

# The Legislative and Institutional Framework of National Minorities in Romania

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**ABSTRACT:** The present study aims to reignite the debate on the variables of the relationships between the majority and the national minorities, as well as stress the importance of the latter being involved, after 1989, in the making of the new democratic and constitutional framework. It briefly observes the internal and EU rules related to the legal protection of national minorities. It presents the current legal and institutional framework on national minorities in Romania, thus highlighting the fact that protecting national minorities has been one of the political requirements that Romania had to comply with as part of the EU accession process. The link between the right to identity – in its ethnic, cultural, linguistic, and religious components – and non-discrimination principle is analyzed from the perspective of both constitutional norms and that infraconstitutional legislation. The existence and implementation of a legal framework that is generally favorable to minority rights allow us to conclude that Romania is an inclusive society, where the principle of diversity is promoted and respected, this being a merit of both the majority and national minorities.

**KEYWORDS:** national minorities, right to identity, Constitution, National Council for Combating Discrimination, Council of Europe

## 1. Brief introductory remarks

The matter of national minorities can be found on the agenda of building democratic regimes and fostering dialogue between the majority and minority is a sign of maturity within the latter. It has been rightfully noted that “national, ethnic, religious or linguistic minorities have formed in diverse historical eras and circumstances, their situation varying across countries, and from one continent to another” (Diaconu 2008, 96).

Even though there are numerous international and European instruments dealing with the topic of national minorities and there have been debates at UN level for the purpose of setting up a definition of this concept, an unanimously accepted legal definition has not been proposed. In spite of this, legal literature argues that “a consensus has been reached in relation to two main elements, i.e., the subjective and objective requirements” (Selejan-Guțan – Muraru et al. 2022, 64).

From an objective point of view, a minority ought to be a non-dominant group and its members must have distinctive features: ethnicity, religion, language. The subjective element comprises solidarity, the feeling of belonging to a group and the desire to maintain and develop the identity given by the distinctive features (Selejan-Guțan – Muraru et al. 2022, 64). Within the constitutional development of Romania, the matter of national minorities has had a capricious history, and it arguably returned to the forefront of both public debate and political agenda since the fall of Communism. It has been said that “to ignore the protection of minorities is like ignoring a volcano. The tensions contained within the political, cultural and economical life of minorities usually stay hidden until the moment of eruption throws them to the surface. Thanks to the integration process, Europe has the opportunity to deal with and ameliorate these sleeping and perilous tensions across the continent” (Ahtisaari 2001).

## 2. International and European legislation relevant for the legal protection of national minorities

While lacking a special clause with regard to the protection of minorities, the UN Charter has solemnly proclaimed the need to uphold human rights and fundamental liberties, irrespective of

race, sex, language or religion. Through Resolution no. 217(III) of the General Assembly, it was declared that the UN cannot remain indifferent to the fate of minorities, yet it is difficult to adopt a uniform solution to this complex and delicate issue, with particularities in every state confronted with it.

The International Covenant on Civil and Political Rights provides, in Article 27, that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. The Covenant is to this day the only legal norm per se with general application in the matter of rights enjoyed by those belonging to minorities worldwide. Authors stress that the legal force of this regulation derives from the large number of states that have ratified it, as well as from it establishing a mechanism for “communications” or individual complaints, which may be addressed by persons subject to the jurisdictions of a state which is party to its first Optional Protocol (No. 1), in relation to breaches of rights enshrined within its provisions (Zlătescu-Moroianu 2007, 122).

The Framework Convention for the Protection of National Minorities, adopted at Strasbourg on 1 February 1995, enunciates the legal principles which the states obliged to respect in order to assure the protection of national minorities. The Convention enshrines the commitment of its parties to uphold the conditions required so that those belonging to minorities may maintain and affirm the essential values of their identity, namely their religion, language, traditions, and cultural heritage. As far as the supervision mechanism for the application of the Convention is concerned, it consists of a system of reports which the parties submit to the Council of Europe Committee of Ministers, which ought to be assisted by a consultative committee (Diaconu 2008, 132).

The European Charter for Regional or Minority Languages aims to protect minority or regional language and promote them through effective usage in various domains (education, administration, public services, cultural institutions, economic and social life). In the Charter’s understanding:

(a) “Regional or minority languages” are languages other than the official language of a state and traditionally used within a certain area of that state by citizens of it that comprise a smaller group than the rest of the population. This definition does not include dialects of the official language of the state or of migrants’ languages.

(b) “Non-territorial languages” are languages used by citizens of a state that differ from the language or languages used by the rest of the population, but which cannot be identified with a certain area, even though they are traditionally used on the territory of that state.

The Charter contains provisions with respect to education (Article 8), justice (Article 9), administration and public services (Article 10), means of communication (Article 11), cultural activities and facilities (Article 12). It also contains a supervision mechanism for its application through a committee of experts that shall examine the periodical reports of the parties.

Within primary EU law, the Treaty of Lisbon introduced the notion of “persons belonging to minorities”, and the EU Charter of Fundamental Rights made “national minorities” a part of the EU law lexicon. Article 21 para. (1) of the Charter provides that “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”.

Even though the rights of persons belonging to national minorities are not explicitly protected by the European Convention of Human Rights, the Court of Strasbourg included some of these rights in the sphere of protection afforded by the Convention (Selejan-Guțan 2022, 68).

### **3. The current legislative and institutional framework on national minorities in Romania**

According to the last census (2011), the minority population of Romania forms about 11% of the total population of 20.1 million inhabitants. No less than 20 national minority groups inhabit Romania (Albanian, Armenian, Bulgarian, Czech, Croatian, German, Greek, Hungarian, Italian, Jewish, Macedonian, Polish, Roma, Russian-Lipovan, Ruthenian, Serbian, Slovak, Tatar, Turkish and Ukrainian), each of which has its own religion and mother tongue, as well as traditions. The policies aimed at protecting human rights and national minorities in European countries were influenced by EU policies in the field, as well as other European forums such as the Council of Europe and the Organization for Security and Co-operation in Europe (established in 1973, as the Conference for Security and Co-operation in Europe (CSCE), the OSCE offers to the 57 states that are party to it a framework for dialogue and interaction on security matters).

The largest minority groups in Romania are the Hungarians (1.23 million, or 58.9% of the entire minority population), followed by the Roma (0.62 million, or 29.8 of the entire minority population), Ukrainians (50.9 thousand, or 2.44% of the entire minority population), Germans (36 thousand, or 1.73% of the entire minority population), Turks (27.7 thousand, or 1.33% of the entire minority population), Russian-Lipovans (23.49 thousand, or 1.13%). Other minorities number 1% (20 thousand) or less: Tatars, Serbians, Slovaks, Bulgarians and so on.

The protection of national minorities entered a new phase after 1990. The last decade of the 20<sup>th</sup> century marked a rekindling of the interwar tradition of cultural, political, and economic relations with the West, after the slogan “what is good for Europe is good for us too” (Năstase et al., 2002, 14). Unlike other legislations, however, which distinguish between “national minorities” which, inter alia, purport the existence of a mother country, and “ethnic minorities” lacking a motherland (e.g., Hungary, Poland), Romania never made such a distinction. It should be noted that out of the aforementioned minority groups, only three of them lack a mother country (i.e., Roma, Tatar, Ruthenian) that would protect their interests even through bilateral treaties (following the path of documents signed with Hungary, Ukraine, Serbia etc.).

#### ***3.1. The current legislative framework on national minorities in Romania***

The current Constitution of Romania (1991, revised in 2003) represents the rebirth of national democracy, being commendable from the perspective of international standards in the field of constitutionalism. The basic law grants national minorities a legal status on par with standards provided by international and European agreements, in the sense that it explicitly establishes – in Article 4 para. (2) 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”.

Article 6 – discussing the “Right to identity” – provides, in para. (1), that “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”, whereas para. (2) states that 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”.

Within legal literature it has been stressed that “with respect to the concepts it employs, the Romanian constituent considers that minority rights embody a class of human rights and are individual rights” (Prisacariu 2010, 123).

In any case, the constitutional norm may be interpreted in accordance with the other provisions of the Constitution in order to identify the rights enjoyed by national minorities:

(a) *The right to education in their own languages.* Article 32 para. (3) provides that “the right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law”. This rule is expanded upon in the Law of National Education no. 1/2011.

(b) *The right to use their own language in administration and justice.* Article 120 para. (2) states that “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”. The use of mother tongues is also regulated at infraconstitutional level by Article 94 of the Administrative Code.

Article 128 para. (2) provides that “Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts of law, under the terms of the organic law”, and para. (3) states that “the means of exercising the right stipulated under para. (2), including the use of interpreters or translations, shall be stipulated so as not to hinder the proper administration of justice and not to involve additional expenses to those interested”. These provisions are also expanded upon in Article 14 of Law no. 304/2004, as well as in Article 18 of the Civil Procedure Code and Article 12 of the Criminal Procedure Code.

(c) *The right to practice their own religion.* The Romanian Constitution prohibits any restraint on religious freedom. Consequently, persons belonging to national minorities have the right to practice their own religion, as a fundamental component of their right to identity. The right to establish religious schools is a part of their right to practice their own religion.

(d) *The right to political representation, including in Parliament.* Article 62 para. (2) provides that “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 electoral law. Citizens of a national minority may be represented solely by one organization”. It should be noted that the Revision Law no. 429/2003, through point 38, amended the provision concerned with the domain of organic legislation (L. 429, 2003). Thus, Article 73 para. (3), formerly Article 72, states that “organic laws shall regulate: (...) r) the status of national minorities in Romania”.

Legal literature rightfully noted that “the effects of this amendment are many: first, it reflects the availability of Romanian authorities to adopt a law on the status of the national minorities of Romania; second, the status of national minorities is defined as a domain of organic law, so that the law on the status of national minorities shall have to be adopted with absolute majority, the Chamber of Deputies being decisional chamber; and, last but not least, the introduction of the new text may suggest a certain change in the vision of the Romanian constituent with regard to national minorities” (Prisacariu 2010, 124).

At infraconstitutional level, the legal provisions concerned with national minorities are found in numerous legal acts, which regulate the fields of education, health, justice, administration, and public services, as well as means of communication (L. 35, 2008; L. 1, 2011, E.O. 57, 2019; L. 95, 2006; L. 292, 2011; L. 304, 2004).

Although there have been a great many legislative proposals from the Democratic Union of Hungarians in Romania (UDMR), and even a draft bill initiated by the Government (Pl-x 502, 2005), to this day no organic law has been adopted to regulate the status of national minorities in Romania. This aspect has also been noted by the Constitutional Court in Decision no. 328/2017: “rights of national minorities, an expression of the right to identity, acknowledged and guaranteed by the Romanian State in the provisions of Article 6 of the Constitution, are established within the infraconstitutional legislation in a series of laws that regulate in the fields of education, justice, administrative authorities and public services, means of communication, cultural activities and facilities etc. According to Article 73 para.

(3) letter r), the constituent legislator had expressly provided the regulation through organic law of the status of the national minorities of Romania. Or, the Court finds that said constitutional rule has not been transposed into an act of the primary legislator, at the present no such law existing to unitary, consistently and predictably regulate this matter. Moreover, the Court holds that Article 73 para. (3) letter r) is the sole rule from the enumeration contained in this paragraph that has no correspondent in legislation, the Status of the national minorities of Romania, although constitutionally acknowledged, as an expression of the historical tradition of the Romanian State, established on the principles of democracy and cultural diversity, in the framework of national sovereignty and territorial integrity, not being regulated yet as the constitutional rule requires it” (D. 328, 2017, 44).

The Democratic Union of Hungarians in Romania is a union comprised of autonomous, territorial, and political organizations that represent the Hungarian community in Romania and protect its interests at central and local level. UDMR enjoys parliamentary representation since 1990, holds seats in the European Parliament since 2007, and is currently part of the coalition government.

One may also recall the fact that Government Decision no. 881/1998 declared 18 December as the National Minorities of Romania Day, with Law no. 247/2017 declaring it a national holiday. The choice of this date was by no means accidental, as it aims to acknowledge the UN General Assembly’s adoption – on 18 December 1992 – of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.

### ***3.2. The current institutional framework on national minorities in Romania***

Taking into account the provisions of the Constitution of Romania with respect to the equal rights of all citizens (art. 16) and the recognition and guaranteeing of the rights of persons belonging to national minorities, some institutions or institutional structures were established in order to strengthen the exercise of such rights, both at central and local government level.

#### **(a) The Council for National Minorities**

As the provisions of Article 1 in the Government Decision no. 137/1993 suggest, the Council for National Minorities aims to “pursuit the specific problems of persons belonging to national minorities and has competence in matters of a normative, administrative and financial nature which relate to the exercise of the rights of persons belonging to national minorities in terms of preserving, developing and expressing their ethnic, cultural, linguistic and religious identity, as defined in the Romanian Constitution, in the legislation in force, as well as in the international treaties and conventions to which Romania is a party”. The Council comprises 3 representatives each for every organization of citizens belonging to national minorities which are represented in the Parliament of Romania.

#### **(b) The Department for Interethnic Relations**

The Department for Interethnic Relations, established through Government Decision no. 111/2005, is a structure lacking legal personality and subordinated to the Prime-minister. This organism enjoys a great number of competences in the field of interethnic relations, including collaborating and offering logistical support to the Council of National Minorities.

So as to reach its goals, the Department implements the policy established in the Government Program in the field of interethnic relations, it monitors the application of domestic and international instruments on the protection of national minorities, participates in the elaboration of the Report on Romania's application of the Council of Europe Framework Convention for the Protection of National Minorities as well as the elaboration of the chapters regarding the national minorities from the reports of Romania to other international institutions and bodies, it stimulates the majority-national minorities dialogue in order to improve the decision-making act and the implementation measures.

## (c) The National Agency for Roma

Through Government Emergency Ordinance no. 78/2004, the National Agency for Roma was established as a specialized body of the central public administration, with legal personality, subordinated to the Government and coordinated by the General Secretariat of the Government.

The National Center for Roma Culture – Romano Kher operates under the auspices of this Agency and under the coordination of the General Secretariat of the Government. Its mission is to preserve, develop and promote Roma cultural heritage, values, culture and traditions.

## (d) The Institute for the Study of National Minority Issues (ISPMN)

The ISPMN was established through Government Ordinance 121/2000, as a public institution with legal personality subordinated to the Government and is coordinated by the Department for Interethnic Relations. It aims to study and multidisciplinary research on the preservation, development, and expression of ethnic identity, sociological, historical, cultural, linguistic, religious or otherwise to national minorities and other ethnic communities in Romania.

## (e) The National Council for Combating Discrimination (CNCD)

An autonomous state authority, under parliamentary control, guarantor of the observance and application of the principle of non-discrimination, in accordance with the internal legislation in force and with the international treaties to which Romania is a party, the CNCD was established through Government Ordinance no. 137/2000. Anti-discrimination legislation is adequately comprehensive and in line with the Racial Equality Directive (43/2000).

#### 4. Conclusion

The dialogue between majority and national minorities has consolidated the foundations of the contemporary Romanian State. Legal literature underlined the fact that “national minorities, through their contribution to the cultural, scientific and economic life of the country, the spirit of cohabitation and mutual respect that is generated, is an asset and a treasure for Romania. In this context, their protection and capitalization may mean a duty and an honorary title” (Nicoară 2005). One agrees wholeheartedly with the opinion according to which “the scope of policies in the field of national minorities is dual: namely, to protect the special identity – cultural, linguistic, ethnic – of the persons belonging to national minorities, and to ensure the harmonious cohabitation between majority and minorities, as well as between the minorities themselves” (Aurescu 2015).

The current status of national minorities in Romania may be seen as satisfactory. Significant steps have been made beginning in 1997 so as to improve this status, and within the first years of this century – in the context of EU accession efforts – considerable progress was achieved. As one author recently pointed out, Romania made the transition from “laggard” to “leader” (Ram 2009, 180-194).

Without a doubt, it cannot be argued that in our country, all the problems concerning national minorities have been solved, but it cannot be denied that Romania is an inclusive, modern society in which the principle of diversity is promoted and respected on the merit of both the majority and national minorities.

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