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Minority Rights Protection and Policy-Making in Romania prior to the EU Accession.

Double demands, different pressures: EC Monitoring Reports vs. RMDSz/UDMR Programs

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The present paper is an attempt to examine, in a comparative fashion, the series of demands and claims the Romanian state, as a candidate-state, had to deal with in the sphere of minority rights observance, protection and promotion, in the period prior to the EU accession (1998-2006). The study is based on extensive document analysis of two sets of documentation: (1) the European Commission's annual regular reports on Romania's progress towards accession in the period 1998-2006, and (2) the documentation (i.e. statute, programs, governmental agreements, internal resolutions, etc.), adopted by the main, most active, political organization representing the interests and demands of the Hungarian minority, the RMDSz/UDMR. The paper employs the observations previously drawn by Edina Szöcsik and Peter Vermeersch, on the development recorded by the states of East-Central Europe in the field of minority rights, under the auspices of the European Commission in the pre-accession period. From the documents' analysis, the study concludes that a significant discrepancy between the claims and demands expressed by the RMDSz/UDMR for its constituency, and the recommendations issued by the European Commission through the monitoring reports, is conspicuous and can only be further explained through the circumstances and political changes specific to each of the years under scrutiny. Generally, the Commission appears vague and ambiguous in this sphere, probably due to the lack of well-established and well-founded standards.
Keywords*: minority rights protection, monitoring report, European Commission, RMDSz/UDMR, Venice Commission, cultural autonomy, mother tongue, education, territorial autonomy, decentralization*

Accession to the European Union has always exerted a particularly powerful trigger in redefining, reshaping, and – more often than not – in actually drafting legislation and policy lines in the field of national minorities' rights observance, protection, and promotion. This is especially so in the periods prior accession when the influence and the pressures are politically exercised through the so-called "Copenhagen Criteria" and through its resulting reports, issued annually and designed to undertake tasks monitoring and supervising the candidate state's progress, improvements in accommodating its own legal framework and socio-political realities to the "European standard" of consolidated democracy and a working free market-economy. The

protection and observance of the minority rights in the candidate states has been envisaged as part and parcel of the broader field of human rights protection. As a matter of fact, throughout the processes of transition and democratization in the countries of former Sovietized Europe, the topic of minority rights observance, protection and promotion has been consistently on the post-communist governments' agenda and, consequently, it has been gradually strengthened. The tremendous role played by the European Union's Copenhagen Criteria in this realm in the countries of East-Central Europe appears incontestable, although, it will be emphasized here, the relevance and the contents of the monitoring reports have been politically manipulated. The present paper also attempts to examine the actual extent in which the annual reports of the European Commission constituted a basis for policy-making and policy-reshaping for the Romanian governments of the 1998-2006 period; hence, this paper's question revolves around the evaluation of the triggers and pressures represented by the EC reports on Romanian factors of decision-making in the sphere of minority rights protection. This assessment is further compared to the series of demands advanced by the main minority political organization, the Democratic Union of Hungarians in Romania (RMDSZ/UDMR), as illustrated in this organization's official documentation (from party programmes, party statutes and other type of acts concerning the organization). The main question of the present study refers to the extent to which the EU conditionality, as depicted in the annual reports on the candidate state's progress, actually responds to the minority parties' demands and grievances, in the period under scrutiny.

Countless and quite compelling studies have been conducted in the field of the impact and influence of the EU conditionality with respect to the protection, observance, and promotion of minority rights. This pressure on the candidate-states is particularly powerful for the countries of East-Central Europe and Sovietized Europe, countries that faced identity problems, nationalism, and multiple deviations in the realm of minority groups even before their inception in the 19th century and after the Paris Peace Treaty of 1918-1919. A series of observations can be summarized from the research undertaken thus far: (1) the actual effectiveness of the EU conditionality, expressed in the annual reports monitoring the progress of the candidate-states, is severely questioned, for, as in any stringent areas – *e.g.* the common foreign and security policy, the fiscal policy, etc. –, there is no commonly agreed upon and shared set of standards in the field of minority protections within the EU; (2) the "*acquis communitaire*" does not refer to a common standard (of course, besides the principle of non-discrimination), making recourse instead to the standards established by the Council of Europe (CoE) and those of the Organization for Security and Cooperation in Europe (OSCE). Under EU conditionality, the very definition and operationalization of the concept of "national minority", and the items to be protected under the umbrella of "minority rights" still constitute open questions, prone to vigorous debates, particularly vague and unclear, open to loose, often contradictory, interpretation. (Both old, *e.g.* France, and new member-states, *e.g.* Bulgaria, do not even rec-

ognize the idea of "national minority"; others define their states as "national" ones.) (3) Quite often, EU conditionality, while frequently employing double-standard practices, proves inconsistency and incoherence in its approximate application and implementation among the candidate states. The renowned American historian Rogers Brubaker totally overlooks the impact of the international or supranational organizations in the dynamics of ethno-political relations: such relations are the exclusive domain of the said minority group, the host state and the kin state, with no mentioning of such structures as EU, OSCE, or CoE. Although, constant scholarly concerns have been raised in respect to the European Commission's action in the realm of minority rights protection for the states caught in the process of EU accession, it should be remembered that EU monitoring can be doubled by scrutiny internally performed and strong advocacy constantly sustained by the ethnic parties within the candidate states. The analysis of such a joint effort represents part of the objective of this paper, while the main objective is constituted by the evaluation of the extent in which the ethnic party's demands correspond to or are actually doubled by the European Commission's monitoring and conditionality on Romania.

Conceptual Framework

Probably one of the most compelling categorization of ethnic parties in the European context pertains to Protsyk and Garaz[1] who differentiate parties according to their position on the "integrationist – multicultural" *continuum*: closer to an "integrationist position", one can encounter ethnic parties which are negative (codified 1) or neutral (codified 2) on multiculturalism; at the opposite pole, one finds a multitude of parties that are positive on multiculturalism: (1) those seeking identity preservation (codified 3), (2) those advocating for political representation (codified 4), (3) those whose paramount interest is territorial autonomy (codified 5), and (4) those few, rather anti-systemic[2], anti-national, extreme parties embracing the *desideratum* of pushing for a new constituent nation within the existing stately setting (codified 6). Quite similarly, Jenne[3] conceptualizes the ethnic parties on a resembling *continuum*, that of "inside of state framework – outside of state framework", distinguishing among: (1) parties of "affirmative action" (codified 1), (2) parties of "cultural autonomy" (codified 2), (3) parties of "territorial autonomy" (codified 3), and the only species of parties outside the state framework, (4) parties of "secession or irredentism", anti-national ones. Far from the danger of "ethnification" of the party systems, stressed among oth-

1 Oleh PROTSYK and Stela GARAZ, "Politicization of Ethnicity in Party Manifestos", in *Party Politics*, Vol. 19, No. 2 (March 2011), pp. 296-318.

2 For an explanation on the "anti-system" parties, *see* Giovanni SARTORI, *Parties and Party Systems: A Framework for Analysis* (Cambridge: Cambridge University Press, 1976).

3 Erin K. Jenne, *Ethnic Bargaining: The Paradox of Minority Empowerment* (Ithaca, New York, & London: Cornell University Press, 2007).

ers by Horowitz[4] and Rabushka and Shepsle[5], those parties of ethnic profile actually offer significant opportunities for interest articulation and demand channeling for those groups that would otherwise be marginalized by, secluded, or isolated from the party and political systems[6]. According to Arendt Lijphart, moderate ethnic parties are part and parcel of a working consociational democracy[7]. Ishiyama and Breuning's interesting contribution[8] in the sphere of the conceptualization and taxonomy of ethnic political formations argues that ethic parties can be distinguish among their "organizational identities, or how they present themselves to an electorate", *i.e.* through their name or label: (1) "parties portraying themselves as representative of a particular group and including that group in the party's name", *vs.*(2) "parties that portray themselves in non-ethnic ways (by not including the group in its name)", with the latter being able to attract supporters who display a considerable level of acceptance of democracy. This differentiation somehow annuls Kitschelt's definition of an "ethnic party", which is described as a political organization of limited appeal "to a particular ethnic or regional constituency and explicitly seek[ing] to draw boundaries' between ethnic 'friends' and 'foes'"[9]. The same holds true for Gunther and Diamond's definition: "a purely ethnic party seeks only to mobilize the votes of its own ethnic group"[10], and for Brass's: "that one political organization dominant in representing the demands of the ethnic group against its rivals."[11] Horowitz's definition resembles the "classical" direction, focused on party membership: "an ethnically based party is one that derives its support overwhelmingly from an identifiable ethnic group and serves the interests of that group"[12]. Similar to this is the institutional definition of Lee van Cott: an ethnic party is that political formation "[…] authorized to compete in local or national elections; the majority of its leadership and membership identify

4 Donald HOROWITZ, *Ethnic Groups in Conflict* (Berkeley, California: University of California Press, 1985).

5 Alvin RABUSHKA and Kenneth SHEPSLE, *Politics in Plural Societies: A Theory of Democratic Instability* (Columbus, Ohio: Charles E. Merrill, 1972).

6 Johanna BIRNIR, *Ethnicity and Electoral Politics* (Cambridge & New York: Cambridge University Press, 2007); Kanchan CHANDRA, *Why Ethnic Parties Succeed: Patronage and Ethnic Headcounts in India* (Cambridge: Cambridge University Press, 2004).

7 Arendt LIJPHART, *Democracy in Plural Societies: A Comparative Exploration* (New Haven, Connecticut: Yale University Press, 1977). Lijphart's famous distinction between "Westminster" (majoritarian) democracy and "consociational" democracy is instrumental in explaining the role of ethnic parties in two different democratic arrangements.

8 John ISHIYAMA and Marijke BREUNING, "What's in a name? Ethnic party identity and democratic development in post-communist politics", *Party Politics*, Vol. 17, No. 2 (March 2011), pp. 223-241.

9 Herbert KITSCHELT, "Divergent Paths of Postcommunist Democracies", in Larry DIAMOND and Richard GUNTHER (eds.), *Political Parties and Democracy* (Baltimore, Maryland: Johns Hopkins University Press, 2001), pp. 299-326.

10 Richard GUNTHER and Larry DIAMOND, "Species of Political Parties: A New Typology", *Party Politics*, Vol. 9, No. 2 (March 2003), pp. 167-199 (p. 183).

11 Paul BRASS, *Ethnicity and Nationalism* (New Delhi, India: Sage Publications, 1991), p. 106.

12 Donald HOROWITZ, *The Deadly Ethnic Riot* (Berkeley, California: University of California Press, 2000), p. 291.

themselves as belonging to a non-dominant ethnic group, and its electoral platform includes demands and programs of an ethnic or cultural nature."[13] Founded on public display and representation, an ethnic party is defined by Chandra and Metz as "a party that overtly represents itself to the voters as the champion of the interests of one ethnic group or a set of groups to the exclusion of another or others, and makes such a representation central to its mobilizing strategy"[14], doing so by "identifying the common ethnic enemy to be excluded"[15]. The taxonomy of ethnic parties is equally puzzling; Lieven de Winter[16] discriminates among: (a) "moderate-protectionist" parties, (b) "autonomist" parties, (c) "national-federalist" parties, and (d) "separatist" parties (which, in turn, are of two sorts, (d.1) "the independence" parties, and (d.2) "the [purely] separatist" or "irredentist" parties). Sonia Alonso defines what she labels as a "ethno-nationalist party" that "party that pursue the maximalist political programme of independent statehood for the nation it claims to represent and ethnic homogeneity within the territory of this nation. This constitutes the ethnic party's long-term political and policy programme, its *raison d'être*."[17] Famously, Alonso would prefer the distinction among: those ethnic parties operating in "ethno-national regions", as opposed to those acting in "ordinary regions", compellingly arguing that the difference in the setting the "ethno-national" parties advance their community's demands generates a difference in the very *raison d'être* and methods of the parties.

As a matter of fact, the Romanian Constitution, though defining the Romanian state as a "national" one, yet officially recognizes nineteen national minorities, which are entitled to parliamentary representation. Presently, eighteen minority groups (the Czechs and the Slovaks being represented as one) are represented in the lower chamber of the Romanian Parliament. Surely, the most important minority group are the Hungarian (both numerically and politically) and the Roma (numerically) communities. The most vocal in pushing for broader minority rights' protection, observance and promotion has constantly been the Hungarian one. The Hungarian minority constitutes around 7% of the Romanian population, and it is territorially circumscribed to the counties of Harghita, Covasna and Mure, with sporadic communities all throughout Transylvania and the Western extreme of Bacău county; the territory inhibited preponderantly by the Hungarian community and comprising the three counties is customarily known as "Székely Land". Undoubtedly, the paramount *portavoce* for the demands of the Hungarian minority has been since 1990 an umbrella-organization

13 Donna LEE van COTT, "Institutional Change and Ethnic Parties in South America", *Latin American Politics and Society*, Vol. 45, No. 2 (July 2003), pp. 1-39 (p. 3).

14 Kanchan CHANDRA and David METZ, "A New Cross-National Database on Ethnic Parties", paper presented at the *Annual Meeting of the Midwestern Political Science Association*, Chicago (Illinois), April 24-27, 2002, pp. 1-28 (p. 5).

15 Kanchan CHANDRA, *op. cit.*, p. 4.

16 Lieven de WINTER, "Conclusion: a Comparative Analysis of the Electoral Office and Policy Success of Ethnoregionalist Parties", in *idem* and Huri TÜRSAN (eds.), *Regionalist Parties in Western Europe* (London: Routledge, 1998), pp. 204-247.

17 Sonia ALONSO, "Enduring Ethnicity: The Political Survival of Incumbent Ethnic Parties in Western Democracies", *Estudio/ Working Paper* No. 221/ 2005, pp. 1-29 (p. 4).

acting as a fully-fledged political party, the Democratic Union of the Hungarians in Romania (*Uniunea Democrată a Maghiarilor din România – UDMR / Romániai Magyar Demokrata Szövetség* – RMDSz). Functioning *de facto* as a political party on the post-communist Romanian political scene, UDMR/ RMDSz constitutes one of the most stable parties[18], even though allowing internally for democracy and a considerable degree of "back-bencher"-ism (*e.g.* the so-called "Reform Bloc", functioning within the party in the period 2000-2003): it was part of the governing coalition in two out of five mandates (1996-2000; 2004-2008), with a third term supporting the government in Parliament, without being in the governing coalition (2000-2004). It has generally antagonized the successor party of the defunct regime, FSN/FDSN/PDSR/ PSD, being the governmental partner of rather right-wing, democratic coalitions. In the period 1991-2001, the Democratic Union of Hungarians in Romania enjoyed 95.8% support from the ethnic group they represented[19]; such overwhelming support is rarely prone to change, since ethnic identities are particularly rigid categories. Even so, during the last decade, the RMDSz/UDMR found itself challenged initially by the Civic Association for Oderheiu (UPE) – a conservative formation whose votes in the local elections of 2000 were annulled through a court order[20] –, by the Hungarian Civic Union (MPSz; later to become the Hungarian Civic Party: *Magyar Polgári Párt* – MPP / *Partidul Civic Maghiar* – PCM)[21] – a political formation initiated in 2004, with the full support of the defunct UPE, but unable to register as a political party due to the pressures – at the limits of legality. – of the dominant RMDSz/UDMR, running on the lists of the right-wing, non-ethnic Popular Action Party (PAP) instead –, by the Hungarian National Council of Transylvania (*Erdélyi Magyar Nemzeti Tanács* – EMNT / *Consiliul National Maghiar din Transilvania* – CNMT) and by the Szekler National Council (*Székely Nemzeti Tanács* – SzNT / *Consiliul National Secuiesc* – CNS)[22]. Both of these parties were established in 2003, as splinters from the "Reform Bloc", both equally vehement and radicalized by the hegemonic position of RMDSz/ UDMR and by what they perceived as the treason of the *desideratum* of territorial autonomy. The general level of support towards RMDSz/UDMR has registered a subtle

18 In this respect, Alonso argues that such a situation constitutes the normalcy: "*[C]eteris paribus*, ethnic parties should show lower fluctuation of votes, less electoral punishment, lengthier durations in office and less political erosion with the passage of time than class-based parties." (*op. cit.*, p. 8)

19 "Consolidation of democracy – Candidate countries barometer 1991-2001", *apud* John ISHIYAMA and Marijke BREUNING, *op. cit.*, p. 233.

20 *See*, for the controversial episode, Frigyes UDVARDY, "A romániai magyar kisebbség történeti kronológiája 1990-2003" ["The historical chronology of the Hungarian minority in Romania"], *Erdélyi Magyar Adatbank 1990-2010* [*Transylvanian Hungarian Database*], 2006.

21 Miklós BAKK, Zoltán Alpár SZÁSZ, and István Georgő SZÉKELY, "Parlamenti és elnökválasztás Romániában 2004 novemberében" ["Parliamentary and presidential elections in November 2004 in Romania"], *Magyar Kisebbség* [*The Hungarian Minority*], Vol. 9, No. 34 (2004), pp. 3-52 (p. 35).

22 Kinga MANDEL, "Az RMDSz oktatáspolitikája 1990-2003 között" ["The education politics of the RMDSz between 1990 and 2003"], in *idem* and Éva. BLÉNESI (eds.), *Kisebbségek* és *kormánypolitika Közép-Európában (2002-2004)* [*Minorities and Government Politics in Central Europe (2002-2004)*] (Budapest, Hungary: Gondolat Kiadó-MTA Etnikai-nemzeti Kisebbségkutató Intézet, 2004), pp. 85-107 (p. 97).

decrease, due also to the decrease in the population of Hungarians in Romania. All these factors cumulated and it became increasingly difficult for the RMDSz/UDMR to overcome the 5% parliamentary threshold in 2012.

For the Romanian case, in respect to its Hungarian minority, based on the methodology provided by the document analysis method, the following four indicators in the EU conditionality framework were taken into consideration: (1) the use of minority language, (2) education in and of minority language, (3) cultural autonomy, and (4) territorial sub-national authority. The use of minority language was codified as follows: the minority language can only be used in private space – codified 1; the minority language can be used in order to guarantee human rights – codified 2; the minority language can additionally be used in professional life – codified 3; the minority language can additionally be used actively and passively with the state authorities at the local and regional levels – codified 4; and minority language is an official second state language – codified 5. Education in and of the minority language was thusly codified: no education of and in the minority language is provided and allowed by the state – codified 0; some education of the minority language is provided by the state – codified 1; the education in the minority language is additionally provided by the state up to the secondary level – codified 2; education of and in the minority language is additionally provided by the state up to the tertiary level – codified 3; the state established and actively funds a separate university providing studies exclusively in the minority language – codified 4. Cultural autonomy – understood as "the capacity of a collectivity to choose ideas and modes of thought, to influence the forms in which meaning is externalized, and to steer how these forms are distributed"[23] – was coded as rather cumulative indicators of the other three ones, and a more coherent, comprehensive dimensions of mere "individual (personal) autonomy". That expressed a more liberal approach than a communitarian one with respect to minority rights, and is irrespective of the belonging of an individual to a certain national minority group; the presence in the scrutinized documents of the phrase "cultural autonomy" was coded as 1, whereas its absence was codified as 0. Territorial sub-national authority was coded through the following indicators: the existence of constitutionally designed unitary, centralized state – coded 1; the framing of successive stages of devolution, de-concentration, and functional and territorial decentralization – coded 2; the constitutional existence of federalization – coded 3; the constitutional and physical frame consisting of an asymmetrical federalism on ethnic basis – coded 4; and the launching of a secessionist or irredentist projects and their successful accomplishment – coded 5. Paradoxically, a climate encouraging broader expressions of cultural autonomy leads almost immanently to segregation of the different ethnic groups encapsulated by a state, whereas a firm grip on issues revolving around the affirmation of the mi-

23 Ulf HANNERZ, *Cultural Complexity: Studies in the Social Organization of Meaning* (New York: Columbia University Press, 1992), p. 7. In Hannerz's, culture is tri-dimensional: it encapsulates: (1) "ideas and modes of thought", (2) "the externalization of meanings", and (3) "the manner in which the inventory of meanings and meaningful forms are spread throughout a population".

norities' cultural autonomy can undoubtedly contribute significantly to the preservation of national unity, to the national *status-quo*, to assimilation and integration of the national minority.

Demand Discrepancy: EU Reports vs. the RMDSz/UDMR

As soon as the democratic opposition accessed political power in 1996, the RMDSz/UDMR advanced its constituency's demand of employing Hungarian in public life, in dealing with the state authorities, in the relations of the minority with the public administration. Most local leaders in the three counties in which the Hungarians represent the majority of the inhabitants are of Hungarian origins, with the local bureaucracy being largely Hungarian. Consequently, in the region of Székelys, the Hungarian language was customarily used in the administration. Legally, with the Romanian state being constitutionally defined as a "national" one, the official language employed in the administration was, until 2001, Romanian. Pushing for a legal framework providing for the use of Hungarian in administration was not only *de facto*, but *de jure* as well. The RMDSz/UDMR obtained the adoption of the 2001 Law on Local Public Administration, stipulating the employ of a minority language in public administration and in the citizens' dealing with the authorities in the region in which the minority community is above 20%. However, while holding a say in the governmental affairs from 1996 to 2008, the RDMSz/UDMR has never advanced the proposition introducing Hungarian as a second state language, pragmatically envisaging the minimal, non-existent chances such a legislative proposal would garner.

In all its programmatic documentation, almost without exception, the RMDSz/UDMR expressed its community demands for the Romanian state to provide a broader access to education in minority language at all levels, with a specific accent on the teaching of History and Geography in the mother tongue[24]. Due to its privileged position in the government, in 1997, RMDSz/UDMR proposed and obtained the repealing

24 Such a demand appears successively in: RMDSz/UDMR, "Az RMDSz programja" ["The program of the RMDSz"], in RMDSz (eds.), *Dokumentumok 5* [*Documents 5*] (Cluj-Napoca, 1997); *idem*, "Az RMDSz kormánykoalíciós cselekvési prioritásai" ["The Priorities of the RMDSZ in the government coalition"], in RMDSz (eds.), *Dokumentumok 5* [*Documents 5*] (Cluj-Napoca, 1997); *idem*, "Az RMDSz programja" ["The program of the RMDSz"], in RMDSz (eds.), *Dokumentumok 7* [*Documents 7*] (Cluj-Napoca, 1999); *idem*, "Az RMDSz kormánykoalíciós cselekvési prioritásai" ["The Priorities of the RMDSz in the government coalition"], in RMDSz (eds.), *Dokumentumok 7* [*Documents 7*] (Cluj-Napoca, 1999); *idem*, "Milyen magyarságot akarunk? Milyen Erdélyt akarunk? Milyen Romániát akarunk? Választási program 2000" ["What Kind of a Hungarian Nation Do We Want? What Kind of Transylvania Do We Want? What Kind of Romania Do We Want? The Electoral Program 2000"], 2000; *idem*, "Megállapodás a Szociáldemokrata Párt és a Romániai Magyar Demokrata Szövetség együttműködésére a 2003. évben" ["Agreement between the Social Democratic Party and the Democratic Alliance of the Hungarians in Romania in 2003"], 2003; *idem*, "A Romániai Magyar Demokrata Szövetség VII. Kongresszusán elfogadott programja" ["The Program of the Democratic Alliance of the Hungarians in Romania, adopted at its 7th Congress"], 2003; *idem*, "Párbeszéd az autonomiáért. Az RMDSz választási programja" ["Dialogue for Autonomy. The Election Program of the RMDSz"], 2004.

of the 1995 Law on Education which had represented the legal fundament for countless restrictions on the implementation of educational programmes in the minority languages. Cultural autonomy was equally demanded by the Hungarian community in Romania, and found thusly its expression in the programmes and governmental claims of RMDSz/UDMR. The employ of the mother tongue in administration and education is only a facet of cultural autonomy; the promotion of the specific culture, traditions and customs of a minority community belongs to the same sort of autonomy. Jeffrey Alexander[25] and Kane[26] oppose "the sociology of culture" to "the cultural sociology", arguing that the later is dependent on the existence of cultural autonomy *per se*, envisaged as a strong program in which "culture plays [a significant, determinant role] in shaping social life"[27]. Postulating from the very beginning that "attempts to substitute cultural autonomy for territorial autonomy in contexts where territorial autonomy is feasible" should be rejected for the political integration of multinational polities, Rainer Bauböck distinguishes among three forms of CA [cultural autonomy]: "residual", "supplementary", and "transitional" arrangements of cultural autonomy. "Residual CA" is rather specific to most East-Central European legislations on minority rights, applying to those "groups that are geographically dispersed within or across territorial units and that are regarded as cultural minorities rather than constitutive peoples of the states where they live"[28]; residual CA is hence "little more than a combination of the freedom of association and cultural practice with public recognition and support for historic minorities", and sometimes some "local self-government in municipalities where they form a majority". "Supplementary CA" often accompanies a general arrangement of TA [territorial autonomy], in those mixed regions, among usually two constitutive communities. Finally, "transitional CA" appears as a solution for those former communist multinational states in their attempt to avoid secession or irredentism, and to adopt a functioning integrationist liberal approach in the realm of minority rights in the absence of territorial autonomy: concretely, in order to avoid disintegration of the existing states. A rather "morally suspicious double standard" is employed, in which states facing multi-nationalism officially recognize the co-inhabiting minorities without granting them the right to self-determination. Outside the scholarly debates on the definition and proper conceptualization of "cultural autonomy", the European Commission presented a less straightforward, unclear perspective on the issue. In the specific case of the annual reports on the progress of Romania as

25 Jeffrey C. ALEXANDER, "Action and Its Environments", in Jeffrey C. ALEXANDER (ed.), *Action and Its Environments. Toward a New Synthesis* (New York: Columbia University Press, 1988), pp. 301-333.

26 Anne KANE, "Cultural Analysis in Historical Sociology: The Analytic and Concrete Forms of the Autonomy of Culture", *Sociological Theory*, Vol. 8, No. 1 (Spring 1992), pp. 53-69.

27 Jeffrey C. ALEXANDER and Philip SMITH, "The Strong Program in Cultural Theory: Elements of a Structural Hermeneutics", in Jonathan H. TURNER (ed.), *Handbook of Sociological Theory* (New York: Springer Science+Business Media, 2001), pp. 135-150 (p. 137).

28 Rainer BAUBÖCK, "Territorial or Cultural Autonomy for National Minorities?", in Alain DIECKHOFF (ed.), *The Politics of Belonging: Nationalism, Liberalism, and Pluralism* (Lanham, Maryland: Lexington Books, 2004), pp. 221-257.

a candidate-state, the problem of "cultural autonomy" is only rarely, sporadically and superfluously discussed. Whereas the RMDSz/UDMR pushed for "cultural autonomy" under the form of the imperious necessity of the adoption of a Law on the *Status* of National Minorities, it could only bring forth its claims for "cultural autonomy" in the 2005 governmental program. Meanwhile, the European Commission transferred its satisfaction with the active and vocal presence of RMDSz/UDMR in government into the 2005 report on Romania, even through until that time it had overlooked the necessity of the ethnic party of the most populous minority of the country as part of the government. Additionally, it had never asked for the representation of a national minority in government or for active, coherent, comprehensive dialogue and cooperation between the government and the ethnic parties, for a suitable, fortunate expression of the claims and demands of the national minority groups. Equally, while RMDSz/UDMR constantly stressed the immense significance of territorial autonomy doubling the cultural one – what it referred to as "asymmetrical federalism on ethnic bases" – both the Romanian state and the European Commission failed to respond to such a claim. Territorial autonomy was never a valid coin for trade-offs in the *calculus* for governmental support; although much debated and hotly contested, the problem of "territorial autonomy" has been constantly rejected from the governmental agenda. One similarity is to be however encountered: both the engaged activity of the RMDSz/UDMR and the oversight of the European Commission through its annual monitoring acted as important and harsh reviewers of the much delayed process of administrative decentralization the Romanian state. One digression is welcome here in the present situation of heated debate on the reorganization of the Romanian administration, on regionalization and decentralization, a discussion that was inaugurated during the 2011 right-wing government and continued by the 2012 left-wing government; as observed in the Annexes below, all governmental projects envisaged thus far for the reorganization of the Romanian administrative units systematically neglected the legal formation of an already existing consistent and compressed, a territorially easily delineated region comprising Hungarian nationals. It is this author's strong opinion that, in the initial phase of discussions on regionalization, the pressure of the Hungarian minority for the rethinking of the eight envisaged regions was to only include the three counties as a separate administrative entity. At the time of the first public debates on the issue of regionalization, RMDSz/UDMR continued to represent an important voice in the Parliament and to enjoy the recognition of its importance on the political scene by the governing party. Nevertheless, after the legislative elections of 2012, when RMDSz/UDMR registered serious difficulties in overcoming the electoral threshold of 5%, it still put forth the claim for a regionalization framework that would take into consideration Székely Land. However, both RMDSz/UDMR and the European Commission remained the top observers and tough reviewers of the fashion in which decentralization, regionalization, devolution is to proceed in the Romanian administration. In this respect, all annual reports on the progress of the Romanian state from 1997 to 2006 without exception argued in favor of finan-

cial decentralization, of a proper, more transparent distribution of resources towards the regional and local levels[29]. However, quite importantly, as Szocsik remarkably observes, the European Commission "never linked its calls for decentralization with the issue of minority protection."[30]

The Law on the Statute of National Minorities: the "hot potato" of the Romanian government. A look at the Venice Commission's Opinion (2005)[31]

A Law on the Statute of National Minorities remains another Achilles' heel for Romania's legislative development. The Law was called for by the ethic representation of the country – specifically, the Hungarian one – in the early 2000s, and a legislative project was drafted and forwarded to the Parliament in 2005. Yet in 2013, no Law on the *Status* of National Minorities is in force[32]. The "prehistory" of the 2005 legislative project is Law No. 86 for the Statute of Minority Nationalities, drafted by the Ministry

29 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 1997, p. 13; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 1998, p. 8; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 1999, pp. 26, 63; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2000, pp. 16-17; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2001, pp. 17, 19, 28; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2002, pp. 21, 24, 123, 134; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2003, p. 14; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2004, pp. 17-18; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2005, pp. 8, 25; *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2006, p. 5.

30 Edina SZÖCSIK, "The EU Accession Criteria in the Field of Minority Protection and the Demands of Ethnic Minority Parties", *Journal on Ethnopolitics and Minority Issues in Europe*, Vol. 11, No. 2 (2012), pp. 104-127 (p. 120).

31 For the complete trajectory of the legislative project on the *status* of national minorities in Romania and the complete text of the legislative draft, *see* http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=6778, last accessed: 01.10.2013.

32 Even though, in June 2013, in the context of discussions around the new revision of the Constitution, the Committee for the constitutional revision adopted an amendment proposed by RDMSz/UDMR, as an addition to Article 6 of the Basic Law, reading: "The legal representatives of national minorities can establish, according to the law regarding the statute of national minorities [yet to be adopted], their own decision-making and executive bodies, with competences concerning the right to preserve, develop, and express their identity." The amendment introduced "the right to freely use, including in the public space, their own national symbols, representing their ethnic, cultural, linguistic and religious identity." Another RDMSz/UDMR-proposed amendment was included in paragraph 3 of Art. 6: "The decisions of the central and local public authorities shall be taken only after the consultations of the citizens' organizations pertaining to the national minorities, in respect to the preservation, development, and expression of their ethnic, cultural, linguistic and religious identity." (National Press Agency AGERPRES, "Revizuirea Constituției: Minoritățile naționale își pot folosi în spațiu public și privat proriile simboluri" ["The Revision of the Constitution: National Minorities can use their own symbols both in the private and in the public spheres"], on the 13th of June 2013, http://www.agerpres.ro/media/index.php/politic/item/202945-Revizuirea-Constitutiei-Minoritatile-nationale-isi-pot-folosi-in-spatiu-public-si-privat-propriile-simboluri.html, last accessed: 08.10.2013).

of Minority Nationalities, through Decree No. 309 of 6th of February 1945, a law that was never abrogated, though frequently breached and completely overlooked by the authorities of state socialism after 1948[33]. More importantly, Law 86/1945, in its Art. 8, provided for the legal observance of minority rights in administration in those administrative units comprising 30% minority population. The "history" of the Law on the *Status* of National Minorities begins on the date 31st of August 2000, when the Minister for National Minorities Peter Eckstein-Kovács proposed and managed to adopt the renowned governmental Ordinance No. 137, concerning the prevention and combating of all forms of discrimination, but representing actually the first post-1989 mentioning of collective rights for national minorities. The same drafter of the Ordinance, jurist Marko Attila, working as a State Secretary within the Department for Interethnic Relations, was the principal writer of the legislative project of the Law regarding the *Status* of National Minorities, a project finalized and assumed by Tăriceanu government in February 2005, and urgently sent to the Parliament, in May 2005; it remains nevertheless trapped in the Senate which refused to debate it. Only in September was the project discussed in Committees, but on the 24th of October 2005 the Senate rejected the project. Presently, the legislative project of the Law on the Statute of National Minorities is blocked in the committees of the Chambers of Deputies – in this matter, the decisional chamber –, which failed to prepare a comprehensive report on the project and to advance it for voting in the Lower Chamber of the Parliament. The problem is further complicated by the issuing of a mixed review on the project, at the end of October 2005[34], by the Venice Commission (the European Commission for Democracy through Law). Although it praises the Romanian government's initiative to legislate in such a sensitive area, the Venice Commission requested some significant modification of the project under scrutiny: "The adoption of the current draft, if coupled with the necessary amendments to remedy the shortcomings highlighted hereafter, would certainly contribute to reinforcing Romania as a democratic state." In 82 paragraphs, the Venice Commission's opinion raised a multiplicity of problems with regard to the legislative project; among them, the most important refer to: (a) "[…] the question of the interrelation with other sectoral legislation remains unclear. This is largely due to the fact that the draft law has lost its original framework character […] by incorporating detailed regulations in key

33 Many of its provisions are rather commonsensical, *e.g.* Art. 2: "The research on the ethnic origin of the Romanian citizens, with the scope of establishing their juridical situation, shall be forbidden."; Art. 4: "[…] Any breaching, direct or indirect, of the citizens' rights, or the reverse, the establishment of privileges, direct or indirect, for citizens, on the basis of their race, religion, and nationality, as well as any promotion of exclusiveness or of race hatred and disregard of religion or nationality, shall be punishable by law." (*See*, for the complete text of the Law No. 86/ 1945, http://www.legex.ro/Legea-86-1945-83.aspx, last accessed: 06.10.2013).

34 The European Commission for Democracy through Law, "Report on the project of Law on the *Status* of National Minorities in Romania", "Opinion No. 345/ 2005, CDL-AD 2005 026", report presented and adopted at the *Sixty-fourth Plenary Session of the European Commission for Democracy through Law*, Venice, October 21-22, 2005 (and published in Strasbourg, on the 25th of October 2005).

sectors. In any case, the Commission is of the opinion that provisions of the Constitution should not be repeated in the law, not even in an organic law [as it has been envisaged this piece of legislation to be]"[35]; (b) the Commission perceives the draft rather as a "*lex specialis*", particularly in what concerns the "cultural autonomy" to be provided for by the Romanian state[36]; (c) probably, the most stressed-upon drawback of the legislative project is its conspicuous lack of correlation and coherence with the legislative *corpus* of the state (including the Law on Education, the Law of the Local Public Administration, etc.), deliberately conducive to dangerous levels of legal uncertainty in relation with other pieces of legislation[37]; (d) the conceptual ambiguity of some parts of the draft is harshly reviewed by the Commission, for the project utilized in its text, sometimes interchangeably, notions and phrases such as "national minorities", "communities", "national communities"[38], intuitively leading to a reading of individual rights of ethnically different as collective rights of ethnic groups; (e) yet another problem is Art. 74 of the legislative draft, in that it advances an evidently closed enumeration of national minorities in Romania: "[t]his provision should be deleted; the interpretation and application of the general definition of article 3, paragraph 1 of the draft law should be left to the competent authorities and, ultimately, to the competent courts. Should such a list be retained, it should be explicitly construed as non-exhaustive or indicative, not least of all because over time other communities may meet the elements of the definition."[39]; (f) the very definition of the collocation "national minority" appears problematic to the Commission, which points to a significant defining aspect: "the requirement that the community must have lived on the territory of Romania from the moment the modern Romanian state was established in order to qualify as a national minority […] [but it] seems to indicate that the relevant time is 1919, although the creation of modern Romania may be seen as a process rather than a definite event"[40]. Cumulating, the Commission perceives the relation between the definition of "national minority" and the closed list of Art. 74 as an inconsistent one and virtually incorrect: "[t]he consistency between the definition and the list is not at all evident [...], especially in the light of the comparison between the 1992 and 2002 [and, more strikingly, 2011] census results made by the Government

35 *Ibidem*, "C. Position of the draft law in the hierarchy of norms and in relation with other laws", point 12, p. 4.

36 *Ibidem*, "C. Position of the draft law in the hierarchy of norms and in relation with other laws", point 13, p. 4.

37 *Ibidem*, "C. Position of the draft law in the hierarchy of norms and in relation with other laws", point 15, p. 4. The Venice Commission even suggests the construction of a list to the contained in the project including the pieces of legislation to be annulled with the adoption of the Law on the Statute of National Minorities.

38 *Ibidem*, "D. Personal scope of application", "a. Issue of terminology", point 16, p. 5. The references are in Arts. 49 and 74 of the legislative project.

39 *Ibidem*, "D. Personal scope of application", "b. Definition of the term 'national minority'", point 21, p. 5.

40 *Ibidem*, "D. Personal scope of application", "b. Definition of the term 'national minority'", point 20, p. 5.

[…] [T]he list mentions some communities which were only to be found under the global heading in the 2002 census (*e.g.* the Albanians and the Macedonians), [it] also mentions the Italians which appeared as a specific category in the 2002 census but did not identify themselves as Italians in the 1992 census. Contrary to the Italians, the Csángós are not mentioned in the list even though they appeared as a specific category in the 2002 census"[41]; (g) the legislative project tends to associate the rights reserved to national minorities to their members' quality of "citizens", *i.e.* the condition of citizenship of the ethnically different in the ability of their groups to enjoy the rights traditionally reserved to minorities, except for political rights/political representation; but the project extends this dependency to other sort of rights, with the Commission contending that "the same reasoning is less convincing as regards cultural and educational rights, in particular because the text of the relevant constitutional provisions contains no such explicit limitation"[42]. The recommendation is that Romania shall "not […] make citizenship an element of the definition of, but rather to indicate in the provisions concerned that the enjoyment of certain specific rights is restricted to citizens. Without such explicit restrictions, the assumption would be that the rights and facilities spelled out in the draft law are available both to citizens and non-citizens belonging to national minorities. [...] [T]he exclusion of non-citizens – at least those belonging to a national minority recognized by the draft law – from the whole system of cultural autonomy is highly questionable."[43]; (h) the Venice Commission observed the ambiguity transpiring from the project in respect to the right and the manner of using the mother tongue in the administrative units comprising minorities: no exact percentage of minority population is established when granting such a right in the said units and no concrete manner in which this right is to be exerted are contained in the legislative draft: "The Commission is of the opinion that reserving the linguistic rights […] to citizens only and thereby not extending them to non-citizens can hardly be justified. […] Non-citizens may indeed speak certain minority languages which already enjoy the protection under the draft law."[44]; (i) further clarifications concerning the report between "the individual" and "the community": "A strong protection of the individual is indeed all the more required since important rights are granted to the community, in particular through the system of cultural autonomy."[45] Significant concerns are raised regarding the dangerous and problematic

41 *Ibidem*, "D. Personal scope of application", "b. Definition of the term 'national minority'", point 22, p. 6.

42 *Ibidem*, "D. Personal scope of application", "c. Citizenship criterion", point 26, p. 6.

43 *Ibidem*, "D. Personal scope of application", "c. Citizenship criterion", point 27, p. 7. Neither Art. 26 of the *International Convention for the Civil and Political Rights* nor Art. 21 of the *Protocol of the European Convention of Human Rights* require the strict differentiation between citizens and non-citizens in the enjoyment of universal rights. *E.g.* Art. 7 of the legislative project stipulates that the Romanian state shall take effective measures for the promotion of mutual respect, of understanding and cooperation among all Romanian *citizens* [not "persons"], with no difference of their ethnic, cultural, linguistic or religious identity.

44 *Ibidem*, "E. Public use of minority languages", points 35-36, pp. 8-9.

45 *Ibidem*, "F. Judicial protection of the rights enshrined in the draft law", points 37-39, p. 9.

prevalence of collective rights the legislative draft intrinsically favors, to the detriment of the centrality of individual rights. (j) The Venice Commission refers critically to Law no. 67 of 2004 that simply excludes the organizations of those minority groups that are not represented in the Parliament and in the Council for National Minorities: these ethnic groups are unable, according to the law[46], to claim representation even at the local or regional level, in the circumstances in which they represent below 10% of the population in one administrative unit: "[T]he Commission is still of the opinion that a 10% threshold of this type would be too restrictive a condition. This is especially the case for those organizations which operate at the local level in administrative units where there is a concentration of members of the minority concerned, but which cannot meet the requirement of 10% at the national level. […] [T]he Commission is of the opinion that the conditions for registration may be of such a severity that they disproportionately favor groups which are represented in parliament to the disadvantage of new groups which wish to participate in public life. This is all the more problematic since electoral privileges are not the only element at stake. Indeed, in addition to participation in elections, the qualification as entails several competences listed in Art. 40 of the draft law. These competences include the right to be represented in the Council of National Minorities, the right to administer special funds and receive yearly allowances from the State budget, the right to propose the appointment of representatives in certain institutions and to notify the National Council for Combating Discrimination of cases of discrimination. […] [T]he organizations of citizens belonging to national minorities are associations and the conditions they required to fulfill to be registered have to be analyzed as restrictions to the freedom of association."[47]; (k) While mentioning the virtues of Law no. 86/1945, the Commission expressed serious concerns in respect to the safeguards on the protection of personal *data* of individuals belonging to national minorities: such safeguards are neglected by the Arts. 4, 13, 40, 42, and 62 of the legislative project, and they further contravene Art. 3 of the Framework Convention for the Protection of National Minorities, that stipulates the *sine qua non* condition for legislative acts in this sphere are to include the optional exposure of the personal *data* of the ethnically different; (l) one of the most significant criticisms of the Venice Commission refers to the very concept of "cultural autonomy", present in the Chapter V of the legislative project, which would suggest the granting of collective rights for national minorities: "The Commission notes that there is no internationally accepted model of cultural autonomy for national minorities. […] Chapter V of the draft law implements what could be described as the collective dimension of the protection granted to national minorities. Indeed, the main feature of a system of cultural autonomy is that it goes beyond the mere recognition of rights for persons belonging to national minorities. This is reflected in Art. 57, paragraph 1 of the draft, which defines cultural autonomy as the right of a nation-

46 More specifically, Law no. 67 of 2004.

47 *Ibidem*, "G. Participation", "b. Organisations of citizens belonging to national minorities", "aa. Conditions for registration", points 46-48, 49-50, pp. 11-12.

al community to have decisional powers in matters regarding its cultural, linguistic and religious identity, through councils appointed by its members."[48] For the Commission, it becomes of paramount importance for the legislative draft to properly and clearly discriminate between "the rights of persons belonging to national minorities" (stipulated under Chapters I and II) and "collective rights of the national-ethnic groups" (hinted to in the Chapter V). A further problematic aspect is, in the Commission's perspective, the superposing, overlapping of the attributions and competences of the institutions of cultural autonomy and those of the already existing institutions functioning at the local level, due to the lack of clarity and coherence in the text of the legislative project[49]: in this sense, the ambiguity of competences of the envisaged and existing institutions "makes it extremely difficult to identify the main rules governing the relationship – including from a budgetary perspective – with the public authorities.

Concluding remarks

In the sphere of minority rights of using the language in public administration and professional life, the European Commission was overtly undecided. Clearly, the EC Annual Reports repeatedly reviewed favorably the efforts of the Romanian candidate-state to adopt a new piece of legislation allowing for the use of minority languages in public life[50]. When the improved Law on Public Administration was adopted, the European Commission marked the event in its 2002 report, stressing the success registered by the candidate state in the field of minority rights' protection[51]. Surely, the report of 1997 positively reviewed the repealing of the 1995 Law on Education, but it failed to advance further steps after the abolishment of the said legislation. Instead, in the 1998 report, the European Commission mentioned sporadically the importance of education in Hungarian at the tertiary level[52]. Subsequently and gradually, in 1999, 2000 and 2001 reports, the Commission reminded the Romanian state of the significance of the future establishment of a multicultural, multilingual university – a project initially envisaged by the RMDSz/UDMR –; the 2001 report even criticized to some extent the inability of the Romanian state to fund such an educational establishment. Quite surprisingly and unexpectedly, the problem of the Hungarian university was suddenly dropped, immediately after Sapientia University, a private

48 *Ibidem*, "G. Participation", "d. Cultural autonomy", point 58, pp. 13-14, and [G.d.] "aa. Group rights and binding consent", point 60, p. 14.

49 *Ibidem*, "G. Participation", "d. Cultural autonomy", "bb. Relationship between institutions of cultural autonomies and other bodies", point 67, pp. 15-16.

50 *See*, for instance European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 1999, p. 19, and *idem*, "Regular Report from the Commission on Romania's Progress towards Accession", 2001, p. 29.

51 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 2002, p. 35.

52 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 1998, p. 11.

exclusively Hungarian university, was founded in Cluj, in 2001, with the financial assistance of the Hungarian state. The establishment of Sapientia University seemed to complete the conditionality of the Commission. Three years after, the EC report of 2004 wrote about another success of the Romanian government in the sphere of minority rights' protection and promotion, *i.e.* the introduction of new programmes in Hungarian at two faculties at the state university Babes-Bolyai in Cluj[53]. It can be therefore observed that the Commission expressed a certain degree of concern in respect to the candidate state's legal development in the field of minority rights – with a special emphasis on the Hungarian community –, without actually putting forward a certain, clear-cut position in the field of Hungarians' right to use their language in education at secondary and tertiary levels. The Commission failed in assuming "an assertive stance"[54]: "[s]ometimes it criticized the current situation, while other times it praised ongoing efforts, and was unassertive on the institutional solution of education in Hungarian [in Romania]."[55] Subsequently, it appears that the salience of an issue in the monitoring of the observance, protection, and promotion of minority rights, and its actual presence in the European Commission's Regular Reports on the Progress of Romania, as a candidate-state to the adherence to the Union, are highly dependent on the political factors and on the evolution of some specific topics on the internal political scene. By "political factors", this paper isolates such aspects like: the presence in the governing coalitions of the RMDSz/UDMR; the depth and the *status* of discussions, the negotiations on one of the four indicators presented above by the Romanian legislators; the actual situation and gradual improvements registered on one of these indicators in decision-making internally or externally (*e.g.* with the support of the Hungarian government), etc. The Reports appear sporadic in their treatment of minority rights on the four isolated indicators, with significant differences in the space reserved to these issues in the texts of subsequent reports: oftentimes, stringent aspects, in respect to minority rights, dealt with in a detailed fashion in one report, are completely put aside in the following report, even in the circumstances in which the aspects under scrutiny were not exhaustively discussed and resolved by the Romanian decision-makers. The debates occasioned by the drafting of the legislative project on the Law on the *Status* of National Minorities, the difficulties raised by the delays in adopting the said project, the issuing of a mixed, controversial opinion from the Venice Commission detailed above, were all not even mentioned in the EC reports of 2005 and 2006. Strangely enough, although it has previously referred to the necessity of a piece of legislation in the realm of the statute of national minorities in Romania, the European Commission remained silent on the report of the Venice Commission. It remained equally silent on the constant, consistent demands of RMDSz/UDMR for cultural autonomy for the Hungarian minority, though it declar-

53 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 2004, p. 30.
54 Edina SZÖCSIK, *op. cit.*, p. 119.
55 *Ibidem*.

atively admired the proactive, vigorous attitude of the Democratic Union of Hungarians in Romania. From the dynamics of the issue of minority rights in the EC reports, it appears that the mentioning of the problems the ethnic groups confronted with in Romania has been political opportune. Subsequently, the EU conditionality has been largely incongruent with the active and always growing claims of RMDSz/UDMR, for the simple fact that the aims of the two political entities significantly differed: the scope of the EU conditionality in the field of minority rights was "the stabilization of ethnically divided states, based on the premises that guaranteeing minority rights and ensuring political inclusion of ethnic minorities would prevent ethnic conflict", whereas the prime scope of the RMDSz/UDMR – otherwise, of domestic minority parties generally –, is to promote and protect the political and the cultural distinctiveness of the represented group(s).

In the Report of 1998, the issue of minority rights is circumscribed to the general protection of human rights: a special sub-section is reserved for the topic, in which the level of protection of minorities in Romania is evaluated as "satisfactory, with the major exception of the Roma", with a series of developments being highlighted: [a] "a continued debate on the proposed amendments to the 1995 Education Act, which aim to establish the legal basis for setting up a Hungarian language University. […] a political *modus vivendi* has been achieved which will allow for the establishment of a multi-cultural Hungarian-German university"; [b] "an Inter-ministerial Committee for National Minorities was set up by a government decision in August 1998". The recommendations refer extensively to the Roma minority, with the general suggestion that the "Government Department for Minorities should be strengthened in term of staffing and financial resources."[56] In 1999, the treatment of minority protection in the EC Report is similar; about two pages are dedicated to the topic, emphasis is given to the Roma minority, while it is suggested that the "conditions for use of minority languages, in particular Hungarian, have improved. In July, 1999 both chambers of Parliament adopted the final version of the new Education Law which created the legal framework for establishing multi-cultural universities and gives the right to the national minorities to study in their mother tongue at all levels and forms of education for which there is a sufficient demand." On the other hand, it pointed to the failure of the Romanian state to implement the effects of the recently adopted law for university studies in minority languages: "While this in general will improve the possibilities for receiving education in minority languages, the establishment of a specific public university with teaching in Romanian, Hungarian, and German (*Petofi-Schiller*) remains *controversial*. The legal basis for its establishment has still to be completed."[57] "Controversial" is rather an understatement, even with the support of the right-wing, democratic government at that time in power in Romania: "In June

56 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 1998, pp. 11-12.

57 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 1999, p. 18 [italics added].

1999 the Government signed an agreement with Hungary providing for an increase of the number of lectures taught in Hungarian as well as an increase in the number of exchange students [with Hungarian universities]. In addition the new law of local administration stipulates that civil servants working directly with the public must speak the language of an ethnic minority in areas where the minority represents at least 20% of the population. In this context, the Government Ordinance of June 1999 regarding the restitution of properties belonging to the national minorities is also a positive development."[58] The report of November 2000 is more superfluous on the topic – intrinsically indicating the slow, but sure, progress the Romanian state has registered –, but the focus remained overwhelmingly on the Roma *problématique* and on the unsubstantial commitment of the Romanian government in this sphere. Conversely, the European Commission welcomed the active policy of the government in the protection of the use of minority languages, particularly in the educational system: "[N]ational minorities now have the right to education in their mother tongue at all levels of education. The history and traditions of each minority group have been incorporated into the *curricula* and instruction materials and free textbooks have been provided for compulsory education. At present, 5% of educational units teach in a minority language. In the vast majority of cases this is Hungarian, although six other languages are also used. A number of pupils from linguistic minorities who attend schools teaching in Romanian are also offered the possibility of studying in their mother tongue. In such cases a total of 15 minority languages are taught."[59]

From the comparative analysis of the annual regular reports on Romania's progress towards accession issued by the European Commission in the period 1998-2006, on the one hand, and the RMDSz/UDMR's documentation (including party programmes, the statute of the organizations, and other resembling materials issued by the party leadership), it has resulted in a stringent and conspicuous lack of congruence between the two collections of documents, indicating a discrepancy between the European Commission's conditionality on Romania and the *desiderata*, the claims and the demands of the most vocal minority political organization in the country, on the topic of minority rights' observance, protection and promotion, particularly on the *status* of the Hungarian minority in Romania. Consequently, it appears that, even though declaratively, the European framework is set to observe the promotion of minority rights within the states of the Union, in practice it can hardly match the claims and demands "on the ground", in the minority communities.

58 *Ibidem*, p. 19.

59 European Commission, "Regular Report from the Commission on Romania's Progress towards Accession", 2000, pp. 24.

Annexes

1. The electoral results of the RMDSz/UDMR in legislative trials from its inception to 2012

Electoral trial	The no. of votes		The proportion of mandates in the Parliament		Position in respect to the government
	The Chamber of Deputies	The Senate	The Chamber of Deputies	The Senate	
1990	7.23%	7.2%	7.32%	10.08%	opposition
1992	7.46%	7.58%	8.23%	8.39%	opposition
1996	6.64%	6.82%	7.29%	7.69%	government
2000	6.8%	6.9%	7.83%	8.57%	opposition, but supporting the government
2004	6.2%	6.2%	6.62%	7.3%	government
2008	6.17%	6.39%	6.59%	6.56%	opposition, but in government in 2009-2011
2012	5.15%	5.25%	4.37%	5.11%	opposition

(Source: The Results of the Romanian Elections 1990-2012 [*Date electorale românești*], University "*Babes-Bolyai*" of Cluj, http://www.polito.ubbcluj.ro/romanianelectoraldata/ro/rezultatele-alegerilor-%C3%AEn-rom%C3%A2nia, last accessed: 01.10.2013)

2. Document Analysis: The presence of the four selected indicators in the documentation used

	EU documentation									RMDSz/ UDMR documentation								
	1998	1999	2000	2001	2002	2003	2004	2005	2006	1996-1997	1999	2000	2001	2002	2003	2004	2005	2006
The use of the minority language	4	4	-	4	4	4	4	4	-	3	3	4	4	4	4	4	4	4

Education in and of minority language	4	4	4	4	3	3	4	3	-	3	3	3	4	4	4	4	4	4
Cultural autonomy	0	0	-	-	1*	0	0	1	0 (1)**	-	1	1	1	1	1	1	1	1
Territorial sub-national authority	-	-	-	2	2	-	2	2	2									

* Although the phrase "cultural autonomy" is not to be encountered in the 2002 EC Report, the document does refer to the free "use of the national flag, anthem and coat of arms, in order to allow national minorities to use their own symbols at official gatherings." (p. 35)

** The collocation "cultural autonomy" does not appear in the text of the "Communication from the Commission. Monitoring Report on the state of Preparedness for EU membership of Bulgaria and Romania" (September 2006), but the report includes the indication: "In the field of protection of minorities, only limited progress can be reported. The draft law on the statute of national minorities and setting up *the principles of equality and non-discrimination* and *multiculturalism*, is still being discussed in parliament. This legislative process needs to be followed closely." (p. 40) The Commission Staff's Working Document on Romania, titled "Monitoring Report Romania" (May 2006), does not include any reference to "cultural autonomy", not even to the Hungarian minority *per se*.

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