

PROTECTION OF NATIONAL MINORITIES IN ROMANIA AND REPUBLIC OF MOLDOVA. GUIDELINES

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Abstract: *In light of recent conflicts on the issue of minorities and European regulations, the issue of the protection of minority rights appears to be increasingly more important in a world of multiculturalism, which should be a world of dialogue and respect of human rights as well. The fundamental principles of protection of minority rights in Romania and Moldova are reflected, first, by the constitutions of both countries. In this article we analyze comparatively the two fundamental documents and we focus on the reflection of the principle of nondiscrimination based on race or ethnic origin in the national law of the two states.*

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"The nation is regarded as a form of human community characterized by a historical, linguistic, cultural, economic unity, and also political if established as a state (holder of sovereignty)" (Burian et. al. 2006). Generally, citizenship is a complex institution which represents "the permanent political and legal relationship between an individual and a state, which generates and expresses the fullness of rights and mutual obligations between that person and the State of whose citizen that person is" (Năstase et. al. 2000, Burian et. al. 2006). Ethnicity is a group of individuals who have the same origin and who possess a common cultural tradition.

John Parker, quoted by Gabriel Andreescu (Andreescu, 2004) shows that: "it has been rightly noted that international law assumes the existence of minorities both in general and specifically. However, while the existence of human beings and states is axiomatic in international law, the existence of human groups is problematic. From a conceptual point of view, international law struggles to define the actors who are under the "State" ... while the catalog and content of individual human rights have become relatively clear, the specificity of groups' protection, particularly of the minorities, has remained largely uncertain . The peak of this uncertainty was the definition of "minority" or "of a minority" whose rights were to be recognized".

The lack of a universally accepted definition of the term "national minority" (both in literature and in legally binding texts) doesn't make the protection of the rights of this category impossible, also because "the existence of a minority is a matter of fact and not of definition" said van der Stoep (1993-2001) in his opening speech at the OSCE seminar on minorities held in 1994, in Warsaw.

Romania does not yet have a law on national minorities, as other states have. However, although it is difficult to outline a definition of the national minorities, we can make mention of the one stipulated in the bill on national minorities according to which: "The national minority is any community of Romanian citizens living in Romania since the establishment of the modern state, numerically inferior to the majority population, with their own ethnic identity, expressed through culture, language or religion that they wish to preserve, express, and develop. People belonging to national minorities are Romanian citizens, which expresses freely and openly the affiliation to a national community, or minors whose parents or other legal representatives have declared, by law, this membership".

The 1923 Constitution established by art. 5 a non-discrimination clause, stating that "Romanians, irrespective of ethnic origin, language or religion shall enjoy freedom of conscience, freedom of education, freedom of press, freedom of assembly, freedom of association and all the freedoms and rights established by law. "This provision is repeated in two other cases, being differently formulated, within Articles 7 and 8 of the same Constitution, and states that "the difference of religious beliefs and faiths, of ethnic origin and language, does not constitute in Romania an obstacle in acquiring civil and political rights and exercise them" and respectively that "all Romanians, regardless of ethnic origin, language or religion, are equal before the law and have to contribute to taxes and public duties without discrimination."

The non-discrimination clause was included in the 1938 Constitution referring to the responsibilities of citizens: "all Romanians, regardless of ethnic origin and religion, have to: regard the Country as the greatest purpose of their life, sacrifice in order to defend her integrity, independence and dignity; to contribute through their work to its moral elevation and economic prosperity; to perform the public duties required by law faithfully and to willingly contribute to the public tasks, without which the state cannot exist."

According to Law no. 86 of February 6, 1945 on the status of minority nationalities "checking up on Romanian citizens' ethnic origin in order to establish their legal situation is not allowed".

The specific legal framework in terms of protection against discrimination in Romania has evolved gradually over the last five years. Until 2000, the prohibition of discrimination had been brought under regulation by different laws, including the Basic Law. Also, in this respect, we can make mention of the international conventions and treaties ratified by the Romanian state, with the aim of respecting human rights, and in particular, the equality of chances.

During 2000-2006, a diversified legal framework was adopted. In late August 2000, the Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination was adopted, (subsequently amended by Law 48/2002, Government Ordinance 77/2003, Law 27/2004, Law 324/2006, being republished in February 2007), which was an important step in combating discrimination through legal purposes.

Similar initiatives, in criminal matters, have been materialized by the adoption of the Emergency Ordinance no. 31/2002 regarding the prohibition of organizations and symbols with fascist, racist or xenophobic character and the promotion of the culture of persons guilty of committing crimes against peace and humanity (later amended by Law 107/2006) and by the revision of the Criminal Code.

The Romanian Government Strategy for improving the life of the Roma people, adopted by Government Decision no. 430/2001, was amended and completed by GD 522/2006. The existing Basic Law does not define concepts such as "discrimination" or "privilege" and limits the prohibition of discrimination to the legal sphere and to the relationship with public authorities.

The national minorities in Romania are the following communities: Albanian, Armenian, Bulgarian, Czech, Croatian, Greek, Hebrew, German, Italian, Macedonian, Hungarian, Polish, Russian-Lippovan, Roma, Ruthenian, Serbian, Slovak, Tatar, Turkish, Ukrainian.

We strongly disapprove of the delay in adopting the status of national minorities, especially in light of the requests of the United Nations addressed to Romania in this respect. The United Nations has expressed negative opinions on the matter of territorial autonomy of the Hungarian population in Transylvania, but recommended that, until November 2010 Romania should to adopt the status of minorities, a bill which has been delayed by the parliament for five years.

The fundamental principles are reflected from the first articles of the Constitution: "Romania is a national, sovereign and independent, unitary and indivisible state." According to Article 4, "Romania is the common and indivisible homeland of all its citizens, irrespective of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, wealth or social origin." Article 6 stipulates the guidelines in this field stating that "(1) The State recognizes and guarantees to persons belonging to

national minorities the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity. (2) The protective measures taken by the state for the preservation, development and expression of identity of persons belonging to national minorities shall conform to the principles of equality and nondiscrimination in relation to the other Romanian citizens. "Constitutional Law establishes that minority rights are a category of human rights and are, therefore, individual, not collective.

It is worth noting that, following the review of the constitution of 2003 an important provision was introduced in the Basic Law. Thus, according to art. 73, paragraph (3), point r the status of national minorities in Romania is regulated by an organic law. Organic laws are those adopted by the Parliament in matters of vital importance for the functioning of the state and represent an intermediate category, between constitutional and ordinary laws. So, we will watch for the possible adoption of a national minority status.

The legislation of the Republic of Moldova defines national minorities in the following way: "the persons belonging to national minorities are persons residing in Moldova, they are its citizens, have ethnic, cultural, linguistic and religious particularities by means of which they are different from the majority of people - Moldovan - and consider themselves of a different ethnic origin."

Any person belonging to national minorities has the right to choose freely whether or not belonging to that minority. This choice or exercise of rights related to it should not put that person to the worse. Under Article 10 of the Constitution of the Republic of Moldova, "The State recognizes and guarantees the right of all citizens to preserve, develop and express their ethnic, cultural, linguistic and religious identity." Article 13 establishes that "the State recognizes and protects the right to preserve, develop and use the Russian language and other languages spoken throughout the country."

Coming back to the Law of the Republic of Moldova on the rights of persons belonging to national minorities and to the legal status of their organizations some additional explanations are required. The State guarantees to the persons belonging to national minorities the right to equality before the law and to equal protection before the law and any discrimination on grounds of belonging to a national minority shall be prohibited. The State takes to contribute to creating the necessary conditions for the preservation, development and expression of ethnic, cultural, linguistic and religious identity of national minorities and ensures the carrying out of scientific research in the field of history, language and culture of national minorities. The historic and cultural monuments of minorities are protected by the state.

The state guarantees the realization of the rights of persons belonging to national minorities to preschool education, to elementary, middle (general and professional) superior and post-graduate education in Moldovan and Russian, creates conditions for the realization of their right to education and training in mother tongue (Ukrainian, Gagauz Bulgarian, Yiddish etc.). Similar provisions are established for the use of mother tongue in administration, similar to the Romanian legislation, except that if the mother tongue of the persons belonging to national minorities uses other alphabet than the Latin one, their first name, last name and patronymic is transliterated in the Moldovan language in accordance with its rules of transliteration of foreign names.

Persons belonging to national minorities can exercise their rights both individually and collectively, under law, in organizations (associations, communions, communities, societies etc.) of an enlightened, cultural, religious and charitable nature. None of the organizations of persons belonging to national minorities can claim to monopolistically represent the interests of the respective minority.

The representation of national minorities in Parliament and local councils is established after the elections, as required by law. Persons belonging to national minorities have the right to an approximately proportional representation in the structures of the executive and judiciary power at all levels, in the army, in the courts. And in this case we note the similarities with the Romanian legislation.

Non-discrimination represents a core concept of the problem concerning the protection of national minorities, in addition to the principle of equality. After the fall of the communist regime, minority rights started to become visible, both in the political arena and in the legislative field from Romania and the Republic of Moldova. The legislation in both countries provides important guarantees for the participation of the minorities in the political sphere, the protection of access to education in their own language or the use of the mother tongue in administration.

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