TERRITORIAL AND NON-TERRITORIAL AUTONOMY: "ROMANIAN PARADOX"

CRISTIAN JURA*

Abstract
Whereas in Romania there are 19 national minorities officially acknowledged by Romanian state, up to present, one did not manage to adopt a special law of national minorities. We identify special disposals related to national minorities in Romanian Constitution, in the law of local public administration, the law of education, the law concerning the election of the Chamber of Deputies and Senate, the law related to political parties, the law for the election of the authorities of local public administration, the law concerning the combating of all forms of discrimination.
In the last project of the Law concerning the statute of national minorities in Romania, a new concept is introduced: cultural autonomy of minorities. The cultural autonomy is a form of non-territorial autonomy.
Nevertheless, Romania is criticised by some international organisations for the fact that the organisations of national minorities represented in the Parliament of Romania have instituted a monopole, therefore no other organisation of any minority is allowed to participate to the elections.

Keywords*: non-territorial autonomy, persons who belong to national minorities, inherent rights, Council of Europe, United Nations Organization.*

Introduction

In Romania, there are 19 national minorities officially acknowledged by Romanian state: Albanians, Armenians, Bulgarians, Croatians, Greeks, Jews, Germans, Italians, Hungarians, Poles, Roma, Russians, Serbs, Czechs and Slovaks, Tartars, Turks, Ukrainians, Macedonians and Ruthenians. Disposals related to the national minorities of Romania were included in the national legislation starting with 1991. Also, Romania has ratified the most important international treaties concerning the protection of national minorities.

However, up to present, one did not manage to adopt a special law of national minorities. We identify special disposals related to national minorities in the Romanian Constitution, in the law of local public administration, the law of education, the law concerning the election of the Chamber of Deputies and Senate, the law related to political parties, the law for the election of the authorities of local public administration, the law concerning the combating of all forms of discrimination.

In the last project of the Law concerning the statute of national minorities in Romania, a new concept is introduced: cultural autonomy of minorities. The cultural autonomy is a form of non-territorial autonomy.

Nevertheless, Romania is criticised by some international organisations for the fact that the organisations of national minorities represented in the Parliament of Romania have instituted a monopole, therefore no other organisation of any minority is allowed to participate to the elections. These criticisms appear in the Report presented by Romania during the 77th CERD Session – August 2nd – 27th 2010, Annual Report of USA State Department related to the practices in the field of human rights – 2009 and the third ECRI Report about Romania adopted in June 24th 2005 (point 24).

Practically, a paradoxical situation appeared. There are minorities in Romania, but we do not have a law of national minorities, nevertheless, one requires a form of non-territorial autonomy.

The study intends, in the first part, to clear up conceptually the notion of national minorities and the evolution of this notion, and, in the second part, to analyse the inherent rights of national

* Senior Lecturer, Christian University Dimitrie Cantemir, State Secretary, Member of the Steering Board of The National Council for Combating Discrimination, (email: cristianjura@yahoo.com).

minorities and the role of autonomy in this situation. In the last part one presents the criticisms presented with respect to Romania in the foregoing international documents.

Evolution of the notion of «national minority»

In order to refer to persons that belong to national minorities, we have to discuss first about the apparition, crystallisation and formation of nations, as they are currently appear on the map of Europe. A particularly important principle for the formation of nations, principle with an extremely high number of supporters, was the principle of nationalities. The promotion and application of this principle, mainly in the inter-war period, had to consequences extremely important on the international plan:

- formation of modern states-nations;
- crystallisation of the awareness of affiliation to another nation, awareness manifested in case of the persons that belong to national minorities.

The apparition of the knowledge of affiliation to another nation, as joint collective awareness, generated not only several conflicts in history, but it caused as well major transformations of positive law, since 1648 – date considered by some doctrinaires as inaugural for the application of the principle of nationalities in Europe[1], up to present.

Therefore, in a scientific approach, one must firstly analyse the manner of formation of nationalities and subsidiarily the formation of modern states, and therefore the manner of separating certain segments, that formed the subsequent national minorities.

Another extremely important aspect for the analysis of the evolution on international plan of legal regulations related to the rights of persons belonging to national minorities is represented by the attempt to define the „national minority", as well as the „rights of the persons belonging to national minorities", definitions to which we shall refer during the entire work.

The issue of defining such notions is controversial and up to present no unanimously approved definition was determined. The terms related to such definitions are often ambiguous and sometimes even absent. Most of the times, one uses homonyms or synonyms, with different signification depending on the nature of the situation, with different shades, which are merged sometimes, without determining clearly the senses or without presenting enough data that may suggest the correct sense, therefore the final conclusions are sometimes ambiguous or confused.

The clear definition of senses is a key condition, since it is the only manner to emphasize the limits of the notion of rights of the persons belonging to national minorities, during the evolution of their protection on international plan.

Since 1937, it was outlined the fundamental connection between the persons belonging to national minorities and the mother nation. Therefore, the minorities are characterised by affiliation to a nation different to that which forms the main substance of such state. And here appears the controversy, as the issue of minorities is thus reduced to the problem so much discussed and unsettled, of knowing what a nation is[2].

During the same inter-war period, another doctrinaire noticed with respect to the nation that this cannot be considered but an entity belonging to the psychological field, being the creation of heart, of the feeling and of the will of each individual that forms it.

The language, the race and the common religious beliefs have, definitely, a major influence over the national feeling, however, it may happen, and it happens often, that such elements are special and there is the willing of living together. The United States of America and Switzerland are good examples in this respect.

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[1] Al. Ovidiu Vlădescu, *Principle of minorities*, (Copuzeanu Tipography, Bucharest, 1935), p. 28.
[2] Radu Meitani, *Protection of minorities*, (Ph. D. Thesis, Bucharest, 1931), p. 45.

First of all, one must thus consider the willing of living together expressed by individual. It is the key factor of a nation[3], as well as of a minority.

Georges Scelle[4] expressed an opinion about this definition: „What is a minority? It is almost impossible to provide an accurate definition of this". Further on, the same author analyses the case of Switzerland, model of inter-ethnic living, where the population is spread in groups of different race, language, religion and they form thus different political, autonomous and federalised divisions, without mentioning a relation between the majority and minority population.

Without attempting to provide a definition, the International Permanent Court of Justice delimits the rights of the persons belonging to national minorities, when it passes a judgement on the protection of minorities: „firstly, make sure that those belonging to the minorities of race, religion or language are, from all points of view, equal to the other population of state. Secondly, provide the similar means for the maintenance of ethnical characters, of traditions and of national physiognomy"[5].

During the same period of the League of Nations, Paul Fauchille, in his treaty of public international law, it is made for the first time a distinction between the rights belonging to minorities and the rights of national minorities, drafting thus the theory related to individual rights and collective rights.

He stated that: „It seemed that the treaties would have been better inspired if they had provided under the protection of minorities as individuals and not as communities, the character of a universal principle, applicable to all states, regardless their rank or situation, be it large states or small states, reduced pursuant to the war or created by it, victorious, defeated or neuter. Thus, becoming indeed a fundamental rule of contemporaneous law, it would have produced everywhere its beneficial effects, without the secondary states to experience a humiliation feeling related to the idea that the protection of minorities is imposed only to them, without a state being entitled to consider it a kind of *capitis diminutio*, as an unfair and unilateral restriction of its suzerainty"[6].

The definitions provided to national minorities were numerous during the inter-war period, both on the level of Romanian doctrine, and on the level of foreign doctrine, and mainly of French doctrinaires. All these definitions became on a certain moment sterile, since the only thing they did was to resume, under a form or another, certain characteristic traits of minorities. Such definitions, referred to, were almost unanimous in considering that by national minority is understood a group of individuals who are living on the territory of a state and who are different from the majority of population by few distinct characteristics: race, language, religion, and which must be mainly protected. A characteristic trait of such range of definitions is the fact that minority opposes a living resistance to assimilation and does not have, as community, international rights[7].

This incoherence in defining national minorities, in fact the incapacity of states of approving a definition, continued as well after 1945, after the end of the Second World War.

The bipolar model of post-war society determined the issue of the rights of persons belonging to national minorities to be less promoted, preferring rather the promotion of non-discrimination principle on international plan, than granting, by conventional means, of some rights to the persons belonging to national minorities. However, the block policy made almost impossible the approach of such specific issue, until 1975, when, in the Final Document from Helsinki, was introduced, as a counter-weight to the principle of non-interference in the internal business of states, the principle of promotion and protection of human rights as fundamental principle of public international law. From

[3] Robert Redslob, *The law principles of modern people*, (Paris, 1937), p. 214.
[4] Geoges Scelle, *Law synopsis of people. Principles and methods,* (1st Part, Paris), p. 230.
[5] CPJI, series A/B, no. 64, p. 17.
[6] Paul Fauchille, *Treaty of Public International Law,* (Tome I1st Part, Paris), p. 809.
[7] I. Vintilă Gaftoescu, *Legal positions in the international law. Issue o minorities,* („Curentul" printing shops, Bucharest, 1939), p. 154.

this point of view, we may consider that the principle of observing the human rights was extremely important as well for the protection of the rights of individuals belonging to national minorities, the latter being included in the general system of protection of human rights.

The most important achievements for the promotion and protection of the rights of individuals belonging to national minorities were obtained after the disappearance of what was called bipolar international society, namely at the end of `90s. We consider the most important documents related to the protection of the rights of individuals belonging to national minorities the following: **Declaration on the rights of individuals that belong to national or ethnic, religious or linguistic minorities**[8] on universal level, within the Organisation of United Nations, as well as the **European Charter of regional or minority languages** of 1992 and the **Frame-Convention for protection of national minorities** of 1994, both documents having a regional dimension, being adopted within the Council of Europe.

During the period 1990-1994, one did not agree either on a definition related to national minorities, preferring either apophantic definitions, or definitions similar to that provided by the International Permanent Court of Justice[9].

However, as stated, the issue of national minorities is not new; a definition of national minorities unanimously approved wasn't provided yet. It is noticed that the rights of the individuals that belong to national minorities are approached in documents related to the range of human rights, in separate articles, parallel to disposals that stipulate the same rights for all persons. We notice as well that, beside the documents that refer to national minorities, one speaks about minorities in general, the national minority being one which, regarded from a certain angle, may incorporate the others as well, countrywide. Thus, a cultural minority may be integral part of a national minority, whereas the latter may include several cultural minorities.

A shading of such approach of the issue of minorities is definitely enforced. Opposite to the manner of approaching such field in Central and Eastern Europe, where national minorities represent an important segment of social-political life – situation influenced as well by the historical conditions faced by this geographical area, in Western Europe, we may practically say that no one speaks about national minorities, but about the so-called „ethno-cultural groups", category which includes both ethnical minorities and the migrants.

Returning to the definition assigned to national minority, it must be said that in the preamble of each international document one states the signification that such document provides to a certain concept, in this case to national minorities, fact which supports the idea that one did not agree yet a definition of national minorities.

The recommendation 1134 with respect to the rights of national minorities, adopted by the Parliamentary Meeting of the Council of Europe on October 1st 1990 defines the minorities as „ separate or distinct, well-defined groups, settled on the territory of a state, the members being citizens of such state and presents certain religious, linguistic, cultural, or other traits that distinguish them of the majority of population (art. 11)".

In terms of the Recommendation 1177 related to the rights of minorities, adopted by the Parliamentary Meeting of the Council of Europe on February 5th 1992, the national minorities are „citizens that share specific cultural, linguistic or religious traits" and who „may want to be acknowledged and secure the possibility to express them", following that, in the next paragraph, to

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[8] Adopted by Resolution no. 47/135 of December 18th 1992.

[9] The International Permanent Court of Justice defined minority as a „group of persons who are living in a country or locality, having their race, religion, language and traditions, united by their identity in a solidarity feeling, with a view to maintain the traditions, the religious forms and providing education and raising children in the spirit and traditions of their race and mutual help"; see P.C.J.I., series B, no. 17, p. 19, quoted by Raluca Miga-Beşteliu, *International law. Introduction in public international law,* (All Publishing House, Bucharest), 1998, p. 192; taken over from F. Capotorti, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities,* (United Nations, New York, 1991), p. 5.

be stipulated that „these are groups sharing such specifications inside a state, which the international Community, after the first world war, calls them minorities, without implying any inferiority in any field".

Also, in the meeting report, CSCE of experts on national minorities' issues (Geneva, July 19th 1991), it is tried another approach of defining minorities, outlining that „not all ethnic, cultural, linguistic or religious differences entail necessarily the creation of national minorities".

It is known the fact that, submitted to influences during the formation process, the language of a people has many dialects, in some countries the differences being higher, in other smaller, but, on a whole, without differences meant to create a new language, different of that of the country where such area is situated. Concerning the cultural differences, by a brief historical incursion, we shall notice the influences of migrants and then the feudal division of territories, division that determined these to be successively submitted to several cultural influences. With respect to religion, it must be stated that, pursuant to international consecration of religious liberty, each individual is free to choose any officially acknowledged religious cult, the enfranchising of the concept of religious minority generating a religious intolerance, that should be abandoned in the immemorial times of Middle Ages. One may definitely speak, from a strictly statistic point of view, about religious minorities, however a national minority cannot and must not be defined in terms of religion.

The U.N.O. subcommission for the prevention of discrimination and protection of minorities, in 1950, proposed the following definition: „The term of minority includes only those non-dominant groups of population, which possess and want to maintain stable ethnical, religious or linguistic traditions or characteristics, obviously different from those of the rest of population. Such minorities must properly include an appropriate number of individuals, in order to be able to develop such characteristics. The members of such minorities must be loyal to their citizenship state". In this approach, what draws the attention is the fact that it is imposed a so-called relative limit, that of an „appropriate" number of persons so a group may be considered a national minority. At the same time, in the last part is determined as well an obligation meant to secure and determine the frame of manifestation of the rights of national minorities.

Leaving from this definition, twenty years later, in a study related to minorities, Francesco Capotorti said about a minority that it is: „A group numerically inferior to the rest of population of a state, in a non-dominating position, the members – citizens of state – possessing, from an ethnic, religious, or linguistic point of view, different characteristics than those of the rest of the state and expressing even implicitly a solidarity system with respect to the purpose of preserving their culture, traditions, and religion".

A wide definition, maybe the broadest one, is provided in a document project submitted to the Council of Europe in 1993, as Annex to the Recommendation 1201 of the Parliamentary Meeting of Council, respectively the project of Additional Protocol to the European Convention of human rights related to the individuals that belong to national minorities:

„In terms of this convention, the expression of national minority designates a group of individuals in a state, who:

a) have the residence on the territory of such state and are citizens of it;

b) maintain old, solid and durable relations with this state;

c) present specific ethnical, cultural, religious or linguistic traits;

d) are enough representative, although they are less numerous than the rest of the population of such state or region;

e) are inspired by the will to maintain together what forms their common identity, mainly their culture, traditions, religion and language".

Pursuant to such definitions, one may conclude that the basic criteria to define a group as national minority are:

- the proper number of individuals to be considered national minority;
- citizenship of the state where they are living;

- the maternal language, ethnie, culture or religion, to be different than that of majority of population.

An interesting position, relevant to be mentioned herein, is that of European Union which, on the institution level, does not operate a concept of national minority. It is a signal for the future to waive this concept, to eliminate the privileged status of all national minorities, comparatively to ethnical groups, and to focus on the protection of specificity of ethnical diversity.

One must state as well the Instrument of Central European Initiative of 1994 for the protection of the rights of individuals belonging to national minorities. In this document, one defines national minority in art. 1 par. (1) as follows: „For the purpose of this instrument, the term of national minority will have the signification of group which is less numerous than the rest of the population of a state, having citizen-members with ethnic, religious or linguistic traits different of those of the rest of population and who are animated by the will to safeguard their culture, traditions, religion or language".

Pursuant to analysing the definitions assigned to individuals belonging to national minorities, we propose the following definition: *the individual belonging to a national minority is that person who is a part of a group on the territory of a state and having the citizenship of such state, representative, but numerically inferior, distinct from the majority in terms of specific, ethnic, linguistic, religious traits and who exercises its rights individually, with the other members of the group culturally related to.*

Rights inherent to individuals belonging to national minorities

Considering that an individual belonging to national minorities is a person related to a minority group, but citizen of a state, it enjoys thus all rights provided to the citizens of such state. Thus, it is raised the question whether such person needs special protection, to be granted by the state to which it belongs as citizen, either directly, by the internal legislation of such state, or indirectly, through the participation of such state to specific international conventions.

In order to be able to answer this question, it is necessary to analyse whether there are inherent rights of the persons belonging to national minorities, different from those of majority.

During the inter-war period, such issue was weakly theorized. It was the principle of non-discrimination that one applied in the peace treaties, for instance art. 9 of the special Treaty between the Main Powers Allied and Associated as well in Romania[10].

After the second world war, the **Declaration on the rights of individuals who belong to national or ethnic, religious and linguistic minorities** dated 1992 is the first document that clearly enumerates the specific rights of the persons belonging to national minorities.

According to this document, the inherent rights are:

- the right to its own culture, to its own religion, to use its own language;
- the right to organize and manage its own organisations;
- the right to entertain relations with the other members of the same group;
- exercising such rights individually and jointly.

In the text of this Declaration is stipulated as well the obligation of states to the protection of existence and national or ethnic, cultural, religious, linguistic identity of minority.

The Frame-Convention for protection of national minorities relies to a great extent on the application of non-discrimination principle opposite to individuals that belong to national minorities, but the specificity of such Convention consists in instituting a mechanism of supervision by the Committee of Ministers of the Council of Europe to apply it.

In the specialised doctrine[11] it is considered that a right inherent to the individuals belonging to national minorities is the right to identity and the correlative obligation of the states to protect such right. Thus, there are several kinds of identity:

[10] The Treaty was signed in Paris on December 9th 1919 and was effective on September 4th 1920

- cultural identity;
- linguistic identity;
- religious identity.

In this context, it is deemed that protection of identity represents a synthesis of the protection of the rights of individuals belonging to national minorities. It is also distinguished between „common field", as a range of rights and obligations incumbent upon all citizens and secured to all, without discrimination, and the "specific field", including specific rights of individuals belonging to national minorities, related to the protection of different issues of their identity.

The identity balance must be attached a fair balance between rights and obligations.

Pursuant to the analysis of the range of inherent rights and correlative obligations of individuals belonging to national minorities, it results a certain legal paradox: the individuals belonging to national minorities have inherent rights that are not different from those of majority, but they need a special protection.

1. Right to use maternal language[12]

The realities show that several populations from all states remain loyal to their language, different from that of majority or from other languages. The prediction of some specialists, a few decades ago, that a universal law will be determined, which, being better adapted to a harmonious collaboration with the computers, would impose upon humanity, proved to be an utopia. The maternal languages maintain an important social function meaning that they represent the ground of national identity.

With respect to the right to use maternal language, the European Charter of Regional or Minority Languages stipulates in the preamble that „the right to practice a regional or minority language in the private and public life represents an imprescriptibly right, according to the principles included in the International Pact related to civil and political rights of United Nations and in conformity to the spirit of Convention for the protection of human rights and fundamental liberties of the Council of Europe".

Therefore, the right to use maternal language is a fundamental right of national minorities, breaching it entailing, eventually, its disappearance.

However, it is known the fact that, although language is an indispensable element of culture, maintaining and developing one's own culture depends on the study of maternal language or even on the education in such language.

Nevertheless, there is a difference between studying maternal language and education in such language, difference worth to mention and analyse. The study of maternal language involves that the educational process to be carried out in the official language of a state following that, in the education curriculum, to be introduced courses study maternal language. Regarded from this point of view, the right to use maternal language could seem limited. It must be considered however the fact that, since infancy, the children belonging to national minorities learn the maternal language both within the family and in the community.

The education in maternal language is a more complex process, which involves adjusting the legislative frame in several fields, as proved in the situation from Romania. It worth mentioning the fact that the educational process in maternal language cannot be carried out on the highest level in all specialisations as long as the constitutions of states stipulate the existence of an official language, language used in justice, medicine, research etc. At the same time, in the areas with high concentration of national minorities, one may allow, by law, the use of the language of such minorities on official level in the relations determined by them in the foregoing fields. If knowing the official language is an obligation of the citizens belonging to national minorities, the European

[11] Ion Diaconu, *Minorities. Identity. Equality*, (Romanian Institute for Human Rights, Bucharest, 1998).
[12] Same, p. 65.

Charter of Regional or Minority Languages stipulating that „protecting and encouraging regional or minority languages must not be done in the detriment of official languages and of the need to appropriate them".

There are cases when persons belonging to national minorities do not know the official language of the state of their citizenship. This may generate problems mainly when the work carried out involves multiple connections with the citizens of other minorities or of majority or in technical fields where knowing specific terms is a must.

The problem is delicate, far of being settled, generating several polemics and even tensions inside a mixed community, mainly where the communities of national minorities are a majority. The faulty application of this right or the existence of a legal frame rather unclear and incoherent lead inevitably to discrimination, exclusion of national minorities from certain fields of public rights, separation and isolation of communities, absence of dialogue and occurrence of interethnic tensions.

In the last years, it was attempted in Romania[13] to promote some measures in order to support the protection of national minorities' languages by adopting highly liberal laws (for instance, law of local public administration, law of education, statute of public officers), laws that did not solved yet entirely the problem.

2. Right to its own culture[14]

As seen in the previous section, the cultural criterion is an important one in terms of including a group in the national minorities.

Consequently, the observance of such criterion generates a legitimate right both for the person belonging to the national minority, and for the communities in this category.

The Universal Declaration of Human Rights and the International Pact related to the economic, social and cultural rights stipulate the right of every individual „to get involved in cultural life". The Pact adds the obligation of member states „to take the measures necessary to maintain, develop and spread science and culture". In order to conclude, we may add the Declaration related to the principles of international cultural cooperation, proclaimed in the general Conference of UNESCO in 1966, where it is mentioned that „Any culture has its own dignity and value that must be observed and maintained; (...) in their fecund variety, diversity and mutual influence that they exercise one over the others, all cultures are a part of common patrimony of humanity".

Both pacts related to human rights stipulate several rights that more or less concern the benefit of one's own culture, such as the right of parents to enrol their children to any school, on their discretion, the liberty of expression, the liberty of press, of reunions, religious liberties and others. All these are elements of the right to culture of any individual.

However, this position generally expressed of application of the right to culture, reported to all communities regardless if they belong or not to national minorities. The problem is to find the specificity of such right opposite to minorities and the components included by it during the process of its manifestation.

Some authors refer, in this respect, to customs, habits, traditions, rituals, kinds of dwelling, as well as to the manufacture of pieces of art, cultivation of music, founding cultural organisation, publication of books in their own language, as well as the right of transmitting one's own culture by education to future generation, either by separate schools, or by providing respect to the cultures of minorities in public schools, and, with respect to indigene populations, to their ancestral connection with the land.

Returning to national minorities, it must be stated that, in the performance of such right, the state authorities must firstly provide the conditions necessary for the manifestation of such specific

[13] For details, see Present in the education of national minorities of Romania. Achievements of school year 2001-2002 and perspectives, Ministry of Public Information, Ministry of Education and Research, 2002.

[14] Ion Diaconu, *Minorities. Identity. Equality*, (Romanian Institute for Human Rights, Bucharest, 1998), p. 31.

customs in the sense of securing a «controlled permissiveness» related to the freedom of using maternal language in the education of children belonging to national minorities, access to information and free circulation of it in the language of minorities, as well as the encouragement of their cultural manifestations.

I have used the term of « controlled permissiveness » to outline the fact that the existence of this right entails obligations of both parties, meaning that exercising the minority specific rights, in general, and that to its own culture, with everything it involves, must be included in the sphere of national interest, principle synthesized in the collocation «policy of minorities subscribed to national policy».

The frame convention concerning the protection of national minorities adopted by the Council of Europe in 1994 includes much more complex and detailed disposals. The member states undertake to promote the necessary conditions so the minority persons may maintain and develop their culture and to maintain the essential elements of their identity, mainly the religion, the language, the traditions and cultural inheritance. It is resumed the obligation member states to observe the right of such individuals to peaceful reunion, freedom of association, expression, thinking, consciousness and religion. Examining thoroughly this field, the Convention stipulates the freedom of having opinions, of receiving and sharing information and ideas in the language of minority, without the interference of public authorities. This interference of public authorities must be construed in terms of not controlling the circuit of information, but, on the other hand, it is necessary a minimum supervision related to that information concerning the national safety.

The member states undertook, as well, to adopt the measures necessary in order to facilitate the access of such persons to the means of information and to allow cultural pluralism. In this respect, the member states undertook to encourage the spirit of tolerance and intercultural dialogue, to take effective measures in order to promote the mutual respect, understanding and cooperation between all persons on their territory, mainly in the field of education, culture and means of information.

It must be outlined as well the fact that the origin of a national minority is important, meaning that the past and the manner of arriving on the territory of a state acquiring the capacity of minority, highly influence the manner of manifestation and the customs. Therefore, we distinguish several categories of minorities:

a) *historical national minorities* – those minorities on the territory of a state for several centuries, arriving there pursuant to some historical events (Hungarians, Germans in Romania);

b) *migrants* – those minorities on the territory of a state for a short period, arriving there pursuant to social, economic conditions in their origin country (Arabians in Western Europe);

c) *national minorities originated from slaves* – those minorities brought from their origin countries as slaves, obtaining subsequently their freedom (Roma in Romania, Afro-Americans in USA).

Synthesising the foregoing, we may conclude that exercising the right to one's own culture is performed within an organised state frame governed by international rules, but considering the interests specific to each geographical area and the characteristics of national minorities in such area.

3. Right to practice and profess one's own religion[15]

As determined, religion does not represent a distinguishing criterion of a minority group from a majority. The Universal Declaration of Human Rights[16] stipulates in art. 18 that „any person has the right to freedom of thinking, consciousness and religion, this right involves the liberty to change its own religions and beliefs, individually or collectively, both publicly and privately, by education, practices, cult and performance of rituals". This concept was taken over by the majority of world's

[15] Same, p. 32

[16] Declaration of Human Rights available at: http://www.un.org/en/documents/udhr/

Constitutions, the religious liberty not being discussed in democratic countries. The religious liberty involves, first of all, the acknowledgement by state of the religion or cult practiced by a religious community. This right cannot survive alone, but with other fundamental human rights such as liberty of expression or freedom of consciousness.

It must be outlined the fact that religions are universal. They are not limited to the territory of a state, but, given the free circulation and freedom of consciousness, they have supporters worldwide. Therefore, it is erroneous the assertion according to which we may speak about religions specific to national minorities and, implicitly, assimilation of the term of national minority with that of religious minority

From the point of view of the supporters of a religion on the level of a state, the right to practice the religion in the language of a minority is fully grounded meaning that, where a minority community represents a religious majority, one may adopt the language of such minority in practicing such cult, this involving as well the preparation of clerks in this respect. However, the officials of the clerk of such cult are competent in this respect, the state having the obligation to provide the frame of manifestation of religious liberty and to combat the manifestation of intolerance of other religious communities.

4. Autonomy[17]

Enumerating the rights specific to national minorities, we must analyse as well the concept of «autonomy» much claimed currently.

The term of «autonomy» represents a delegation of central power to local authorities, offering them a wider range of competences in settling the problems of interest for the territorial units of the state.

In the democratic countries, in their great majority, the autonomy is the result of power decentralisation, many attributions belonging to the local authorities elected by the communities in such area.

The same is valid as well in the case of federal states, however, due to the system, the signification of the term of «autonomy» is rather different, involving several components than in the case of unitary states.

It must be emphasized the fact that the issue of autonomy, referring directly to the constitutional field, represents an internal problem of every state, any external involvement being rejected, in terms of suzerainty principle.

Referring to autonomy in the context of national minorities relies on the idea according to which adopting autonomy on ethnical bases would create the proper frame for the development of a minority and for exercising its specific rights.

This idea is wrong, the development of the communities of national minorities as well as the exercising of their rights cannot be done by excluding other minorities or even the majority. The frame for the manifestation of citizens' rights is unitary, any attempt to ignore it being sanctioned by society.

However, in terms of this issue, the report of CSCE[18] meeting of experts with respect minorities (Geneva July 1-19th 1991) shows that „considering the diversity and variety of their constitutional systems, which determine that no approach is generally-applicable, the participating states notice that some of them have obtained positive results in a democratic manner, such as:

- local and autonomous administration, as autonomy on territorial base, including the existence of some consulting, legislative and executive bodies, elected by free and periodical elections;

[17] Ion Diaconu, *Minorities of third millennium – between globalism and national spirit*, (Romanian Association for Democratic Education, 1999), p. 237.

[18] See the tansformation of CSCE see http://www.osce.org/

- self-administration by a national minority of the issues related to its identity, in situations when territorial autonomy does not apply;

- forms of decentralised or local government".

The track followed by Romania is local autonomy relying on territory, the legislation determining this principle.

It would be interesting to analyse, briefly, the three models of autonomy proposed by the states participating to CSCE meeting of experts concerning the minorities.

The first model relies on local elections that may lead, by increasing the attributions, to bodies competent to solve locally the issues in their sphere of attributions, such as to adopt a certain strategy for the development of the area.

The second model, created mainly for national minorities, stipulates the existence of a system specific to the communities of national minorities, able to solve their particular problems, problems known better by persons belonging to a minority. But this does not involve eluding the attributions of the bodies of local public administration, liable for a wider community, which may include several minorities and majorities.

Eventually, we believe that the last model refers to federal states, the term of local government involving the delegation of the most important attributions of the executive, in the unitary states, this model not being able to operate satisfyingly.

Against the autonomy relying on ethnical criteria, it is adopted the European Charter of Local Autonomy in Strasbourg on October 15th 1985, defining the concept of «local autonomy» as „effective right and capacity of local communities to settle and manage in terms of law, under their own liability and in the advantage of such populations, an important part of public works". It is stipulated that this right is exercised by councils or meetings formed of members elected by free, secret, equal, direct and universal vote and who may dispose of executive bodies subordinated to them. It is expressly stipulated that the exercise of such rights has a territorial base, namely the administrative-territorial units for which such bodies are elected, by vote.

Also, the Charter stipulates expressly the application of the principles of local autonomy opposite to local communities from all administrative-territorial state units, without exception. No connection is determined between the ethnical and minority dimension and the local autonomy, between ethnical origin of the inhabitants of a territorial unit and the concept of local autonomy.

Local autonomy is thus defined as principle of internal organisation of states, as manner of performance of decentralised government system, integral part of democracy, without ethnic or minority connotations.

Discussing about local autonomy, we cannot ignore the Recommendation 1201/1993 of the Parliamentary meeting of the Council of Europe, entitled „referred to an additional Protocol to the European Convention of human rights, concerning the rights of national minorities"[19].

In the „Proposal of additional Protocol", which is integral part of the recommendation, it is stipulated, in art. 11, that: „In the areas where they form a majority, the individuals belonging to a particular national minority are entitled to dispose of proper local or autonomous administration, or of a special statute, in terms of the national legislation of the state".

We must outline here the legal character of recommendation which is not obligatory, according to Communitarian Law, the disposals therein may be applied by each state according to its own interpretation.

Concluding, the concept of «local autonomy» does not refer directly to national minorities, by transposing it in practice, one must consider the constitutional issues of a state, the ethnic structure of an area, as well as the regional social-economic realities.

In the last law project related to the status of national minorities, one attempts to introduce a new form of autonomy, namely the cultural autonomy. Therefore, such form of autonomy is non-

[19] About Parlamentary Assambley of the Council of Europe see http://assembly.coe.int/defaultE.asp

territorial. According to the foregoing project, cultural autonomy is defined as being the capacity of the community of a national minority to have decisional competences in the problems related to its cultural, linguistic and religious identity, for councils elected by its members. For the operation of the disposals of such project, the organisations of citizens belonging to national minorities may initiate the incorporation of the National Council of Cultural Autonomy. The National Councils of Cultural Autonomy are administrative autonomous authorities, with legal personality.

The cultural autonomy of national minorities refers to the following categories of competences:

a) elaboration of strategies and priorities with respect to the education in the maternal language of national communities;

b) organisation, management and control of education in the maternal language in private institutions of education, or participation in partnership with competent public authorities to the accomplishment of such attributions, in case of the institutions from the public system of education;

c) organisation, administration and control, in terms of law, of cultural institutions of private law in maternal language, or of research and development of one's own culture, or, if the case, the participation in partnership with competent public authorities to the accomplishment of such attributions, in case of cultural institutions of public law;

d) incorporation and management of one's own means of mass communication, or participation in partnership with competent public authorities to the organisation of some positions, sections, editorial offices, or programs within public companies of radio and television;

e) participation to the elaboration of strategies and protection priorities and the valuation of historical monuments, respectively of movable cultural patrimony of such national minority;

f) management or, if the case, participation in partnership with competent public authorities, or supervision of management of funds meant for financing specific activities in the field of maintaining, developing and expressing cultural, linguistic and religious identity of national minorities;

g) designating the management of private institutions of education teaching in the language of national minorities, as well as of cultural institutions of private law of such national minorities;

h) approving the designation of the management of state institutions of education teaching in the language of national minorities, as well as of the public institutions of culture of such national minorities, in terms of law;

i) proposing the designation of the management of state institutions of education, where are operating subunits with teaching in the maternal language;

j) proposing to designate some representatives of such national minorities within the Ministry of Culture and Cults and the Ministry of Education and Research, within some departments with attributions related to the culture of national minorities and education in the maternal language of national minorities;

k) setting-up and offering some grants and cultural and scientific prizes.

l) determination of some special fees for persons belonging to national minorities, in terms of law, with a view to provide the operation of the institutions of cultural autonomy.

5. System of protection of national minorities in Romania in terms of some international institutions.

Disposals of the 3rd report of ECRI about Romania, adopted on June 24th 2005[20]

A law project related to the statute of national minorities is being currently discussed in Romanian Parliament. This project, elaborated in 1995 and amended several times since then, includes in Article 3 a definition of Romanian national minorities. They are defined as communities living in Romania for at least a century, having their own national, ethnic, cultural, linguistic and

[20] The full report available at http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp (28th of January 2012)

religious identity, and intend to maintain, express or promote such identity. This law project includes a chapter about cultural autonomy which guarantees the right of national minorities to have their own institutions in fields such as culture, education and mass-media. Moreover, this chapter defines the manner of operation and supervision of such institutions and stipulates the right to education in the languages of minorities, the political representation of national minorities and a more supported involvement of them in the process of adopting decisions. This law project proclaims the non-discrimination principle, forbidding any kind of discrimination and instigation to discrimination.

However, ECRI notes concernedly that the section of such law project referring to the organisations of national minorities determines all new organisations willing to represent minorities to be governed as well by the conditions stipulated by Law No. 67/2004 concerning local elections. This chapter includes thus a range of conditions that such organisations cannot practically accomplish. It maintains as well the status quo principle, stipulating that all organisations of national minorities already members of the Council for National Minorities and represented in parliament, will maintain their legal status and will hold the rights and duties stipulated in the law project related to the status of national minorities. Since one of the effects of such conditions is that of obstructing the right of national minorities to elect their representatives, ECRI considers that national minorities are on a disadvantaged position opposite to the majority of population, free to elect its political leaders on all levels.

Disposals of the report of USA State Department related to human rights published in 2011[21]

Organizations representing ethnic minorities may also field candidates in elections. If the minorities in question are "national minorities," defined as those ethnic groups represented in the Council of National Minorities, their organizations must meet requirements similar to those for political parties. For organizations representing minorities not represented in the parliament, the law sets more stringent requirements than those for minority groups already represented in the parliament; they must provide the Central Electoral Bureau with a list of members equal to at least 15 percent of the total number of persons belonging to that ethnic group as determined by the most recent census. If 15 percent of the ethnic group amounts to more than 20,000 persons, the organization must submit a list with at least 20,000 names distributed among at least 15 counties plus the city of Bucharest, with no fewer than 300 persons from each county.

According to the constitution each recognized ethnic minority is entitled to have one representative in the Chamber of Deputies even if the minority's organization cannot obtain the 5 percent of the vote needed to elect a deputy outright, but only if the organization received votes equal to 10 percent of the average number of votes nationwide necessary for a deputy to be elected. Organizations representing 18 minority groups received deputies under this provision. There were 49 members of minorities in the 471-seat parliament, nine in the Senate and 40 in the Chamber of Deputies. At the end of the year, there were four members of minorities (all ethnic Hungarians) in the 17-member cabinet. Ethnicity data was not available for members of the Supreme Court.

Ethnic Hungarians, represented by the Democratic Union of Hungarians in Romania, an umbrella party, were the sole ethnic minority to gain parliamentary representation by passing the 5 percent threshold. Only one Romani organization, the Roma Party-Pro Europe, was represented in the parliament, by one member of parliament. Low Romani voter turnout likely resulted from a lack of awareness, inability to demonstrate an established domicile, and absence of identity documents.

Conclusions

In Romania, there is no doubt that human rights and the rights of individuals belonging to national minorities are observed. In this respect there are several guarantees, some deriving from

[21] Text available at http://romania.usembassy.gov/

internal rules, others from transposing some international norms in the internal legislation by ratification.

Nevertheless, the initiators of the law project concerning the statute of national minorities follow to reach two objectives. The first objective refers to the introduction of a new concept in the national legislation: cultural autonomy, as non-territorial form of autonomy. The second objective concerns the maintenance of stats – quo for the organisations belonging to national minorities represented in parliament. As may be noticed in the analyses of some international documents, Romanian state is criticised on international level for such initiative in the field of the rights of individuals belonging to national minorities.

The future will reveal as whether this legislative proposal is to concretize and which is going to be the final form of initiative or whether it remains a simple law project never adopted.

References

- F. Capotorti, *Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities,* (United Nations, New York, 1991).
- Ion Diaconu, *Minorities. Identity. Equality, Romanian Institute for Human Rights*, (Bucharest, 1998).
- Paul Fauchille, *Treaty of Public International Law*, (Tome I1st Part, Paris).
- Vintilă Gaftoescu, *Legal positions in the international law. Issue o minorities*, („Curentul" printing shops, Bucharest, 1939).
- Radu Meitani, *Protection of minorities, PhD Thesis*, (Bucharest, 1931).
- Robert Redslob, *The law principles of modern people*, (Paris, 1937).
- Geoges Scelle, *Law synopsis of people. Principles and methods*, (1st Part, Paris).
- Al. Ovidiu Vlădescu, *Principle of minorities*, (Copuzeanu Tipography, Bucharest, 1935).
- Present in the education of national minorities of Romania. Achievements of school year 2001-2002 and perspectives, Ministry of Public Information, Ministry of Education and Research, 2002.
- http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp
- http://romania.usembassy.gov/
- http://www.osce.org/
- http://www.un.org/en/documents/udhr/