for Eastern European countries after the fall of Communism. Most states that became independent after this event 'defined themselves as both *democratic (nation) states* vesting power in all the people (citizens), as well as

¹⁷¹ Website Parliament of Romania, <http://www.cdep.ro/pls/dic/site.page?id=371>, accessed 7/10/2008 10:52

¹⁷² Romanian Constitution, source: <http://www.cdep.ro/legislatie/eng/vol65eng.pdf> and www.romania.org, comment on the constitution, accessed 25/10/2008 16:42

¹⁷³ Ibidem, Romanian Constitution, <http://www.cdep.ro/legislatie/eng/vol65eng.pdf>

¹⁷⁴ Cliteur & Voermans, 'Preambules'- Rapport uitgebracht op verzoek van het Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Universiteit Leiden, 2008, p 45-80

¹⁷⁵ In Romania, the Hungarian minority counts up to 6,6% of the population, in the case of Bulgaria 9,4% of the population is Turkish, in Estonia 25,6% of the population is Russian and in the Czech Republic 9.6% of the population is not ethnically Czech, but Moravian, Sudethen-German, Slovak or other.

CIA World Fact Book 2008, source: <https://www.cia.gov/library/publications/the-world-factbook/index.html>

national states (Nation states) created of and for the protection and enhancement of one definite nation'.¹⁷⁶ Although these concepts of democratic state and national state are not fully contradictory, Culic argues that there is an intrinsic tension. The nation state concept implies homogeneity of the population, and governmental policies of state building will therefore be mainly directed towards the dominant nation, and favor their language and symbols. Many new political elites also tried to distance themselves from the old communist regime, by reverting back to 'historical episodes of national statehood, which might demonstrate the legal continuity of their states.'¹⁷⁷ This process might in the Romanian case have enhanced the promotion of the Romanian nation in the formulation of the Constitution.

Article 2 on sovereignty is another example of this national idea, although an extra paragraph was added only in 2003, which might be seen as reflecting political issues of a later period.

Article 2 used to comprise only one paragraph: 2(1) "*The national sovereignty shall reside within the Romanian people, that shall exercise it by means of their representative bodies, resulting from free, periodical and fair elections, as well as by referendum.*" But in 2003 a second one was added¹⁷⁸: 2(2) "*No group or person may exercise sovereignty in one's own name.*" This restrictive formulation is rather distinct from most preambles of the 27 constitutions of Europe.¹⁷⁹ Yet, France has a very similar formulation¹⁸⁰, and Bulgaria, Hungary and Lithuania also use comparable formulations on sovereignty that aim at the same effect. Interestingly, the other 23 countries do not mention restrictions of sovereignty, but on the contrary emphasize the binding force of democracy and equality before law. Calls for (partial) autonomy during the 90's and early 2000's by the Hungarian minority in Transylvania might be connected to the addition of this paragraph.

In Article 20 a reference is made to the Universal Declaration of Human Rights, stating that national law concerning citizens' rights and liberties will be interpreted in accordance with the UDHR, with international covenants, conventions and other treaties Romania is a party to. According to the Romanian Institute for Human Rights; 'These stipulations emphasize the priority of international norms on human rights over the internal legislation.'¹⁸¹

However, the second paragraph of Article 120 contains the uncommon formulation, that in case "*any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws; the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.*"

Question that rise are: what are 'more favourable provisions'? More favourable to whom? On what grounds are decisions on 'favourability' taken, and by whom? Study of jurisdiction of the Romanian Constitutional Court could clarify this concept, but it is clear that the article provides no solid ground for commitment to or implementation of international human rights.

Moreover, year after year Romania ranks high in lists of countries where respect for human rights is lacking. In the latest publications of the UN Human Rights Council, Amnesty International, the European Commission and also the Corruption Perception Index, the situation of human rights in Romania is not described as promising and discrimination against minorities is specifically mentioned. Examples of such allegations in monitoring reports of international, European and even Romanian organisations will be given in the third part of this chapter.

Generally speaking, minority rights are protected by the Romanian Constitution. The specific rights will be elaborated on in detail further along in this Chapter. The point is however, that the

¹⁷⁶ Culic, 'State Building and Constitution Writing in Central and Eastern Europe after 1989', *Regio-Minorities, Politics, Society*; English Edition, issue: 1 / 2003, pages: 38-58, on www.cceol.com, p 43

¹⁷⁷ Culic, 'State Building and Constitution Writing in Central and Eastern Europe after 1989', 2003, p 45

¹⁷⁸ Source: <http://www.cdep.ro/ppts/constitutionEN.ppt>, accessed 25/10/2008 16:58

¹⁷⁹ Cliteur & Voermans, '*Preambles*', Universiteit Leiden, 2008, p 45-80: p 46

¹⁸⁰ Constitution of France (Title I, Article 3): National sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof.

¹⁸¹ Romanian Institute for Human Rights, "The Legislative and Institutional Framework for the National Minorities of Romania", Bucuresti, 1994, page 3

Constitutional approach of minority protection is based on a legal system that supports individual rights instead of collective or group rights. A change of this tendency was promised by the 1990 Provisional Council for National Unity (CPUN) to be implemented in the revision of the Constitution in 2003, but this was not followed through. The Romanian Constitutional Revision Committee argued that if done so, “ein auf internationaler Ebene nicht zulässiges Kollektivrecht mit möglicherweise extrem schädlichen Folgen”¹⁸² would come into being. The fear was that such a collective structure in minority protection could undermine the unity of the state; but foremost, collective rights would also have contradicted the previously mentioned Article 4(1) which contains the purely Romanian interpretation of ‘nation’.

Legislation

Next to the constitution, Romanian legislation provides in a number of separate laws that are specifically important for national minorities. The 1995/1999 Law on Education, the 2001 Law on Local Public Administration, and the 2006 Law on Religion are only a few examples of such laws. These laws will be discussed in connection with specific rights that will be listed in part 1.2. Still, two laws deserve early attention due to their general impact on minority rights in Romania: the 2002 Anti-Discrimination Law and the 2005 Draft Law on the Status of the National Minorities in Romania.

In 2000, a Government Ordinance on the prevention and sanctioning of all forms of discrimination was put forward by the minister for minorities and a delegation of the DAHR. In this ordinance a comprehensive definition of the concept of discrimination is offered:

*“any distinction, exclusion, restriction or preference based on race, nationality, ethnic origin, language, religion, social origin, beliefs, gender, sexual orientation, age, disability, chronic non-infectious disease, HIV infection, appurtenance to a disadvantaged category or any other criteria which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”*¹⁸³

The **Anti-Discrimination Law** following from this ordinance was passed in 2002. The law forms the basis of Romanian legislation in the field of anti-discrimination and specifies constitutional provisions. The law covers the following 5 main areas: i) equality in the economic activity in terms of employment and professional work; ii) access to legal, administrative and public health services, as well as to other services, goods and facilities; iii) access to education; iv) freedom of movement, choice of residence and access to public places; v) the right to personal dignity.

According to the Hungarian Human Rights Office (an independent monitoring organization seated in New York), the law provides the opportunity for any person belonging to a national minority who is the victim of any form of discrimination, to turn to the Minority Protection Office. This office can subsequently launch an investigation of its own as well.¹⁸⁴ Parallel to the implementation of this law, the Anti-Discrimination Council (or the ‘National Council for Combating Discrimination’) was established already in 2001 to implement these new regulations.

However, according to the US 2007 report on Human Rights in Romania, enforcement of the law is a problem: “The law forbids discrimination based on race, gender, disability, ethnicity, language, or social status, among other categories. However, the government did not enforce these provisions effectively in some circumstances, and women, Roma, and other minorities were often subject to discrimination and violence.”¹⁸⁵ Examples from this report will be given when reviewing the rights of minorities in Romania in part 2 of this chapter.

¹⁸² Göllner; ‘Minderheitenrecht und Minderheitenpolitik’, in Kahl, Metzeltin, ea.; ‘*Rumänien*’, Lit Verlag, Wien, 2006; p 791

¹⁸³ 2000 Government Ordinance On Preventing and Punishing All Forms of Discrimination, Article 2(1), and UN HRC National Report on Romania, May 2008, point 17

¹⁸⁴ Hungarian Human Rights Office, <http://www.hhrf.org/htmh/en/?menuid=0404>

¹⁸⁵ 2007 Country Report on Human Rights Practices in Romania, US Department of State, published 11th of March 2008, review of year 2007, <http://www.state.gov/g/drl/rls/hrrpt/2007/100580.htm>

Another piece of legislation that deserves attention is the draft law on national minorities. The idea of creating a special law to handle issues concerning national minorities was born already in 1991. In 1993, a relevant draft was submitted to the Parliament, but the draft was not seriously dealt with until 1996. That year, the Democratic Association of Hungarians in Romania (DAHR or RMDSz) was included in the ruling coalition in the Parliament and governed until the next elections of 2000. Nonetheless, the draft law was not accepted during this period. In 2004-2008 term, the DAHR was again part of the ruling coalition, and in 2005 it reintroduced the “**Draft Law on the Status of the National Minorities in Romania**”, in which ‘die Formen der kulturellen Autonomie der nationalen Minderheiten festgelegt und die Grundsätze der Gleichheit und Nichtdiskriminierung eingeführt werden’.¹⁸⁶ The Draft Law is an attempt to provide the 18 recognized minority groups of Romania ‘limited competence in areas that directly impact on their ability to preserve their cultural identities’.¹⁸⁷ In March of 2005 it was sent to the Parliament where it was discussed, but in July 2006 the Chamber of Deputies decided to send the draft law back to the Chamber’s committees for further analysis. The text of the draft law starts in Articles 1 and 2 with attending to the problem concerning the ‘unitary state’- clause in the Constitution that excludes minorities:¹⁸⁸

Art. 1. This law regulates the juridical statute of the national minorities living in Romania.

Art. 2. The national minorities are recognized as constitutive factors of the Romanian state, as a part of the Romanian people's unity.

Next, a definition of a national minority is provided and the Romanian state is assigned with the task of taking ‘effective measures in order to promote reciprocal respect, understanding and cooperation between all citizens, irrespective of their ethnic, cultural, linguistic or religious identity, especially in the fields of education, culture and mass-media’. [Art. 7(1)]

The most important element of this draft law is a framework that supports the practice of cultural autonomy, which would allow for self-government in cultural and educational matters.

It also provides in the establishment of a National Council for Cultural Autonomy that possesses the right of veto on governmental decisions concerning the national minorities. This aspect of the draft law has caused serious disagreement, which delayed the approval of the law. If the proposed law would be approved and implemented in practice, it would be the first Romanian minority law not focused on individuals, but a law for protection of minorities based on collective rights.¹⁸⁹ A quote from the draft law illustrates this: (Art. 48) ‘The organizations of citizens belonging to national minorities [... g.]) may represent before national or international law courts persons or groups of persons whose interests have been prejudiced because of their affiliation to the respective national minority.’ Up to date, the draft has not been approved yet and this process might take up much more time according to Prime Minister Tariceanu. The decision should be taken by the new Parliament, after the elections of November 2008.¹⁹⁰

Government programmes

Several programs were developed by the Ministry of Culture and Religious Affairs aimed at ‘further preserving and freely expressing the cultural, linguistic and religious identities of the national

¹⁸⁶ Göllner; in Kahl, Metzeltin, ea.; ‘Rumänien’, 2006; p 798

¹⁸⁷ Transylvanian Monitor, minority and human rights watch, No. 20, July 2006

¹⁸⁸ Draft Law on the Statute of National Minorities living in Romania, as published on website of the European Centre for Minority Issues (ECMI), Germany;
http://www.ecmiromania.org/fileadmin/documents/draft_law_national_minorities.pdf

¹⁸⁹ Göllner; in Kahl, Metzeltin, ea.; ‘Rumänien’, 2006, p 799-800

¹⁹⁰ Excerpt from message on BalkanInsight.com: “Romania ‘Delays’ Hungarian Autonomy”, October 2008
Bucharest - Romania’s Prime Minister Calin Popescu Tariceanu says the country’s upcoming general election may delay autonomy plans for ethnic Hungarians. This is according to reports in Hungary’s state news agency. During a visit to the Hungarian town of Szeged earlier this week, the Romanian Prime Minister noted that his country’s planned law on national minorities, a piece of important legislation for Romania’s Hungarian community, would have to wait to be passed by the next Romanian parliament, as the general elections were to be held next month.

Source: <http://www.balkaninsight.com/en/main/news/14224/>

minorities, as well as on fostering intercultural cooperation'.¹⁹¹ A programme that addresses all national minorities is *Proethniculture*, whereas other programmes focus on the Roma minority. On a yearly basis, special budgets are allocated by the government for interethnic projects and programs for combating intolerance. Several projects on Roma and Jewish problems, as well as on all other minorities, have been financed and supported through this mechanism run by the Department for Inter-Ethnic Relations.¹⁹² Also, the launch of a National Plan of Action (NPA) for Human Rights is being prepared, which aims to provide and annual reflection on the status of human rights in Romania.



Freedom square in 1887, Szabadság tér, Cluj/Kolozsvár, Romania¹⁹³
(Note bilingual -both Hungarian and Romanian- name plates.)

¹⁹¹ UN HRC National Report on Romania, May 2008, point 29

¹⁹² Ibidem, point 31

¹⁹³ Source: www.cluj4all.com/addresses

Current minority rights available to the Hungarian minority in Romania

These rights will be divided into four groups; one concerning political rights, one concerning socio-economic rights, another concerning cultural rights and the last one specifically concerning linguistic rights. Per group, rights and regulations will be outlined; and an impression will be given of the current status and the negative or positive effects of these rights on the Hungarian minority.

* Political rights

Representation in Parliament

In 1992 minorities obtained the right to be represented in Parliament by the adoption of the Law on Elections to the Chamber of Deputies and the Senate.¹⁹⁴ This Electoral Law specified the constitutional provision for minority representation that was already included in the 1991 Constitution. After the 2003 amendment of the Constitution, the article number changed but the content was maintained. Article 62(2) of the Constitution on the Election of the Chambers: *Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organization only.* This Article provides a constitutional guarantee for the representation of national minorities and assures participation in every Parliament.¹⁹⁵

The 2004 Law on the elections for the Chamber of Deputies and the Senate, further specifies the procedure regarding political participation of national minorities. In general, parties can now only be officially registered if they manage to collect 25000 signatures. These parties will subsequently be represented in parliament if they can achieve the 5 % electoral threshold, or if their candidates win 6 deputy mandates and three senator mandates. The electoral threshold for alliances ranges between 8 and 10%, depending on the number of constituent parties.

Regarding national minorities, the law grants each recognized ethnic minority one representative in the chamber of deputies if the minority's political organization cannot obtain the 5 percent of the votes needed to elect deputies outright. Therefore there will be in every parliamentary period at least 18 deputies representing the 18 minority groups that are officially recognized. The point is that this regulation causes monopolies within minorities, because most minorities do not pass the 5% threshold. But if members of a minority want to establish a second or competing party within its ranks, they must provide the Central Electoral Bureau with a list of members numbering at least 15% of the total number of persons belonging to that ethnic group, according to the most recent census. If 15% represents more than 25,000 persons, then at least 25,000 names from at least 15 counties, with no fewer than 300 persons from each county, must be submitted. This threshold is for most minorities impossible to achieve, as they simply do not have 300 persons in every county. Even for the

¹⁹⁴ Article 4:

(1) Legally constituted organisations of citizens belonging to national minorities which fail to obtain at least one seat in the Chamber of Deputies or the Senate in the elections shall have the right to one seat in the Chamber of Deputies, in accordance with Article 50 paragraph (2) of the Constitution, provided that their share of the vote is at least 5% of the average number of validly cast votes in the entire country for the election of a Deputy.

(2) Organisations of citizens belonging to national minorities which participate in the elections shall be treated in law as political parties for the purpose of electoral operations.

(3) The provisions of paragraph (1) shall also apply to organisations of citizens belonging to national minorities which have participated in the elections on the joint list of those organisations; in this case, where none of the candidates on the joint list has been elected, all the organisations which proposed the list shall be allocated one Deputy's seat, provided that the conditions set out in paragraph (1) are met.

(4) The provisions of paragraph (3) shall not apply to an organisation of citizens belonging to national minorities which participated in the elections on the joint list with a political party or another political group or on joint lists, in accordance with paragraph (3), as well as on their own lists.

(5) The Deputy's seat allocated in accordance with paragraph (1) or (3) shall be allocated in addition to the total number of Deputies determined by the rules on representation.

¹⁹⁵ Constantin, S., 'Linguistic policy and national minorities in Romania', 2004

Hungarian minority this has proven to be rather difficult, as the new competing party, the Hungarian Civic Union, barely gained official registration, just months before the November 2008 elections. Human rights NGOs have criticized these requirements as discriminatory and as aimed at eliminating competition to the mainstream organizations representing Hungarians and Roma, namely the Democratic Alliance of Hungarians in Romania (UDMR) and the Roma Party-Pro Europe.¹⁹⁶ In this way, minorities are always represented in the Romanian Parliament in a controlled manner, they will seldomly become (too) powerful in Parliament, and they are more likely to refrain from other political activities (that are subversive or possibly harmful to the unity of the state) outside the Parliament.

Representation in local government

Article 120 of the Constitution on the basic principles of local public administration, states in paragraph 1 that public administration on a local level “*shall be based on the principles of decentralization, local autonomy, and deconcentration of public services.*”

On the level of local governance, Romania consists of 42 districts (counties, or in Romanian: *judet*; 41 in the provinces and 1 for Bucharest) that form the basic administrative units of the country. They are divided into 56 municipalities, 189 cities, and 2706 country communities. The most recent local elections were held in June 2008. 7% of the total number of seats in the 41 County Councils was won by the DAHR.

Mayors are directly elected for a four year period and hold executive power, just as the local councils. The activities of the local councils are coordinated by the district councils. Their interaction is defined by the above mentioned principles of decentralization and local autonomy. Their levels are not subordinated to one another; equal cooperation while solving local problems is the slogan.

The central government is represented at local level by the prefect, who is directly appointed by the government. The prefect coordinates and supervises public services, including the activities of decentralized ministerial organs, and guards the observance of the law by the local public administration authorities. However, according to Cliza (2008), the tasks and legal authority of the prefect have increased to a critical level since the coming into force of a special Law (No. 340/2004) regarding the prefect’s institution. Cliza argues that the prefect is now able to interfere in the appointment and dismissal of the heads of the decentralized public services of the ministries and other local governmental bodies.¹⁹⁷ Only in April 2006 did the Constitutional Court adopt a resolution (No. 208/2006) through which this power was limited again. Cliza acknowledges this correction but underlines that the abuses already committed are not removed, and that many positions were given away by means of a faulty and discriminatory procedure.

Another issue in local politics have been the electoral districts. These administrative units have been redesigned several times during the last decade, which severely affects the majority/ minority balance in Romania, especially in the Transylvanian region. The implications of the latest (March 2008) will be discussed in Chapter 4.

*** Social-Economic rights**

Work

The sectors with the largest labour forces are respectively services, industry and agriculture.

Unemployment in Romania was 4.1% in 2007 and the annual GDP growth has been around 6% for several years.

On EU level, two equality laws have been adopted in 2000: the Racial Equality Directive (2000/43/EC) and the Employment Framework Directive (2000/78/EC). These directives prohibit discrimination on the grounds of race and ethnic origin in employment and beyond, and on the grounds of religion or belief, disability, age or sexual orientation in the workplace.

¹⁹⁶ US 2007 Country Report on Human Rights Practices in Romania, March 2008 (review of year 2007)

¹⁹⁷ Cliza, C., ‘Manifestations of the abuse of power in the Romanian legislation regarding the Prefect’s office – constitutional censoring of this abuse of power’, Lex et Scientia No. XV Vol. 1/2008, Nicolae Titulescu University, Bucharest, 2008

Next to that, the earlier mentioned Romanian Anti-Discrimination Law of 2002 and several articles of the Constitution aim at the same effect. According to Article 135(1) and (2) of the Constitution, 'Romania's economy is a free market economy, based on free enterprise and competition', secured by the state. Everyone has a free choice of his/her profession, trade or occupation, as well as work place and all employees have the right to measures of social protection [Art. 41(1) and (2)]. Still, government statistics of 1996 show that ethnic Hungarians were heavily under-represented in management and executive, administrative and economic posts, in which they held only 3.2 percent of such posts.¹⁹⁸ The International Labour Organization has argued in a report of 2000, that discrimination in employment against ethnic minorities was common in Romania.¹⁹⁹ A more recent report on Romania was not available. According to the January 2003 Law on trade unions [54/2003, Art. 2(1)], 'the persons employed and the public servants shall have the right to set up trade union organizations and to join them'²⁰⁰. There are currently five trade union organizations represented at national level.

Health care

In 1997, the social health insurance bill was approved by the Chamber of Deputies and its implementation started in 1999. Since the adoption of the Law on Social Health Insurance, the Romanian health-care system transformed from a state-financed model to an insurance-based system. Membership was made mandatory and was connected to employment, as contributions depend on income and are paid in even shares by the insured and the employer. The basis of the system is equal health services for equal needs.²⁰¹ Still, according to the Romanian Statistics Agency, 29% of total health expenditures are private payments. In other words, public health providers charge extra fees or under-the-table payments for services that should be free of charge, as they are already covered by the insurance system. On its website, UNICEF states the situation of health care in Romania can be defined as unsatisfactory.

Information on health care for or discrimination of minorities specifically is not abundant. Recent information on this matter is offered by the February 2008 Eurobarometer on discrimination in the European Union.²⁰² In this report, over 27,000 randomly selected citizens aged 15+ were interviewed via fixed-line telephone in the 27 EU Member States, with approximately 1,000 interviews in each country.²⁰³ The report shows that 82% of Romanian respondents agreed ('agree' or 'very much agree') that legislation is necessary to protect people against discrimination when they need medical assistance, go to a doctor or receive hospital treatment.²⁰⁴ This suggests that discrimination in health care services exists on quite a large scale. Also, 71% agreed ('agree' or 'very much agree') that legislation is necessary against discrimination when buying insurance policies.

Property rights

According to Article 44 of the Constitution, the right to own property is guaranteed. In combination with Article 136 on the distinction between public and private property, the Romanian Constitution provides a normal degree of property protection, in which persons belonging to national minorities are being treated like any other citizen of Romania. But in connection to the confiscation of church and

¹⁹⁸ Howard, J.; 'Internationally recognised core labour standards in Romania'; *SEER SouthEast Europe Review for Labour and Social Affairs*, issue: 02 / 2000, pages: 81-85, on www.cceol.com.

¹⁹⁹ Ibidem

²⁰⁰ Law No. 54 of 24 January 2003 on the trade unions, published in the Official Gazette of Romania

No. 73 of 5 February 2003, on <http://www.usig.org/countryinfo/laws/Romania>

²⁰¹ Vladescu, C., 'The Romanian Healthcare System: Between Bismark and Semashko', in: '*Decentralization in Healthcare: Analyses and Experiences in Central and Eastern Europe in the 1990s*', Published by the Local Government and Public Reform Initiative, Budapest, 2005

²⁰² Flash Eurobarometer on "Discrimination in the European Union - Perceptions and experiences of discrimination in the areas of housing, health care, education, when buying products or using services", analytical report, fieldwork: January 2008, report: February 2008.

²⁰³ Due to the relatively low fixed-line telephone coverage in Romania, Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia, face-to-face (F2F) interviews were also conducted (700 telephone and 300 F2F interviews) in these nine countries.

²⁰⁴ Eurobarometer on "Discrimination in the European Union", 2008, page 58

communal properties from the Hungarian (and other) minorities by the Communist State since the 1940, unfair practices seemed common throughout the years.

When the DAHR was part of the 1996-2000 ruling coalition in parliament, five governmental decrees were issued to anticipate promised legislation on the restitution of properties to the national minorities. During the years that followed, in only six cases the original owners regained the ownership rights on their former property.

An example of such a decree is Urgency Government Ordonnance no. 13/1998 on the restoring of real estates which belonged to the communities (organizations, religious cults) of national minorities from Romania. In the annex to this decree seventeen properties were listed, from which only six were restituted officially. In the case of property no. 11, the Hungarian minority asked the government for restitution of a property in Timisoara, then held by trading company S.C. "TIM PRESS" S.A. from Timisoara. The property was indeed listed being confiscated by the communist State from the Hungarian community, but was now in use and ownership of the company. It was stated that how this transfer between the state and the company had taken place was not up to the government to prove, which meant that court ruled that, following Article 41(3) of the Constitution, the current owner could not just be expropriated and the Hungarian claim was not rewarded, even though pre-1940 ownership of the Hungarian community was evident.²⁰⁵

Moreover, in the other six cases where ownership rights were restituted to the Hungarian community, the procedure to regain actual occupancy or use of the buildings, was 'stymied, hindered and opposed alternately by the local and appellate public administration courts, local councils, the constitutional court and even the government's very own Ministry of Culture.'²⁰⁶

Agricultural land and forests were also confiscated from various ethnic and religious communities in Romania. These properties are being restored by means of specific regulations from 1999 and 2000. In February 2001, a new law ('Law 10') went into force which aimed at regulating private property restitution concerning properties that were confiscated during the period 1945-1989. The law proved to be very complex and had an application period of only six months. With foreign pressure, the deadline was extended to February 2002 and later to July 2003. But Law 10 did not include the restitution of properties belonging to religious communities or minority groups. This was dealt with through the adoption of the 2002 Law on Restitution of Property, and will be described under religious rights.

In 2005, the National Agency for the Restitution of Properties was established, which monitors the process of restitution of private and community properties that were abusively seized under communist rule. The Agency 'keeps the database of real estates subjected to restitution and offers methodological guidance to local and central public authorities as well as legal persons involved in this exercise.' At the same time, it monitors the restitution process concerned with communities of the national and ethnic minorities, as well as the religious denominations.²⁰⁷

According to the Hungarian Human Rights Foundation, the progress in processing the claims has been and continues to be impeded by (1) administrative understaffing and (2) obstruction from local authorities in procuring documentation proving the rightful owners' claims.²⁰⁸ Local authorities can not be forced to comply, and sometimes even refuse to provide documentation (as they would be 'disadvantage' by losing property), which severely slows down the process.

Economic opportunities

Freedom of movement and equal economic possibilities are guaranteed by the Romanian Constitution and European legislation.

According to Wheatley (2007), the economic status of Hungarians in Transylvania is not worse when compared to Romanian inhabited counties. Wheatly poses that informal networks between Hungarians

²⁰⁵ Decision No. 234 of December, 20, 1999 by the Constitutional Court on the issue of unconstitutionality of the provisions of the Government Urgency Ordinance No. 13/1998 regarding restitution of real estate owned by the communities of citizens belonging to national minorities in Romania.

²⁰⁶ Hungarian Office for Human Rights, <http://www.hhrf.org/restitution/csce.htm>

²⁰⁷ Source: <http://www.state.gov/p/eur/rls/or/93062.htm>

²⁰⁸ Source: <http://hungaria.org/articles.php?id=658>

do not undermine economic success in Transylvania (which might as it possibly undermines intercultural cohesion and economic relations). Cross-border cooperation with Hungary even seem to enhance economic activity, as it also attracts foreign (Hungarian) investments in the region. Also, the Romanian process of privatisation has not led to extremities as in other Eastern European countries, which leaves the medium and small business sector well represented. This sector even counts up to high numbers in the Transylvanian region, compared to the rest of the country.²⁰⁹

Interestingly, during EU accession, it seemed that people owning small businesses were quicker to implement changes needed to comply with the 'acquis communautaire', than large companies. Even though it is more difficult and costlier for small companies implement the new EU measures; the willingness to 'open up to European rule' seemed to be a bottom-up process, with many small and medium sized enterprises taking the lead.

One concern was the seemingly un-random inspection of the implementation of EU rules; Hungarian companies seemed to be more strictly observed and more often fined by the supervising agencies.²¹⁰

* Cultural rights

Freedom of expression (Const. Art. 30, Media: Art 31)

This right is guaranteed in Article 30 of the Constitution and is commonly formulated, except for paragraph 7, in which a special reference is made to the unlawfulness of separatist ideas concerning the Romanian territory: (7) *Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.* By prohibiting 'territorial separatism', this law clearly denounces any claim of the Hungarian minority to territorial autonomy, and stipulates that expression of such ideas is illegal. In a European context this is an exceptionally restrictive addition to freedom of expression. Interestingly, this formulation was included in the new Romanian Constitution that was adopted in 2003; a parliamentary term (2000-2004) in which the DAHR did not participate in the ruling coalition.

The right to information is captured in Article 31 and includes in paragraph 5 that '*public radio and television services shall be autonomous. They must guarantee any important social and political group the exercise of the right to broadcasting time. The organization of these services and the parliamentary control over their activity shall be regulated by an organic law.*' This final sentence ('organic law') refers to separate legislation on media.

Article 29 on freedom of conscience is connected to freedom of expression, but it mainly refers to religious thoughts, and will be discussed in connection to religious rights.

Minority identity

Article 6 of the Constitution is important for national minorities as it guarantees the right to identity of persons belonging to national minorities: 6(1) *The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.*

(2) *The protection measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.*

It might be argued that there is a contradiction in this Article. The first paragraph guarantees the right to -amongst other things- ethnic and cultural identity, but the second paragraph underlines that protection of the expression of this identity should not exceed the equality and non-discrimination principles.

This formulation could limit cultural initiatives and even legislative action on behalf of minorities, as any special treatment could be reproached for ignoring the non-discrimination principle, and

²⁰⁹ Wheatley, 'The Economic Status of National Minorities in Europe: a Four-Case Study', *Journal on Ethnopolitics and Minority Issues in Europe*, 2007, Vol. 6:1

²¹⁰ Marácz, L.K., 'Cluj-Napoca, het hart van Transylvanië', in *ABLAK - Tijdschrift over Midden-Europa en de Balkan*, jaargang 12, No. 1 - 2007, page 18.

consequently be denominated as (positive) discrimination.²¹¹ So, on the one hand this formulation indeed promotes equality, but on the other it curtails any action on behalf of minorities whenever these surpass standard provisions for all citizens of Romania.

Therefore, in the 2005 Draft Law on the Statute of National Minorities living in Romania a formulation is included in Article 8(2) that intercepts this contradiction: *‘According to this law, the following are not considered discrimination: the measures taken by the public authorities or by juridical persons in favour of a person, a group of persons or a community ensuring their natural development and equal chances in relation with other persons, groups of persons or communities, as well as affirmative measures aiming at protecting the disadvantaged groups.’*

The draft law also defines what a ‘national minority’ is, and lists basic elements constituting an ethnic or minority identity: ‘language, culture, the immovable and movable cultural patrimony, traditions and religion’ [Art. 9(2)], that are ‘preserved, expressed and promoted through educational and cultural institutions, mass-media as well as the institutions of cults acknowledged by law’ [Art. 9(3)].²¹²

Interestingly, the 2005 European Parliament ‘Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe’ makes the same point. In the resolution it is clearly underlined, that *‘there is a difference between the protection of minorities and antidiscrimination policies; noting that equal treatment is a basic right, not a privilege, of all citizens, and tolerance should be a general attitude in life, not a favour granted to some and not to others.’*²¹³

Symbols of ethnic identity can be freely used, according to the Hungarian Human Rights Foundation. Since 2002, a government resolution regulates the use of national symbols which also applies to national minority communities. All national minorities in Romania, including the Hungarian one, may therefore freely use its national symbols.²¹⁴

An interesting survey on intolerance and authoritarianism was held in Romania in September 2003. When respondents were asked if, in their opinion, the Hungarians who live in Romania are part of the Romanian Nation or not, 67% of those surveyed said “yes”, 23% said “no”, and 10% did not know or did not answer.²¹⁵

Assembly/ Association

The Romanian Constitution guarantees the right of assembly in Art. 36, and the right of association in Art. 37. These rights are provided ‘as long as the implementation of this right (to freely associate in political parties, trade unions and other forms of association) does not follow subversive or constitutionally adverse aims.’²¹⁶

The rights to Assembly and Association are in Romania particularly important for Hungarian civil society in Romania. The number of civil society organisations in Romania that focus on the Hungarian minority or stem from it, is remarkably high. Hundreds of organisations, institutions, associations, guilds, councils, clubs and unions can be found. In Chapter 3.2 a selection of main institutions will be outlined, and a general overview is provided in Annex 2.

Religion

Article 29 of the Romanian constitution on freedom of conscience includes the freedom of religious thought. A decree of 1948 forms the legal basis for the recognition of church communities in Romania. A revision of this decree was included in the 2003 Constitution as Article 29 on the freedom of conscience. In this article, freedom of religion and religious association is guaranteed, as well as religious autonomy of not legally recognized denominations. The ethnicity-clause that was included in

²¹¹ Göllner; ‘Minderheitenrecht und Minderheitenpolitik’, in Kahl, Metzeltin, ea.; ‘*Rumänien*’, 2006; p 791

²¹² Draft Law on the Statute of National Minorities living in Romania, as published on website of the European Centre for Minority Issues (ECMI), Germany

²¹³ European Parliament, ‘Resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe’, (2005/2008(INI)), Brussels, 2005

²¹⁴ Hungarian Human Rights Foundation, source: www.hhrf.org/htm/en/?menuid=0404

²¹⁵ Survey “Intolerance, discrimination and authoritarianism in public opinion”, done by the Institute for Public Policies and Gallup Organization Romania in September, 2003. Source: Culic (2003)

²¹⁶ Source: http://www.ceinet.org/download/CEI_Publication_7.4.05.pdf

the former religious law has been removed. The use of minority languages in religious services was suppressed during communism, but was reintroduced after the revolution.

A total of 18 religious denominations are currently legally recognized in Romania. The majority of the Romanian population (86.7%) belongs to the Romanian Orthodox Church. This also includes Ukrainian, Bulgarian, Greek and Lippovan Russian ethnics. The great majority of the Hungarian population adheres to the protestant Church, divided into four historical churches: Roman Catholic, Reformed (Calvinist), Unitarian, and (Evangelical–) Lutheran. The Saxons mainly belong to the Unitarian Church. The Catholic Church consists of over one million members (4.7% of the total population), who are for the larger part Hungarian. The Reformed Church comes next, with approximately 700,000 members (3.2%). This Church is comprised almost entirely of Hungarians; on the sociological level it might therefore be considered as a national Hungarian church. Generally speaking one could say that Romanians adhere to the Orthodox faith and Hungarians to the Protestant faith. Earlier mentioned dissident and Bishop László Tökés has always emphasized the ‘intertwinedness’ of Hungarian religious and ethnic identity in Romania.²¹⁷ Discrimination of specific religious denominations has therefore often been perceived as ethnic discrimination, because of the considerable overlap in religious adherence and ethnicity.

In 2006 a new law (489/2006) on religious freedom was adopted, which has proven to be controversial on several points. The law sets strict rules for religious communities to be acknowledged as an official religious denomination. The law provides that the religious communities need to have been functioning uninterruptedly for at least 12 years (from 1994 onwards) on the national territory and their members should be Romanian citizens, representing at least 0.1 % of the population of Romania, and for smaller communities consisting of at least 300 persons.²¹⁸ The law also provides in state subsidies for religious officials and denominational employees, but this could in fact lead to more state control on religion, as the criteria for receiving subsidy remain rather vague.

According to the Institute on Religion and Public Policy (IRPP) the legal situation of religious freedom in Romania is poor. Despite overwhelming domestic and international opposition to the 2006 law on religion, this ‘restrictive and discriminatory legislation’ was adopted. The “recognized religious denominations” enjoy the greatest rights under the new law, but form a category that, according to IRPP, is almost impossible for some faiths to join because of the numerical threshold. The Jewish community for example constitutes about 0.03% of the total population, and is therefore not acknowledged as an official denomination. According to Human Rights Without Frontiers (HRWF), the new law only favours the Romanian Orthodox Church and other large churches that have been recognized as religions.²¹⁹

Another important issue that concerns the Hungarian minority is the restitution of church properties. The process of restitution of confiscated church possessions began in June 2002. Law 501/2002 which put into force emergency government decree 94/2000 regulated the legal status of the properties illegally taken away from the churches after March 1945. The law took over several basic points of the DAHR’s proposal and opened the way to the settlement of the legal status of church real estate. As a result, numerous school buildings, such as the Reformed College of Kolozsvár, the former Unitarian College and the Bolyai High School of Marosvásárhely (Tirgu Mures) have already been returned to the church.²²⁰

²¹⁷ ‘One of the distinctive characteristics of the Romanian Reformed Church is that its members are all Hungarian. According to our law books..., the official language of the Reformed Church is the Hungarian language. For this reason our religion is called in everyday speech the “Hungarian religion.” Consequently, our faith and our nationality have become completely intertwined through the course of time, and, when we represent and defend our people, this applies equally and inseparably to our Reformedness and our Hungarianness.’

Source: Baer, H.D., ‘Ethnicity as a theological concept: the thought of László Tökés’, *Journal of Ecumenical Studies*, 35:3-4, Summer-Fall 1998, page 477, note 11 (Tökés, “Ideje van a szólásnak”, p. 5)

²¹⁸ Source: www.hhrf.org/htm/en/?menuid=0404

²¹⁹ Source: <http://www.religionandpolicy.org/show.php?p=1.1.2006>

²²⁰ Hungarian Human Rights Foundation, source: <http://www.hhrf.org/htm/en/?menuid=0404>

In the national report that Romania sent to the UNHCR in May 2008, the Romanian reporting parties state the following on church property restitution: *‘Important progress has been made in the return of real estates, nationalized with or without a legal title, which belonged to the legally recognized religious denominations. According to October 2007 national statistics, the situation of returned buildings looks as follows: Romanian Orthodox Church 518, the Roman-Catholic Church 405, the Greek-Catholic Church 652, the Calvinist Church 456, the Jewish Cult 394, the Unitarian Church 39, the Evangelical Church B.A. 298 and the Evangelical Church 16, other cults 34 files.’*

In the US Department of State report on Property Restitution in Central and Eastern Europe of October 2007, it was stated that ‘by the middle of 2007, the Special Commission for Restitution had restituted 599 of the 1700 buildings claimed by Hungarian churches.’²²¹ However, the report underlines that the Hungarian churches were unable ‘to regain physical possession of many of these properties.’ This practice is very similar to the outcome of the (earlier described) restitution process of communal or private properties, where regaining actual occupancy or use of the buildings has also failed in most cases. The fact that the may 2008 report lists the number of *files* per Church and not the number of solved cases or actually restituted properties, seems to support this impression.

Education

Education is compulsory for the first 10 years of schooling, beginning the age of six. The education system has undergone a number of structural changes, but low funding remains a problem, as is the lack of qualified teachers. To solve this problem, the state has increased the state budget on education in recent years.

The education law that came into force in 1995, supported the dominance of Romanian culture, language and history, and restricted the possibilities for Hungarian language and church education. The anti-minority provisions were removed by a Government Decree in 1997, but more fundamental change came with the adoption of the New Law on Education in September 1999, which guaranteed ‘the right of education in the mother-tongue from the kindergarten to the university.’²²² The law guarantees vocational education at every level and allows for the entrance examination to be taken in the Hungarian language. It makes it possible to study the Hungarian language in the framework of a special program in primary schools and on the basis of special textbooks in grades five to eight. In small settlements of regions with scattered minorities, the law allows native-language classes below the established minimums. It grants churches not only the right to train the teachers they need but also the right to provide secular education as well, albeit in the form of private institutions. The amended law also allows the establishment of Hungarian-language groups, sections, colleges, and faculties in higher education. On the other hand, it still does not allow for the establishment of Hungarian schools; Hungarian language teaching is only permitted in the framework of a Romanian language school. Thus, the law is also restrictive with regard to the establishment of higher education institutions with instruction in the native language. It does not allow the setting up of a Hungarian-language state-funded university but allows only for a multicultural university which includes the Romanian language, and whose language of instruction is regulated by a separate law.

Use of minority languages in education and the study of minority languages are essential for the maintenance of an ethnic or minority identity or culture. Instruction of history and geography also contributes to this, for example by teaching the Hungarian names of historic figures, town or events and of geographical locations and objects. The main issues concerned with passing on this cultural legacy are related to language in education and will be discussed under linguistic rights.

Media

Article 30 of the Constitution guarantees that ‘freedom of expression of thoughts, opinions, belief, and freedom of any creations, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable’, and prohibits any censorship. Freedom of the press also involves the free setting up of publications, and no publication may be suppressed. Again, the 2000 Anti-Discrimination Ordinance limits the freedom of expression by incriminating ‘*any public behavior with a nationalistic-chauvinist character, any incitement to racial or national hatred or any behavior*

²²¹ Source: <http://www.state.gov/p/eur/rls/or/93062.htm>

²²² Source: www.hhrf.org

aiming to prejudice a person's dignity or to create an intimidating, hostile, degrading, humiliating or offending atmosphere against a person, a group of persons or a community on grounds of race, nationality, ethnic origin, religion, social category or underprivileged category, beliefs, gender or sexual orientation.'

Regarding media facilities for minorities in Romania, the 2002 Law on audio-visual media is the most important legislation. It guarantees that the persons belonging to national minorities have equal access to all types of media. It also ensures that every organization representing persons belonging to national minorities publishes at least one magazine or newspaper with support from the state budget.

The law makes it mandatory for the cable services to also beam television programs in the language of the relevant minority in the areas where the proportion of a minority reaches 20 percent. Also, national and local radio stations are obliged to broadcast programmes in minority languages, presenting details about the culture, traditions, religion and public life of national minorities and ethnic communities.

The National Council of the Audio-Visual (NCAV)²²³ is an autonomous public institution, under parliamentary control, which is authorized to adopt normative decisions, issue public summons and apply contraventional sanctions in support of its role to ensure, inter alia, the application of anti-discrimination policies in the field of audiovisual. Between 2002 and 2007, NCAV applied 15 sanctions for breaches of the legal provisions regarding discrimination based on nationality, race, religion, gender or sexual orientation and ethnicity (13 to TV stations and 2 to radio stations).²²⁴

There is no single TV channel for the Hungarian minority, but national channel *TVR Cultural* broadcasts half an hour of Hungarian language programmes on Friday morning.²²⁵ Hungarians in Romania watch *Duna TV* from Hungary, which is broadcasted through satellite. Along the Hungarian-Romanian border, the Hungarian public channels *MTV1* and *MTV2* can be received without satellite. *Duna TV* is mainly funded by the Hungarian government (since 2002) and has its seat in Budapest; the word "Duna" is the Hungarian name for the river Danube. The channel concentrates on newsfact from Hungary and specifically focuses on Hungarian minorities outside of Hungary. *Duna TV* started emitting in 1992 from Budapest, and has a number of regional studio's, including three in Romania: in Cluj-Napoca (Kolozsvár), Tîrgu Mureş (Marosvásárhely), en Odorheiu Secuiesc (Székelyudvarhely)²²⁶. In 2006 *Duna TV II* (also called 'Autonomy TV') was launched.

The Hungarian minority in Romania has only one national Hungarian language newspaper: the 'New Hungarian Word' (Új magyar szó).²²⁷ The most important regional daily newspaper in the Hungarian language is the 'Freedom' (Szabadság)²²⁸, which appears in Koloszvár. The 'Popular Newspaper' (Népújság)²²⁹ is another Hungarian regional daily paper, which only appears in Marosvásárhely (Tîrgu Mures) in the Széklerland.

*** Linguistic rights**

Use of language has to do with many different issues concerning minorities and seems to incorporate other rights as well. It interferes with daily life of members of the majority of a country more concretely, for example in communication of minority persons with authorities or public administration in a minority language, and in education.

Regional and minority languages have different positions in the constitutions of European countries. The most frequent type of minority language provisions in European constitutions is the non-

²²³ Source: www.cna.ro

²²⁴ UN HRC National Report on Romania, May 2008

²²⁵ 09:00 Minorităţi * Emisiune în limba maghiară

²²⁶ *Duna TV* also broadcasts from Bratislava in Slovakia; Subotica (Szabadka) in Serbia; Oezjhorod (Ungvár) in Ukraine and from some smaller places.

²²⁷ Source: <http://umsz.manna.ro>

²²⁸ Source: www.szabadsag.ro

²²⁹ Source: www.e-nepujsag.ro

discrimination clause. Typically, an article in the constitution prohibits discrimination on a number of grounds, including on the basis of language. The following countries have constitutions that contain clauses of this type: Albania, Germany, Armenia, Bosnia-Herzegovina, Cyprus, Estonia, Slovakia, Croatia, Finland, Greece, Georgia, Hungary, Italy, Lithuania, Macedonia, Moldavia, Sweden, Portugal, Poland, Romania, Russia and Turkey.²³⁰

Next to the non-discrimination clause, some European countries use additional provisions on the status of minority languages in their constitutions. France and Greece apply 'official monolingualism' in their constitutions; while the constitutions of Austria, Germany, Bosnia-Herzegovina, Hungary, Iceland, Norway, the Vatican, San Marino, the Czech Republic, the Netherlands, the United Kingdom, Sweden and Serbia -Montenegro do not contain any language declaration at all. In some European countries minority languages are constitutionally recognized by means of the concept of 'linguistic pluralism' on an institutional level (Ireland, Luxembourg, Finland); and in a few countries minority languages enjoy a 'territorial co-official status' next to the first official language of the country (Denmark, Italy, Spain).

In a number of European countries minority languages have no official status but do receive special recognition or protection (for example Portugal, The Netherlands, Sweden, Germany, Austria, and United Kingdom). Belgium uses the concept of 'linguistic federalism' and is in this sense the most inclusive towards linguistic minorities: all three languages (French, Dutch and German) are recognized as official languages in the Belgian constitution.²³¹

Official language

In Romania no other languages than Romanian are recognized: according to the Constitution Article 13, "In Romania, the official language is Romanian." There are many more countries in Europe that have only one official language, but the effect of this provision on linguistic minorities differs per country. In other words, the possibilities or restrictions of this provision depend on the extent in which minority language protection is actually accomplished in society. With sufficient additional regulations for minority language protection, there is not much disadvantage in having only one official language. But in Romania, the principle of a single official language is further restricted by Article 152 (1) of the Constitution: *'The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, independence of justice, political pluralism and official language shall not be subject to revision.'* This article clearly prohibits any revision regarding the status of the official language, which makes addition of a second official language merely impossible. According to the 2004 constitutional survey from Spain, 'Article 152.1 establishes a hard-and-fast clause –or intangibility clause– that affects among its contents the official language declaration, thus making the linguistic declaration of Romania become the most strict one on the Continent in legal terms.'

Linguistic identity

Article 6 of the Constitution on the right to identity is already discussed under cultural rights. From a linguistic point of view, the same observation applies: the first paragraph guarantees the right to linguistic identity, but the second paragraph underlines that protection of the expression of this identity should not exceed the equality and non-discrimination principles, which limits acceptance of special arrangements for minorities. Again, the 2005 Draft Law on the Statute of National Minorities living in Romania tries to intercept this ban on positive discrimination by means of Article 8(2) of the draft law.

Education

Article 32(3) of the Constitution provides the right to education *in* the mother tongue and the right to education *of* the mother tongue for national minorities. A very important law is the (partially revised) Law on Education no. 84/1995, Chapter XII, modified as 151/1999.

²³⁰ Vিয়েtez, 'Official Languages and Minority Languages: Issues about Their Legal Status through Comparative Law'; II Mercator International Symposium: Europe 2004: A new framework for all languages?, University of Deusto, Spain, 27/28-2-2004, source: <http://www.ciemen.cat/mercator/pdf/simp-vিয়েtez-ang.pdf>

²³¹ Ibidem

In the 1995 version, education in native or minority languages was restricted. After revision, the new Law on Education was adopted in 1999, and it improved the provisions for education in the mother tongue. The basic principle of this law (Article 118) is that *'persons belonging to national minorities have the right to study and receive instruction in their mother tongue, at all levels and forms of education where there is an appropriate request'*²³². As mentioned before, the law also guarantees vocational education at all levels and allows entrance examinations being taken in Hungarian. Although this law supports education in languages of national minorities, it does not allow independent Hungarian language schools to be set up. In practice this means that all Hungarian language education still needs a 'superior' Romanian institution to foster it. The law no longer contains restrictions such as the required proficiency in the Romanian language and the creation of Romanian-language classes in every locality. However, it continues to maintain several discriminative provisions such as not allowing the study of Romania's geography and history in the native language at all levels.²³³ In Article 120, the law dictates that in secondary schools, history and geography of Romania should only be taught in the Romanian language. This undermines the knowledge of Hungarian children concerning Hungarian geographical names and more importantly the history of the minority connected to these names. This matter is explained in the section on road-signs and historic names. Paragraph 4 of Article 120 and Article 121 of the law do allow, at request, for the study of the language and the literature of the mother tongue as well as the history and traditions of the respective national minority, but not in the minority language.

Religion

Religious services in the Hungarian language have in general always been allowed, even during communism. Linguistic rights connected to religion are therefore not focused on liturgical practice, but more on religious education. As Hungarian ethnicity is closely related to religion (mainly Protestantism, but also Catholicism), most Hungarian schools were traditionally connected to the local churches. Many school buildings were owned by the church, but also the content of the Hungarian educational system in Romania was greatly influenced by the Hungarian religious institutions. The 1995 law on Education already allowed recognized religions the right to create religious education of every degree, profile and specialization, but did not regulate state subsidy of confessional education. The 2003 amending of the constitution meant for the churches the official recognition of denominational education, but still left the financial aspects unsolved. The earlier mentioned infamous 2006 law on religion even restricted the support for church-operated secular schools. In February 2008, the leaders of the Transylvanian Hungarian churches prepared a statement, in which they voiced their wish 'to be allowed to establish and operate educational institutions on every level, from kindergarten to university'. Concerning financial resources and state-funding, the church leaders asked to be treated the same as public educational institutions in Romania.²³⁴

Public Administration

The 1991 Law on Public Administration did not live up to the expectations of the national minorities, as it contained only two provisions -Article 29(4) and 58(1)- regarding minority languages.²³⁵ It was a start, but the provisions offered rather vague possibilities, instead of specific obligations. The new Law on Local Public Administration of 23 April 2001 changed the balance. Article 17 is the legislative basis for the use of minority languages in local administration, as it ensures the use of the mother tongue of national minorities in territorial-administrative units where they form a share of

²³² Source: <http://www.minelres.lv/NationalLegislation/Romania/romania.htm>

²³³ DAHR Bulletin (Bucharest), Aug. 12, 1999

²³⁴ Source: http://www.emnt.org/dokumentumok/transylvanian-monitor-no39_february-2008.pdf

²³⁵ Article 29(4): In territorial administrative units where national minorities are present in sufficient numbers, decisions of the local council shall also be brought to the notice of citizens in the language of those minorities. Article 58(1): In relations between citizens and the authorities of the local public administration the language used shall be Romanian. (2) In their relations with the authorities and staff of the local public administration, citizens belonging to national minorities may also communicate with them orally and in writing in their mother tongue.

over 20% of the inhabitants.²³⁶ Furthermore, in Article 43(3), local councils are obliged to allow the use of minority languages when more than one third of councillors represent a national minority.²³⁷ Another important provision was Article 51, as it provides for the use of minority languages for the publication of normative decisions in administrative-territorial units where a minority represents at least 20% of the population.²³⁸ This was in fact an adaptation of Article 29(4) of the 1991 Administration Law, as it specified the 20% rule. Although this provision was a major achievement for the Hungarian minority, the choice for a percentage of 20 was criticized severely. The percentage seems to have been chosen randomly, or intentionally, as the Hungarian population counts up to 19.7% of the total population in the Transylvanian region.

In the 2003 Constitution, this 1991 right was reaffirmed in Article 120(2) on the basic principles of local public administration: *'In the territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shall be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the organic law.'* Although a percentage is not mentioned and instead the words 'significant weight' are used, the provision refers back to details in the separate 2001 Law on Local Public Administration, which implies the 20% threshold.

Court

The right to have an interpreter of Article 127 of the 1991 constitution stipulated that *'citizens belonging to national minorities, as well as persons who cannot understand or speak Romanian have the right to take cognizance of all acts and files of the case, to speak before the court and formulate conclusions, through an interpreter; in criminal trials, this right shall be ensured free of charge.'* In the 2003 amendment, this article was remodelled into Article 128 called 'Use of mother tongue and interpreter in the Court'. The new article contains similar provisions in regard to Romanian citizens belonging to national minorities, as they 'have the right to express themselves in their mother tongue before the courts of law, under the terms of the organic law. The ways for exercising [this right] 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.' But György Frunda (ethnic Hungarian ex-senator in the Romanian Parliament, long time member of DAHR, now sitting with the EPP and member of the Parliamentary Assembly of the Council of Europe) recently said that the legislation on using the mother tongue in court should be amended, because the Romanian legislation in the field is incomplete. He stated that if Borbély László, his European colleague of Hungarian origin, goes to court in a trial against his Hungarian neighbor for property delineation, he must hire Hungarian language interpreters, but no interpreter would stay in court all day long, for ten RON per day, when they can earn several times more in a translation office.²³⁹

However, in the European context, Romania recently ratified the European Convention on Regional and Minority Languages, which went into force in May 2008. This ratification should be the beginning of the implementation of the Convention, which will affect amongst other things minority language use in administration and in courts.²⁴⁰

²³⁶ Law No. 215 on Local Public Administration, 23 April 2001, in Official Gazette of Romania, No. 204, 23 April 2001

²³⁷ Art. 43(3): The works of the meetings are conducted in Romanian, the official language of the state. In the local councils where the councillors belonging to a national minority represent at least one third of the total number, their mother tongue may also be used at the council meetings. In these cases, the mayor shall see to it that a Romanian translation is provided. In all cases, the documents of the council meetings shall be drafted in Romanian.

²³⁸ Art. 51: In the administrative-territorial units where the proportion of the citizens belonging to a national minority is above 20% of the population, the normative decisions shall also be brought to the notice of citizens in the language of those minorities, while the individual ones are communicated, to request, in the mother tongue as well.

²³⁹ Source: http://www.divers.ro/opinii_en?wid=37649&func=viewSubmission&sid=9257

²⁴⁰ Source: http://www.eurolang.net/index.php?option=com_content&task=view&id=3018&Itemid=1&lang=en

Road-signs and historic names

The 2001 Law on Local Public Administration has a specific provision regarding the use of bilingual topographic information, names of cities and streets.

Article 90(4): *The authorities of the local public administration shall ensure the displaying of the names of localities and public institutions within their authority, as well as the posting up of notices of public interest in the mother tongue of the citizens belonging to the respective minority, under the provisions of paragraph (2).* And paragraph 2 refers again to the 20% rule.

But in the meantime, the 1999 Education Law still influences this issue as well. In school, children do not learn the Hungarian historic names of regions, townships and rivers anymore, as the subjects of history and geography are to be taught in the Romanian language.

This issue also affects the transfer of historic knowledge of the Hungarian minority, because many ethnic Hungarian historic figures have been ‘adopted’ into Romanian history, but in most cases only when this adoption could be combined with a shift in ethnicity and identity. The case of the historic figure of János Hunyadi is a good example of this process, as he is seen as a national hero by both Hungarians and Romanians.

According to most scientific sources on this matter, Hunyadi was an extramarital son of King Zsigmond, King of Luxembourg, King of Hungary and Emperor of the Holy Roman Empire²⁴¹ and Erzsébet of Hunyad. Hunyadi János developed a military career and was soon included in the close circle surrounding Zsigmond. Hunyadi supported in 1440 the candidature of King of Poland Władysław III of Varna, and as a reward, he received governorship over Transylvania. In his adult life, Hunyadi spoke the Hungarian language, although he may have spoken Romanian during his youth. Hunyadi can be considered a Hungarian due to his birthplace (the Kingdom of Hungary), and due to the Hungarian-speaking environment he surrounded himself with during his life. But according to Romanian legends, Hunyadi was an ethnically Romanian farmer’s son, who was taken in by the court of Zsigmond, after the king spotted the talented boy during one of his hunting trips. Even though he focused on Hungarian affairs and was an outsider in the politics of the Romanian regions of Wallachia and Moldavia, he is seen as a Romanian hero, partly for defending Christianity against the Ottomans in the region.

Hunyadi married Erzsébet Szilágyi and his son Hunyadi Mátyás was born in Koloszvár in 1443 (+1490). Mátyás was crowned King of Hungary when he was fifteen years old, was raised by Hungarian, Polish and Italian tutors, and ruled for over thirty years (1458-1490). Under his rule, public health, education and a new legal system were developed and the period of his rule is considered a golden age of the Hungarian Kingdom. He was a Renaissance ruler, was later called Matthias Corvinus, and on the central square of Koloszvár a grand statue (picture on front page) in his honour was erected in 1902, as already mentioned in Chapter 1.²⁴²

The Romanian plaque on this statue (installed 1992) and on his house of birth (installed 1996) both serve to ‘correct, re-present and reframe’²⁴³ history by underlining his supposed Romanian ethnicity, by claiming the following: “According to historical tradition, in this house was born Matei Corvin, son of the great soldier Iancu of Hunedoara, Prince of Transylvania and governor of Hungary. The Romanian Matei Corvin is considered, because of the accomplishments during his reign (1458-1490), the greatest King of Hungary.”²⁴⁴ This suggests that a Romanian ‘son of a soldier’ not only ruled the Hungarians but was also the best in doing so. Instead of adoption, one could also call this practice historic ‘kidnapping’; as Hungarian persons of great historical significance are not only included in

²⁴¹ Sigismund 1368-1437, was Holy Roman Emperor for four years from 1433 until 1437, and the last Emperor of the House of Luxemburg. He was also one of the longest ruling Kings of Hungary and Croatia, reigning for fifty years from 1387 to 1437. In 1374 Sigismund was betrothed to Mary of Hungary of the House of Anjou, was sent to the Hungarian court, and became devoted to his adopted country. He married her in 1385, after she became the Queen of Hungary in 1382. He was crowned King of Hungary on 31 March 1387 in Székesfehérvár. With his mistress Elizabeth or Erzsébet of Cinciș, the daughter of a noble family from Hunyad-Vajdahunyad, his had a son, called Hunyadi János.

²⁴² Brubaker, 2006, p 138

²⁴³ Brubaker, 2006, comment to Plate 15a

²⁴⁴ Romanian plaque on house of birth of Matthias Corvinus, source: Brubaker 2006, comment to Plate 15a

Romanian history, but they are depicted as having served the Romanian cause and are portrayed as persons of Romanian ethnicity. This constitutes a full shift of identity and leaves the Hungarian minority little room to remember these persons in their true, Hungarian form; in thought as well as concrete (by the statue and the Romanian plaque).



Ethnic groups of the Hungarian Kingdom according to the 1880-census.

3.2 Use of framework

As shown in Chapter 3.1, the constitutional and legal framework which is guaranteed by the Romanian state provides regulations for minorities, although many regulations seem contradictory or difficult to implement in practice. An important question to subsequently ask is how organizations that represent the Hungarian minority make use of this framework. The answer will be concentrated on the use of this framework in politics, in civil society and in linguistic matters; the latter subdivided in education and relations with authorities.

In politics

The main organization that represents the interests of the Hungarian minority in Romania is the **Democratic Alliance of Hungarians in Romania (DAHR)**, Hungarian: Romániai Magyar Demokrata Szövetség (RMDSz), Romanian: Uniunea Democrată Maghiară din România (UDMR). The DAHR was established on the 25th of December 1989, straight after the Romanian Revolution of December 1989 and the execution of former president and dictator Ceausescu.

The new leading party of the Romanian majority, the National Salvation Front (FSN; Frontul Salvării Naționale) installed itself, proclaimed the restoration of democracy and freedom and functioned as an interim government with Ion Iliescu as its leader. In the first parliamentary elections of 1990, the FSN captured a majority in parliament, but the DAHR won 29 seats and acted in opposition, a situation that would last until 1996.

After the second party congress of 1991 a declaration was issued which was almost immediately renounced by the government. In this declaration, the DAHR had three demands: a pluralistic constitution; a 'contract' between the Romanian government and the Hungarian minority (similar to a nationalities statute); and a Ministry for Nationalities (to control and implement provisions of the statute). Iliescu's government soon turned another way; that same year it accepted the new Constitution which was based on the idea of a 'unitary nation state'. Furthermore, it refused to discuss a nationalities statute and created a separate governmental body for nationalities, which turned out to be rather ineffective in supporting the minorities.²⁴⁵

After the fall of the government in 1992, Ion Iliescu was re-elected and his new party, the Democratic National Salvation Front (FSDN; Frontul Democratiei Salvării Naționale) won the majority of votes. In 1993 the FSDN was renamed Party of Social Democracy of Romania (PDSR; Partidul Democratiei Sociale din Romania) and a branch of the party split off and formed the Democratic Party (PD; Partidul Democrat).

On a local level, the DAHR has been strongly connected to the 'Liberal Circle of Cluj', a semi-political organization that is broadly supported by urban Hungarians in Transylvania. The aim of this organization is not only cultural, but also territorial autonomy for the Hungarians in Romania. Bishop Tökés László, who sparked the revolution of 1989, agreed with this point of view and as a vice-president of the DAHR at that time, he tried to find foreign support, amongst others in the United States. This plan of action caused a considerable amount of ethnic tension.

In February 1995, a negotiation meeting was held in Atlanta, US, which aimed at bringing the two positions closer. The meeting was led by former US president Jimmy Carter, and was attended by high rank representatives of the Romanian political elite and leading personalities of the Hungarian minority in Romanian, including Tökés. The negotiations ended without results and showed the incompatibilities of the interests of both parties.

Yet, the DAHR changed its programme to a more moderate approach in 1995. The demand for territorial autonomy was transformed to a demand for 'communal autonomy' aiming for mainly cultural and linguistic rights. Integration with the European Union was also a central theme in its objectives. Part of this process was the signing of a bilateral friendship treaty with Hungary, which was completed in September 1996. This 'Treaty between the Republic of Hungary and Romania on Understanding, Co-operation and Good Neighbourliness' regulated the relationship between the two

²⁴⁵ Csergő, 'Beyond Ethnic Division: Majority-minority Debate about the Postcommunist State in Romania and Slovakia', *East European Politics and Societies*, 2002, Vol. 16:1, page 23

countries concerning the protection of minorities on both sides and especially the Hungarian minority in Romania.²⁴⁶

This focus on peaceful integration contributed to the outcome of the elections of 1996, in which Emil Constantinescu became president and a coalition is formed with his Romanian Democratic Convention (CDR). The new coalition consists of the CDR, the Democratic Party (PD), the National Liberal Party (PNL) and the Hungarian minority party (DAHR); Victor Ciorbea is named prime minister. In this coalition, the DAHR governed until 2000 and managed to obtain some positions in the government of Victor Ciorbea. The 2000 general elections returned both the PDSR with Adrian Nastase as prime minister and Ion Iliescu as president. Iliescu's Party of Social Democracy of Romania (PDSR) was reorganized in 2001 into the Social Democrat Party (PSD; Partidul Social Democrat).²⁴⁷

The period between 1996 and 2004 is characterized by political liberalization concerning minority issues on the one hand, but increasing ethnic tension on the other hand caused by persistent corruption on local governmental level and the 2001 Hungarian Status Law (which awarded rights and privileges to Hungarians living outside Hungary, as explained in Chapter 1).

The DAHR has been part of the governmental coalition again since the elections of 2004. Minority protection has been a prominent issue in government policy due to the influence of DAHR, but also due to the impact of preparations for EU-accession.

Between 2004 and 2008, the country was governed by the following formations:²⁴⁸

Government coalition:

- Democratic Liberal Party (Partidul Democrat-Liberal - PDL²⁴⁹);
- Democratic Alliance of Hungarians in Romania (DAHR);
- Conservative Party (Partidul Conservativ – PC).

Opposition:

- Social Democratic Party (Partidul Social Democrat – PSD²⁵⁰);
- Great-Romania Party (GRP) (Partidul Romania Mare – PRM).

Since the recent parliamentary elections of November 30, 2008, new formations have not been officially formed, but the DAHR has a considerable chance of participation in the ruling coalition again. Outcomes of the 2008 elections are described in Annex 3.

Currently, the DAHR still propagates the following goals:

Recognition: The national minorities of Romania should be recognized as 'constituent elements of the state based on the constitutional principle of equality and non-discrimination'. The DAHR therefore still demands for the removal of the term "unitary nation state" from the Romanian Constitution. The goal of recognition also includes the adoption of the earlier described framework law on the national minorities of Romania, which still has not been approved by the Romanian Parliament.

Social standards: The DAHR aims to promote better conditions in society, which 'allow each citizen to freely assume, preserve and nurture his/her ethnic identity'. A large element of this goal is the campaign for more education in minority languages; especially better educational facilities for ethnic Hungarians, which will be described in the next part of Chapter 3.2.

Another element is the 'development of complex inter-ethnic relations based on mutual appreciation and respect between the Romanian majority and the national minorities.'

Rule of law: The separation of powers in Romanian society should be consolidated in the rule of law, guaranteed by a stable judiciary and an 'increase the autonomy of local public administrations and local communities based on the principle of self-government and devolution of power.'

²⁴⁶ Source: <http://ec.europa.eu/education/policies/lang/languages/langmin/euromosaic>

²⁴⁷ Source: <http://www.electionworld.org/history/romania.htm>

²⁴⁸ Source: <http://www.electionworld.org/history/romania.htm>

²⁴⁹ The Democratic Liberal Party (PDL) was established only in January 2008 when the National Liberal Party (Partidul National Liberal – PNL) and the Democratic Party (Partidul Democrat – PD) merged. President Basescu is connected to the PDL.

²⁵⁰ The Social Democratic Party (PSD) is considered to be the party of the ex-Communists; it split of the FSN in 1992, and started as the (FDSN; Frontul Democrat al Salvării Naționale). The name was changed in 1993 to PDSR, then in 2001 to PSDR and once more to PSD.

Property restitution: A full return of ‘illegally confiscated church and community properties; restitution of private properties that were nationalized, expropriated or confiscated for political reasons, either through the return of property or equitable financial compensation.’

European practice: The DAHR aims to codify the legal status of the Hungarian (and other) national minorities based on positive European practices’, and to guide the process of European accession and integration. Also, since 2007 the DAHR is represented in the European Parliament by two members (next to Tökés László), who’s activities will be outlined in Chapter 4.

A more radical arm of the DAHR was founded in 2001 as the Hungarian Civil Union (Magyar Polgári Szövetség) and was formally registered as the Hungarian Civic Party (Magyar Polgári Párt) on March 14, 2008. It positioned itself as an alternative to the DAHR, but is more explicit in its autonomy demands. It pushed for closer relations with Hungary and territorial autonomy for the Széklerland, the region in eastern Transylvania home to about half of the 1,4 million Hungarians in Romania.²⁵¹ It also demands a revision of the 20% rule established by the 2001 law on local authorities. The party participated in the November 008 elections, but did not manage to pass the 5% threshold.

The Hungarian Civic Party is supported by the Székler National Council (Székely Nemzeti Tanács, CNS); an organisation that represents the Székler Hungarians in Romania, wich is not registered as a political party. In November 2008, the CNS has asked the local authorities of the Covasna, Harghita and Mures counties to organize official referenda for the territorial autonomy of the Széklerland. The referendum was planned on November 30th, on the same day as the parliamentary elections, but the request was not granted.²⁵²

In education

After the amendment of the Education Law in 1999, the DAHR gave notice that it would utilize the new opportunities that were created by the law, which included the right to (a) Hungarian-language vocational instruction at all levels; (b) the establishment of minority-language sections and departments in universities; (c) agreement that a separate law will regulate multi-cultural universities; (d) establish and maintain privately-funded educational institutions by the Hungarian churches; and (e) take entrance examination in the students' language of instruction; (f) form minority language classes in which the number of students fails to meet the established minimums; (g) write and issue native-language school documents in minority schools; (h) issue official minority-language translations of documents written in Rumanian; and (i) use special minority text books for Rumanian language instruction in grades 5 to 9.²⁵³

An important achievement regarding these rights was the establishment of a Hungarian-language university in Oradea/Nagyvárad funded by the Hungarian Reformed Church. The Christian University of the Partium (Partiumi Keresztény Egyetem) was established 1999 in Oradea. In November 2000, the Partium University was given a provisional licence in the 1215/2000 Government Decree. Although the accreditation applications for most departments were already submitted in 1999, the National Accreditation Board accredited only some courses of the Partium University as late as 2004.²⁵⁴

Another Hungarian language university was established in Koloszvár in 2001: the Sapientia Transylvanian Hungarian University (Sapientia Erdélyi Magyar Tudományegyetem). The university received a preliminary permit in 2001, and in 2008 it received accreditation for 10 curricula, in the fields of economics, technical science, humanitarian sciences, social sciences, physics and art. In the meantime, students received their degree through other credited universities such as the Babes-Bolyai University in Koloszvár. The university is not state-funded by the Romanian state (just as the Partium

²⁵¹ The Széklerland can be considered as the cultural heartland of the Hungarians of Romania. In a number of towns, more than 90 percent of residents speak Hungarian. The Székely Land was an autonomous region between 1952 and 1968, and before 1920 when large parts of Transylvania belonged to Hungary.

²⁵² Source: http://www.sznt.ro/en/index.php?option=com_content&view=article&id=184%3Aterritorial-autonomy-a-solution-for-open-ethnic-conflicts&catid=18%3Acikkek-tanulmanyok&Itemid=24&lang=en

²⁵³ DAHR Bulletin (Bucharest), Aug. 12, 1999, www.rmdsz.ro

²⁵⁴ Source: www.partium.ro

University), but by the Hungarian state, on the basis of parliamentary ‘Act LXII on Hungarians Living in the Neighbouring Countries’, which was adopted in 2001 by the Hungarian Parliament. The Sapientia University produced 607 graduates in June 2008, and last September it had 2007 registered students. Campuses exist in Marosvásárhely (Tirgu Mures) and Csíkszereda (Miercurea Ciuc).²⁵⁵

In short, there is no Hungarian university funded by the Romanian state, but higher education in the Hungarian language is also provided by Hungarians sections in Romanian universities; above all at the Kolozsvári Babes-Bolyai University (as described in Chapter 1).

In the meantime, the DAHR also still advocates for Hungarian-language primary and secondary education in counties where Hungarians live. While doing so, the DAHR refers to the Bologna Declaration, which mentions the importance “to assure the verticality of instruction in native language” at all educational levels.

The Bolyai Society (Bolyai Társaság) provides support to all legal and all ‘well-constructed initiatives’ that aim at realising an independent Hungarian system of higher education in Romania.²⁵⁶ The society represents these interests internationally, searches for support of a state-funded Hungarian university, and explores the legal and financial resources needed to achieve that aim. Next to that, it strives for popularisation of and spread of science and culture in Transylvania.

Despite of these developments, the Eurobarometer Report of February 2008 on discrimination in the European Union shows that 83% of Romanian respondents agreed (‘agree’ 39% , ‘very much agree’ 44%) that legislation is necessary to protect people against discrimination (on any ground) in the educational system.²⁵⁷

On a small scale however, things might be gradually changing. The Open Society Institute in Hungary put up a message in November saying: ‘A schoolbook becomes popular with a message that the majority is just one among many cultures living in Romania.’²⁵⁸ It revealed that in November 2008, the Ethnocultural Diversity Resource Center in Cluj (in cooperation with a Belgian Foundation) published a textbook with financial support from the central government’s Interethnic Relations Department. The publication for the third and fourth grade is called ‘Multicultural Education’ and highlights the ethnic groups who live in Romania. The book is used in more and more schools, and has been added to the official list of suggested optional courses by the Romanian Ministry of Education.²⁵⁹

Also, the Romanian Government has proposed a National Education Pact 2008, in which as much as 28 changes and amendments have been made to the Education Law. The focus of the pact is a restructuring of the funding system (to allocate at least 6 percent of GDP to education), a reshuffling of the existing grade levels; the pact aims to create a system centred on students’ abilities, a less intensive curriculum—distributing difficult subjects over more years—and a decentralized financial apparatus. Drafts of the law have been created but will have to wait until after the elections of November to be politically processed.

In relations with authorities

An interesting situation is that of linguistic rules in communication with authorities, on local, national and European level. On local communication with authorities the 20% threshold applies, but on a national level this is not the case. Hungarians in Romania cannot correspond in Hungarian with the Romanian central authorities, even though the Hungarian population makes up almost 7% of the total population. But in the context of the European Union, Hungarians from Romania can use their mother

²⁵⁵ Source: www.emte.ro, www.sapientia.ro

²⁵⁶ Source: www.bolyait.ro

²⁵⁷ Eurobarometer on “Discrimination in the European Union”, 2008, page 59

²⁵⁸ Source: <http://lgi.osi.hu/documents.php?id=2289>

²⁵⁹ Each two-page chapter provides a few basic details, such as the community’s population and location in Romania (marked by red dots on a map), along with a few words in the community language from a child’s basic vocabulary, a trivia box, and a little story from the folklore of that particular ethnic group.

tongue at any occasion. Of course this is explainable because of the fact that Hungary is a European Member state as well, and Hungarian is, like Romanian, one of the 23 official languages of the EU. Nevertheless, it seems a strange situation that the national authorities of the homeland of the Hungarian minority do not speak the language, while ‘Brussels’ does.

In civil society

The number of civil society organisations in Romania that focus on the Hungarian minority or stem from it, is remarkably high. Hundreds of organisations, institutions, associations, guilds, councils, clubs and unions can be found. In this section, a selection of main institutions will be outlined, and an overview is provided in Annex 2.

One to be mentioned here is the umbrella organisation is the Foundation for Transylvanian Hungarian Civil Organisations (Erdélyi Magyar Civil Szervezetekért Alapítvány, ERMACISZA). Every year a ‘Civil Forum’ is organised, where participating organisations can exchange and share ideas, experience and funding. In October 2007 the forum focused on ‘Európai Unió Források’; on how to gain and use European Union funding. On 5-6 December 2008, the forum was held in Koloszvár and focused on the theme of ‘Értékünk az ember’; the ‘Human Value’.²⁶⁰

Cultural associations like the Association for Hungarian Culture in Transylvania (EMKE), and the Transylvanian Museum Association (EME) should be mentioned as well, due to their historical importance: these were one of the first civil society organisations to be formed in the ‘new’ Transylvania after the Treaty of Trianon. The former wants to preserve Hungarian culture and art from Transylvania, the latter to promote Hungarian-language science in Transylvania.

The historical Churches of Transylvania that are affiliated to the Hungarian minority²⁶¹ also play a significant role in society, which was explained in Chapter 3.1.

There are also many Hungarian educational, occupational and youth associations in Transylvania, which suggests an active involvement of all parts of the Hungarian society. Some examples of such associations are outlined in Annex 2 as well.

²⁶⁰ Source: www.ermacisza.ro, page under construction

²⁶¹ The Roman Catholic Church, the Hungarian Reformed Church, the Unitarian Church, the Hungarian Evangelical-Lutheran Church, and the Union of Baptist Congregations in Romania.

3.3 Monitoring

Monitoring in general means to observe a situation during a specific time period, report changes that may occur, carry out surveillance and become aware of the state of a system, in this case of the status of minority rights in Romania. Monitoring does not imply law-enforcement; it is mainly focused on collecting objective, reliable and comparable information.

Monitoring on international level

Amnesty International

The 2008 Report on Romania starts with describing a general political instability for the year 2007 caused by friction in national politics. Furthermore, violations of human rights were reported on grounds of discrimination, ill treatment of people by police and security forces and in mental health care. On minority rights the report mentions the following: “Minorities, and in particular Roma, continued to confront serious discrimination, including in employment, housing, health and education.”²⁶²

Through its contribution to the Universal Periodic Review of UN, Amnesty International has mentioned that the law aimed at prevention and punishment of all forms of discrimination was amended in June 2006 to meet the requirements of the EU's Racial Equality Directive. However, Amnesty notes, that as of the beginning of February 2008, the Romanian Parliament had yet to approve the draft law on the protection of ethnic minorities.²⁶³

Human Rights Watch (Helsinki Committee)

The latest publication that HRW has produced on Romania is its contribution to the Universal Periodical Review on Romania of the UN Human Rights Council. This contribution is focused solely on discrimination of children living with HIV in Romania. Minority issues have not been reported in HRW archives on Romania since 2002.²⁶⁴

United Nations

Already in March 1993, the Economic and Social Council and the Commission on Human Rights of the UN issued a report (E.C.N. 4/1993/L98) on the situation of human rights in Romania. The report is quite positive, except for a few comments, for example on Article 4 on national minorities: [The Commission on Human Rights] *Takes note of the fact that respect for human rights in general is improving in Romania, although shortcomings remain to be overcome as regards implementation of constitutional and legislative rules by local authorities, inter alia relating to the protection of persons belonging to national minorities.*

The situation today as described by the UN Human Rights Council is not very different. In an account of May 2008 of the second session meeting on Romania for the Universal Periodic Review, the Human Rights Council states that measures should be taken *to improve the independence of the judiciary; the provision of social benefits for minorities; progress to bring about equality and rights in rural communities, especially among ethnic minorities.*²⁶⁵

In the final National Report on Romania of June 2008, this is repeated by the following recommendations to Romania (Part II-58, points 4-30):²⁶⁶

- To continue its efforts in combating discrimination and to take additional measures to fight discrimination against minorities;
- To raise awareness of the need to improve the overall situation of human rights;
- To accelerate the property restitution process;

²⁶² Amnesty International Report 2008 on Romania (review of year 2007).

²⁶³ UN HRC - Universal Periodic Review, National Report on Romania May 2008, Section I-B-2

²⁶⁴ Human Rights Watch, ‘Human Rights Watch’s Submission to the Human Rights Council’, May 2008, <http://www.hrw.org/doc?t=europe&c=romani> , accessed 24/10/2008 14:12

²⁶⁵ UN HRC - Universal Periodic Review, National Report on Romania May 2008

²⁶⁶ UN Human Rights Council, Eighth session, Agenda item 6: ‘Report of the Working Group on the Universal Periodic Review on Romania’ (A/HRC/8/49), June 2008

- To strengthen its efforts to protect the rights to freedom of religion by ensuring that persons belonging to religious minorities are able to freely exercise their religion and that rights of persons belonging to religious minorities are protected and respected without discrimination;
- To apply the recommendation of the Special Rapporteur on the right to health on obstacles to access to health services by marginal populations;
- To strengthen its efforts in bringing more equity in ensuring rights and opportunities of rural communities especially, ethnic minorities.

The Hungarian minority in Romania is not mentioned at all in this report. Nevertheless, in the National Report on Romania of May 2008, chapter 9 is fully devoted to the rights of persons belonging to national minorities. Again, Hungarians are only listed as a percentage of the population and that Hungarian is studied as a language by minority students. On the general situation of national minorities in Romania, the report writes the following:²⁶⁷

‘The Romanian authorities have sustained a dynamic policy of participation and integration of all national minorities in the social, political, and cultural life of the country, with the aim of ensuring the preservation and full manifestation of their ethnic, linguistic, cultural and religious identity. The Romanian protection system has been recognized at the international level as a positive model.’ When reading this text, one is often reminded of similar texts in provisions of the Romanian Constitution. Of course, a certain amount of repetition in reports of this kind is unavoidable, but the text barely provides new information. The report also describes the law on local administration, education in minority languages, political representation, access to media and equality before the law in a positive way, without comment. Unfortunately, details or sources are not provided in the report; it might be interesting to trace the origin of these findings.

United States

The 2007 Country Report on Human Rights Practices in Romania, issued by the US Department of State, is an interesting exception regarding the explicit details that are given on several subjects. First of all a general impression is given by pointing out that some human rights problem have been addressed by the government, but that abuses continued to occur.²⁶⁸

The law forbids discrimination based on race, gender, disability, ethnicity, language, or social status, among other categories. However, the government did not enforce these provisions effectively in some circumstances, and women, Roma, and other minorities were often subject to discrimination and violence. (...) The judiciary exercised its independence, but lacked the public's trust in its ability to impartially apply the law. Restrictions on freedom of religion became a greater concern following the adoption of a restrictive, discriminatory religion law in December 2006. In general, property restitution was slow during the year. (...) Corruption remained a widespread problem.

After sketching the overall situation of human rights in Romania, the report goes into detail. Many issues that concern the Hungarian (and other) minorities are specifically mentioned. Some of these case examples were already analyzed earlier in this chapter; one more is listed here.

Regarding property restitution, the report mentions that the 2005 law to improve the property restitution process clarified the procedures for restitution and established new application deadlines and fines for officials who hinder the process. The law also created a property fund worth approximately \$5 billion (14 billion lei) for the compensation of owners with properties that cannot be returned in kind. However, the fund was not yet listed on the stock exchange. On June 28, the government adopted an ordinance to enable the fund to be evaluated and then listed on the stock exchange by mid-2008. The ordinance also provided for cash payments in lieu of restitution of up to about \$215,000 (500,000 lei), paid over a two-year period. Claims in excess of this amount will be paid with stock in the property fund. On November 20 2007, the government paid the first cash compensation to 20 former owners. The restitution process was very slow during the year, and the large majority of restitution cases remained unresolved.

²⁶⁷ UN HRC National Report on Romania, May 2008, Points 66-77

²⁶⁸ US 2007 Country Report on Human Rights Practices in Romania, March 2008, review of year 2007

Monitoring on European level

Council of Europe

The latest recommendation on the implementation of the Framework Convention for the Protection of National Minorities by Romania was published by the CoE on 23/5/2007. The report mentions three positive, but rather general developments: 1) the particular attention that is continuously given to national minority issues; 2) efforts to create a legal basis to prevent discrimination, intolerance and hostility based on ethnicity; and 3) measures to promote the use of minority languages in education, in the public sphere, and participation in decision-making.

No specific examples of laws, measures or governmental programmes are provided.

The principal issue of concern is the following: *Although Romania has a developed legal and institutional framework for the protection of national minorities, shortcomings continue to be reported with regard to the implementation of certain legislative provisions, particularly at local level. The financial difficulties affecting many fields of relevance to the protection of national minorities, such as education, also have an impact on the effective implementation of measures adopted by the government.*²⁶⁹ The report lists a number of appropriate measures to be taken by the Romanian government, which will be discussed in Chapter 4.

Framework Convention for the Protection of National Minorities

The 1999 Law on Education clearly contradicts Romania's previous commitment to the 1995 Framework Convention (specifically Article 11/3) because of allowing instruction of the geography and history of Romania only in the Romanian language, which again influences the knowledge of geographic and historic names. The UNPO therefore calls for a modification of the Law on Education, giving national minorities the right to be taught the geography and history of Romania in their native languages. The next State Report on Romania concerning the implementation of the FCNM by the Council of Europe is due 1/2/2009.

European Union

The Romanian government adopted Ordinance 137/2000 "on the prevention and punishment of all forms of discrimination" which prohibits all forms of discrimination. In 2006 the European Commission Against Racism and Intolerance (ECRI) noted that 'the anti-discrimination legislation has hardly been applied at all and neither public officials nor the general public are aware of the said legislation or of the existence of the National Council Against Discrimination, the body set up to apply it.'²⁷⁰

The earlier mentioned Eurobarometer reports, that are published regularly by the European Commission, provide an interesting picture of public opinion in the European Union.

The 2008 Eurobarometer on discrimination in the 27 EU member states²⁷¹, shows that respondents most often saw race or ethnic origin as the source of discrimination that they, or people within their close-knit circle of family and friends, have personally experienced. Race or ethnic origin as a basis for discrimination was mentioned in 19% of all cases, age counted for 16%, gender for 14%, disability for 14% as well, religion or belief for 11%, sexual orientation for 8% and a combination of these factors for 16%. Highest is France, where race or ethnic origin counted for 31% of respondents as the primary basis of discrimination, in Austria and Hungary it was 25%, and in the Netherlands 23%. The lowest percentages are seen in Malta (5%), followed by Lithuania and Poland (both 7%), and Romania and Bulgaria (both 8%).

The findings of this report do not show that discrimination is highest in old EU member states and lowest in new member states, but the frequency of certain grounds for discrimination to occur as the

²⁶⁹ Resolution CM/ResCMN(2007)8 on the implementation of the Framework Convention for the Protection of National Minorities by Romania, Council of Europe, May 2007

²⁷⁰ Source: ibidem, Section II-B-1(5)

²⁷¹ Flash Eurobarometer on "Discrimination in the European Union - Perceptions and experiences of discrimination in the areas of housing, health care, education, when buying products or using services", analytical report, fieldwork: January 2008, report: February 2008.

basis of a discriminatory experience. The findings do suggest on the other hand, that ethnic discrimination in Romania is not very common. Contrary to the earlier described reports by international institutions. In that view, one could pose the question whether the perception of the concept of ethnic discrimination differs radically between old and new EU states? The findings of this report seem to be multi-interpretable.

Another illustrative example is the December 2007 Eurobarometer on intercultural dialogue, in which the question was raised whether Romania's cultural life is enriched by people with a different cultural background than the majority. The European average was 11% saying it was not really enriched and 7% saying it was not enriched at all; the Romanian response was respectively 19% and 11%. So thirty percent of Romanians said their lives were not being enriched by inter-cultural contact, which was one of the highest EU figures. On the other hand, 17% of Romanians were extremely positive and 40% rather positive and these views were especially held by young people still in the educational system.²⁷²

As illustrated, the findings of these Eurobarometer reports are not conclusive, the results are not explained, and therefore they can not serve as a ground for EU policy measures.

Supervision and subsequent action concerning minority issues should be accomplished by means of strong monitoring mechanisms; however, this seems to be a difficult task on EU level.

Each year, the EU publishes a report on human rights practices in the European Union. This report is jointly prepared by the Presidency of the European Union, the European Commission, and the General Secretariat of the Council. The annual report provides an overview of the human rights-related work of the European Union. Until 2007, this report was published by the European Monitoring Centre on Racism and Xenophobia (EUMC, Vienna; in 2007 the centre was replaced by the European Union Fundamental Rights Agency - FRA). The mandate of EUMC was not monitoring, but providing the Community and its Member States with objective, reliable and comparable data at European level on racism, xenophobia and anti-Semitism.²⁷³

In the EU Annual Report on Human Rights 2007 (covering the period from 1 July 2006 to 30 June 2007), Romania is not mentioned specifically in relation to national or ethnic minority issues. The report does make the explicit statement that "The EU is committed to fully respecting the human rights of all persons, including those belonging to minorities."²⁷⁴, followed by a list of European treaties and charters that contribute to the protection of national and ethnic minorities. In the 2008 EU Annual Report on Human Rights (for the first time under the mandate of the FRA), Romania is mentioned several times, but concerning national minorities only on issues related to the Roma minority.²⁷⁵ These reports seem to be of a general nature, focusing on governmental intentions and legislative guidelines, instead of on specific events and daily practice.

Monitoring on national level

Monitoring of rights for ethnic and national minorities (or specifically the Hungarian minority) in Romania on a national level does exist. On the one hand by the central government and on the other hand by non-governmental organizations (NGO's).

Law enforcement on minority rights is performed by the following governmental institutions:

- the Department for Inter-Ethnic Relations (DIR) within the Ministry of Public Information
- the Council of National Minorities (CNM)
- the Advocate of the People (AvP)
- the National Council for Combating Discrimination (NCCD)

²⁷² Flash Eurobarometer No 217 – Intercultural dialogue in Europe

²⁷³ Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia.

²⁷⁴ EU Annual Report on Human Rights 2007, Council of the European Union, European Commission, Brussels, 2008, page 55

²⁷⁵ European Union Agency for Fundamental Rights, Annual Report, 2008

- and the Parliamentary Committee on Human Rights, Cults, and the Problems of National Minorities. The responsibilities of these institutions are summarized in Annex 2.

Monitoring of the activities of the law-enforcing governmental agencies and of Hungarian minority rights is performed by several institutions, NGO's and research institutes which are listed in Annex 2. One of those was the Centre for Human Rights – Romanian Helsinki Committee (APADOR). Even though the mother organisation (Helsinki Committee) ceased its activities in 2007, Apador still functions in Romania. It created a critical report on the status of human rights in Romania in 2007, describing the events of 2006. The Soros Foundation Romania (Open Society Institute) and the League for the Protection of Human Rights²⁷⁶ also monitor minority rights in Romania, but recent reports seem unavailable. The Hungarian National Council of Transylvania²⁷⁷ publishes a monthly magazine both on paper as online, which is called 'Transylvanian Monitor - minority and human rights watch'. The magazine reports on most political and societal events, both regional, national as on the European level, that may be of importance to the Hungarian minority.

Interestingly, the Romanian Academic Society (SAR) has produced a rather critical report on Romania in 2008, called 'Annual report on Romania: Romania's first year in the EU'²⁷⁸. The focus of the report however lies mainly on the unstable government coalitions during 2007, and not on minority issues.

An external monitoring body for the rights of the Hungarian minority in Romania (and surrounding countries) is the Hungarian Human Rights Foundation (HHRF), an independent organisation, seated in New York.²⁷⁹ It is a sister organisation of the Government Office for Hungarian Minorities Abroad (HTMH) in Budapest, Hungary, of the Hungarian government.²⁸⁰ The HTMH was disbanded on December 31, 2006, but though the HHRF it still supports the Apáczai Foundation, seated in Budapest and funded by the Hungarian state.²⁸¹ This is an allied association which supports education of Hungarians outside of Hungary and helps to build and restore schools, boarding schools and other educational facilities.

On a national level, monitoring in Romania seems to be based on the idea of soothing the Hungarian minority with provisions and semi-governmental institutions that in fact do not function properly. This practice resembles the concept of an 'ethnic democracy', which' distinctive features are 'the dominance of a core ethnic nation, which owns and controls the state, and which perceives the existence of non-core ethnic groups as a threat, against which the core nation needs to live in a permanent mobilization.'²⁸² The Hungarian minority seems to be restrained in favor of the dominant majority of Romanians.

The only really effective remedie to the lack of monitoring on a national level seems to be external pressure and international critique/comment. The period of accession to the EU showed an increased activity regarding the protection of minority rights. But on the whole, it did not last after Romania acceded.

²⁷⁶ Source: www.ladocluj.org, League for the Protection of Human Rights, 'Cluj branch'

²⁷⁷ Source: www.emnt.org

²⁷⁸ Source: www.sar.org.ro/index.php?lang=en

²⁷⁹ Source: www.hhrf.org/hhrf/index_en.php

²⁸⁰ Source: www.hhrf.org/htmh/en/; Határon Túli Magyarok Hivatala (HTMH)

²⁸¹ A Határon Túli Magyar Oktatásért Apáczai Közalapítvány, www.apalap.hu

²⁸² Smooha, S., 'The Model of Ethnic Democracy', ECMI Working Paper # 13, October 2001

Recapitulation

In this chapter it was made clear that minority protection in Romania seems to be founded on the following idea: special rights are granted to persons belonging to national minorities, as long as they do not cause detriment to the rights available to the Romanian majority population. This way of dealing with rights of minorities does not honor the concept of self-determination of peoples, which was introduced after WWI and in fact assigned Transylvania to Romania.

The political system of minority representation intercepts accusations of lacking minority protection, since representation is guaranteed. This system soothes members of minorities with having at least one seat; and it prevents minority organisations from engaging in extra-parliamentary activities which may cause irregularities or unrest in society. Also important to realize is that the Romanian constitution is a document that is indeed built on collective rights, but only for the Romanian majority.

All in all, the rights of the Hungarian minority in Romania are currently protected by a basic legal framework, but specific law contain restricting formulations, which cause limitations to the practical implementation of these rights. Many provision would need to be revised and above all, a version of the Statute on National Minorities should be adopted, so that the Hungarian minority is at least legally acknowledged by the Romanian state.

Chapter 4 – Domestic politics since 2007 in a European perspective

Introduction

In this Chapter, the status of the Hungarian minority in Romania will be discussed from a European perspective.

First, an introduction will be given on the minority protection clause in the Copenhagen Criteria and the way Romania has dealt with this issue towards Europe.

Secondly, the situation of the Hungarian minority in Romania since January 1, 2007 (the date of Romania's accession to the EU) will be sketched in a general sense, partly based on reports by the European Union. Also, an overview of recent changes and adaptations to minority policy will be given. Moreover, the effects of the Romanian elections of September 2008 and the changes in district borders will be discussed in this paragraph.

In order to explore the question whether Hungarians from Romania should seek a solution for or a response to their status in Brussels, the activities of three Members of the European Parliament and their visibility will be described.

Concluding, a comparison will be made between the activities of Hungarian MEPs from Romania and Hungarian MEPs from Slovakia.



Nagyszeben (H), Sibiu (R), or Hermannstadt (G): European Capital of Culture, 2007²⁸³

²⁸³ Source: http://www.messerschmidt-reisen.de/index.php?main_page=index&cPath=4_16

4.1 *Respect for minorities in the Copenhagen Criteria*

Background of the minority protection clause

According to Kymlicka (2002) there are three central factors that explain the emerging trend of promotion of (multiculturalism and) minority rights in the Western world: demographics, 'rights-consciousness' and democracy.²⁸⁴ Demographics pushed governments to take action on minority issues because minority populations and immigrant populations did not decline in many western countries, but remained the same or significantly increased due to high birth rates in recent decades. Furthermore, members of minority groups have become more active in advancing their rights and interests in recent decades. Subsequently, this concept of 'rights-consciousness' could be regarded as an influential factor in creating pressures on states for adopting various forms of multiculturalism and minority rights. A third factor according to Kymlicka is a significant increase of democratic regimes in the western world. These states not only recognised their cultural diversity, but also provided the opportunity for minority members to freely pursue their claims and rights at different levels of governance. Democracy brings 'multiple and shifting points of access to power'²⁸⁵, which implies that democracy encourages minority members to actively participate in daily politics at local, regional and national levels of governance, thus to defend their rights in various contexts.

In the Romanian case however, two of these three factors are different. Rights-consciousness has indeed been visible, but democracy and demography have had other effects in Romania.

Demographics show a different side of the coin, as numbers of people belonging to the Hungarian (and other) national minority have declined consistently in the last three decades.²⁸⁶ Because of this decline, the Romanian government was not pushed to take action but instead leaned back, hoping that the minority problem would be solved 'naturally'. And democracy has in Romania not been a guarantee for minority rights promotion or cultivation of minority identity. According to Sasse, in the post-Communist period many Central and Eastern European countries prioritised the strengthening of central state capacity and the position of the majority nations, and by doing so, a number of states (including Romania) discriminated against their national minority groups, despite being democratic states.²⁸⁷

Nevertheless, these discriminatory circumstances of minorities in Central and Eastern Europe did put the need for minority protection higher on the EU agenda. Furthermore, the violent ethnic conflicts following the disintegration of former Yugoslavia and the possible escalation of further conflict in the region (due to the presence of other sizeable minorities in many Eastern European countries, especially the Balkan-states²⁸⁸) led to a growing awareness within the EU to tackle the issue more effectively.

After the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in June 1990, the so called 'Copenhagen Document' was signed by the participating states (including Romania). As described in Chapter 2, this document is seen by many as the foundation of new ideas on state sovereignty and security that include minority protection as an important aspect of it. Chapter VI of the document fully aims at minority issues and contains far-reaching provisions regarding national minorities.²⁸⁹ During the CSCE Meeting of Experts on National Minorities it was repeated that the

²⁸⁴ Kymlicka, W., 'Multiculturalism and Minority Rights: West and East', *Journal of Ethnopolitics and Minority Issues in Europe* 4:1-27, 2002, Budapest.

²⁸⁵ Ibidem, page 9

²⁸⁶ Hungarians in Transylvania counted for 1,691 million persons in 1977; 1,604 million in 1992 (national number: 1,624 million); and 1,417 in 2002 (national number: 1,431 million).

Sources: Brubaker, 2006, Table 2.1, p 86, see Tables 1-3 in Annex 1.

²⁸⁷ Sasse, G., 'EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy' EUI Working Paper, RSCAS No 2005/16, San Domenico di Fiesole: European University Institute, 2005

²⁸⁸ Memisoglu, 'The European Union's Minority Rights Policy and Its Impact on the Development of Minority Rights Protection in Greece', 2007

²⁸⁹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 1990

rights of national minorities are 'matters of legitimate international concern and consequently do not constitute exclusively an internal affair of the respective State'²⁹⁰.

As a result of these meetings, in June 1993 at the Copenhagen European Council, the first so-called Copenhagen Criterion was created, which –literally- included the protection of national minorities as a prerequisite for accession to the European Union.

Chapter 7/A/iii. The European Council today agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.^{291 292}

Even though the issue of minority protection was included so unambiguously in the Copenhagen Criteria, the European Union did not construct matching instruments to monitor the implementation of measures taken in support of the issue. Nevertheless, Regular Reports on candidate states' progress towards accession were produced by the Commission annually. According to Rechel (2008) and other authors (Grabbe 2002, Nowak 1999), "the Commission's Regular Reports were often very general and vague", the quality of the information included in the reports was often of questionable value, the analysis was often 'rather superficial and related more to the de jure than de facto situation'²⁹³. And regarding ethnic minorities, Rechel poses the following: 'In the monitoring of CEE [Central and Eastern European] candidates, the EC has focused on two minorities: the Russian-speaking minorities in Estonia and Latvia, and the Roma in Bulgaria, the Czech Republic, Hungary, Romania, and Slovakia.'²⁹⁴ This statement supports the author's finding, that the Hungarian minority in Romania is almost never mentioned in the Regular Reports on Romania. This inconsistency between initially clear orders and subsequent weak monitoring has often caused frustration with representatives of the Hungarian and other minorities. On the other hand, governments of the candidate states also opposed the inclusion of minority protection as a political condition for accession, because 'old' member states had never been obliged to account for this issue. It was the basis for a later point of criticism on the Copenhagen criteria.

The European Union was criticized for using a 'double standard' concerning the minority protection accession criteria, as the EU seemed to "impose requirements on others that it does not apply to its existing member-states."²⁹⁵ According to Amato & Batt (1998) the resentment of this 'double standard' seemed to lie in the assumption that minority problems form a unique feature that distinguishes Eastern Europe from the 'West'. At the basis of this lies a perceived contrast between Western and Eastern modes of nationalism. It is argued that national identity in the West was formed within established states and was therefore of a primarily 'civic' character; the state represented the nation. In Eastern Europe, national identity was of a more 'ethnic' character; nations within empires defined themselves against other nations and against the (often newly formed) state they lived in. After the fall of Communism, most Eastern European nations formed new governments on the basis of the dominant nation-state idea, however, these states were suddenly also held accountable for the ethnic minorities that resided on their territory. This was a responsibility that 'old' EU member states never have had to carry, or had to answer for to the European Union. Still, the minority protection-clause in the

²⁹⁰ CSCE, Report of the CSCE Meeting of Experts on National Minorities, Geneva, 1991

²⁹¹ Conclusions of the Presidency - Copenhagen, June 21-22 1993

²⁹² EU ANNUAL REPORT ON HUMAN RIGHTS 2007, page 55-56

²⁹³ Rechel, B., 'What Has Limited the EU's Impact on Minority Rights in Accession Countries?', East European Politics and Societies 2008-22; 171-191, p 185

²⁹⁴ Rechel, 2008, p 186

²⁹⁵ Amato, G. and Batt, J., 'Minority Rights and EU Enlargement to the East', Policy Paper 98/5, The Robert Schuman Centre - European University Institute, Italy, 1998

Copenhagen Criterion had become a fixed element of the accession criteria and had to be met. The problem of the clause has been the monitoring of the actual implementation of minority protection. The requirements to demonstrate respect for and protect minorities were not supported by legislative EU documents that are binding for member States, nor by monitoring instruments that set a specific and measurable standard for minority protection on the EU level. The absence of monitoring of minority issues in old member states and the negligent monitoring in the new member countries might be an indication of the lack of priority the issue has in the larger EU context.²⁹⁶

As mentioned before in Chapter 3, the European Parliament did however adopt a resolution in 2005 on 'Protection of minorities and anti-discrimination policies in an enlarged Europe.'²⁹⁷ In this resolution, the EP makes very clear that it is aware of the lack of monitoring and inconsistency in policy concerning minorities: "*[The EP] Points out the inconsistency of policy toward minorities - while protection of minorities is a part of the Copenhagen criteria, there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a minority.*" Still, no concrete action was undertaken by the European Parliament following this statement.

It is therefore remarkable that the EU has showed renewed interest to minority issues mainly during the last two years, right after the big enlargements of 10 plus 2 new member states, the latter including Romania. It might be possible, that the EU has not been in a hurry to welcome collective rights for minorities earlier, because candidate states already had enough difficulties with the 'heavy burden' of this obligatory minority protection, which aimed at individual rights. To avoid complications in the accession process and keep interests in balance, the EU might have turned down the heat regarding the promotion of minority rights until most Eastern European states had acceded to the Union. Or, taking into account the earlier mentioned 2005 resolution of the European Parliament, the European Commission or the EU as a whole lacks sufficient diligence in processing and implementing this matter. This can again be explained by a lack of priority or by the slow proceedings of an extremely bureaucratic structure.

Fortunately, when Bulgaria and Romania were to accede in January 2007, the shortcomings of the two countries regarding the implementation of the other accession criteria did not remain unnoticed and might influence the minority issue as well.

EU monitoring of Romania since 1-1-2007

In October 2002 the preliminary date for Romania's accession to the EU was announced by the European Commission to be the 1st of January 2007; and in April 2005, the accession treaty was signed. In the pre-accession period of Romania, the European Commission has published annual Monitoring Reports on its progress in implementing the *aquis communautaire*, which are analyzed in the first chapter of this thesis. Just before EU accession, Romania still had progress to make in the fields of environmental issues, human rights, protection of minorities ('*In the field of protection of minorities, only limited progress can be reported.*'), reforms in public governance, judicial reform and fighting corruption and organised crime.²⁹⁸ Despite these remaining 'points of improvement', Romania became a member of the European Union on the 1st of January 2007.

However, the EU decided to create an instrument to help Romania (and Bulgaria) to address these shortcomings, preceding EU accession. Under authority of the European Commission, the

²⁹⁶ Sasse, G., 'The politics of EU conditionality: the norm of minority protection during and beyond EU accession', *Journal of European Public Policy*, 15: 6, p 842 – 860, 2008

²⁹⁷ European Parliament resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe (2005/2008(INI))

²⁹⁸ European Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania, COM(2006) 549 final, Brussels, September 2006

“Mechanism for Cooperation and Verification for Bulgaria and Romania” was established in December 2006. By means of this mechanism Romania is assessed on the workings of its policies and institutions and on the reforms needed in the administrative and judicial system. Even though the Commission’s progress reports up to December 2006 listed a considerable number of issues that needed improvement, including minority protection; the mechanism only focuses on progress in the fields of ‘judicial reform, corruption and organised crime.’²⁹⁹

Both new Member States are required to submit a progress report each year. The Commission forwards its comments and conclusions on these reports to the European Parliament and the European Council, where they are reviewed and adopted. It is not clear whether this process of assessment involves actual fact-checking or repeated contact with the organizations and ministries of the candidate states that provide the details for these reports.

The first report on Romania was approved by the Commission in June 2007. Although minority issues formed an official shortcoming during accession, minority protection was not included in the aims of the mechanism. Therefore nothing is mentioned specifically on minorities, but an issue that might be of influence to minorities is the persisting corruption within the local government. Procedures of nomination and (early) departure or replacements of officials and civil servants that are supposed to implement reforms are specifically described as being corrupted.³⁰⁰ According to the report, the effective application of EU laws, policies and programmes depends on the reduction of corruption and the stabilization of the judiciary. A public awareness campaign that was initiated by the Government aimed at increasing the fight against corruption and took place between October 2007 and January 2008. An interim report on Romania was approved by the European Commission in February 2008, in which it is concluded ‘that delays have occurred (...) in developing an overall strategy and implementing flagship projects to fight local corruption’.³⁰¹

In the third report on Romania of July 2008, a more general impression is given of the country’s progress: *‘[The report] finds that Romania presents a mixed picture. It has put the fundamental elements of a functioning [administrative and legal] system in place. But the foundation is still fragile and decisions on corruption are highly politicised. Each step in the right direction engenders a divisive internal political debate, fostering legal uncertainty. Commitment to reform by Romania’s key institutions and bodies as well as with regard to different benchmarks is uneven.’*³⁰² The comment on the fourth benchmark on fighting corruption in local government is not changed in the third report but repeated: *‘[Romania should] Take further measures to prevent and fight against corruption, in particular within the local government.’* And in the Council’s Conclusions of September 2008, Romania is summoned to *‘consolidate the reforms undertaken, and to produce results which are more convincing and more lasting, so as to show that the [administrative and judicial] system actually functions effectively in all areas.’* Obviously, many reforms still need to be accomplished.

In regard to the Hungarian minority, corruption in local governments could for example cause serious problems in the implementation of the linguistic provisions.³⁰³ Looking at the findings of Brubaker’s 2006 fieldwork in the region of Koloszvár, this was indeed the case: adhering to these linguistic rules depended in many cases on the willingness of the involved official, and on the general attitude of the community’s major.³⁰⁴ For the years 2007 and 2008 no ‘official’ data was found on this matter by the author, although private conversations in 2008 between members of the Hungarian minority and the author point in this direction. The chance that this practice persists is evident, but to give conclusive answers, the issue would need to be researched again to apply to the current situation.

²⁹⁹ European Commission, main webpage of and introduction to Mechanism for Cooperation and Verification for Bulgaria and Romania, http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm

³⁰⁰ ‘Report from the Commission to the European Parliament and the Council - Romania’s progress on accompanying measures following Accession’, COM(2007) 378 final, Brussels, June 2007

³⁰¹ European Commission, ‘Interim Report on Progress in Romania with Judiciary Reform and the Fight against Corruption’, MEMO/08/72, Brussels, February 2008

³⁰² MEMO/08/520, Brussels, 23 July 2008

³⁰³ Which allow for members of the Hungarian minority to use the Hungarian language when communicating with local authorities; in regions where their numbers count up to 20% or more of the total population.

³⁰⁴ Brubaker, ‘Nationalist politics and everyday ethnicity in a Transylvanian town’, 2006, p 140-146

As an answer to the regular recommendations by the EU after EU-accession, in late 2007 the Romanian government designed a **National Reform Program** (NRP).³⁰⁵ The Program in general aims at establishing the country's development priorities along the guidelines established by the European Union's Lisbon Strategy for economic growth and employment.

Increasing Romania's economic competitiveness, defining completion deadlines and budget resources (56% financed by EU budget, the rest by state budget) for each priority, reforming the institutional framework to ensure governmental support for the reforms' implementation, the creation of a fair social system and judiciary reform are aims for the 2007 - 2012 period.

The introduction of this program of national reform and the European Union comments in the post-2007 reports illustrate the observation of several authors³⁰⁶ that the process of changing institutional structures in the Romanian socio-political context, combating corruption and accomplishing economic reform is not finalized yet. The period after EU-accession seems to have opened another important chapter in the internal transformation of Romania, rather than marking the end of it.³⁰⁷



Palace of Parliament, Bucharest, Romania

³⁰⁵ Website of the Romanian government: www.gov.ro

³⁰⁶ For example: Noutcheva & Bechev (2008), Sasse (2008), Rose (2008)

³⁰⁷ Noutcheva, G. & Bechev, D., 'The Successful Laggards: Bulgaria and Romania's Accession to the EU', *East European Politics and Societies*, 2008; 22; 114 -144, p 140

4.2 *Romanian events since EU accession affecting the Hungarian minority*

As mentioned before, the European Union does not deploy a specific minority policy; this matter is left to the responsibility of the member states. Concerning minority rights in Romania no significant reports have been published since Romania's EU accession, besides the already described reports of the United States, the UNHCR and the EU Mechanism for Cooperation and Verification. Recent domestic events in the political sphere however, have influenced or could influence in the future the status of the Hungarian minority in Romania.

District change

In March 2008, the Romanian Parliament voted on the adoption of a bill, which would introduce a change of the electoral system. The system has been (since 1990) a constituency voting system in which ballots are casted for national party lists. The bill was adopted by the Parliament and will change the system into a rather complicated uninominal system in which individual candidates are selected from each district or constituency.³⁰⁸ The system change will be implemented during the forthcoming elections of November 30, 2008.

The country is divided in 42 constituencies: 41 in the provinces and 1 for the capital of Bucharest. These constituencies will be subdivided into 330 smaller districts for the Chamber of Deputies (and 135 for the Senate), which are called 'single member districts' (SMDs), or 'individual constituencies', as they produce one deputy maximum.

If a candidate wins at least 50% of all casted votes plus one in his/her individual district, he/she will become a Member of Parliament. Next to that, all the votes obtained by the candidates from individual districts, are added to the county total and to the national electoral subtotal of the party to which they belong. In other words, per individual district all casted votes are counted according to party affiliation, which influences the distribution of power between the national factions. In this way, extra or remaining seats are divided amongst the national parties.

But if the winner of a constituency is allied to a party that does not receive 5% of all votes in Romania (the national electoral threshold), he/she loses all significance. Parliamentary seats will be divided amongst the parties that surpassed the 5% threshold and the expressed support on local level has been in vain, or would have to be regained in the next local elections that are held in four years time.³⁰⁹ This also results in proportional non-representation: a high percentage of the population (15 to 20%) remains unrepresented because of the redistribution of votes.³¹⁰

According to president Basescu, this rule prevents 'local, corrupt mafiosi' to enter the Parliament, but many Romanians fear that it might instead be a measure to support the position of the ruling parties. The 5% threshold³¹¹ has already proven to be too high for most minority parties, as people belonging to these minorities constitute (per minority group) less than 5% of the total population of Romania. Only the DAHR managed in the elections of 2004³¹² to pass the threshold, by only 1.2% (with a total of 6.2%, resulting in 22 seats in the Chamber of Deputies).

Another point of criticism might be that the current election law does not provide details on how the SMD boundaries within the 42 districts will be drawn up. It seems likely that this will be done at the level of the county. But in this way, the person in charge at county level (for example the president of

³⁰⁸ International Herald Tribune, 'Romania's parliament approves electoral system change', March 4, 2008

³⁰⁹ Marác, L., 'Balkanstaten worstelen met verleden', in *Ablak - Tijdschrift over Midden-Europa en de Balkan*, No. 4, September 2008, Oost-Europa Instituut, Universiteit van Amsterdam, page 2

³¹⁰ Coman, R. & Ivan, R., 'Political system and State Institutions in Romania', May 2008, Brussels

³¹¹ The electoral threshold has risen since 1990; in that year the threshold was 0,2%, in 1992 and 1996 it increased to 3%, since 2000 5% is upheld, including the elections of 2004 and forthcoming 2008.

³¹² See Annex 1, Table 4: Results of the 2007 European and 2004 Parliamentary elections in Romania.

the County Council) has great influence on the shaping of the SMD's. And backed up by the local prefect, this influence might be even bigger. The point is that opportunities to fiddle with the electoral system exist on local level. The boundaries of SMD's could be drawn in such a way, that numbers of minority persons are evened out over the SMD's, resulting in a decrease of the proportion of minority populations compared to the official percentages that minorities constitute in that specific county.³¹³ In other words, the chance for a minority SMD candidate to win in an SMD might increase, but the allied national minority party will probably not pass the national electoral threshold, after which the won SMD seat will be lost and redistributed to the strongest party in the county. So by 'diluting' votes or by concentrating them, certain effects can be accomplished that influence the general outcome of the elections. It could even be a strategic measure of the newly formed Democratic Liberal Party (PD-L) and perhaps their former associate Basescu, in trying to win an absolute majority in Parliament. Of course, things could turn out the positive way, and the outcomes of November 30th will have to be awaited. Still, as mentioned in Chapter 3, according to the ECMI³¹⁴, minority parties are slightly overrepresented in the current composition of the Parliament. But again, the elections of November 2008 might change a lot.

Effects of domestic elections

Local elections of June 17, 2008

The Romanian local elections that were held in June 2008 had a national turnout of 50.67%. In Bucharest, the turnout was only around 31%. The local elections are especially important in the rural areas, as European funds are principally distributed on local level by means of local governments. For the Hungarian minority, local elections also provide an important entrance gate to gaining influence on local policies that affect their communities. Even more so with these local elections, because presidents of County Councils were for the first time elected directly by people's vote and not by negotiations within the County Council afterwards.

An interesting development was the attempt of the Hungarian Civic Party (PCM) to create an alternative for the DAHR. The Party was founded in 2001 already, but was formally registered as a national party only in March 2008. Its main objective is territorial autonomy for the Székler land, and in that region the party has found most support up to now.

The DAHR won 4 of the 41 County Council President positions, and 2195 of the seats in the Local Councils, which is 5.8% of the total number of seats. Of the 3110 mayor positions, the DAHR won 184, which is 8.6%³¹⁵ of the votes, but the newly formed Hungarian Civic Party won 6 mayor positions (0.35%). In Koloszvár, sitting mayor and candidate Emil Boc was re-elected with 70% of the votes. Regarding member seats in the County Councils: the DAHR won 89 (6.52%), and the Hungarian Civic Party won 19 seats (1.39%). The four mainly Hungarian counties of Harghita, Covasna, Mures and Satu Mare indeed won DAHR Presidents for the County Councils. The DAHR proclaimed to be quite satisfied with the results of local elections, as it showed that the DAHR is still the fourth strongest political organization in Romania.³¹⁶

In general terms, the Democratic-Liberal Party (PD-L), which is associated with President Basescu, won an equivalent to 28.4% of the ballots; the Social Democratic Party (PSD) won 28.2%; and the ruling National Liberal Party (PNL) captured 18.7% of the votes.³¹⁷ According to Romanian experience, this outcome will be indicative for the national parliamentary elections of November 2008.

³¹³ Source: <http://drseansdiary.blogspot.com/2008/03/romania-election-law-everything-you.html>

³¹⁴ ECMI, 'Representational Consequences of Special Mechanisms for Ethnic Minority Inclusion: Evidence from Romania', September 2008

³¹⁵ According to the DAHR, <http://www.rmdsz.ro/news.php?tag=41>

³¹⁶ Source: <http://www.rmdsz.ro/news.php?hir=38>

³¹⁷ The New Europe Weekly - Issue: 787, www.neurope.eu, 'The light in the tunnel for Social Democrats', 23 June 2008, official results of the local elections in Romania on June 17 2008.

The fear is now however, that the participation of PCM in the legislative elections of November 2008 might split up the votes of the Hungarian minority and result in both the PCM and the DAHR not reaching the 5% threshold to enter the Parliament.

Parliamentary elections of November 30, 2008

A new Romanian element to these elections is the possibility for Romanians abroad³¹⁸ to participate. Their votes will result in a fixed number of representatives in the Romanian Parliament: 2 in the Senate and 4 in the Chamber of Deputies.

At least 35 parties and alliances, 30 independents, and a total of 2965 candidates are running for the 319 deputy seats and the 139 senator seats. Votes can only be casted in the constituency in which voters reside, which probably will contribute to a low turnout of less than 50%.³¹⁹

According to Radio Romania International, low turnout might also be a result of the perceived 'poor quality of the election debates, the more than 100 violent incidents reported so far, and the fact that candidates are not known by the public or have a bad reputation.'³²⁰ A black list has even been compiled by civil society, on which names of candidates are mentioned who are under investigation for allegations of corruption, candidates who suddenly changed party and candidates who possibly collaborated with the Securitate; the former secret service under communist rule.³²¹

Outcomes of the elections

The turnout has indeed been rather low: only 39.3% of Romanian citizens casted their vote. The results according to the official bureau are presented in Annex 3.

One incident (which happened during election day in Koloszvár) is perhaps illustrative for the still existing ethnic divide between the Romanians and the Hungarians in Romania, and was reported in the following article, from the Hungarian Transylvanian newspaper 'Szabadság' of December 1, 2008:³²²

Anti-Hungarian incident on the main square. An election incident, that was offending to the Hungarian minority, happened a few minutes ago on the ice rink that has been set up on the main square. An unidentified person announced the following message in Romanian through the loud-speakers (which until that time had been playing music): - According to my information, 70% of persons that have voted up to now are Hungarian. We are the majority, we can not leave it like this. - said the unknown person. Representatives of the DAHR who were present when the incident happened requested an explanation and informed both the Regional Election Committee and the police.

Antihongaars incident op het centrale plein. Een verkiezingsincident, dat tevens beledigend is voor de Hongaarse minderheid, gebeurde enkele minuten geleden op de schaatsbaan die op het centrale plein is ingericht. Een onbekend persoon zei het volgende door de luidsprekers, die tot dan toe muziek lieten horen: - Volgens mijn inlichtingen is 70 procent van de mensen die totnutoe zijn gaan stemmen, Hongaar. Wij zijn in de meerderheid; we kunnen het er niet bij laten zitten – zei de onbekende persoon. Later hebben de vertegenwoordigers van de RMDSz (UDMR) ter plekke om uitleg gevraagd, en aangifte gedaan bij de Regionale Verkiezings Commissie en bij de politie.

³¹⁸ Both Romanian historical communities in neighbouring states as emigrant Romanian communities in the West, for example Italy and Spain.

³¹⁹ Radio Romania International, weekly news, 'Romanians vote on Sunday 28/11/2008', www.rri.ro

³²⁰ Ibidem

³²¹ The Securitate is the common name for the former Communist secret police, which is still considered to be a functioning part of Romanian society.

³²² (Unofficial) translation of: "**Magyarellenes incidens a Főtéren.** Választási, s egyben a magyar kisebbséget sértő incidens történt néhány perccel ezelőtt a Főtéren felszerelt korsolyapályán. Egy ismeretlen személy a következőket mondta be az addig zenét sugárzó hangszórókba: - Információim szerint az eddig urnák elé vonult szavazók 70 százaléka magyar. Mi vagyunk többségben, ezt nem hagyhatjuk ennyiben – mondta az ismeretlen személy. Később az RMDSZ képviselői a helyszínen kértek magyarázatot, s feljelentést tettek a Megyei Választási Bizottságnál (BEJ) és a rendőrségen.", Szabadság (online) newspaper, December 1, 2008; www.szabadsag.ro

4.3 Visibility in European Union politics

Representation in the European Parliament

In May 2007, for the first time it was Romania's turn to elect its 35 members of the European Parliament. This also provided the first opportunity for representatives of the Hungarian minority in Romania to run as a candidate and create a European stage for their interests.

It turned out that a national referendum on a new voting system was planned on the same day with which the European parliament election coincided. The referendum on reforms for national elections in Romania intended to make politicians more accountable to voters and to curb top-level fraud. Prime-Minister Tariceanu pleaded the case that holding a referendum on the same day was unconstitutional and was allowed to postpone the European elections to November 25 of the same year. This domestic mudslinging was rather indicative for the atmosphere in the run-up to the election. Even though accession was still recent, the campaigns focused more on domestic issues, as the elections were also a try-out for some new parties, ahead of the 2008 Parliamentary elections. In October, the President of the European Parliament Hans Gert Poettering appealed to the Romanian political parties, asking them to put European issues at the centre of the EP elections campaign.³²³

After the final count of casted votes in the European election of November 25 in Romania, and the redistribution of the votes for the parties that had failed to pass the 5% threshold, the 35 MEP seats were distributed as follows:³²⁴

Party	Votes	%	Seats won
Democrat Party (PD)	1,476,105	28.8	13
Social Democrats (PSD)	1,184,558	23.1	10
National Liberals (PNL)	688,859	13.5	6
Liberal Democrats (PLD)	398,901	7.8	3
Hungarian Democratic Union (UDMR)	282,929	5.5	2
Laszlo Tokes (Independent)	176,533	3.4	1
New Generation Party (PNG)	248,863	4.9	0
Greater Romania Party (PRM)	212,596	4.2	0
Conservative Party (PC)	150,385	2.9	0
National Initiative Party (PIN)	124,829	2.4	0
National Peasants (PNTCD)	71,001	1.4	0
Roma Party (PRPE)	58,903	1.1	0
Socialist Alliance (PAS)	28,484	0.6	0
Green Party (VERDE)	19,820	0.4	0
	5,122,226	100.0	35

The extremist Greater Romania Party, the New Generation Party and some other smaller parties did not pass the threshold and gained no seats. The official turnout was 29.46%.

The 6 PNL candidates became part of the Alliance of Liberals and Democrats for Europe group (ALDE), and the 10 PSD parliamentarians have joined the Socialist group (PES).³²⁵ It was expected that the 13 PD, 3 PLD and 2 UDMR candidates as well as non-affiliated Laszlo Tökés would join the European People's Party - European Democrats (EPP-ED); and initially all were welcomed by the EPP. However, discontent emerged between the two DAHR MEP's and Tökés, which resulted in Tökés joining the European Free Alliance/Greens instead.

³²³ Source: <http://www.nineoclock.ro/index.php?page=detalii&catégorie=politics&id=20071016-508507>

³²⁴ The official website of the election www.bec2007pe.ro/ does not exist anymore; secondary sources like newspaper were used for this table, and www.europarl.europa.eu. Table collected from source page: http://www.sussex.ac.uk/sei/documents/epernep_eb24_-_2007romania.pdf

³²⁵ Source: <http://ue.mae.ro/index.php?lang=en&id=31&s=62431&arhiva=true>

The president of the DAHR Béla Markó said that in case the Hungarians had run on a single list the outcome might have been four or five MEP's. György Frunda, the first on the DAHR's list, even accused Tőkés of hindering the success of DAHR and splitting the Hungarian vote.³²⁶

The national turnout of the European elections in Romania might have been so low because of the domestic focus and quarrels during the campaign. Also, the lists of the main political parties consisted of many low profile candidates that were mostly unknown to the public, and did not lure the average Romanian to the election box. There were some famous and even controversial names on the party lists, but the larger part was 'secondary' candidates. This might have to do with the fact that being elected for the European Parliament meant that candidates would be excluded from the Romanian political scene in 2008,³²⁷ the important electoral year in which presidential and parliamentary elections in Romania would be held.

The turnout amongst the Hungarians on the other hand was exceptionally high. The most probable explanation for this is the arousal that occurred amongst the Hungarian minority when the DAHR and Tőkés clashed and the latter decided to go on independently. This quarrel caused a mobilization of Hungarian voters; of the total of casted votes, 8.9% went to either DAHR or Tőkés. The general low turnout also resulted in an electoral advantage for the Hungarian minority; if 10 million people had voted instead of 5 million, the distribution of votes would have been very different.

All in all, the Hungarians from Romania are represented in the European Parliament by means of three MEP's. György Frunda and Sógor Csaba were the two candidates that became MEPs on behalf of the DAHR. Frunda did win the MEP seat, but in December 2007 he announced to give up his seat in favour of Gyula Winkler, a DAHR colleague who had also been a candidate. The reason was that Frunda was being considered for the presidency of the Parliamentary Assembly of the Council of Europe (PACE) Judicial Committee, which he was indeed rewarded.

The DAHR now is a member of the European Democrat Union (EDU) and an associated member of the European People's Party (EPP). Tőkés works from his position within the EFA-Greens.

Three Hungarian-Romanian Members in the European Parliament

- László Tőkés (EP: Greens/ European Free Alliance)

In 2007 Reformed Bishop Laszlo Tőkés decided to run for the European Parliament as an independent, receiving the backing of Hungary's 'conservative' party Fidesz, aiming at representing the Hungarian minority in Romania of 1.4 million people. A combined list with the DAHR seemed impossible after disagreement with DAHR president Markó Béla.³²⁸ Tőkés wanted to promote more autonomy for ethnic Hungarians and improve their educational opportunities. At the November 2007 EP election, he gained enough votes to win a seat. As a result of his competition with the DAHR, Tőkés was accused of creating a divide within the Hungarians of Romania and of being 'helped' by President Băsescua, as he received 18,000 votes from Wallachia and Moldavia, regions where only few Hungarians live. This dispute even carried on into the EP, as his membership of EPP-ED was opposed by the Romanian Democratic Party delegation in the EPP-ED in December 2007.³²⁹ Democrat Sorin Frunzaverde said that the main reason of Tőkés' rejection was his standpoint on Transylvania's territorial autonomy³³⁰. Tőkés was accepted into the European Parliamentary Group of EFA/Greens on April 9, 2008.

Especially EFA pays a lot of attention to minority and linguistic issues. Before his admission to EFA, Tőkés remained an active yet unaffiliated MEP. He is a member of the Committee on Agriculture and Rural Development, a member of the Delegation for relations with the countries of south-east Europe, and a substitute for the Committee on Culture and Education.

³²⁶ November 26, 2007, 13:37 CET news, 'Tőkés and RMDSZ both make it into European Parliament', <http://www.politics.hu/20071126/tokes-and-rmdsz-both-make-it-into-european-parliament>

³²⁷ As the professions of MP and MEP are irreconcilable.

³²⁸ Source: <http://tokeslaszlo.ro/en/doc/02.html>

³²⁹ MEPs have veto right when new candidates from the same country want to enter their EP party.

³³⁰ Transylvanian Monitor No. 37, December 2007, www.emnt.org

In February 2008, Tökés held a speech in the European Parliament, in which he compared the Serbian fear for independence of Kosovo to the situation of the Hungarians in Romania:

*“The ‘deep concern’ of the Romanian parliament is completely unfounded and unjustified. Romania must not be afraid of the Hungarians. Our national community in Transylvania does respect the Romanian constitution and territorial integrity. At the same time, however, we have reason to expect that, based on the principle of ‘territorial rights’, Romania will deal with the situation of our national community in a European way, and ensure the personal autonomy of Hungarians (1) and the regional autonomy in Transylvania and other regions (2) on the basis of the principle of self-governance that applies in the European Union.”*³³¹ This clearly showed his views on the situation of the Hungarian minority in Romania and the way to proceed in the future.

On the 6th of March 2008, Tökés participated in a written question to the Commission: ‘Subject: European Year of Intercultural Dialogue in Romania?’³³² The question was (com)posed by Péter Olajos (Hungary, PPE-DE), Árpád Duka-Zólyomi (Slovakia, PPE-DE), Kinga Gál (Hungary, PPE-DE), Csaba Sógor and Tökés himself. It concerned ethnic attacks against members (children) of the Hungarian Csángó minority in schools in Nagypatak, Romania, since November 2007. According to the MEPs, the situation violates Article 22 of the European Union Charter of Fundamental Rights, and action by the Commission is demanded. The Commission answered that it is concerned about the situation, but ends with the following statement: ‘However, Article 149 of the Treaty establishing the European Community provides that Member States are responsible for the content of teaching and the organisation of education systems and their cultural and linguistic diversity, and the Commission can intervene in individual cases of breach of fundamental rights by Member States only in so far as they fall within the scope of Community law.’³³³

After the ‘Communiqué on anti-Hungarian demonstrations in Cluj-Napoca, Romania’ of 17 March 2008, the relationship between Tökés and Romanian MEP Niculescu received a hard blow. Niculescu expressed his disappointment in a letter to the European Parliament as a whole but addressed to Tökés, saying that the Cluj demonstration of 15 March was not specifically anti-Hungarian and that Tökés’ communiqué aimed at ‘empoisoning the relations between Romanians and Hungarians in Romania.’³³⁴ Tökés wrote an open letter (to Niculescu and the EP) in return, in which he explicitly underlined the anti-Hungarian character of the demonstration, called Niculescu’s letter ‘plain lies and slander’, and postulated that the letter was an example of the activities of the Romanian Democratic Liberal Party to exclude him from the European People’s Party.³³⁵ As mentioned before, Tökés had already not been accepted by the EPP-ED and joined the EFA/Greens. The most recent action Tökés has undertaken in the EP was the promotion of the European Day of Languages on September 26.

- Csaba Sógor (RMDSz, EP: EPP-ED)

Sógor was a member of the Romanian Senate for the DAHR and Secretary of the Parliamentary group of the DAHR in the period between 2004 and December 2007. When he was elected as a member of the European Parliament, he was replaced in the Senate by Vilmos Zsombori.

In the EP, Sógor is a member of the Committee on Civil Liberties, Justice and Home Affairs and a member of the ASEAN delegation. He is substitute for the Committee on Employment and Social Affairs and for the Korean Peninsula delegation.

Sógor has given One-minute speeches on the (linguistic) rights of Hungarians in Romania on several occasions. On 18 February 2008 he mentioned that strangely enough, he is able to speak in his mother tongue here (European Parliament), but not at home (Romanian Parliament). He also referred to the 2008 Year of Intercultural Dialogue and sketched the limited linguistic education in the mother tongue of the Hungarian minority in Romania. During the 20 February 2008 EP debate on the independence of Kosovo, Sógor related the issue to the Hungarian in Romania and made the following statement,

³³¹ Speech of László Tökés, President of the Hungarian National Council of Transylvania at the Plenary of the European Parliament at Strasbourg, on 20 February 2008, Transylvanian Monitor No 39, February 2008

³³² Written question to the Commission, [E-1574/08], 6 March 2008

³³³ Source: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2008-1574&language=EN>

³³⁴ Source: <http://www.tokeslaszlo.ro/en/doc/tokesletterniculescu.pdf>

³³⁵ Ibidem

which clearly illustrates the DAHR's political aims in the EP: *'The process leading up to Kosovo's independence was not instigated by the EU. Serbia started it by not guaranteeing fundamental human rights, individual and community rights to its citizens living in that territory. (...) It may now become clear to everyone that the question of the individual and collective rights of traditional national minorities cannot merely be an internal issue for a country. It is time to draw up a standardised agreement in the European Union (EU) that applies compulsorily to everyone and reassures minorities.'*³³⁶

In March 2008, Sógor also joined the written question on the questionable European Year of Intercultural Dialogue in Romania, mentioned earlier under Tóké. In May 2008 Sógor denounced the clash between police and fans in Kolossvár after a soccer match between a Romanian and an ethnic Hungarian team; and the anti-Hungarian sentiments that are 'constantly being fomented by extremist politicians.'³³⁷ In May he posed (in cooperation with colleague Gyula Winkler) a written question on 'The defence of minorities in the Carpathian basin' to the Commission, in which he provided details of recent anti-Hungarian incidents in Kolossvár and asked how the Commission will act to deal with the specific cases or to prevent similar occurrences.³³⁸ The Commission answered that it has repeatedly condemned these events, and that it wishes that the framework Decision on racism and xenophobia will be adopted soon. In the One-minute speeches of July, September and October of this year Sógor also reminded the EP of the situation of the Hungarian minority in Romania.

- Gyula Winkler (RMDSz, EP: EPP-ED)

Winkler took over the seat from Frunda, as mentioned before. In the EP, Winkler is a member of the Committee on International Trade and the Delegation to the Euro-Latin American Parliamentary Assembly, and is substitute for the Committee on Regional Development.

He joined Sógor and Tóké in the written question of March 2008 on the questionable European Year of Intercultural Dialogue in Romania. In May 2008 he also joined Sógor in the written question on 'The defence of minorities in the Carpathian basin' to the Commission.

In early May 2008, Winkler participated in the Brussels conference of the EP Intergroup on National Minorities and the NGO Project on Ethnic Relations preparing the EP resolution on national minorities in the European Union. After this meeting, he declared in press conference that 'the foundation within the European Union of a judicial system comprising minority protection norms and valid for all member states is needed.'³³⁹ Winkler is a member of the Economic Committee of the Forum of Hungarian Representatives of the Carpathian Basin; a cross-border parliamentary framework for representatives of Hungarian communities, aimed at cooperation between countries in which Hungarian minorities live (including Hungary). From his position, he also invited the Romanian Council of National Minorities to join the September 2008 meeting of the European Parliaments Minority Intergroup in Brussels.

A fourth MEP to be mentioned is Magor Imre Csibi (Partitul National Liberal, EP: ALDE).

Csibi was elected as one of 6 representatives for the National Liberal Party, and provides an interesting case as he is the only ethnic Hungarian from Romania who does not specifically represent the Hungarian minority in Romania. As stated on his EP personal website, he aims to promote Romania as a whole, and on his website he makes no direct connection to matters concerning the Hungarian minority, even though he grew up in the most Hungarian part of Romania: the Harghita-region. His personal website as an MEP is however available in the Romanian, English and Hungarian language.³⁴⁰

Csibi is vice-chairman of the Committee on the Environment, Public Health and Food Safety and of the India delegation.³⁴¹ In the European Parliament, Csibi focuses on citizen's interests, increase of

³³⁶ [P6_CRE(2008)02-20], www.europarl.europa.eu, Kosovo (debate), 20 February 2008, EP, Strasbourg

³³⁷ [P6_CRE(2008)05-07], www.europarl.europa.eu, One-minute speeches, 7 May 2008, EP, Brussels

³³⁸ [E-2577/08], Parliamentary questions, 6 May 2008, Brussels, and Commission answer [E-2577/2008]

³³⁹ Source: www.winklergyula.ro

³⁴⁰ Source: www.magorcsibi.ro

³⁴¹ He is substitute for the Committee on the Internal Market and Consumer Protection and for the Delegation for relations with Belarus.

information accessibility on European matters in Romania, and the promotion of dialogue between citizens and the Romanian government, by means of European instruments. On a European level he focuses on matters like agricultural issues, food safety, climate change and deforestation. He is credited by other MEPs for being a young, trustworthy, and consistent representative for Romania. His only activities remotely related to ethnicity or nationality are of February 2008. He held a one-minute speech in the EP on a case of discrimination of a Romanian citizen in Brussels wanting to rent a car. Csibi urged the other MEPs to jointly fight discrimination based on nationality. He also sent a written question to the Commission regarding the same matter, in which he asks for a better supply of information towards citizens on the legal instruments that are available to them in order to uphold their rights.³⁴²

The answer of the Commission shows, that anti-discrimination monitoring is on the way: ‘the Commission would like to inform the Honourable Members that, in the context of the Community Statistical Programme 2008-12, initiatives have started on establishing a framework for the collection of statistics on the extent and impact of discrimination (including discrimination on the basis of race and ethnic origin) with the aim of establishing a basis for monitoring the implementation of Community antidiscrimination legislation and action programmes.’³⁴³ Interestingly, there have been more and more recent developments in the EU regarding minority matters.



Tökés László

³⁴² [P6_CRE(2008)02-18], One-minute speeches (Rule 144) , 18 February 2008, EP, Brussels

³⁴³ Source: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2008-0823&language=EN>

New European policies concerning minorities

On September 18, 2008, the European Commission sent out a communication on ‘Multilingualism: an asset for Europe and a shared commitment.’³⁴⁴ Unfortunately, in this communiqué it becomes clear that minority languages are treated as a means of communication and not as carriers of minority identity. It was underlined that the programmes currently offered by the European Commission are open for all languages including minority languages, but still, the practical sides of facilitating, promoting and protecting minority languages are left to the member states.

On the 5th of November (2008) in Brussels, the National Minority Intergroup of the European Parliament and PER (Project on Ethnic Relations) organized the discussion ‘New Approaches to Minority Rights in the European Union’³⁴⁵. During this meeting, two draft motions for a Resolution on National Minorities were presented in the European Parliament, intended to create a framework for approaching minority problems on a European level. The meeting was attended by many representatives of minority communities in Europe, of NGO’s and of representatives of national governments, including Attila Markó from Romania, who is the DAHR state secretary for minority matters of the Government of Romania.

Markó held a speech, in which he emphasized, that the two documents might trigger radically new political messages and approaches within the framework of the European Union. *"It were the first time for the European Parliament to declare that minority matters are not exclusively to be dealt with by member states as internal matters, as they require joint European action. The draft differentiates in between historical minority communities and minorities emerged as an outcome of labor force migration. It is an element of common knowledge that the Union has merely prohibited discrimination so far, thus having the European Union adopt an active future role in this domain as compared to its past passive attitude might actually be a great result."*³⁴⁶

His speech displays the hopes of national minorities in Romania and in other European countries for a new legal basis for minority rights on European Union level, which guarantees these rights, monitors the actual implementation in member states and actively intervenes if the implementation is lacking. The draft is not available yet as it will be presented as a resolution to the European Parliament. This resolution still has to be conceptualized, but the idea of the draft laws and the large number of participating officials in the meeting does reflect the growing European readiness for the creation of new measures dealing with minority issues on a European level.

4.4 Comparison between Hungarian-Romanian and Hungarian-Slovakian MEPs

The Hungarian minority in the Slovak Republic accounts for approximately 529.170 persons, who make out 9.7% of the total population of the country according to the 2001 census. On a national level, the Hungarians are represented by the Party of Hungarian Coalition (SMK-MKP, short form: SMK) which was established in 1998; chairman of the party now is Pál Csáky.

Slovakia became a member state of the European Union on May 1, 2004, and has been represented in the European Parliament by 14 Members of the European Parliament (MEPs). Of these MEPs, 2 can be counted as representatives of the Hungarian minority in Slovakia: Edit Bauer and Árpád Duka Zólyomi, both part of the EPP-ED. In Slovakia, Bauer is a member of the presidency of the SMK.

³⁴⁴ Brussels, 18.9.2008, COM(2008) 566 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on “Multilingualism: an asset for Europe and a shared commitment.”

³⁴⁵ Source: www.eurolang.net, www.divers.ro: ‘Towards a Functioning Minority Protection in the EU’, News - Divers Bulletin no. 86(329), 11/10/2008

³⁴⁶ Source: www.winklergyula.ro

The Party of Hungarian Coalition itself is an associate member of the European People's Party since 7 June 2000 and a full member of the European Democrat Union since January 2001.

During the nineties, many incidents happened in Slovakia including the passing of several laws that concerned discrimination of the Hungarian minority. A law was adopted in 1993 for example, which banned the use of Hungarian first names and made use of a Slovak ending on all female last names mandatory. Moreover, in 1996 the administrative division of the country into 4 regions was replaced by a division into 8 regions centred on the country's 8 largest cities and 79 districts, which resulted in a situation in which the ethnic Hungarians did not form the majority in any district. Also, Slovak Prime Minister Mečiar³⁴⁷ was famous for his offending statements regarding the Hungarians.

Anti-Hungarian sentiments have re-entered the stage since the case of Hedviga Malinová: an ethnic Hungarian student who was beaten up by two skinheads in Nitra, Slovakia, August 2006. Two slogans were written on her blouse by the attackers, which are well known from the period after the Second World War, when Hungarians were expelled from Slovakia on the basis of collective guilt (the Beneš-decrees): 'Hungarians go back over the Danube', and 'Slovakia without parasites'.³⁴⁸ After an investigation of the Ministry of the Interior, she was accused of having made up the story. She is now involved in a legal case against the police corps and the central Slovak government.

The Beneš-decrees were originally issued during WWII by president Beneš, and accused the ethnic Hungarians of Slovakia³⁴⁹ of being collectively responsible for the effects of WWII. They were deprived of their rights and citizenship, their property was taken and many were expelled from the country. The decrees are officially still valid through the 1993 statute of Slovakia.

After the parliamentary elections of 2006, a new government was formed by the Social Democracy Party, the Slovak National Party and the People's Party Movement for a Democratic Slovakia.

According to some sources, these parties cooperated to exclude the ethnic Hungarian party from government.³⁵⁰ The number of incidents targeting the Hungarian community has risen since the current government is in power, and some discriminating laws have been adopted. With help from the Slovak National Party for example, the use of Hungarian names of historical Hungarian towns that are now within Slovakian borders was banned from schoolbooks last year.

When the Slovak Parliament reconfirmed the Beneš-decrees on 20 September 2007, ethnic tensions increased severely. There was even a collision in the European Parliament in November 2007 on the case of the Beneš-decrees, when Hungarian MEPs and ethnic Hungarian Slovak MEPs were accused by other Slovak MEPs of distorting facts and supporting Hungarian irredentist claims. A similar situation occurred during the plenary session of the European Parliament on October 8, 2008 in Brussels, when Slovak MEPs raised their voices against MEPs Bauer and Zólyomi before the latter two even started their speeches, and accused them of wanting to renew the former 'Great Hungary'.³⁵¹ In the Slovak Parliament, Jan Slota, head of the Slovak National Party (SNS) and part of the governing coalition, is known for his anti-Hungarian rhetoric. His description of the Hungarian minority as a "cancer in the body of the Slovak nation" caused considerable friction³⁵². Recently, the chairman of the SMK, Pál Csáky, received a threatening letter containing a bullet, SMK Member of Parliament, geologist and former dissident writer Miklós Duray also received a threatening letter³⁵³, and MEP Edit Bauer was threatened with death in an email.³⁵⁴ A soccer game in Dunaszerdahely (Slovakia) in early November added fuel to the fire, when riot police assaulted Hungarian fans. According to articles in several on-line newspapers, ethnic tensions between Hungarians and Slovaks in Slovakia, and

³⁴⁷ Vladimír Mečiar has been Prime Minister and Acting President of subsequently the Slovak Federal Republic and Slovakia, roughly between 1992 and 1998.

³⁴⁸ Website of the Party of the Hungarian Coalition (SMK) in Slovakia, www.mkp.sk

³⁴⁹ And the ethnic Germans in Slovakia, called the 'Sudethen-Deutsche'

³⁵⁰ Source: www.slovakia.org and www.americanhungarianfederation.org

³⁵¹ Source: http://www.mkp.sk/eng/index.php?option=com_content&task=view&id=72&Itemid=1

³⁵² Source: <http://www.spiegel.de/international/europe/0,1518,537008-2,00.html>

³⁵³ Source: http://www.sktoday.com/content/1671_head-ethnic-hungarian-party-smk-got-threatening-letter-bullets

³⁵⁴ 'Parties condemn threats against ethnic Hungarian leaders in Slovakia', 24-11-2008, www.politics.hu

relations between the ‘mother countries’ Slovakia and Hungary are even worse than during the nationalist Meciar government.³⁵⁵

The Slovakian MEPs have been in the EP 2 years longer than the Romanian MEPs. Concerning the Hungarian minority in their country, Bauer and Zólyomi have achieved the following.

Edit Bauer, as a MEP, is a member of the Committee on Employment and Social Affairs (EMPL) and of the Committee on Women's Rights and Gender Equality (FEMM); and substitute member for a number of delegations.³⁵⁶ She is also vice-chairperson of the Intergroup for Traditional National Minorities, Constitutional Regions and Regional Languages.

In June 2005, Bauer reacted to the Moraes-report on the Protection of Minorities and Anti-discrimination Policies in an Enlarged Europe (A6-0140/2005), which led to the earlier mentioned Resolution on this matter of the European Parliament. In her reaction she pleads for a monitoring system for minority rights protection, and asks for a minority policy based on the principles of subsidiarity and self-governance.

During the EP debate on ‘Non-discrimination and equal opportunities for all’ of June 2006, Bauer commented with a statement that the prohibition of discrimination of national minorities is not enough; new legal instruments are required. She proposed to end ‘the unacceptable policy of double standards, because while the Copenhagen criteria regarding compliance with minority rights are applicable to candidate states, Member States do not have internal laws in this respect.’³⁵⁷ In May 2007 during the ‘One-minute speeches on matters of political importance’ in the EP, Bauer spoke about the earlier mentioned case of Hedviga Malinová.³⁵⁸

Bauer has posed a written question to the Commission in October 2008 on: ‘Worsening situation of a traditional ethnic minority in Slovakia’ (P-5663/08).³⁵⁹ In this question, she asks for an investigation by the Commission regarding the respect for basic human rights in Slovakia, regarding the misuse of EU funds by excluding the Hungarian minority, and regarding discrimination of the Hungarian ethnic minority, especially related to bans on Hungarian language use in education and textbooks. An answer from Commission is not available yet.

Although Bauer displays activity concerning the Hungarian minority in Slovakia, it remains difficult to determine what the outcome of this action is.

Árpád Duka Zólyomi, within his position of MEP, is a member of the Subcommittee on Human Rights; vice-chairman of a number of delegations; and member of the Intergroup for Traditional National Minorities. In September 2006 he gave a One-minute speech on the situation of physical violence towards Hungarian ethnics in Slovakia, clearly referring to the Hedviga Malinová case, and asked EU institutions ‘to pay closer attention to current events in Member States’, and respond and act immediately against ‘disorder and lawlessness’³⁶⁰. In October 2006 he reported³⁶¹ on attacks on Hungarians in Romania and Slovakia during the memorials of the Hungarian Revolution of 1956, then 50 years ago. And in July 2007, Zólyomi demanded attention for the decreasing concern of the Slovak Fico-government with minority issues, even though Slovakia already acceded to the EU, fulfilling the Copenhagen Criteria on minority protection fairly well, and promising to at least preserve the status quo regarding the rights of the Hungarian minority.³⁶² In September 2008, he discussed the ethnic

³⁵⁵ Source: www.politics.hu , www.szabadsag.hu , www.spectator.sk

³⁵⁶ Source: www.editbauer.sk

³⁵⁷ Source: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20060613+ITEM-020+DOC+XML+V0//EN&language=EN&query=INTERV&detail=2-357>

³⁵⁸ [P6_CRE(2007)05-21], one-minute speech in EP by Edit Bauer, EPP-ED, 21 May 2007, Strassbourg

³⁵⁹ [P-5663/08], ‘Worsening situation of a traditional ethnic minority in Slovakia’

³⁶⁰ [P6_CRE(2006)09-04]

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20060904+ITEM-017+DOC+XML+V0//EN&language=EN&query=INTERV&detail=1-057>

³⁶¹ [P6_CRE(2006)10-23]

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20061023+ITEM-015+DOC+XML+V0//EN&language=EN&query=INTERV&detail=1-074>

³⁶² [P6_CRE(2007)07-09]

tensions in Slovakia in his One-minute speech in the EP, and reported that ‘neither the prime minister nor the representatives of the coalition parties are protesting about these anti-Hungarian, racist and xenophobic displays’³⁶³. Effects of these questions and speeches are, again, hard to determine.

The Hungarian-Slovakian MEPs Bauer and Zólyomi seem to be actively involved in the defence of the rights of Hungarians in Slovakia, but on a slightly smaller scale than the Hungarian MEPs from Romania.

Interestingly, in March 2008, Zólyomi participated in posing the written question to the Commission: ‘Subject: European Year of Intercultural Dialogue in Romania?’ The question was (com)posed by Péter Olajos (PPE-DE), Árpád Duka-Zólyomi (PPE-DE), Kinga Gál (PPE-DE), Csaba Sógor (PPE-DE) and László Tóké (NI). Looking at the composition of the group of MEPs who posed the question, it is clear that two ‘new’ ethnic Hungarian MEPs from Romania have joined forces with Zólyomi, and two Hungarian MEPs joined in as well. Hopefully this indicates a new situation, in which the Hungarian minorities in EU member states are represented more effectively and with joined forces.

Sógor proves to be quite effective in keeping the EP up to date on matters concerning the Hungarian minority in Romania and questioning the Commission on related policy. And Winkler also seems very active in the field of involving minority representatives in the policy making process of the EU on minority issues.

As mentioned earlier, Tóké seems very active in posing EP-questions and organising meetings between representative bodies of Hungarian minorities. Next to that, events like his rejection by the EPP-ED and his clash with MEP Niculescu, combined with his solid, sometimes provocative statements on many subjects, regularly put his activities in the centre of attention. This both positive as well as negative publicity of Tóké actions mainly, shows his strength in advocating the rights of the Hungarian minority. He provokes actively to create new opportunities where he can repeat the message. In the ends this does contribute to the attention given to the issue of Hungarian minority rights in Romania.

Recapitulation

This chapter has shown that although minority protection was included in the Copenhagen Criteria, the monitoring of actual improvements to minority rights in Romania was not an EU priority. Romania became a member of the European Union on January 1, 2007. Since that time, several domestic events have affected the status of the Hungarian minority, namely changes of electoral district borders, the local elections of June 2008 and the Parliamentary elections of last November.

The Hungarians from Romania have managed to be represented in the European Parliament by three MEPs, who show considerable activity regarding their mandate towards their voters. Especially compared to the Hungarian MEPs from Slovakia, Tóké, Sógor and Winkler stand out in respect to their visibility in the European Parliament. Their oral and written questions and their support to the lobby for multi-lingualism as a European policy seem to strengthen the Hungarian minority case. A European Framework for National Minorities has even been proposed in November 2008, which might ultimately lead to more direct communication between the European Union and its minorities.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20070709+ITEM-014+DOC+XML+V0//EN&language=EN&query=INTERV&detail=1-027>

³⁶³ [P6_CRE(2008)09-22]

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20080922+ITEM-018+DOC+XML+V0//EN&language=EN&query=INTERV&detail=1-050>

Conclusion

In Chapter 1, the historical context of the Hungarian-Romanian relations was analysed which showed that this context has affected the status of the Hungarian minority throughout the 20th and 21st centuries (undoubtedly up to the point of EU accession, but most probably beyond that moment as well). The main factors that have influenced this relation are territorial disputes, diplomatic discord between the two 'mother countries', and conflicting ethnic-historical mythologies. Despite of the influence of these historically defined perspectives, the starting point for EU accession was a growing Romanian domestic balance in economics, in politics, as well as growing minority acceptance.

The arrival of the Hungarians between the 9th and the 11th centuries AD in the Transylvanian region changed their way of living from a nomadic to a sedentary way of life, and led to a conversion to Christianity in the year 1000, guided by their King István. The Hungarian empire (including Transylvania) was consolidated in the following ages, and the Hungarian nobility ruled by means of landlordism, in cooperation with the other *nationes* and classes. After the battle of Mohacs (1526), the Kingdom was occupied by the Ottomans for over a hundred years, and eventually came under Habsburg rule. Due to the impact of nationalist ideas of state formation, an ethnic divide between Hungarians and Romanians came into existence during the 18th century that had not existed before. After World War I Transylvania was assigned to Romania, a gesture through which the entire Hungarian population of Transylvania was suddenly transformed into a large Hungarian minority within the new Romanian state. During the communist era, the Hungarian minority became the focal point of policies that aimed at homogenizing the population of Romania. They were often expropriated, forced to assimilate, put in labour camps or even deported, and numerous discriminatory laws were adopted to undermine their community; as a result their number shrank significantly. The strong historical connection of Hungarians was also undermined by newly invented theories that linked the Romanian population to the Transylvanian region before the arrival of the Hungarians, and caused a deepening of the ethnic conflict between the two populations. When Ceausescu's regime was toppled in 1989, a new period started for the Hungarian minority. Although initially the Hungarian minority was guaranteed a number of rights, daily practice seemed difficult due to a rise in ethnic tension during the early nineties.

The second half of the nineties introduced a gradual change and opportunities for Hungarian language education were even provided. Economically, the entire country had difficulties adjusting to the new system and the mainly Hungarian inhabited areas were slightly ignored by Bucharest. Participation of the political minority party DAHR (representing the Hungarians in Romania) in the ruling coalition in government had a positive influence on the inclusion of the Hungarian minority in society. However, secessionist ideas of part of the Hungarians caused an increase in ethnic tensions and re-intensified Romanian nationalist policies, especially in the historically Hungarian town of Kolossvár (Cluj). In the meantime, bilateral agreements between Romania and Hungary were signed in 1996 and 2001; the former being quite successful but the latter leading to more complications and being abandoned within a year. EU-accession became the point of attention for all Romanian citizens, and the monitoring mechanisms provided by the Copenhagen Criteria -which involved protection of national minorities- improved both the social and political climate for the Hungarian minority as well. Romania became a member state of the European Union on January 1, 2007.

In Chapter 2 it was made clear how international and European human rights agreements have begun to turn towards a more inclusive comprehension of minority rights. Also, the recent shift of attention in European Union policy on minority issues is described; showing that an increased willingness to acknowledge rights for minorities - that are based on collective rather than individual needs - is emerging in Europe.

The concept of minority rights has entered the international stage since WWI, when the League of Nations was established and especially since the creation of the United Nations, its Human Rights Council and the Universal Declaration on Human Rights. During the sixties, several covenants were adopted that provided guarantees for individual rights, including for persons belonging to minorities,

but the practical implementation of these rights was not thoroughly monitored. Since the early 1990s, an increased focus on minority rights developed due to the wars in former Yugoslavia that involved severe ethnic conflict. On the European level this resulted in the realisation of the need for stable democracies by securing threatening factors such as conflict between ethnicities. The idea of cultural and ethnic diversity was included in most European treaties and conventions that were adopted since the nineties, but the concerned provisions aimed at protecting individuals, instead of groups or communities. A number of agreements were made regarding minority languages and other linguistic matters, but these charters strived for the protection of languages, and not individuals or groups. But overall, minority rights have evolved from being vague political promises to legally binding commitments. Still, monitoring and practical implementation of these rights remains difficult as European terminology and policy regarding the rights of minorities is quite inconsistent. Since 2000, new ideas have been proposed in the context of the European Union that aim at developing a pan-European minority policy. Vertical connections between European and regional governments, thus bypassing central authorities of member states, is a much heard line of thought and might provide a partial solution to the situation in Romania.

In Chapter 3, the current Romanian framework of minority rights has been outlined, which showed that a basis for minority protection is there, but that it still includes certain provisions and formulations that legally restrict the rights of the Hungarian minority. Also, theory deviates from daily practice. Regarding the framework of minority rights in Romania, the first document to review is the Romanian Constitution. Although amended in 2003, it still contains several formulations that are certainly not unambiguous, and sometimes even intrinsically discriminating towards the Hungarian minority. The concept of Romania as a 'unitary nation-state' in its first article has often been criticised as not acknowledging the country's multi-cultural but above all multi-ethnic character and history, leaving little room for full freedom of expression of one's ethnic identity. The additional legislative framework shows two points of friction: the Anti-Discrimination law and the still to be adopted Draft Law on National Minorities in Romania. The former is a common law with an uncommon addition, which undermines special measures for minorities by denouncing these as positive discrimination. The latter is a guarantee for elaborate collective minority rights in Romania, but its adoption and subsequent implementation is postponed again and again.

When looking at political, socio-economical, cultural and linguistic rights specifically, a number of rights catch the eye because the practice of these rights turns out to be different than the intended level of protection they should provide. Political representation on both national as local level is guaranteed, but at the same time restricted by means of numerical thresholds that in many cases prove too difficult to achieve. Social services and health care are known to depend on financial corruption and to discriminate on ethnic grounds. Properties that were seized during the communist regime but originally belonged to members or communities of the Hungarian minority are the subjects of a remarkably slow process of restitution. Additionally, the actual regaining and putting to use of the reclaimed properties is not managed by the authorities and is often undermined by previous owners refusing to leave or by (consciously) negligent local officials.

In the cultural field, freedom of expression is partially limited because of the incrimination of ideas on territorial separatism, which is a serious subject to many Hungarians in Romania. Church communities suffer from the same lack of progress in the property restitution process. Use of the Hungarian language is allowed in localities where the Hungarian population exceeds 20%, but the reason why this percentage was chosen remains unclear and unfair, as the total Hungarian population of Romania constitutes only 6.6%; even in the entire Transylvanian region its share (19.6%) remains below the chosen percentage. Additionally, the Hungarian language has still not been recognized as an official language of the Romanian state. Also, the use of bilingual signs proves to be depending on the willingness of local officials. Education is the field in which Hungarian organisations have managed to increase their influence and improve the general situation for Hungarian speaking individuals. The creation of state-funded Hungarian higher education is still far away, but the establishment and accreditation of two private funded Hungarian-language universities is a large step in the right direction.

Developments like these are still lacking in quality and quantity, but some matters are noticed in the international scene. Both the UN as the EU show some awareness regarding the current status of the Hungarian minority and sometimes send a list of recommendations that might need to be implemented. This monitoring process remains rather unconditional, which does not stimulate further progression and leaves many minority provisions unfinished halfway. On a national level, monitoring is performed by several state institutions, but these often lack in authority or legal power. The Department of Interethnic Relations however seems to be an exception and shows activities in several fields.

In Chapter 4 it was demonstrated how the European stage starts to play an important role in society. Minority rights were actually considered to be sufficiently guaranteed in Romania in 2006, when the final report towards accession was published. Romania had fulfilled the political demands, which included the respect for and protection of minorities. Other conditions such as the elimination of corruption and the stabilization of the judiciary were not met yet, but were estimated to be properly accomplished soon after EU accession, with help of an additional monitoring mechanism. But the reports of 2008 still show the existence of corruption within local authorities, which also affects the implementation of minority provisions that need to be done on the local level. The change of borders of electoral districts is another example of a threat to the rights of the Hungarian minority, as the rearrangement caused a proportional redistribution of the Hungarian votes, which could lead to under representation. However, in the Parliamentary elections of November 30, 2008; the DAHR managed to pass the electoral threshold and gain 6.2% of the votes; resulting in 22 seats in the Romanian Chamber of Deputies and 9 seats in the Senate.

On the European level, the Hungarians of Romania are represented by three MEPs; independent László Tőkés and two representatives of the DAHR: Csaba Sógor and Gyula Winkler. All three show to be concerned with the needs of their voters and display considerable activity in promoting the idea of collective minority rights on a European level. The Slovakian MEPs Edith Bauer and Árpád Duka Zólyomi that represent the Hungarian minority of Slovakia are also actively involved with the hopes of 'their' Hungarians and throw light on recent events in Slovakia. But they seem glad to receive supported from the Hungarian MEPs from Romania, and in particular by the distinctiveness of Tőkés. Although he attracts both positive and negative attention, his actions are noticed in the broader European context, which in the end might lead to positive results.

Overall, one could say that the Hungarian minority in Romania has been functioning reasonably well during the last decade. The hysteric anti-Hungarian sentiments that surfaced almost daily during the early nineties have softened, Hungarian schools and universities have opened, Hungarian churches have regained property, instruction in the mother tongue is given at all levels, limited local autonomy is allowed in the regions where they form the majority, and the Hungarian minority has a say in the European Parliament. The economic progress has kept both Romanians as Hungarians busy, shifting the focus of attention away from ethnicity. Also, the perspective of European accession has caused rectification of a certain amount of discriminatory legislation, and accession has put pressure on reforming the judicial and administrative branches through the EU Mechanism for Cooperation and Verification.

This leads us back to the research question: *'To what extent has the accession of Romania to the European Union in 2007 influenced the status of the Hungarian minority in Romania?'*

The expectation was that the need to comply with the Copenhagen Criterium of minority protection and the pressure provided by the EU monitoring mechanisms would created sufficient incentive for Romania to significantly³⁶⁴ improve the rights of its minorities, in particular for the Hungarian minority.

The outcome of this research however shows that a significant improvement of the rights of the Hungarian minority has not taken place.

³⁶⁴ 'Significant' is interpreted in this context as mainly referring to a large number of legal adaptations to the rights of the Hungarian minority, uncurtailed possibilities for Hungarian language education and visible social equality in the Romanian society.

Currently, political, cultural and linguistic rights for individual members of the Hungarian minority exist, but rights that can be appealed on by the collective of Hungarians in Romania are not provided. The individual rights that do exist are still limited; the following factors can be described as negative examples. Instruction in the mother tongue is indeed given at all levels, but not everywhere. Church and other cultural property has been regained by the Hungarian minority, but the process is very slow, relatively few cases are taken into official consideration, and even fewer cases are carried through properly. Local autonomy for the Székler region still cannot be discussed openly; according to the Constitution such considerations are actually illegal. The linguistic provisions seem to be difficult to implement in daily life and in communication with local authorities; the use of the Hungarian language is still not perceived as a daily regularity, and still causes annoyance with Romanians. Yet the dialogue between the Hungarians and Romanians has normalised but has, on the other hand, not increased significantly. It seems that the Hungarian minority forms a society within Romanian society, which might magnify perceived differences between the two ethnicities.

On the other hand, the following factors can be described as positive examples. The international framework regarding minority rights has significantly improved, and the concept of collective minority rights has been introduced in several charters. On a European scale, EU accession of Romania has improved the general political climate in the country, which has clearly empowered the Hungarian minority and has created a more stable foundation of minority protection in Romania. Individual persons belonging to Hungarian minority in Romania are currently entitled to specific rights that aim at protecting their ethnic culture and supporting their status. Still, one of the problems is that these rights are difficult to call upon in daily practice, as bureaucracy and corruption in local governments still severely hamper the implementation of these rights. The other problem is that these rights cannot be extended to the benefit of the whole community, as collective minority rights in Romania are not provided. This refers back to the title of this thesis: officially, individuals belonging to the Hungarian minority are 'free'; the Romanian legislative system provides opportunities and measures that protect the interests of persons of Hungarian ethnicity. But the Hungarian minority as a community remains curtailed in its usage of political, linguistic and cultural rights, as collective rights for minorities are not guaranteed in Romania.

That, which *has* significantly improved since Romania's accession to the European Union, is not so much the legal status of the Hungarian minority, but the Romanian socio-political climate. The Hungarian minority is less considered a burden to the Romanian majority, and has instead become more appreciated as a constituent and economically viable part of Romanian society. As a result, during the last 3 to 4 years, more political parties have been able to form, higher education in the Hungarian language has greatly increased, countless Hungarian books are being published and Hungarian civil organisations in Romania are growing even stronger than after the 1989 revolution. This might indeed indicate that a new acceptance of Hungarians as a positive part of Romania is growing, but also that a sense of Hungarian history is being restored; and that the Hungarian Transylvanian collective memory is being processed and rebuilt and is receiving a place in history.

The provocative idea of territorial autonomy of Transylvania as pursued by the Hungarian Civic Party and the Hungarian National Council of Transylvania is still focused on historic claims and is very unlikely to be achieved within the Romanian legal and political framework. The options that seem more realizable are cultural autonomy and regional self-governance.

Cultural autonomy is strived for by the DAHR and might win broader support due to a possible increase in European monitoring of minority rights and intensified international interference. The concept of regional self-governance might also be achievable in the context of a European policy on minority rights. But the most practical solution within the Romanian legal and political framework is the introduction of bilingualism in the region of Transylvania (or at least in the 5 most Hungarian districts). Instead of constantly being an exception to the rule; bilingualism would become the rule.

On the political level, every now and then the Hungarian minority still seems to be seen as an inconvenient element of society, which is related to the persistent emphasis in Romania on the idea of national unity. But the concept of the nation state in the traditional sense of a homogeneous nation state might be growing out of date. The nation state in a more modern sense of a federal multinational state however, could open new doors to the formal recognition of minorities within states, where even the institutional and practical consequences of this recognition are acknowledged as well. Especially in the European context, multinational and/or supranational authorities are new models of political organization that continue to win support and legitimacy.

On the short term, what could affect and possibly improve the status of the Hungarian minority in Romania is political, financial and linguistic lobbying in Brussels; more effective monitoring of the Framework Convention for Regional or Minority Languages (as the Hungarian language in Romanian is both a regional as a minority language); and international criticism that does address specific 'personal' comment to the Romanian government and enforces consequences.

On the longer term, creating a situation in which a standard protection of the Hungarian minority is guaranteed from a governmental level, for example by means of the recognition of Transylvania as a bilingual region, might provide at least part of the acknowledgment that the Hungarians in Romania have been looking for since 1920.

The current situation is that every right still has to be fetched in individual cases, which undermines the legal status of the Hungarian minority in Romania; and this has not changed significantly since Romania's accession to the European Union. However, the climate of Romanian society has improved, which opens the door to a broader acceptance of the Hungarian minority, and perhaps to the adoption of the fiercely debated Draft Statute for National Minorities in Romania by the new Parliament. In the meantime, official bilingualism of Transylvania and utilization of the European Parliamentary stage might be the two most important paths that need to be followed at the same time, in order to create a stable framework of minority protection in Romania and Europe.

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Annexes

Annex I - Transylvanian borders and demography (in separate file)

Annex II – Hungarian organizations and institutions in Romania

Annex III - Parliamentary elections of November 2008

ANNEX I - Transylvanian borders and demography

Map 1: The Romanian Old Kingdom at the end of the 19th century bordered the southern and eastern part of Transylvania, separated mainly by the Carpathians Mountain Chain. Source: Völkl, 'Rumäniën – Vom 19. Jahrhundert bis in die Gegenwart', Verlag Pustet, Regensburg, 1995, p 44

Map 2: The Austrian-Hungarian Empire on the other hand stretched far beyond the current borders of Austria and Hungary, including Transylvania in the eastern part. Source: www.donaumonarchie.com

Map 1

Das "Altreich" am Ende des 19. Jhs.



Map 2

Map 2



Map 3: “Transylvania in Twentieth-Century Romania”; this map clarifies the war over Transylvanian territory during WW I and II.

Source: Brubaker, ‘Nationalist Politics & Everyday Ethnicity in a Transylvanian Town’, Princeton, 2006, p 77



Map 6. Transylvania in Twentieth-Century Romania

Map 4: “Hungary and Romania in Twentieth Century”; this map provides an overview of the territorial exchange of Transylvania and other territories on the Pannonian Plain.

Source: Brubaker, ‘Nationalist Politics & Everyday Ethnicity in a Transylvanian Town’, Princeton, 2006, p 69



Map 5. Hungary and Romania in the Twentieth Century

Tables 1 and 2: these tables indicate the populations of respectively Romania and Transylvania in 1992.

Table 5.43

Ethnic Structure of Romania in 1992

Ethnic group	Population	
	N	%
Romanians	20,408,500	89.5
Hungarians	1,624,900	7.1
Gypsies	401,000	1.8
Germans	119,500	0.5
Ukrainians	65,800	0.3
Russians	38,600	0.2
Serbs	29,400	0.1
Slovaks	19,600	0.1
Bulgarians	9,900	0.1
Jews	9,000	0.0
Czechs	5,800	0.0
Poles	4,200	0.0
Croats	4,100	0.0
Others	69,700	0.3
Total	22,810,000	100.0

Source: *Recensământul populației . . . (1993).*

Source: Eberhardt, P., 'Ethnic groups and population changes in twentieth-century Central-Eastern Europe : history, data, and analysis', Armonk, New York, 2003, p 321

Table 5.45

Ethnic Structure of Transylvania in 1992

Ethnic group	Population	
	N	%
Romanians	5,684,100	73.6
Hungarians	1,603,900	20.8
Gypsies	202,700	2.6
Germans	109,000	1.4
Ukrainians	50,400	0.6
Serbs	27,200	0.4
Others	46,000	0.6
Total	7,723,300	100.0

Source: Varga (1999), p. 60.

Source: Eberhardt, P., 'Ethnic groups and population changes in twentieth-century Central-Eastern Europe : history, data, and analysis', Armonk, New York, 2003, p 323

Table 3: Ethnic distribution of Romania according to the 2002 census

Excerpt from Census of Population and Dwellings, March 18-27, 2002, Romanian National Institute for Statistics,

Table 16: Population by ethnic groups, regions, counties and areas;

Source: <http://www.insse.ro/cms/rw/pages/rpl2002.en.do>

POPULATION TOTAL	E T H N I C									
	Roma- nians	Hunga- rians	Gypsies	Ukrai- nians	Germans	Russians- Lipovenians	Turks	Tar- tars	Ser- bians	Slova- kians
1	2	3	4	5	6	7	8	9	10	11
21680974	19399597	1431807	535140	61098	59764	35791	32098	23935	22561	17226

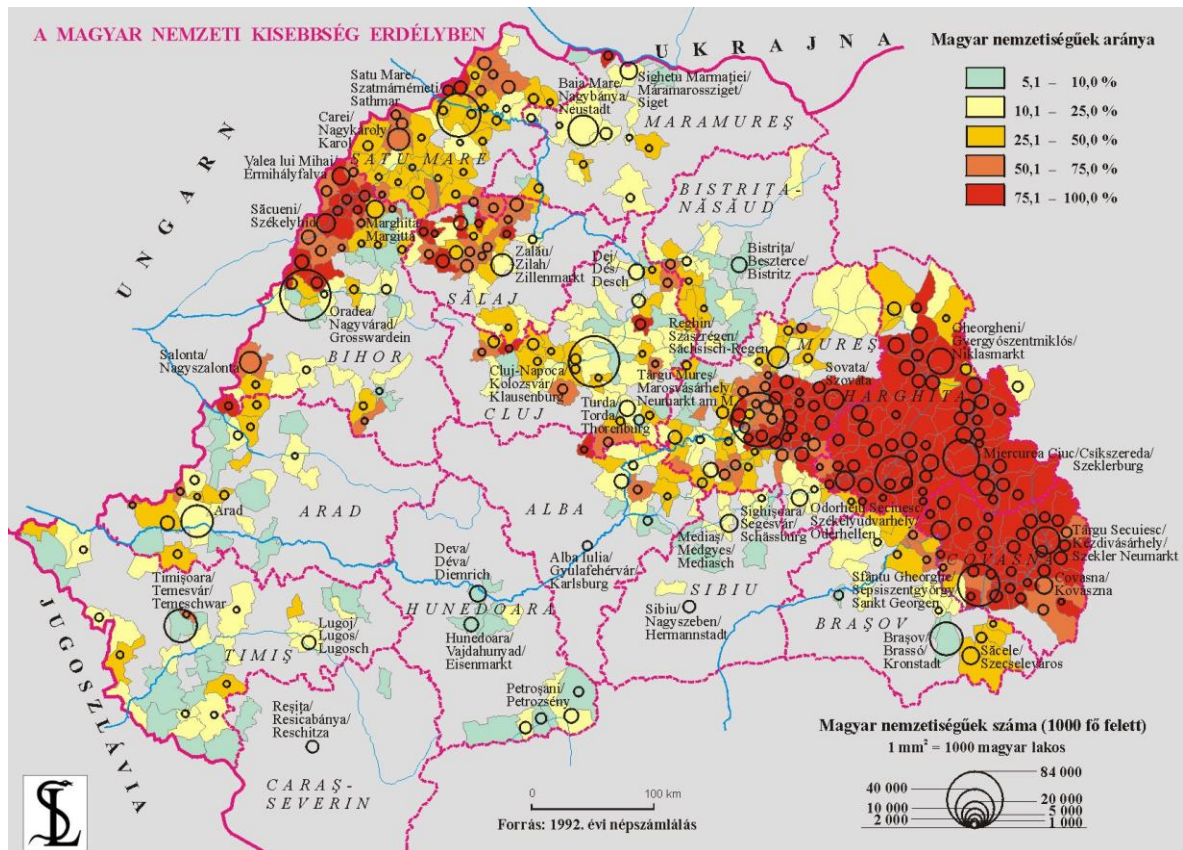
G R O U P											
Bulga- rians	Croats	Greeks	Jews	Czechs	Poles	Italians	Chinese	Arme- nians	Csan- gas	Others	Not stated
12	13	14	15	16	17	18	19	20	21	22	23
8025	6807	6472	5785	3941	3559	3288	2243	1780	1266	16850	1941

Source: <http://sebok1.adatbank.transindex.ro/legbelso.php3?nev=retnikai>



Map 6: Distribution of the Hungarian national minority in Transylvania, based on 1992 census.

Source: <http://sebok1.adatbank.transindex.ro/legbelso.php3?nev=Erdmag92a>



‘Figure 16’



Figure 16. The Roman province of Dacia in the 2nd century represented on a map by Heinrich Petris published in Geographia universalis, Basileae (Bale) 1545 according to Claudius Ptolemaeus

‘Figure 17’

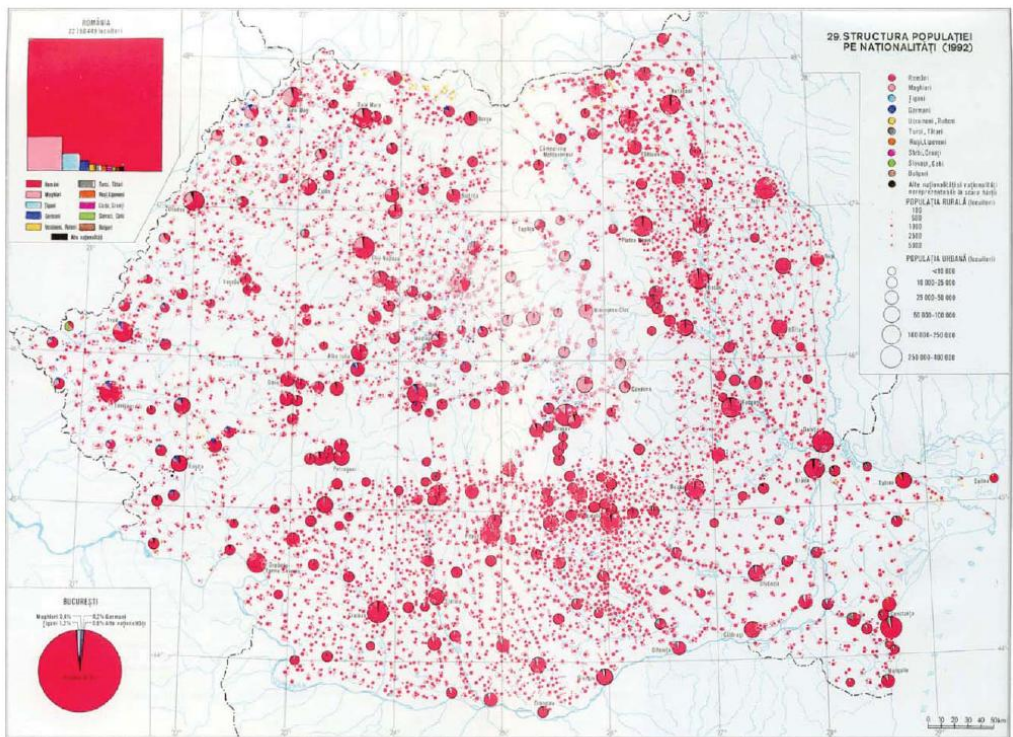


Figure 17. Population structure by nationality 1992. Romanians are indicated by red dots and circle sectors, Hungarians by pink dots and circle sectors. Hungarian majorities occur in the counties of Harghita and Covasna near the country's centre

Maps from document 'Romania — Historical-Geographical Atlas', produced in 1996, by the Romanian Academy of Sciences.

"This not very voluminous atlas has been published by the Romanian Academy of Sciences and can be understood as a kind of post-Communist update and amendment to the large Atlas of Romania, published by the same academy in 1970. The new atlas re-adjusts the country's position in the new post-Communist scene, but very much so by underlining traditional Romanian views.

Most maps are rather conventional. Exceptional in respect to identity is the extensive historical section which traces the history of the nation and of the nation state back to Roman times, i.e. to the Roman province of Dacia, where the Romanian nation is said to having been shaped by the intermarriage of Dacians and Roman soldiers (Figure 16).

This national historiography, which stems from the 18th and 19th centuries, when the idea of a Romanian nation was born, was obviously considered necessary to be supported and propagated again in the new political environment of redefined post-Communist nation states.

Another map of this atlas (Figure 17) is not so unconventional because of its topic, but because of the cartographic method used. The topic of ethnic structure can of course be found in many national atlases. In the Romanian atlas ethnic structure is portrayed according to the figures of the 1992 population census and the dot method is applied. But it is applied in such a way that the largest ethnic minority in Romania, the Hungarians, with at that time a population of 1.6 million, is attributed almost the same colour as the Romanians. For the map reader it is extremely difficult to distinguish between Hungarians and Romanians. Anyway it is impossible to outline at one glance the spatial distribution of Hungarians in Romania.

A cartographic method applied in this way must be regarded as indicative for the nation state idea which was still flourishing in Romania when this atlas was drafted and published (1996). In the meantime things have improved."

Source: Jordan, P.; 'National and Regional Atlases as an Expression of National/Regional Identities: New Examples from Post-Communist Europe',

The Cartographic Journal, Vol. 41 No. 2 pp. 150–166, IGC Special Issue 2004, © The British Cartographic Society 2004 (page 161-166).

Table 4

Results of the 2007 European and 2004 Parliamentary elections in Romania

Political formations	European election 2007			National election 2004	
	Votes	Votes (%)	MEPs (EP grouping)	Votes	Votes (%)
Democratic Party (PD) ^a	1,476,105	28.8	13 (EPP–ED)		
Social Democratic Party (PSD) ^a	1,184,018	23.1	10 (PES)		
National Liberal Party (PNL) ^a	688,859	13.4	6 (ALDE)		
Liberal Democratic Party (PLD) ^a	398,901	7.8	3 (Ind.)		
Democratic Alliance of Hungarians in Romania (UDMR)	282,929	5.6	2 (EPP–ED)	628,125	6.2
Ladislau (László) Tökés, Independent	176,533	3.4	1 (Ind.)		
New Generation Party Christian Democrats (PNG)	248,863	4.8	0	227,443	2.2
Greater Romania Party (PRM)	212,596	4.2	0	1,316,751	13.0
Conservative Party ^a	150,385	2.9			
Christian Democratic National Peasants' Party (PNTCD)	71,001	1.4	0	188,268	1.9
National Union Alliance (PSD and PUR, renamed PC) ^b				3,730,352	36.8
Justice and Truth Alliance (PD and PNL) ^b				3,191,546	31.5
Others ^c	107,207	2.1	0	853,975	8.4
Total valid votes	5,122,226	100.0		10,188,106	100.0
Invalid votes	246,555			599,641	
Total votes	5,370,171			10,794,653	
Registered voters (turnout)	18,224,597 (29.5%)			18,449,344 (58.5%)	

Source: Biroul Electoral Central (see http://www.bec2007pe.ro/documente/REZULT_27_11_2007_ORA13.pdf)

a Party did not stand in 2004 or stood as part of a coalition.

b Coalition did not stand in 2007.

c National Initiative Party (2.43%), Roma Pro-Europa Party (1.14%), Socialist Alliance Party (0.55%), and Green Party (0.38%).

The data show that (...) considerable rebalancing of party strengths has occurred, and that the European elections represent an instance of change in the configuration of political competition and individual party development. (...) Opposition parties won the European elections: PD in Romania (...). As well as a shift away from governing parties, there were also changes in the balance of power between established and new parties, and between mainstream and fringe parties.³⁶⁵

³⁶⁵ Stefanova, B., 'The 2007 European elections in Bulgaria and Romania', in: *Notes on Recent Elections / Electoral Studies* 27 (2008) 566–571, p 569; Department of Political Science and Geography, The University of Texas at San Antonio, One UTSA Circle, San Antonio, TX 78249-0655, USA
http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V9P-4S7HS6G-1&_user=1299405&_coverDate=09%2F30%2F2008&_rdoc=1&_fmt=full&_orig=search&_cdi=5904&_sort=d&_docanchor=&_view=c&_acct=C000024218&_version=1&_urlVersion=0&_userid=1299405&md5=3d2bc126c7b130a839f857f3ef8679fc#sec3

ANNEX II - Hungarian organizations and institutions in Romania

First, a two page general overview is listed; on pages 3 to 6 the most important governmental institutions of Romania concerning the Hungarian minority are profiled.

Governmental

- Department for Inter-Ethnic Relations (DIR) within the Ministry of Public Information
- Council of National Minorities (CNM)
- Advocate of the People (AvP)
- National Council for Combating Discrimination (NCCD)
- Committee on Human Rights, Cults, and the Problems of National Minorities
- Ministry of Culture and Religious Affairs
- Ministry of Education, Research and Youth

Political

- Democratic Alliance of Hungarians in Romania
- Hungarian Civic Party (Magyar Polgári Párt)
- Hungarian National Council of Transylvania
- Székler National Council (Székely Nemzeti Tanács, CNS)

Minority/Human Rights organisations:

- Centre for Human Rights – Romanian Helsinki Committee (APADOR)
- Romanian Institute for Human Rights (IRDO)
- League for the Protection of Human Rights, Cluj branch (www.ladocluj.org)

Research Institutes

- The Romanian Institute for Research on National Minorities (RIRNM, Cluj-Napoca)
- Ethnocultural Diversity Resource Center (EDRC, Cluj-Napoca)
- Research Centre on Interethnic Relations in Transylvania (CCRIT, Cluj-Napoca)

Other NGO's

- Soros Foundation Romania (Open Society Institute)
- Intercultural Institute of Timisoara (IIT)
- Divers.ro
- Pro-Europa League

Cross Border organisations

- Hungarian Autonomy Council in Carpathian Basin (est. 2004)
- Council of Hungarians in the Carpathian Basin

Foreign organisations

- Government Office for Hungarian Minorities Abroad, Budapest, Hungary
- Hungarian Human Rights Foundation (HHRF), New York, USA
- Hungarian American Coalition (www.hacusa.org)
- American Hungarian Federation (www.americanhungarianfederation.org)

Civil Society

Cultural institutes

- Association for Hungarian Culture in Transylvania (EMKE)
- Transylvanian Museum Association (EME)
- Intercultural Institute of Timisoara (IIT)
- Transylvanian Federation for the Fostering of the Native Language
- Lajos Kelemen Society for the Protection of Historic Monuments

Educational associations

- Association for Hungarian Public Education in Transylvania
- Kelemen Mikes Association for Public Education
- Sándor Körösi Csoma Association for Public Education
- Bolyai Society

Occupational associations

- Association of Hungarian Journalists in Romania (www.mure.ro)
- Association of Hungarian Teachers in Romania (www.rmpsz.ro)
- National Hungarian Student Association (www.omdsz.ro)
- Miklos Barabas Guild (an independent interest group of Hungarian artists in Romania)

Youth organisations

- Hungarian Youth Conference (MIRT)
- Hungarian Youth Council (MIT)
- Association of Hungarian Youth Organizations (MISZSZ)

Newspapers (description in Chapter 3)

- Szabadság (Freedom)
- Új magyar szó (New Hungarian Word)
- Népszerűség (Popular Newspaper)

TV channels (description in Chapter 3)

- Romanian TVR Cultural
- Hungarian satellite DUNA TV
- Hungarian channels MTV1 and MTV2

Governmental institutions

- the **Department for Inter-Ethnic Relations (DIR)** within the Ministry of Public Information
- the **Council of National Minorities (CNM)**
- the **Advocate of the People (AvP)**
- the **National Council for Combating Discrimination (NCCD)**
- the **Committee on Human Rights, Cults, and the Problems of National Minorities**
- the **Ministry of Culture and Religious Affairs**
- the **Ministry of Education, Research and Youth**

The main governmental institution seems to be the **Department for Inter-Ethnic Relations (DIR)** within the Ministry of Public Information.³⁶⁶ The DIR was created in 2001 as a specialized body of the central public administration within the Romanian Government. Its main task is to elaborate and propose strategies to the government for preserving, development and expression of the identities of individuals belonging to national minorities. The main aim of the DIR is therefore to develop a coherent policy on interethnic relations based on decentralization and partnerships with local authorities and civil society. It promotes specific programmes for the purpose of enhancing understanding and dialogue between the majority and the national minorities.³⁶⁷ It has six regional offices, through which it communicates and collaborates with local governments, county councils, and local NGOs. It also funds inter-ethnic projects and policies such as the National Development Plan; a current governmental programme that aims at the preservation and free development of ethnic identity for all citizens belonging to a national minority. The government also allocates annually a special budgetary fund for interethnic projects and programs for combating intolerance. Several awareness projects on Roma and Jewish problems, as well as on all other minorities, have been financed and supported through this mechanism.

The **Council of National Minorities (CNM)**³⁶⁸ is the second organisation that must be mentioned. Romania became an associate member of the European Community in February 1993. In order to implement the European Convention for the Protection of National Minorities of the Council of Europe, the government created a council to coordinate the implementation. Following Decision No. 17 of April 6, 1993, the Council for National Minorities was set up as an advisory body to the Romanian Government, and is not a legal entity on its own. The Council 'has competence (...) over the legislative, administrative and financial problems referring to the exercise of rights by persons belonging to national minorities on the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.'³⁶⁹ The Council was reorganized in 2001 to become a main partner for the Department for Inter-Ethnic Relations. It works under DIR's coordination and facilitates a permanent relation with the (legally constituted) organizations of persons belonging to national minorities as it is composed of three representatives of all national minority organizations represented in the Parliament.³⁷⁰ The CNM supports activities of ethnic organizations, makes suggestions to the government regarding the improvement of the social and cultural life of citizens belonging to ethnic minorities, and proposes measures that are meant to create favorable conditions for education in the language of national minorities.

The Council has been criticized by many parties to be 'the Illiescu's government showcase to the West'³⁷¹, as according to the DAHR it lacks the power to implement its decisions. The Council

³⁶⁶ www.dri.gov.ro

³⁶⁷ Report of the Working Group on the Universal Periodic Review – Romania, June 2008, A/HRC/8/49 http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/RO/A_HRC_8_49_Romania_E.pdf

³⁶⁸ www.dri.gov.ro/index.html?page=council_minorities

(Site through the website of DIR, the Council's part of the website is 'Under Construction'.)

³⁶⁹ Romanian Institute for Human Rights, "The Legislative and Institutional Framework for the National Minorities of Romania", Bucuresti, 1994, page x

³⁷⁰ UN HRC National Report on Romania, May 2008

³⁷¹ Csargo, Zs., 'Beyond Ethnic Division: Majority-minority Debate about the Postcommunist State in Romania and Slovakia', *East European Politics and Societies* 2002; 16; 1, page 23

approved decisions on issues such as bilingual signs and use of minority languages for Romanian history and geography, but the government failed to implement them due to pressure from nationalist groups. As a result, the representatives of the DAHR withdrew from the Council, claiming it lacked substantive progress and authority.

The 1997 Law on the Ombudsman established the institute of **Ombudsman or Advocate of the People (AvP)**³⁷² for the protection of rights and freedoms of citizens in relation to the authorities. The AvP is an autonomous institution, acting independently from any other public authority. Its tasks apply to all citizens and it makes no provisions which are exclusively related to minority issues. Its functioning was redefined under the provision of the new Constitution (Art. 58-60, and Art. 146 a and d).

The **National Council for Combating Discrimination (NCCD)**, was created in 2001 in combination with the Governmental Anti-Discrimination Ordinance. It serves as the 'main specialized body of the central public administration empowered to guarantee and supervise the implementation of the principle of equality and nondiscrimination among citizens.'³⁷³ The Council is an autonomous public institution, with legal personality, under parliamentary control. The Council is responsible for the enforcement and observance of anti-discrimination legislation. Recently, the National Council for Combating Discrimination designed a National Strategy for Implementing Measures on Preventing and Combating Discrimination (2007-2013), establishing guidelines in the field of preventing and combating discrimination, with the aim to develop a society which is inclusive, intercultural and based on policies facilitating interaction, equality, mutual understanding and respect. The Strategy was adopted by the Government during the first semester of the year 2008; the implementation still has commence.

The Romanian Parliament also has a Parliamentary **Committee on Human Rights, Cults, and the Problems of National Minorities**.³⁷⁴ The Committee's main activities concern: human rights and citizens' rights, the problems of minorities, freedom of conscience, the problem of religious cults, and freedom of expression other than press freedom. It examines and drafts legislative proposals which will be presented to the Chamber of Deputies, for example regarding the organisation of central and local public administration, as well as the rights of every community on the national territory and the national respect of human rights.

The **Ministry of Culture and Religious Affairs** also promotes inter-religious dialogue and supports activities aimed at inter-confessional dialogue.³⁷⁵ It has a specialised division for national minorities, supporting book and cultural magazine publishing in minority languages. The 2007 National Development Plan states that the Ministry of Culture and Religious Affairs is to establish specific programmes to support the cultural and linguistic identities and the diversity of expression, cultural activities and artistic practices of minorities groups.

The **Ministry of Education, Research and Youth** does have a specialised division for national minorities, but no governmental position concerning the role of education for the promotion of inter cultural diversity and the preparation of the individual for living in a multicultural/multi-ethnic society.³⁷⁶

³⁷² www.avp.ro

³⁷³ www.cncd.org.ro

³⁷⁴ http://www.ipu.org/parline-e/reports/instance/2_45.htm

³⁷⁵ www.cultura.ro

³⁷⁶ www.edu.ro

NGO's

Romanian Institute for Human Rights (IRDO)

Website: -

The Romanian Institute for Human Rights (RIHR) aims at furthering the rights protected under the Universal Declaration of Human Rights by carrying out research on: human rights norms within cultural systems and social organisations; the implementation of human rights in Romania and the democratisation process; and on economic, social and cultural rights and public opinion.

Centre for Human Rights – Romanian Helsinki Committee (APADOR)

Website: <http://www.apador.org>

The Centre for Human Rights – Romanian Helsinki Committee – APADOR has established a documentation centre in the field of human rights and minorities and publishes the Romanian Human Rights Quarterly. It has also developed as a research centre for interethnic relations, and is the main source of information in Romania for analyses regarding: general concepts relating to national minorities and their rights; the situation and position of minorities in Romania, especially that of the Hungarian minority; concepts relating to the state and international law in connection with the situation of minorities in the modern state.

The Centre works in collaboration with the Council for National Minorities of the Romanian Government; the Inter-Ethnic Foundation of the OSCE High Commissioner for National Minorities; the Council of Europe; the Centre for Human Rights in Geneva; organisations of minorities from Romania, especially the Democratic Alliance of Hungarians in Romania; and many analysts.³⁷⁷

Hungarian Human Rights Foundation (HHRF)

Website: <http://www.hhrf.org/hhrf>

The Hungarian Human Rights Foundation, initially Committee for Human Rights in Rumania, was formed in 1976 by young Hungarian-Americans to alert the public opinion and political leadership of the United States and other Western countries to the gross human rights violations against national minorities in Rumania. In 1984, the Foundation expanded its efforts to working on behalf of the 3.5 million ethnic Hungarians who live as minorities in Croatia, Serbia, Slovenia, Slovakia and Ukraine, as well as in Rumania, and who collectively comprise the largest national minority in Central Europe. (→ Journal of Minority Studies <http://www.hhrf.org/magyarkisebbseg/indexa.htm>)

Soros Foundation Romania (Open Society Institute)

Website: <http://www.osf.ro/en/index.php>

The Soros Foundation Romania supports activities focusing on EU accession, NGO development, interethnic relations, education, child protection, domestic and EU legal issues, public health, and economic development.

Main Research Centers

The Romanian Institute for Research on National Minorities (RIRNM, Cluj-Napoca)

(National Institute for the Study of National Minorities' Issues)

Website: <http://ispmn.gov.ro>

The RIRNM is a public entity under the authority of the Romanian Government that aims at the study and research of the preservation, development and expression of ethnic identity, as well as the study of social, historic, cultural, linguistic, religious aspects of national minorities and ethnic communities in Romania.

Ethnocultural Diversity Resource Center (EDRC, Cluj-Napoca)

(Part of Department for Inter-Ethnic Relations DIR, Ministry of Public Information)

Website: <http://www.edrc.ro/en/index.html>

³⁷⁷ <http://www.cemes.org/current/ethpub/ethnobar/romania/dir-Romania-2.htm>

According to the center's website, the EDRC is an independent non-governmental organization and is one of the successor institutions of the Open Society Foundation Romania, Cluj. Main objective of EDRC is to gradually provide a more favorable climate for the interethnic relations in Romania. It does so by "developing more pragmatic political programs targeting institutional solutions for accommodating ethnocultural difference; monitoring the interethnic climate and political arena (ethnobarometer, monitoring the press and law-enforcement); offering qualified information and analysis (reports, information bulletins); (...); counseling, instruction and training for communities, organizations and individuals involved in conflict mediation and advocacy regarding minority rights; (...); direct grant-making and re-granting activities for individuals, (...)." ³⁷⁸

Research Centre on Interethnic Relations in Transylvania (CCRIT, Cluj-Napoca)

Website: http://www.ccrit.ro/index_eng.htm

CCRIT is a research centre based at Babes-Bolyai University, Department of Sociology, not directly connected to the Romanian government. It runs research and educational programmes directed at civil society building. Projects include: setting up a Documentation Centre for Multiculturalism in Cluj; conflict prevention in local communities in Transylvania; comparative research on minority identity and interethnic relations in Central and East Europe in collaboration with UNESCO.³⁷⁸

Cultural Institutes

Association for Hungarian Culture in Transylvania (EMKE)

Website: - (<http://www.hhrf.org/htm/en/?menuid=0404>)

The foundation of the alternative Hungarian system of cultural institutions set up until 1995 is presently made up of several hundred associations, foundations and federations ranging from the preservation of culture to arts. Its infrastructural base is the Association for Hungarian Culture in Transylvania (EMKE) and its network of some 12 "Hungarian houses". The Association, which celebrated its 115th anniversary in 2000, holds together Hungarian cultural life in Transylvania, and functions as a network. Its self-organizing and institution-creating activities encompass the entire national community and aim at achieving cultural autonomy for the Hungarians in Romania.

Transylvanian Museum Association (EME)

Website: www.eme.ro

EME aims to be the preserver of the historical and universal values of Transylvania and to contribute to the development of the science in Transylvania. It seeks to play the role of an "academy of sciences" for Transylvania's Hungarians. Its activities encompass, along with the cultivation of Transylvania's Hungarian-language science and the organization of conferences and meetings, the publication of scientific periodicals.

Intercultural Institute of Timisoara (I.I.T., Temesvár)

Website: www.intercultural.ro

The IIT is a non-governmental institution pursuing the development of the intercultural dimension in the fields of education and culture and is actively involved in many of projects of the Council of Europe. Among its multiple activities there also figures cross-border cooperation, research, minorities and antidiscrimination issues and, as a priority, Roma community affairs (using multiple approaches in order to establish equal chances).

³⁷⁸ Centre for European Migration and Ethnic Studies, University of Sussex,
<http://www.cemes.org/current/ethpub/ethnobar/romania/dir-Romania-2.htm>

ANNEX III - Parliamentary elections of November 2008

Main parties and outcomes in the Romanian legislative elections of November 30, 2008:³⁷⁹

Social Democrat - Conservative Alliance

Party: **Conservative Party / Partidul Conservator (PC)***

Leader: Daniela POPA

Party: **Social Democratic Party / Partidul Social Democrat (PSD)****

Leader: Mircea Dan GEOANA

Seats won in 2004 parliamentary elections: Senate 55, Chamber of Deputies 124 (36.8%)

Seats won in November 30, 2008 elections: Senate 49, Chamber of Deputies 114 (33.9%)

Party: **Democratic Liberal Party / Partidul Democrat-Liberal (PD-L)******

Leader: Emil BOC

Seats won in 2004 parliamentary elections: Senate N/A, Chamber of Deputies N/A (-%)

Seats won in November 30, 2008 elections: Senate 51, Chamber of Deputies 115 (32.36%)

Party: **National Liberal Party / Partidul Național Liberal (PNL)*****

Leader: Calin Popescu-TARICEANU

Seats won in 2004 parliamentary elections: Senate 49, Chamber of Deputies 112 (-%)

Seats won in November 30, 2008 elections: Senate 28, Chamber of Deputies 65 (18.57%)

Party: **Democratic Union of Hungarians in Romania / Uniunea Democrată Maghiară din România (UDMR, DAHR, or RMDSz)**

Leader: Bela MARKO

Seats won in 2004 parliamentary elections: Senate 10, Chamber of Deputies 22 (6.2%)

Seats won in November 30, 2008 elections: Senate 9, Chamber of Deputies 22 (6.17%)

Party: **Greater Romania Party / Partidul România Mare (PRM)**

Leader: Corneliu Vadim TUDOR

Seats won in 2004 parliamentary elections: Senate 13, Chamber of Deputies 21 (13.0%)

Seats won in November 30, 2008 elections: Senate 0, Chamber of Deputies 0 (3.2%)

Party: **Others: *******

Leader: N/A

Seats won in 2004 parliamentary elections: Senate 0, Chamber of Deputies 18 (12.5%)

Seats won in November 30, 2008 elections: Senate 0, Chamber of Deputies 18

* Until 2005, the Conservative Party was known as the Humanist Party (PUR). In the 2004 elections PUR ran on a joint-ticket with the Social Democratic Party (PSD)

** The PSD ran in the 2004 election on a joint ticket with the Conservative Party (at the time known as the Humanist Party). Results reflect the votes and seats won by the ticket as a whole.

*** The National Liberal Party ran in the 2004 elections as a member of the Justice and Truth Alliance (DA) together with the now defunct Democratic Party (PD). The above results from 2004 reflect the votes and seats won by the alliance as a whole.

**** The Democratic Liberal Party was formed in 2008 by the merger of the Democratic Party (PD) and Liberal Democratic Party (PLD). Both of these parties ran on the Justice and Truth alliance ticket with the National Liberal Party in the 2004 election.

***** In this election no other parties passed the 5% threshold, therefore the section 'Others' constitutes only the ethnic minorities parties, who are always assigned 18 seats.

³⁷⁹ Sources: www.electionguide.org, www.becparlamentare2008.ro, accessed 2/12/2008, 13:12