

## Chapter 2. Institutionalized Political Participation of Minorities

Minorities are groups of people held together by a shared sense of the particularity of their cultural identity who live in a non-dominant or subordinated position within complex societies.<sup>376</sup> In this type of subordination, the culture of the dominant population is characterized as *the* "public culture". Subordination means that the cultural and educational institutions of a given state are designed to reproduce the dominant culture, while non-dominant communities have less chances of promoting their interests in cultural production and reproduction. States can have different approaches: they can simply affirm a so-called cultural neutrality and, under this heading, implicitly support the hegemony of the dominant culture,<sup>377</sup> or, in more radical cases, they can "thirst after the cultural and linguistic souls of their subjects",<sup>378</sup> encouraging a politics aimed at limiting the chances of minority cultures to reproduce themselves.

Against this background, minority protection can be defined as the institutionalization of various structures to increase the capacity of a given ethno-cultural community to promote its particular interests in the process of incorporating cultural reproduction into public policies. If minorities have a chance to effectively participate in the political process, the probability of ethno-political conflicts might decrease, or as Max van der Stoel formulated, "if minorities feel that they have a stake in society, if they have input into discussion and decision-making bodies, if they have avenues of appeal, and if they feel that their identities are protected and promoted, the chances of inter-ethnic tensions arising will be significantly decreased."<sup>379</sup> Therefore, one of the main goals of the preventive diplomacy of the HCNM was to encourage various forms of effective participation of minorities in public and political life.<sup>380</sup> The "Lund Recommendations on the Effective Participation of National Minorities in Public Life",<sup>381</sup> drawn up at the High Commissioner's request, represent a comprehensive inventory of approaches, forms and instruments of minority participation based on international norms and standards.

This means, in terms of promoting interests, that different forms of pressure will gradually be replaced by political dialogue and that actors will be able to directly negotiate their relationships. This process has important legal, institutional and political aspects. The legal aspects comprise those basic norms which directly or indirectly affect the possibility of minorities to induce changes they consider favourable for maintaining their cultural identity. The institutional aspects refer to the framing of structures and procedures through which minorities can exercise their influence. In the political dimension, we refer to those forms of temporary political relations between representatives of majority and minorities which were extensively dealt with in Chapter 1.

Although the High Commissioner invested considerable efforts in consolidating the political dimension of minority participation in Romania before 1996, he was even more concerned with its institutional and legislative aspects. In this chapter, we will focus on the High Commissioner's efforts to strengthen the institutional and legal measures aimed at enhancing the political participation of minorities. First, we will analyse the constitutional provisions relevant to minorities, then we will focus on the particular institutions and procedures that were set up to promote the political participation of minorities. In the frame of this analysis, we will concentrate on the HCNM's efforts to increase the effectiveness of the system of minority participation.

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<sup>376</sup> For definitions of national minorities see Capotorti 1979, Girasoli 1995.

<sup>377</sup> Cf. Kymlicka 1995.

<sup>378</sup> Gellner 1983, p. 46.

<sup>379</sup> Van der Stoel, 9 July 1999, in: Van der Stoel 1999, p. 170.

<sup>380</sup> Cf. Kemp (Ed.) 2001, pp. 33-34.

<sup>381</sup> FIER 1999.

## 2.1 *Minority Rights in the Romanian Constitution*

The Romanian Constitution<sup>382</sup> is both generous and restrictive when it comes to minority rights. The first aspect mainly relates to its famous article 1 which states that "Romania is a sovereign, independent, unitary and indivisible National State." (art. 1, para. 1) As mentioned above, "national state" in Romanian implies an ethno-political understanding of the term (cf. Chapter 1.2.1.2.). This perception of the relation between state and nation logically excludes collective minority rights and was therefore frequently contested by the RMDSZ. One of the core demands of the RMDSZ memorandum on Romania's admission to the Council of Europe was "the recognition of national minorities as state constituting factors", arguing that the concept of nation state, as used in the Romanian Constitution, "suggests the second class status of approximately three million citizens who belong to national minorities, including provisions that are patently discriminatory or aim at assimilation."<sup>383</sup>

The Romanian understanding of the national state, as an intrinsic link between an ethno-culturally defined community and the state, has also been debated in scholarly literature. Weber considered this definition a reflection and result of nationalism being imbued with Romania's political life and legislative processes.<sup>384</sup> Solcan focused on the logical inconsistencies between the national concept of political community and those parts of the Constitution referring to the protection of national minorities,<sup>385</sup> which can be understood as the main contradiction in the Romanian Constitution. A similar conclusion was drawn by the UN High Commissioner for Human Rights, as can be observed in his following statement: "Concern is also expressed about the concept of the nation-State since it may result in weakening the policy of protecting minorities and could aggravate the relations between communities."<sup>386</sup> Weber further mentions that the concept of a national state has the general legal consequence that minority standards included in the Constitution are lower in comparison to former Romanian traditions.<sup>387</sup>

The debates around this definition of "national state" contributed, on the one hand, to the political alienation of Hungarians from the newly constructed democracy; on the other hand, the fact that the Hungarian population overwhelmingly voted against the new constitution was perceived as political disloyalty toward the Romanian state. From a legal-political point of view, the qualifications for a "national" and "unitary" state were used as a political principle and ultimate argument to limit the margin of negotiation of possible solutions to minority problems, excluding certain forms of (especially territorial) devolution of central power. The Constitution also excludes the possibility of a revision of these and other core provisions: "The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the Republican form of government, territorial integrity, independence of the judiciary, political pluralism and official language shall not be subject to revision." (art. 148, para. 1)

On the other hand, the Romanian Constitution admits to the existence of culturally differentiated groups, acknowledging them as the sum of individuals with special cultural needs.<sup>388</sup> The Constitution reads as follows: "The State recognises and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity." (art. 6, para. 1) The idea of non-discriminatory treatment of persons belonging to minority groups is expressed in article 4, paragraph 2: "Romania is the common and indivisible home-

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<sup>382</sup> Cf. footnote 159. For an in-depth analysis of the Romanian Constitution under the aspect of minority rights see Weber 1998, especially pp. 201-203.

<sup>383</sup> Az RMDSZ Memoranduma Románia felvételéről az Európa Tanácsba [Memorandum on Romania's Admission to the Council of Europe], 26 August 1993, in: RMDSZ 1994, pp. 6 and 4.

<sup>384</sup> Cf. Weber 1998, pp. 202-203.

<sup>385</sup> Cf. Solcan 1998.

<sup>386</sup> Office of the United Nations High Commissioner for Human Rights, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Romania, 22/09/95, Geneva, A/50/18, para. 262-278.

<sup>387</sup> Cf. Weber 1998, p. 203.

<sup>388</sup> Answering a questionnaire for the European Commission for Democracy through Law, the Romanian Foreign Ministry was clear in considering that minorities are not recognised as an entity, and that the protection of minorities is seen in terms of individual rights: "La Constitution ne permet pas la reconnaissance par l'Etat de minorités tant que telles, c'est a dire en tant qu'entités" [The constitution does not allow the state to recognise minorities as such, meaning as entities], in: European Commission for Democracy through Law 1994, p. 236.

land of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin."

More concretely, educational rights of minorities are stressed in the most powerful way, permitting not only the teaching *of* the mother tongue in compulsory education, but also education *in* the mother tongue for minorities: "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." (art. 32, para. 3) Regarding other linguistic rights, the Constitution grants less favourable provisions for minorities: "In Romania, the official language is Romanian." (art. 13) In courts of law, article 127, paragraph 2 introduces an exception for minorities: "Citizens belonging to national minorities, as well as persons who cannot understand or speak Romanian have the right to take cognisance of all acts and files of the case, to speak before the Court and formulate conclusions, through an interpreter; in criminal trials, this right shall be ensured free of charge." Besides educational and linguistic rights, the Constitution grants another right which is important for the political representation of minorities: "Organisations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organisation only." (art. 59, para. 2) After his first visit, the High Commissioner assessed the constitutional provisions on minority rights as follows: "[P]rovided that they are fully implemented, they can offer important guarantees for the members of the various minorities."<sup>389</sup>

In addition, it should be noted that the Romanian Constitution explicitly states that international law takes precedence over domestic law: "Where any inconsistencies exist between the covenants and treaties on fundamental human rights, Romania is a party to, and internal laws, the international regulations shall take precedence." (art. 20, para. 2) As "several international treaties have clearly stated that minority rights are part and parcel of human rights it is unquestionable that under the Romanian Constitution minority rights enjoy the same legal status and international protection as general human rights."<sup>390</sup> Minority protection is limited in formal terms by the following article which stipulates restrictions on measures of positive discrimination of minorities: "The protecting 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." (art. 6, para. 2) Taken together, we can conclude that the Romanian Constitution is rather restrictive in its general stipulations; here it resembles the typical constitution of a nationalizing state, whereas its concrete issue-related stipulations reflect a large scope of minority-friendly solutions.

## 2.2 *Raising Legal Standards*

As presented in Chapter 1, one of the main efforts of the international actors, including the HCNM, was to introduce international norms and standards as points of reference for ethno-political conflict regulation. Although this is not the place for a comprehensive analysis of the legal framework of minority protection in Romania,<sup>391</sup> we cannot ignore the impact of international minority standards on the regulation of the relation between minorities and the state. Without the claim of being exhaustive, table 7 provides a brief overview of the main legally and politically binding documents signed by Romania. A part of them, for example the European Charter for Regional or Minority Languages, is still in the process of ratification.

Within the framework of the High Commissioner's activity in Romania in making norms matter, we can identify several lines of action, systematically presented by Ratner: disseminating norms, identifying the place of norms in the political process, providing the interpretation of norms and its trans-

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<sup>389</sup> HCNM letter to Meleşcanu, 9 September 1993.

<sup>390</sup> Weber 1998, p. 205.

<sup>391</sup> Cf. Weber 1998 or: Report submitted by Romania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 24 June 1999. For a critical view on the situation of Romania see the Shadow Report submitted by Gabriel Andreescu, October 1999.

lation in concrete situations, upgrading norms that do not have legally binding status to a more binding status and developing norms.<sup>392</sup>

Parallel to his discussions with political leaders of both the majority and minority and his recommendations, the High Commissioner organized a broader process of normative socialization, which was mainly based on the Foundation on Inter-Ethnic Relations (FIER). In 1995, the FIER organized two seminars in Romania. In September, one was titled "The Implementation of International Minority Rights into the Romanian Legal Order". At this seminar, there was a broad participation of representatives from the polity and the civil sphere. The focus of the seminar was on the relationship between international minority standards and Romanian domestic legislation, especially on the draft laws on national minorities and the Law on Education.<sup>393</sup> In December, in the context of the highly contentious debate on the Law on Education, another seminar on "Educational Opportunities for Minorities" was organized.<sup>394</sup> In September 1997, training for the staff of the newly constituted Department for the Protection of National Minorities on human rights and minority standards was arranged.<sup>395</sup>

*Table 7: International instruments on human and minority rights protection to which Romania is a party<sup>396</sup>*

<i>United Nations</i>
Universal Declaration of Human Rights, December 1948
International Covenant on Civil and Political Rights, December 1966
International Covenant on Economic, Social and Cultural Rights, December 1966
International Convention on the Elimination of All Forms of Racial Discrimination, December 1965
Declaration of the General Assembly of the United Nations on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, Resolution 47/135, December 1992
The Convention Against Discrimination in Education, December 1960
<i>CSCE/OSCE</i>
Final Act of the Conference on Security and Co-operation in Europe, August 1975
CSCE Concluding Document of Vienna, January 1989
CSCE Document of Copenhagen, June 1990
The Charter of Paris for a New Europe, November 1990
CSCE Helsinki Document, July 1992
Pact on Stability in Europe, March 1995
<i>Council of Europe</i>
Convention for the Protection of Human Rights and Fundamental Freedoms, June 1994
Protocols No. 1-10 to the Convention for the Protection of Human Rights and Fundamental Freedoms, June 1994
Framework Convention for the Protection of National Minorities, May 1995
European Charter of Local Self-Government, October 1985
European Charter for Regional or Minority Languages, November 1992
Recommendation 1201 of the Parliamentary Assembly of the Council of Europe on an additional protocol on the rights of national minorities to the European Convention on Human Rights, February 1993
<i>Bilateral Treaties</i>
Treaty on Friendly Co-operation and Partnership between Romania and Germany, 1991
Treaty of Understanding, Co-operation and Good-neighbourliness between Romania and Hungary, 1996
Treaty on Good-neighbourliness and Co-operation between Romania and Ukraine, 1997

<sup>392</sup> Cf. Ratner 2000, pp. 618-625, 636-637, 640 ff.

<sup>393</sup> Cf. FIER 1995, p. 7.

<sup>394</sup> Cf. *ibid.*

<sup>395</sup> Cf. FIER 1997a, p. 10.

<sup>396</sup> Cf. Weber 1998, Report submitted by Romania Pursuant to article 25, paragraph 1 of the Framework Convention, quoted above (footnote 391), and the collection of legal documents in: Pro-Europa 1997.

The latter was followed by a series of trainings for regional government officials in 1998.<sup>397</sup> A former official of the Secretariat of the Council for National Minorities summarized Van der Stoel's role as one that helped Romanian actors familiarize themselves with the OSCE, its documents and instruments.<sup>398</sup> The High Commissioner's activity was, however, not restricted to the dissemination of norms. He also tried to identify the proper place of norms in policy processes by offering interpretations of norms for concrete situations. One example is his first set of recommendations referring to the commitments made by Romania on the occasion of its admission to the Council of Europe, where he highlighted the function and place of norms in domestic legislation:

In this context I wish to recall Recommendation 1201 of the Parliamentary Assembly which contains provisions, which, once their implementation is ensured, could help considerably to allay concerns which apparently exist among some minority groups. I think for instance of Article 7.3, which states *inter alia* that in the regions in which substantial numbers of a national minority are settled, the persons belonging to a national minority shall have the right to use their mother tongue in their contacts with the administrative authorities.<sup>399</sup>

As can be seen, the emphasis is not on the adoption of the norms, as such, but on their function in the policy process and in their benefits regarding the possible defusing of inter-ethnic tensions. This role of the HCNM was especially important in the light of the fact that the HCNM was viewed by nearly all Romanian mainstream actors as an institution of arbitration with the legitimate authority to assess whether a certain course of action meets international minority standards or not. An example for this is his statement in 1998 concerning the debate on a separate Hungarian-language university between the RMDSZ and its coalition partners. As various statements of the High Commissioner had been politically exploited, he issued a clarifying statement saying that European legislation on national minorities "neither prohibits nor compels" setting up universities offering instruction in minority languages, but "leaves an open door" to it.<sup>400</sup> In this way, he acquainted political actors with the idea that international norms do not dictate certain standard solutions, but offer a framework for the actors' specific needs and ideas.

### 2.3 *Minority Representation in the Legislation*

In 1989, the FSN deemed it useful to include the minorities in the new power structures. This was true for the first *ad hoc* political structure formed in December 1989 as well as for the *ad interim* executive structures to which Hungarians were co-opted. The process of integration of the minorities continued in February 1990 when, after being pressured by the historical parties (PNȚCD and PNL), a new provisional legislature was set up. The minorities were invited to send one representative each, a measure which was interpreted by the acting leader of the RMDSZ as a political manoeuvre by the FSN to assure its control upon this transitional body.<sup>401</sup>

The parliamentary representation of those minority organizations, which were unable to win enough votes to obtain one seat in the Chamber of Deputies, was codified for the first time in the Electoral Law of 1992 (Law 68/1992, art. 4) and later enforced in the Constitution. (art. 59, para. 2) According to these provisions, the legally constituted organizations of the minorities<sup>402</sup> are equated with political parties and can thus participate in general and local elections. The preferential treatment of these minority organizations applies only to general elections and consists in the fact that they can send a deputy to the Chamber of Deputies if they obtained, at country level, a number of valid votes equal to at least five per cent of the average number of votes necessary for the election of a deputy.<sup>403</sup> Therefore, a rather small number of votes is necessary for a minority representative to obtain a seat. For example,

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<sup>397</sup> Cf. FIER 1998a, pp. 18-19.

<sup>398</sup> Interview with former official of the Secretariat of the Council for National Minorities, 26 November 2001.

<sup>399</sup> HCNM letter to Meleşcanu, 9 September 1993.

<sup>400</sup> RFE/RL Newswire, 9 February 1998, Conflicting reports on Van der Stoel's visit.

<sup>401</sup> Cf. Domokos 1996, p. 160.

<sup>402</sup> These organizations are constituted as NGOs, according to the relevant Romanian legislation.

<sup>403</sup> Cf. Law on Elections (68/1992) to the Chamber of Deputies and the Senate, 15 July 1992, art. 4.

the Bulgarian Union of Banat-Romania managed, in September 1992, to obtain a mandate with 1,906 votes (0.02 per cent of all valid votes).

Under these circumstances, most of the organizations representing a minority succeeded in winning a seat in the Chamber of Deputies. In the 1996 elections, 15 deputies representing minorities received a mandate in the Parliament; the parliamentary group of these minorities held 4.3 per cent of the seats. After the 2000 elections, 18 small-sized minorities were represented in the Chamber of Deputies amounting to 5.2 per cent of the seats. Two aspects should be mentioned in relation to this system of minority representation: First, the law does not exclude that more than one organization participate in the elections for a given national minority. Positive discrimination, however, applies only to the one organization which wins the highest number of votes. Second, the RMDSZ obtained its parliamentary representation without having to fall back on measures of positive discrimination. In the 1996 elections, it won 25 seats in the Chamber of Deputies and 11 in the Senate; after 2000 it gained 27 seats in the Chamber of Deputies and 12 in the Senate.

The fact that the norms on parliamentary minority representation lack any definition of a national minority and therewith of the subjects benefiting from this measure of positive discrimination can lead to a certain proliferation of minority groups claiming political representation. For example, the community of Slavic-speaking Macedonians gained parliamentary representation in 2000, although they had not been categorized in the 1992 census. Also, the Ruthenians, who numbered 350 persons in the 1992 census, gained representation as a separate group in 2000. On the other hand, the community identifying themselves as Aromanians<sup>404</sup> (21,089 persons declared themselves Aromâni in the census from 1992) was not granted the right to participate in the elections by the Central Electoral Bureau with the argument that they are not a separate ethnic group, but an ethnographic subdivision of the Romanian people.<sup>405</sup>

Another particularity of the legislation on parliamentary minority representation is the inherent competition between various groups claiming to represent a given minority. As only one organization of a given minority can benefit from the favourable provisions of the Constitution, the votes may get fragmented and, as a result, none of the organizations claiming to represent a minority wins a parliamentary seat. This concerns especially the Roma, whose internal divisions resulted in the fact that they could not increase their parliamentary representation beyond the one seat provided by the Constitution and electoral legislation. It also occurred that not even the lower minority threshold could be attained and that a group remained without political representation in Parliament.<sup>406</sup> According to the saying "the winner takes all", the organization winning the most votes here acts as an interest group, depriving all other organizations of the resources offered as support for the minority group as a whole.<sup>407</sup> This policy of minority representation is based on the assumption that minority groups are unitary actors. As this has proved to be wrong, future regulations seem to be necessary.

Another problem is that the system of parliamentary minority representation has centralized character and does not relate to the local and regional level. Nevertheless, due to their proportion in certain localities, the minorities (especially the Hungarians, but also a part of the smaller minorities) often have the chance to win seats in local councils; in some cases, the Hungarian minority even obtains the majority. However, if the proportion of a minority group is low, it has no possibility of influencing the local decisions that are affecting its situation with routine political mechanisms.<sup>408</sup> As more and more competencies are transferred from the central to local authorities in the process of decentralization, this becomes an even more important issue. Under these circumstances, concentration on the level of the central state meant protecting and promoting the specific interests of minorities could become ineffective - a problem already raised by the representatives of the small-sized minorities who asked for

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<sup>404</sup> Or Vlachs; see on this group spreading over the Balkans Poulton 1994, especially pp. 117-118.

<sup>405</sup> Interview with an official of the Department for Interethnic relations, 27 November 2001.

<sup>406</sup> As this was the case with the Croat minority in 1996 (interview with an official of the Department for the Protection of National Minorities, 16 September 1999).

<sup>407</sup> Cf. Opreșcu 1999.

<sup>408</sup> On the representation of minorities at local level see Weber 1998, pp. 232-233.

preferential treatment from minority representatives in the elections for the county<sup>409</sup> and local councils.<sup>410</sup>

#### 2.4 *The Council for/of National Minorities as a Consultative Body*

When Romania tried to obtain accession to the Council of Europe on 6 April 1993,<sup>411</sup> "a Council for National Minorities was set up as a consultative body (cf. Chapter 1.2.1.4). Its task was to liaise between the Government and organisations representing national minorities. It is composed of fourteen governmental representatives and thirty-six representatives of Romania's (seventeen) minorities and ethnic groups."<sup>412</sup> According to Foreign Minister Meleşcanu, its task was to "[address] administrative and financial issues concerning the exercise of the rights of persons belonging to national minorities, and [examine] and [present] draft laws to the parliament that guarantee and exercise these rights."<sup>413</sup> The Council was conceived as a minority round table comprising representatives of the minority organization represented in Parliament (and even those who failed to obtain representation), with each minority having the same number of votes regardless of its size. A Secretariat for the Council was set up as a governmental office to assure contact between the Council and the government. The RMDSZ raised doubts on the effectiveness of the newly created institution and, implicitly, on the good faith of the government. As the integration of the Hungarian minority was the main purpose of the international actors of that period, the effective authority of this newly created institution was one of the major issues on the High Commissioner's agenda. In June 1993, when he visited Romania for the first time, he recommended the following:

The Romanian Government, and equally the representatives of the minorities in the Council, ought to make full use of the potential of the Council on National Minorities. [...] it can cope with a great number of issues, provided that sufficient budgetary and staffing resources are available. It is essential that it does not restrict itself to recommendations on legislation, even though this is also a crucially important task, but also fulfils the other tasks as laid down in its operating regulation [...]. Its role in making proposals on Government decisions, monitoring problems at the local level of administration and considering individual complaints could help considerably in removing or preventing tensions concerning minorities.<sup>414</sup>

The idea behind this recommendation was to develop the Council both into a body that acts as an agency promoting specific regulations for minority issues and, as the HCNM pointed out in a public speech, "into an effective body for inter-ethnic dialogue".<sup>415</sup> This is fully in line with the High Commissioners general philosophy of effectively empowering minorities in their relations with the state by initiating genuine processes of dialogue and participation as stated in the Lund Recommendations:

These [advisory and consultative] bodies should be able to raise issues with decision-makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources.<sup>416</sup>

<sup>409</sup> A county is the usual regional administrative unit in Romania with a few hundred thousands of inhabitants.

<sup>410</sup> The deputies of the national minorities presented an amendment on the electoral law stipulating that a representative of a minority can be sent to the relevant council at regional and local level, if a minority list gets 20 per cent of the average of the votes needed for a local or county councillor seat (interview with an Undersecretary of state of the Department for Interethnic Relation, 13 December 2001).

<sup>411</sup> Cf. Government Order (137/1993) on the Functioning of the Council for National Minorities as amended by Government Order No 220/1993.

<sup>412</sup> CoE/PA, Doc. 6901, 19 July 1993, para. 45, p. 13.

<sup>413</sup> Ibid., appendix II, Letter addressed by Mr. Teodor Meleşcanu, Minister of State, Minister of Foreign Affairs of Romania to Mr. Friederich König, Rapporteur for Romania of the Political Affairs Committee (22 June 1993). For detailed information on the legislative basis and structure of the Council for National Minorities see: Romanian Institute for Human Rights 1994.

<sup>414</sup> HCNM letter to Meleşcanu, 9 September 1993.

<sup>415</sup> Van der Stoel, 28 October 1994, in: Van der Stoel 1999, p. 103.

<sup>416</sup> FIER 1999, para. 12, p. 6.

In this logic of expanding the involvement of the Council for National Minorities, the High Commissioner suggested, in the same set of recommendations, that "[t]he Commission for education, science and youth matters of the Council for Ethnic Minorities could play a useful role in making recommendations concerning Government regulations on this subject [Law on Education], not only in the field of primary and secondary education, but also at the university level."<sup>417</sup> Taken together, the HCNM's recommendations on the Council for National Minorities were focused on three elements: strengthening its infrastructural and material resources, a comprehensive approach to ethno-political problems, including regulatory aspects as well as monitoring functions and, in more general terms, the authority of this body. The expectations which the HCNM put on such an agency are reflected in his recommendation to the Slovak government to develop a similar institution:

In addition it would in my view help to promote harmonious inter-ethnic relations if the dialogue would not restrict itself to discussions on future legislation, but would also be used to help solve problems of a non-legislative character. Perhaps I may quote the example of the Council for Ethnic minorities in Romania. [...] I would recommend that your Government consider a similar structure and similar competences in order to promote and intensify dialogue between the Government and the various minorities.<sup>418</sup>

In his reply to the HCNM's recommendations, the Romanian foreign minister emphasized that "the Council has fairly and effectively run the funds allotted to the activities of ethnic organisations, including the purchase and equipping of offices, the organisation of specific cultural and scientific events (festivals, symposia, meetings), the financing of publications edited in minority languages and of radio and television broadcasts for the national minorities."<sup>419</sup> Practically speaking, this answer did not refer to the three elements of the High Commissioner's recommendations. Instead, it stressed the upgrading of the infrastructural capacities of the individual organizations participating in the Council and the expansion of its redistributive function.

The lack of effective authority was taken as a justification by the RMDSZ for withdrawing from the Council in September 1993, blaming the government for lack of good will in implementing the Council's recommendations.<sup>420</sup> Soon thereafter, the Roma representatives also decided to withdraw, arguing that the government did not take firm action in the case of violence against the Roma population in Hadareni, where three Roma were killed and 13 houses burnt.<sup>421</sup> International agencies also assessed the effectiveness of the Council for National Minorities in negative terms. In the Country Report of the US State Department, it is stated that "[t]he Government's Council for National Minorities, widely hailed in 1993, appeared largely ineffective in 1994. [...] Many minorities and other observers state that the Government seldom acts on the Council's recommendations."<sup>422</sup>

Oprescu assessed the functions of the Council as essentially propagandist and subordinate to the political manoeuvres of the PDSR and further summarized that the PDSR assured support for the initiatives of the government in the Chamber of Deputies by paying "alimonies"<sup>423</sup> to minority organizations. According to Oprescu, the Council for National Minorities had an important demonstrative function concerning the government's integrative minority policy; on the other hand, it served to counter the allegations of the RMDSZ on the anti-minority politics of the governing parties.<sup>424</sup> Against this background, the expectation that the work of the Council would lead to a decrease in tensions between the Hungarian minority and the Romanian state was not fulfilled. During the first three years of the Council's existence, relations between the Romanian state and the RMDSZ were highly tense. The establishment of the Council for National Minorities as a *form* of dialogue and participation was not sufficient to bridge the two sides' deep contradictions in terms of *substance*. In this sense, the

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<sup>417</sup> HCNM letter to Meleşcanu, 9 September 1993. Here, as in the most cases in this letter, the term "Council for Ethnic Minorities" is used.

<sup>418</sup> HCNM letter to Moravcik, 8 November 1993. Cf. remark in footnote 417.

<sup>419</sup> Meleşcanu letter to the HCNM, 30 May 1994.

<sup>420</sup> Cf. Human Rights Watch, *Ethnic Hungarians in Post-Ceausescu's Romania*, September 1993; US Department of State, *1993 Romania Report on Human Rights Practices*.

<sup>421</sup> Cf. US Department of State, *1994 Romania Report on Human Rights Practices*.

<sup>422</sup> *Ibid.*

<sup>423</sup> Oprescu 2000, p. 75.

<sup>424</sup> Cf. Oprescu 1999 and 2000.

Council, at least in its first period, shared the same fate as Neptungate, the first failed attempt at negotiating substantial issues.

After the change of government in 1996, the RMDSZ representative, Minister on National Minorities Tokay, headed the new department set up to handle minority issues. This new structure, the Department for the Protection of National Minorities, replaced the Secretariat of the Council *for* National Minorities and became the main liaison structure between the cabinet and the council. The Council was re-named Council *of* National Minorities and its competencies in handling the minority budget were formally clarified with the purpose of reducing the possibility of direct governmental influence via budgetary resources.<sup>425</sup> In the governmental Decision No. 17/1997, the Council was directly linked to the department as a consultative body.<sup>426</sup> Through this step, the possibility of a more effective promotion of interests, at least formally, was created. Oprescu considers,<sup>427</sup> however, that no major change in perspective occurred; the main focus of the Council continued to be the distribution of the budget to the minority organizations.<sup>428</sup> The following statement from a deputy on the draft Law on Minorities, promoted in 1998 by the Council of National Minorities,<sup>429</sup> shows that the Council's possibilities of influencing the legislative process had not significantly increased: "The Council of National Minorities can propose any draft. [...] These kind of drafts like the one proposed by the national minorities does not have chances, because the legislative is the one which analyse the laws, and the already adopted decisions of our committee are contrasting some of the provisions of the proposal introduced by the Council of National Minorities."<sup>430</sup>

Given this gradual negative development, the HCNM referred less and less to the Council *for/of* National Minorities. Apart from the ones quoted above, there are no further recommendations related to the Council. However, the Foundation on Inter-Ethnic Relations (FIER) used the Council to organize seminars, study trips and training courses,<sup>431</sup> in short, as a liaison and support structure. Whereas, before 1996, the Council - as a formal structure - could not bridge the gap in terms of substance, after 1996, it lost (relative) weight, because the major minority group had won other and more important channels of influence and ways to promote their interests. Therefore, we can agree with Oprescu's assessment of this institution as a cheap system (costing about 2,5 million US-Dollar per year), "able to provide a very 'good image', especially abroad".<sup>432</sup> This leads to the general question on whether the various minority round tables and consultative body constructions in the different countries are effective. In a quasi-general assessment of experiences made, the High Commissioner cautioned in 1998, without referring directly to the Romanian situation, that "structures for dialogue without meaningful competences will achieve little. Indeed they may be counter-productive. Participants must feel that there is some real value to their dialogue that their views will contribute to some concrete outcome."<sup>433</sup> Indeed, results can rarely be achieved by dialogue structures alone, especially when the political will for substantial solutions is lacking.

## 2.5 *Executive Structures at the Level of the Central Government*

In January 1990, the FSN promised, among others, to appoint a Minister for National Minorities.<sup>434</sup> When nationalism became one of the most important elements in sustaining the authority of the new power-holders, this promise was forgotten. In 1992, when after the elections a new cabinet was formed, the small-sized minorities, without the participation of the RMDSZ, requested that a separate

<sup>425</sup> Interview with the former head of the Department for the Protection of National Minorities, 17 September 1999.

<sup>426</sup> Cf. Government Decree (17/1997) on the Creation, Organisation, and Functioning of the Department for the Protection of National Minorities, 31 January 1997.

<sup>427</sup> Cf. Oprescu 2000, pp. 74-75.

<sup>428</sup> Concerning the amount of resources for 1996 and 1997 see Weber 1998, pp. 228-229, and 237-238.

<sup>429</sup> The Council's main task when created was to promote a Law on National Minorities.

<sup>430</sup> Declaration of a PNȚCD deputy quoted in: Transilvania Jurnal, 24 October 1998, p. 3.

<sup>431</sup> Cf. the report of the Council for National Minorities on the seminar on the education of the national minorities of Romania, Bucharest 1996, FIER 1995, p. 10, and FIER 1996a.

<sup>432</sup> Oprescu 2000, p. 74.

<sup>433</sup> Van der Stoel, 18 October 1998, in: Van der Stoel 1999, p. 158.

<sup>434</sup> Frontul Salvării Naționale [National Salvation Front], Declarația cu privire la drepturile minorităților naționale din România [The declaration regarding the rights of the national minorities of Romania], 6 January 1990.

State Secretariat for Minority Questions be set up.<sup>435</sup> In parallel, the RMDSZ asked the newly appointed prime minister to include, in the new cabinet, a minister dealing with minority issues. Nicolae Văcăroiu, the head of the government, which was installed on 19 November 1992, answered that this claim goes beyond the limits of the Constitution.<sup>436</sup>

Only after the elections of 1996 and the inclusion of the RMDSZ in the governing coalition, was a special structure dealing with minorities established. This structure was based on governmental Decision No. 17 of 31 January 1997. The Department for the Protection of National Minorities was set up within the Office of the Prime Minister - its head having ministerial rank (Minister on National Minorities, delegated by the prime minister) and full status as a member of the government. In practical terms, the department replaced the former Secretariat of the Council for National Minorities with a significantly increased number of personnel.<sup>437</sup> The department was given the important right to initiate legislation and to supervise the initiatives of other branches of the executive on issues affecting national minorities. Moreover, it was granted the authority to monitor the implementation of the relevant legislation, including the international one. The department was also authorized to receive and examine complaints by individuals, institutions and non-governmental organizations concerned with the eventual infringement of minority rights by the central or local administration. The department maintained permanent contacts with the Council of National Minorities, mainly in two areas: in financial issues, it administered the funds designated to the minorities; in the second area, two structures reciprocally reinforced various legal and administrative initiatives. The Council supervised the legal initiatives of the department; *vice versa*, the department promoted the initiatives of the Council.<sup>438</sup> Since the founding of the department, the minority budget has increased.<sup>439</sup>

The activities of the department developed in two main directions. On the one hand, a significant regional presence was established to maintain contacts with minority organizations and to monitor the implementation of legislation. At the end of 2000, the department had five regional offices. On the other hand, the Inter-Ministerial Committee for National Minorities<sup>440</sup> and, within this body, a special task-force working on Roma issues was set up to assure better co-ordination between the various branches of the executive.<sup>441</sup> Also, within the department, the National Office for Roma was created,<sup>442</sup> initiating special programmes to handle the complex issue of integration of this minority.<sup>443</sup> It should also be mentioned that, apart from the department, specialized units existed within the Ministry of Education, the Ministry of Culture and the State Secretariat for Religious Cults, which were tasked with implementing minority policies within the relevant branch. These bodies manage specific problems, but follow only goals defined by the respective ministries. In comparison with the department, they do not possess significant competencies to initiate and promote policies.<sup>444</sup>

Concerning the overall legislative changes initiated by the department, the failed attempt to promote a Law on National Minorities in 1998 (cf. 2.7), and the successful governmental ordinance (No. 137 of 31 August 2000) concerning the prevention and sanctioning of all forms of discrimination should be pointed out. This ordinance was approved with modifications by both chambers of the Romanian Parliament at the end of 2001; the two versions were the subject of mediations between the two chambers.<sup>445</sup> The department played a particular role in promoting the emergency ordinances of 1997, the first one modifying the Law on Education,<sup>446</sup> and the other the Law on Public Administration<sup>447</sup> with

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<sup>435</sup> Cf. RFE/RL Newline, 13 November 1992, Romanian Minorities Agree to Cooperate.

<sup>436</sup> Cf. RMDSZ 2000, p. 28.

<sup>437</sup> With a total staff of 46 persons in 1998, see Weber 1998, p. 245.

<sup>438</sup> Interview with an official of the territorial branch of the Department for the Protection of National Minorities, Cluj, 19 March 2000.

<sup>439</sup> The budget designated for the minorities gradually increased, also in real terms (interview with an undersecretary of state of the Department for Inter-ethnic Relations, 28 November 2001).

<sup>440</sup> Decree (459/1998) on the establishment, organization and functioning of the Inter-Ministerial Committee for National Minorities, 7 August 1998.

<sup>441</sup> Cf. Oprescu 2000, p. 80.

<sup>442</sup> Government Decree (17/1997), 31 January 1997.

<sup>443</sup> Cf. Oprescu 1999 and 2000.

<sup>444</sup> Interview with a former state secretary of the period 1996-1998, 28 November 2001.

<sup>445</sup> Cf. Oprescu 2001.

<sup>446</sup> Cf. Ordonanța de urgență (36/1997) pentru modificarea și completarea Legii învățământului No. 84/1995 [Emergency ordinance (36/1997) concerning the modification and completing of Law No. 84/1995].

important provisions favouring the use of minority languages in public life and the organization of education in the mother tongue (cf. 3.2 and 3.4). Later on, within the department and with its assistance, discussions about a Hungarian-language university took place. In February 1998, the HCNM's office<sup>448</sup> and the Romanian government (precisely the department<sup>449</sup>) jointly organized a seminar on the issue of a separate Hungarian-language university with the participation of leaders of political parties, international experts and the leading staff of the Babeş-Bolyai University of Cluj. In autumn 1998, a committee of specialists, studying the possibility of setting up a Hungarian-language university, gathered under the chairmanship of the minister on national minorities.<sup>450</sup>

After 2000, two changes were made in the department: First, the prime minister reduced the number of departments within his office. This in turn affected the department for the Protection of National Minorities,<sup>451</sup> which was renamed the department for Inter-ethnic Relations and integrated into the Ministry of Public Information in January 2001. A state secretary<sup>452</sup> and three undersecretaries of state, who are appointed on the basis of agreements with minority organizations (the RMDSZ, the Roma Party and the German Democratic Forum), run the department. Although no other major changes in the structure or in the mandate were made, Oprescu assessed the department as "somehow downgraded".<sup>453</sup> The Department for Inter-ethnic Relations was actively involved in the implementation of the provisions on the language use of national minorities stipulated by the Law on Public Administration passed at the beginning of 2001,<sup>454</sup> and from mid-2001 the implementation of the National Strategy on Roma (Ordinance No. 430 of 2001).<sup>455</sup> Currently, the department is working on the ratification of the European Charter for Regional or Minority Languages (signed by Romania in 1995), and is preparing a map reflecting the particular needs of each minority and the standards applicable thereon.<sup>456</sup> The department also finalized a series of laws related to the restitution of property of national minorities to churches and cultural institutions.

The inclusion of the RMDSZ in the government in 1996 created the political context for the establishment of the Department for the Protection of National Minorities. The department promoted the particular agenda of the RMDSZ in the process of developing governmental policies. This was successful in terms of taking the minority issue out of the highly politicized public debate and treating it as a normal issue on the government's daily agenda. In contrast to the Council *for/of* National Minorities, the department proved to be a rather effective construction for precisely the tasks which the High Commissioner had originally attributed to the Council: functioning as a forum for dialogue, initiating legislation and supervising its implementation. Of course, we have to consider the fact that the department is a subdivision of the central political administration. Its "downgrading", after 2000, shows that its relative weight, its field of manoeuvre and its possibilities to set up a proper agenda depend on a governing party's or coalition's political willingness. Meanwhile, the Council *for/of* National Minorities is a relatively autonomous consultative body. Thus, the consolidation of the system of institutional minority protection may involve, in a longer-term perspective, the rethinking of the functions and the effective authority of the Council.

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<sup>447</sup> Cf. Ordonanța de urgență (22/1997) pentru modificarea și completarea Legii administrației publice locale No. 69/1991 [Emergency Ordinance (22/1997) to modify and complete the Law on Local Public Administration No. 69/1991].

<sup>448</sup> Cf. FIER 1998a, p. 19.

<sup>449</sup> Interview with the former head of the Department for the Protection of National Minorities Bucharest, 17 September 1999.

<sup>450</sup> For details cf. Chapter 3.4.5.

<sup>451</sup> Interview with undersecretary of state of the Department for Interethnic Relations, 28 November 2001.

<sup>452</sup> Not appointed in November 2001 (interview with undersecretary of state of the Department for Interethnic Relations, 28 November 2001).

<sup>453</sup> Oprescu 2001, p. 6.

<sup>454</sup> Cf. Law (215/2001) concerning the general system of local autonomy and the organization and functioning of the Local Public Administration.

<sup>455</sup> Cf. Oprescu 2001.

<sup>456</sup> Interview with undersecretary of state of the Department for Interethnic Relations, 28 November 2001.

## 2.6 *The Ombudsman as a Supervisory Body*

The philosophy of Max van der Stoep of a multi-layered system of ethnic dispute resolution comprises not only institutions specifically designed for solving inter-ethnic disputes, but also other democratic institutions concerning the particular aspects of the discrimination of persons belonging to national minorities. His insistence, after his first visit in Romania, on establishing the institution of the Advocate of the People (the ombudsman in the Romanian legal system<sup>457</sup>) should be interpreted in this respect: "In order that the Advocate of the People, to be established pursuant articles 55-57 of the new Constitution, may effectively contribute to the strengthening of the rule of law, it is recommended that extensive powers be given to this institution."<sup>458</sup>

One of the obvious efforts of the Constitution adopted in 1991 was a particular emphasis on human rights. In order to safeguard an efficient implementation of the human rights provision, the Constitution stipulates the creation of the institution of an Advocate of the People [Avocatul poporului] to be appointed by the Senate for a period of four years with the mandate "to defend the citizens' rights and freedoms".<sup>459</sup> Its task consists of issuing reports to the two chambers of Parliament which "may contain recommendations on legislation or measures of any other nature for the defence of the citizens' rights and freedoms."<sup>460</sup> Although the intention to frame such an institution was without doubt positive, specialists in constitutional rights consider that the constitutional provisions on the Advocate of the People are somewhat formal, proving rather good faith than a comprehensive view on the place of such an institution within the democratic system.<sup>461</sup>

Lack of any experience in this field was one of the probable reasons why setting up this institution was still pending in 1993, when the HCNM issued his recommendation. But, in spite of the promises made in 1994 by the foreign minister - "The draft law on the Advocate of the People: Three draft laws [...] are expected to be discussed in the Legal Commissions of Parliament in early autumn of this year, after summer vacation."<sup>462</sup> The law was not voted on in the legislature of 1992-1996 and was first passed in 1997.<sup>463</sup> According to this law, the institution of ombudsman is designed to defend citizens' rights and freedoms in the field of relations between citizens and public authorities.<sup>464</sup> The public authorities have the obligation to present the ombudsman with all documents considered necessary in a given investigation,<sup>465</sup> they should also conform to his recommendations.<sup>466</sup> If they do not, the higher authority will be informed.<sup>467</sup> The final authority to settle a contentious issue, identified by the ombudsman, is the Parliament.<sup>468</sup> The ombudsman's mandate is limited, insofar as neither document by one of the houses of the Parliament, nor the activities of the members of Parliament, of the president or the Constitutional Court can be the subject of an investigation of the ombudsman.<sup>469</sup> The rules for implementing the ombudsman were first published at the end of year 1977;<sup>470</sup> functional problems were still being solved into mid-1998,<sup>471</sup> in 1999 the work of the institution was assessed as fully consolidated.<sup>472</sup>

During the parliamentary debates on the ombudsman draft law, RMDSZ representatives repeatedly raised the issue of having a separate ombudsman for minorities, or alternatively, a separate line of re-

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<sup>457</sup> If not quoting we prefer to use the term ombudsman.

<sup>458</sup> HCNM letter to Meleşcanu, 9 September 1993.

<sup>459</sup> Constituția [Constitution of Romania], art. 55, para. 1.

<sup>460</sup> Ibid., art. 57.

<sup>461</sup> Cf. Focşeneanu 1998, p.157.

<sup>462</sup> Meleşcanu letter to the HCNM, 30 May 1994.

<sup>463</sup> Cf. Lege (35/1997) privind organizarea și funcționarea instituției Avocatul Poporului [Law (35/1997) concerning the structure and the role of the Advocate of the Peoples institution].

<sup>464</sup> Cf. Lege (35/1997), art. 1, para. 1.

<sup>465</sup> Cf. ibid., art. 19-21.

<sup>466</sup> Cf. ibid., art. 22.

<sup>467</sup> Cf. ibid., art. 23-24.

<sup>468</sup> Cf. ibid., art. 24-25.

<sup>469</sup> Cf. ibid., art. 15, para. 4.

<sup>470</sup> Cf. Regulamentul de organizare și funcționare a instituției Avocatul Poporului [Regulations concerning the organization and functioning of the institution of the Advocate of the Peoples].

<sup>471</sup> Interview with an official of the Department for the Protection of National Minorities, 16 September 1999.

<sup>472</sup> Cf. US Department of State, 1999 Romania Report on Human Rights Practices, p. 1.

sponsibilities for problems of ethnic discrimination.<sup>473</sup> As a result of these debates, the protection of minorities was explicitly included in the implementation rules of the ombudsman.<sup>474</sup> This debate on a separate line of duties dedicated to minority issues reflects a wider minority concern, especially on behalf of the Hungarians, having sub-units dealing with minority issues at the level of the different public institutions. This focus contradicts the Romanian political elite's general line of thinking. Whereas the latter one understands the minority issue *only* as a particular aspect of human rights, the Hungarian community calls for a special design of public institutions focusing on the minority issue as a separate aspect. This strategy represents a challenge to the spirit of the Constitution of 1991, which deals with the minority question in terms of individual human rights only.

The ombudsman's Office registered 4,556 complaints by the end of 1999, up from 2,985 in 1998. For the year 2001, there were 7,412 registered complaints.<sup>475</sup> Many complaints were rejected because they were concerned with the judiciary and not with the administration.<sup>476</sup> In 1998, out of a total of 2,970 complaints, 425 were considered to be within the competence of the ombudsman.<sup>477</sup> As far as minority discrimination is concerned, a representative of the RMDSZ stated that no significant cases could be mentioned.<sup>478</sup>

The adequate functioning of the judiciary in Romania cannot be assessed here in depth. What is remarkable, however, is the relatively low level of trust in the judicial system. In 1998, only 28 per cent of the overall population declared that it had (a great deal or some) trust in justice;<sup>479</sup> for ethnic Hungarians the share was 32 per cent.<sup>480</sup> Worth mentioning is that, in the last five years, no cases of political actors or NGOs accused by biased law enforcement agencies on ethnic grounds are known. The main complaints of various monitoring organizations deal with extra-legal discrimination<sup>481</sup> and the lack of enforcement of anti-discriminatory provisions by the authorities.<sup>482</sup> As a concrete example, we can quote the Shadow Report on the official report submitted by Romania on the measures taken to give effect to the Framework Convention: "In Romania, the Roma are the most common target of discrimination. The Hungarians are also discriminated, especially with regard to the opportunity to be appointed in high positions in the army, the police and the intelligence services." Regarding discrimination against Roma, the Shadow Report added:

In 1998 the Department for the Protection of National Minorities urged the Prosecutor's Office to institute proceedings against the companies that have placed ads '[...]. We select [...] 500 security guards from sector 2, 3, and 4 Bucharest. Age 21 to 45. The Roma are excluded.' The Prosecutors Office turned down the request to institute proceedings.<sup>483</sup>

This kind of open discrimination is related to the lack of willingness to enforce legislation regarding the ban of hate speech: "Though its offending, menacing, chauvinistic and anti-Semitic language continuously jeopardizes inter-ethnic relations in Romania, although the Romanian penal code sanctions such deeds, the respective provision is not enforced."<sup>484</sup>

Thus, in formal terms, the recommendation of the High Commissioner was fulfilled; the institution of the Advocate of the People was finally set up. Seen from a broader angle of the overall functioning of the legal system and other safety nets for the legal regulation of ethnic diversity, the new institution is still not satisfactorily functioning. This assessment leads to another recommendation by the HCNM,

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<sup>473</sup> Interview with a senator of the RMDSZ, 7 May 2001.

<sup>474</sup> Regulamentul de organizare și funcționare a instituției Avocatul Poporului, art. 14.

<sup>475</sup> Cf. the homepage of the ombudsman <http://www.avp.ro/Romana/index.htm> (10 April 2002).

<sup>476</sup> Cf. US Department of State, 1999 Romania Report on Human Rights Practices, p. 1

<sup>477</sup> Cf. footnote 475.

<sup>478</sup> Interview with a senator of the RMDSZ, 7 May 2001.

<sup>479</sup> CURS 1998, p. 22.

<sup>480</sup> CCRIT 1999a, p. 8.

<sup>481</sup> "Roma, and other minorities are subject to various forms of extralegal discrimination." (US Department of State, 1997 Romania Report on Human Rights Practices, p. 7).

<sup>482</sup> "However, in practice the Government does not enforce these provisions [on anti-discrimination] effectively, and women, Roma, and other minorities are subject to various forms of extralegal discrimination" (US Department of State, 1999 Romania Report on Human Rights Practices, p. 7).

<sup>483</sup> Shadow Report submitted by Gabriel Andreescu, October 1999, p. 11.

<sup>484</sup> Ibid., p. 10.

issued in 1993, concerning discrimination: "Also, I recommend that the Government will not hesitate to take strong action whenever there are indications that Roma are the victims of direct or indirect discrimination in the work place". In more general terms he added: "Intensified efforts should be made to combat violence and ethnic hostility and hatred, including anti-Semitism, against persons belonging to national minorities."<sup>485</sup> The government's answer was to focus on its commitment "to improve the process of social, economic and cultural integration of Roma/Gypsy population mostly by assisting them in the fields of education and job training."<sup>486</sup> In relation to hate speech directed at persons belonging to ethnic minorities, Foreign Minister Meleşcanu added that "a national Committee for Coordinating Actions against Racism, Antisemitism and Xenophobia was recently set up."<sup>487</sup> This line of action was continued and supported in 2001 with an amount of 800 million lei (approximately 32,000 US-Dollar).<sup>488</sup>

The long period needed to adopt and implement the Law on the Advocate of the People shows that this mechanism is new for Romania, both in institutional and, even more so, in substantial terms. Success lies in the fact that the process of institutionalization could be finalized. Concerning the substantial dimension, in terms of public awareness of the different forms of discrimination, the process has just begun. The specific contribution of the ombudsman office to the regulation of inter-ethnic conflicts has yet to be proven. At least conceptually, the ombudsman would be a suitable instrument to fight discrimination, especially against the one large minority group, which is not as well organized as the Hungarian community, namely the Roma.

## 2.7 *Presidential Pardon in Minority-related Legal Cases*

The issue of a presidential pardon in minority-related legal cases should be interpreted in the light of the institutionalization of nationalism and its influence on the various institutions of the state, including the judiciary. The RMDSZ regarded two groups of law enforcement cases as biased on ethno-political grounds: first, the persons convicted after the violent clashes of March 1990 in Tîrgu Mureş<sup>489</sup> and, second, the Hungarians sentenced to prison for committing violent acts during the revolution of December 1989, for which a general amnesty in other cases had been granted.<sup>490</sup> These cases had also been considered in the process of Romania's admission to the Council of Europe. President Ilescu promised the CoE's rapporteur to examine the possibility of a presidential pardon.<sup>491</sup> The foreign minister was somewhat undecided, stating that "political intervention could be interpreted as a political intrusion into the functioning of justice", but promising, however, that the president "will examine the possibility of undertaking same steps until the end of year [...] and the President is not ruling out the possibility that, in a climate of tolerance, as the trust of the population in the authority, fairness and impartiality of the justice is increasing, a pardon could be also considered."<sup>492</sup>

Against this background, the HCNM, after his first visit to Romania, took up the issue precisely in the context which had been created by the Council of Europe. In quoting Foreign Minister Meleşcanu's reply to the CoE rapporteur - "the President is not ruling out the possibility that [...] a pardon could also be considered" - he makes the following recommendation: "I express the hope that the President will find it possible to take these steps."<sup>493</sup> What is interesting about this intervention of the HCNM is the fact that it could be interpreted as conflicting with the wording of his mandate: "Nor will the High Commissioners consider violations of CSCE commitments with regards to an individual person be-

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<sup>485</sup> HCNM letter to Meleşcanu, 9 September 1993.

<sup>486</sup> Meleşcanu letter to the HCNM, 30 May 1994.

<sup>487</sup> Ibid.

<sup>488</sup> Interview with undersecretary of state of the Department for Interethnic Relations, 28 November 2001.

<sup>489</sup> Only persons of Hungarian and Roma origin were sentenced and imprisoned for their roles played in the clashes.

<sup>490</sup> Cf. the cases referred to in the resolutions of the 2<sup>nd</sup> RMDSZ Congress in May 1991, Rezoluție [Resolution], 2. Congres [2<sup>nd</sup> Congress]; and Az RMDSZ Memoranduma Románia felvételéről az Európa Tanácsba [Memorandum on Romania's Admission to the Council of Europe], 26 August 1993.

<sup>491</sup> Cf. CoE/PA, 19 July 1993, Doc. 6901, para. 43, p. 12.

<sup>492</sup> Letter addressed by Mr Teodor Meleşcanu, Minister of State, Minister for Foreign Affairs of Romania, to Mr. Friedrich König Rapporteur for Romania of the Political Affairs Committee, 22 June 1993.

<sup>493</sup> HCNM letter to Meleşcanu, 9 September 1993.

longing to a national minority."<sup>494</sup> The apparent deviation from the mandate can be considered an implicit statement on the nature of the issue - as one having a considerable potential to increase tensions between the state authorities and the Hungarian minority. Thus, it is not the individual aspect of these legal cases that is relevant, but the implicit tension-reducing and eventually confidence-building dimension of a presidential pardon. We can also assess this recommendation as a signal that the High Commissioner had considered an ethno-politically biased law enforcement as a potential source of tension. Therefore, cases such as the aforementioned belong to his sphere of competence.

The High Commissioner's recommendation was implemented in formal terms. However, whether the presidential pardon worked as an act of confidence-building is questionable. On 30 May 1994, Foreign Minister Meleşcanu informed the HCNM: "The entire group of eight prisoners of Hungarian origin, pardoned by President Iliescu in March of this year, has been freed. The last two detainees (Mr. Boldizsar Ferencz and Mr. Ilyes Istvan), who were still executing the non-pardoned part of their punishment, were conditionally released on May 6, 1994, as a result of the decision taken by the Court of Appeal in Alba-Julia."<sup>495</sup> The important omission which somewhat undermined the gesture of the pardon, in terms of confidence-building, was the fact that the case of Pál Cseresznyés - serving a ten-year sentence for the attempted murder incident in Tirgu Mureş - was not pardoned on that occasion. The relevance of this case is not just related to its legal aspects, but to the manner in which it was politically exploited. An international journalist had filmed Cseresznyés, together with a group of persons, when they were beating a defenceless individual lying on the ground. Nationalistic propaganda tried to portray the victim as a Romanian national hero and in this way helped in strengthening the public image of Hungarians as aggressors. President Iliescu visited the victim, Cofariu Mihăilă and, thereon after, he was added on to the PRM list for the Senate 1996 elections. The exploitation of his image reached absurd dimensions when the head of the PRM publicly contested, in 1999, the gesture of Iliescu and the PDSR to invite Cofariu as a guest of honour to a meeting.<sup>496</sup> Cseresznyés was released at the end of 1996, after the RMDSZ asked the newly elected President Constantinescu to grant a presidential pardon.<sup>497</sup>

## 2.8 *The Law on Minorities*

In its first proclamation of 22 December 1989, the new political power called for equality of minorities with the majority as a basic principle of the new regime. On 6 January 1990, the FSN issued another declaration promising a constitution comprised of individual and collective minority rights, a ministry and a law on national minorities.<sup>498</sup> In October 1990, the government issued a new declaration on the problem of national minorities.<sup>499</sup> This time, the focus was on the general commitments of the relevant OSCE and Council of Europe documents; the law on minorities was no longer mentioned. Moreover, significant emphasis was put on the idea that inter-ethnic harmony could not involve separation or isolation of the minorities from the majority. The main goal of the Parliament elected in 1990 was to work out a new constitution, and the question of a law on minorities became secondary. The basic problem was whether and on what terms the constitution would integrate the Hungarian community. The main objective of the RMDSZ, as established at its 1<sup>st</sup> Congress in April 1990, was to include guarantees on collective minority rights in the Constitution<sup>500</sup> and not to elaborate a law on national minorities.

The documents of the 2<sup>nd</sup> RMDSZ Congress (May 1991) already mention the possibility of regulating minority problems within the frame of an extended local autonomy, and also make some references to

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<sup>494</sup> CSCE Helsinki Document 1992: "The Challenges of Change", Helsinki, 10 July 1992; Helsinki Decisions, Section 2, CSCE High Commissioner on National Minorities, para. 5c, in: Bloed (Ed.) 1993, p. 716.

<sup>495</sup> Meleşcanu letter to the HCNM, 30 May 1994.

<sup>496</sup> Cf. Shafir 2000a.

<sup>497</sup> Cf. RMDSZ 2000, p. 67.

<sup>498</sup> Cf. Frontul Salvării Naţionale [National Salvation Front], Declaraţia cu privire la drepturile minorităţilor naţionale din România [The declaration regarding the rights of the national minorities of Romania], 6 January 1990.

<sup>499</sup> Cf. Guvernul României [Government of Romania], Declaraţia cu privire la minorităţile naţionale [The Declaration regarding the national minorities], 20 November 1991.

<sup>500</sup> Cf. Bakk 1999, p. 98.

personal and cultural autonomy.<sup>501</sup> At the same congress, the first initiative for a law on nationalities was presented, but this proposal was not an official congress document. When the Constitution was adopted, the entire situation changed. Now, the challenge consisted in formulating the same ideas - collective minority rights on the basis of self-determination - within the constitutional frame. The RMDSZ's conceptual answer was its autonomy project (cf. 1.2.1.2). At the end of 1993, the Hungarian alliance adopted the draft Law on National Minorities and Autonomous Communities, and submitted it to Parliament in 1994 (cf. 1.2.1.2).

In September 1993, the HCNM made the following recommendation to the Romanian government: "[T]here is obviously a need to elaborate them in greater detail in the form of a law on minorities. I suggest that the Council for Ethnic Minorities gives priority to this question and that the Government will ask the parliament to give priority on its agenda to the draft law."<sup>502</sup> Actually, the RMDSZ draft law was not the first one. The German Democratic Forum had prepared one somewhat earlier. The High Commissioner made reference to this in his recommendation: "Important elements in the formulation of this law could be [...] the proposal on the subject made by German minorities in Romania."<sup>503</sup> By 1996, four other drafts had been added, two by the Council for National Minorities, one by the Parliamentary Group of National Minorities (other than Hungarians), and one by the NGO, APADOR - Helsinki Committee Romania.<sup>504</sup> In spite of the fact that the Romanian foreign minister was optimistic at that time, concerning the adoption of a law on minorities,<sup>505</sup> no significant steps were taken.

After 1996, the government included the adoption of a law on national minorities in its programme. Starting in 1998, the Department for the Protection of National Minorities initiated a debate on a draft law with the support of the Council for National Minorities. The mass media and the majority of the politicians, however, were reluctant to make this issue a priority. On the one hand, it was viewed as futile because other laws, especially the ones on education and public administration, already covered most of the articles of the draft law.<sup>506</sup> On the other hand, some provisions of the draft law introduced new aspects which threatened to generate new tensions within the coalition which had already experienced a hard autumn concerning the question of a Hungarian-language state university.<sup>507</sup> The draft law was never submitted to Parliament and, after the change of the ministership - Eckstein Kovács replaced Tokay, who had promoted the law - was not even a subject of debate. Instead, the new Minister on National Minorities promoted an anti-discrimination draft law in 1999, which not only focused on ethnic but also on general discrimination. After a short public debate,<sup>508</sup> the law was promoted via governmental ordinance.<sup>508</sup>

During the term 1996-2000, when the RMDSZ was part of the government coalition, it was rather difficult to adopt a law on national minorities. The reason for this is simple: on the one hand, the RMDSZ leadership had promised the other coalition parties not to promote, while in government, internal self-determination and autonomy. This concept of autonomy, however, represents the central idea that underlies the RMDSZ draft law. On the other hand, the internal opposition within the RMDSZ constantly blamed its leaders for treachery and for giving up the basic principles and objectives of the RMDSZ. Under these circumstances, Eckstein Kovács had to declare the following: "We had no guarantees to be able to promote an adequate law on minorities, because of this we consider that it is more adequate to implement in the sectoral legislation provisions which affect us."<sup>509</sup>

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<sup>501</sup> Cf. *ibid.*

<sup>502</sup> HCNM letter to Meleşcanu, 9 September 1993.

<sup>503</sup> *Ibid.*

<sup>504</sup> For the texts of these draft laws, cf. *Pro Europa* 1997, pp 167-229. A short synthesis of the various proposals is included in Brunner/Tontsch 1995, pp. 164-168.

<sup>505</sup> Cf. Meleşcanu letter to the HCNM, 18 September 1993, and Meleşcanu letter to the HCNM, 30 May 1994, where he announces a speedy parliamentary debate on the Law on National Minorities.

<sup>506</sup> Cf. *Transilvania Jurnal*, 24 October 1998, p. 3.

<sup>507</sup> *Curentul*, 22 October 1998, was titled: "RMDSZ starts a new war".

<sup>508</sup> Cf. *Ordonanța* (137/2000) privind prevenirea și sancționarea tuturor formelor de discriminare [Ordinance (137/2000) on preventing and sanctioning all forms of discrimination].

<sup>509</sup> Quoted in: Simon J. Csak eszköz a kormányzás. Eckstein Kovács Péter a választások előtti RMDSZ-ről [The participation in the governing coalition is only an instrument. Eckstein Kovács Péter about the RMDSZ before elections], in: *Krónika*, 28 August 2000.

After 1996, the dominant RMDSZ faction engaged itself in a political process with the Romanian political elite, including the (re)framing of ethno-political relations. The common approach was pragmatic in terms of both substance and form. Concerning substance, it represented a step-by-step strategy aimed at working out issue-oriented solutions which avoided grand designs. As for the form, internal negotiations replaced the exchange of public declarations without major public repercussions. In this environment, the RMDSZ draft Law on National Minorities and Autonomous Communities represented a keepsake from a past period, whose sole function, vehemently asked for by the more radical RMDSZ faction, consisted in disturbing the policy process between the RMDSZ and its Romanian partners, which was still susceptible to faults. Therefore, the project of a law on national minorities could not have any positive impact on the political process. On the other hand, the RMDSZ was not ready to bid a formal farewell to its autonomy project. Against this background, it is not surprising that the High Commissioner never came back to his recommendation on a law on minorities.