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THE IMPACT OF EU ACCESSION ON RIGHTS OF NATIONAL MINORITIES IN ROMANIA

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The impact of EU accession on rights of national minorities in Romania

Maral Zhanarstanova

Влияние присоединения Румынии к ЕС на права национальных меньшинств.

Распад коммунизма оказал огромное влияние на развитие стран Центральной и Восточной Европы. Все эти страны были ориентированы на запад, несмотря на различие транзитного периода в них. Румыния не была исключением, для которой процесс перехода к демократии ассоциировался с «возвращением к Европе», в частности к Европейскому Союзу. Автор строго убежден, что лейтмотивом демократических трансформаций в Румынии стало ее присоединение к ЕС, в силу чего особое внимание было уделено влиянию этого процесса на конституционные реформы в стране, в особенности на защиту прав национальных меньшинств. Национальное согласие является одним из наиболее важных вопросов, обеспечивающих стабильность как в стране, так и в регионе в целом.

Ключевые слова: Европейский Союз, Румыния, права национальных меньшинств, расширение ЕС.

The impact of EU accession on rights of national minorities in Romania. The collapse of communism has had an enormous influence on the development of Central and Eastern European states. Although, the transition period in these countries was accompanied by several distinctive features, all these states had a general orientation to the west. This was the case in Romania too, which saw transition to democracy as a “return to Europe”, and specifically accession to the European Union. The author strongly believes that the leitmotif of democratic transformations in Romania is its orientation and accession to the European Union, which is why the author will investigate its impact on constitutional reforms in the country. However, it is beyond the framework of this article to cover all areas of social, political and economic life of Romania, where there have been significant changes as a result of the EU’s influence, so I have focused only on minority rights, as this issue is very important for maintaining stability and democracy in the region.

Key words: European Union, Romania, national minorities’ rights, EU enlargement.

1. INTRODUCTION

The collapse of communism has had an enormous influence on the development of Central and Eastern European states. Although, the transition period in these countries was accompanied by several distinctive features, all these states had a general orientation to the west. This was the case in Romania too, which saw transition to democracy as a “return to Europe”, and specifically accession to the European Union.

Romanian attempts to enter in the EU succeeded after 17 years of mutual relations, which began in October 1990 with the signing of an Agreement on Trade and Commercial and Economic Cooperation, and ended with official accession of Romania to the European Union in January 1, 2007.

I strongly believe that the leitmotif of democratic transformations in Romania is its orientation and accession to the European Union, which is why I will investigate its impact on constitutional reforms in the country.

Good analysis of the Romanian authorities’ attitude to the European influence on domestic politics can be found in works of a professor and a specialist in this field, Melanie Ram, who has repeatedly expressed the idea that “**the extensive legal harmonization requirements stipulated by the EU have guided and even directed or catalyzed the choice and development of new, sometimes unpopular domestic laws and institutions in the EU-Associated post-communist states and thereby influenced domestic politics and the speed and success of these countries in achieving their reform goals**” [1].

However, it is beyond the framework of this paper to cover all areas of social, political and economic life of Romania, where there have been significant changes as a **result of the EU’s influence, so I have focused only on minority rights**, as this issue is very important for maintaining stability and democracy in the region.

For Romania the regulation of minority issue is also important due to existed conflicts between national minorities, where one of the most violent clashes were Tirgu Mures events in March 1990. The fact that events would occur at *that* city was quite predictable, as in Tirgu Mures there is a great number of Hungarian population, which was initially the dominant ethnic group, and only during the communist Ceausescu regime influx of Romanian population in the city began, which led to today's almost equal proportion of Romanians and Hungarians.

Serious clashes began on 19 March 1990, when armed with sticks and bottles crowd of Romanians had gathered near the headquarters of the Democratic Union of Hungarians in Romania (UDMR), attempting to penetrate the building, which resulted in injury of several Hungarians. The next day, about 15,000 Hungarians and their supporters among

Romanians came to the main square of the city as a response to what happened the day before, and were attacked by a group of comparable size of Romanians. Violence erupted between the two ethnic inhabitants of Tirgu Mures, and did not cease until the morning of 21 March [2].

Despite the fact that the Romanian government has accused Hungary in contributing to the tension, where, among other things, **were mentioned provision of “the Hungarian minority with maps and textbooks in which Transylvania was presented as Hungarian territory”** ([3]: 17), many scholars concur that the real force that provoked the violence to take place were circles in Romania and not in Hungary [4].

The significance of these events is undeniable, as it was the first ethnic clash not only in the republic, but also in the post-communist Balkans, **tragic events in which “sprang from an extreme development of [...] March 1990 in Romania”** (Vighi, 2004: 431), and that is why solution of the ethnic issue in Romania was of great importance for the European Union, **which enshrined it as one of the criteria for acceptance into the ‘club’**.

The paper starts with the brief review of basic concepts used in this paper, among **which are the problem of defining the term “national minority” and the notion of “Europeanization” process. After that, I will focus on Romania-EU relations, with an accent made upon the problem of national minorities in Romania in pre-accession period and on constitutional changes in 2003 in terms of minority rights’ protection, being a result of EU enlargement process.**

The work is mainly based on an analysis of Regular Reports of the Commission, **which “monitor and assess in detail what each candidate [...] has achieved over the last year and areas where more effort is needed”** [5], as well as other legal and international documents relevant to the subject. At the same time, the paper is also investigates scientific sources in this sphere in order to get the full picture of the issue.

2. THEORETICAL FRAMEWORK

Before moving to the practical part of the present paper, it is necessary to define studied phenomena, which are the issue of national minorities and effect of Europeanisation.

Starting with the former, it is important to note from the beginning that there is no universal and legally accepted definition, thus, for instance, the former OSCE High Commissioner on National Minorities Mr. Max van der Stoel in his speech on May 1993 **confessed that he doesn’t have an exact “definition of what constitutes a minority”, but he**

tried to describe it as “a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority”, and it “not only seeks to maintain its identity but also tries to give stronger expression to that identity” [6].

His description is similar to the definition given by Francesco Capotorti, Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities several decades ago in 1977, who saw a minority as:

“A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” [7].

Another example of fuzziness of the term is seen in the Framework Convention for the Protection of National Minorities (FCNM), adopted in Strasbourg on February 1995, which is seen as “the first legally binding international agreement devoted to minority protection [that] has been ratified by 36 countries” [8].

According to the FCNM, “the protection of national minorities is essential to stability, democratic security and peace in [...] continent”, stating that “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity” [9]. However, the FCNM does not contain a definition either, because of inability, as it states, “to arrive at a definition capable of mustering general support of all Council of Europe member States” ([9] item 12).

On the other hand, there is also no generally accepted notion about national minority and the nature of minority rights in scientific community, as scholars mostly rely on the official and legal documents in their works. Thus, for example, British specialist in the issue of national minorities, Jennifer Jackson Preece in her book *National minorities and the European nation-states system* (1998) tried to find out what is a national minority, by analyzing a) legal sources of international organizations, such as the League of Nations, the United Nations and the OSCE and COE; and b) diverse notions adopted by leading scholars in this sphere (I. Claude, J. Laponce). After surveying “the various meanings assigned to minority both by international institutions and academic commentators”, she preferred to use the above-mentioned definition of Francesco Capotorti [10].

At the same time, many authors agree that it is necessary to take into account different kinds of criteria when we are talking about minorities, among which objective and subjective factors are the most common. The former focuses on such characteristics as citizenship, numerical size, ethnic, religious or linguistic differences and **“the non-dominant position ... vis-à-vis the rest of the population”** ([11]: 14). The latter, on the other hand, relates to **“the principle of self-identification and the desire to preserve the group identity”**, which means the will and the right of the group to self-identify or not to self-identify itself as a minority [12].

Therefore, even if there is no internationally accepted definition of a minority, most of scholars and authors coincide about several characteristics that need to be fulfilled in order to distinguish national minority from the majority, which have already been discussed above.

The next concept used in this paper is the impact of the EU on other member states, **which is known as “Europeanisation”**, and which is also seen as an ambiguous term. Thus, for instance, Kevin Featherstone and Claudio Maria Radaelli in their book *The politics of Europeanization*, defined this term, first of all, as every **“changes within European politics and international relations”**; **secondly, as “a process of structural change, variously affecting actors and institutions, ideas and interests”**; and finally, in a narrow sense, as **“a response to the policies of the European Union”** ([13]: 3).

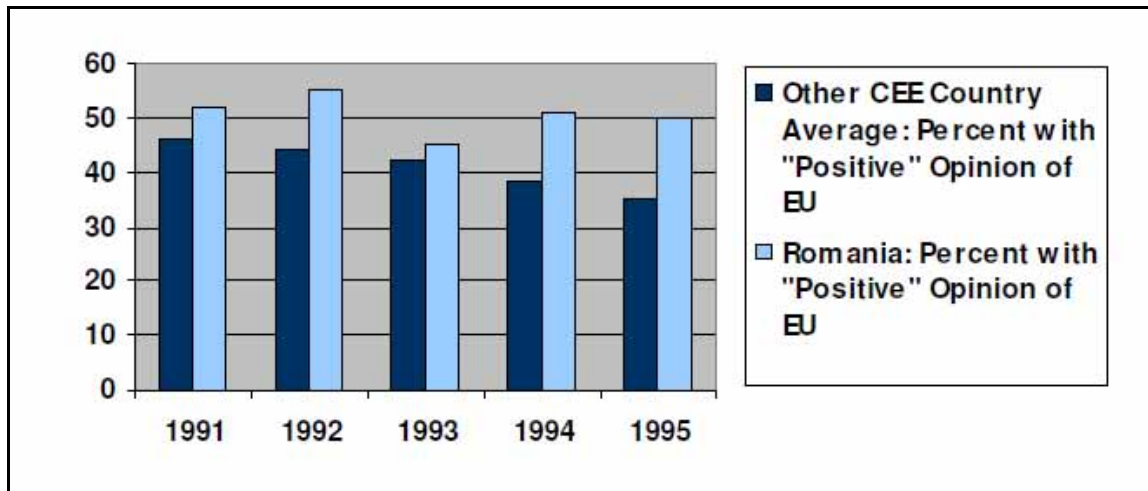
Europeanisation also covers **“a top-down and bottom-up” relations (Börzel and Risse, 2003)** between the EU and member states, the first of which is more sizeable and frequently studies, as all countries have to fulfill special criteria in political, social and economic spheres in order to be accepted to the ‘club’. Another prominent scholar, András Sajó, in his work *Becoming “Europeans”: The Impact of EU “Constitutionalism” on Post-Communist Pre-Modernity* investigates **“the impact of “Europeanization” on public understanding of constitutional democracy and the institutional structures put in place within new member states”** ([14]: 177).

Therefore, it is clear enough that there are different aspects of Europeanisation process, but in this paper I will focus only on one of them, namely on a top-down perspective, investigating the impact of the European integration, which, according to Klaus Goetz and Simon Hix, **comprises achievement in particular policy outcomes, and “the establishment of a new set of political institutions, with executive, legislative and judicial powers”** ([15]: 3), on Romanian domestic minority policy.

3. ROMANIAN PROTECTION OF NATIONAL MINORITIES IN THE CONTEXT OF EU ENLARGEMENT

What was always remarkable in Romania is its zeal and support of the idea of European integration not only by public authorities, but also by Romanians themselves (see Figure 1). Many of them saw preparation for the EU accession as a positive event, which will speed up democratic reforms in the country.

Figure 1. Percent of Romanians with “Positive” Opinion of EU [16]



As it was already mentioned, the first step of Romania's diplomatic relations with the EU began in October 1990 with a signing of a Trade and Co-operation Agreement, which entered into force in February 1995, providing Romania status of the EU's "associated member". Immediately after that, based on the Europe Agreement [17], new institutions in the sphere of Romania and the EU relations were set up: an Association Council, which "shall supervise the implementation of this Agreement" (Article 106); an Association Committee that shall assist an Association Council in the performance of its duties (Article 107) and An Association Parliamentary Committee, which "shall be a forum for Members of the Romanian Parliament and the European Parliament to meet and exchange views" (Article 112).

Thus, initially, the EU's relations with Romania was built on the Association Agreement, the meaning of which consisted in the recognition of the European integration prospects and an establishing of the institutional framework in transition Romania to the attainment of full membership. Associate membership in the EU is the main form of legitimate participation in the process of European integration. Thus, for instance, according to the European Council in Copenhagen in June 1993, "the associated countries in

Central and Eastern Europe that so desire shall become members of the European Union” [18]. The Conclusions of the Presidency of that Council is known as ‘**Copenhagen Criteria**’, because it establishes certain requirements that need to be fulfilled by candidate states in order to become a full member of the EU:

“Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required” ([18]: 13).

Along with political and economic criteria, necessity to achieve stability of institutions guaranteeing democracy and the rule of law, Copenhagen European Council emphasized that “membership requires that the candidate country has achieved stability of [...] human rights and respect for and protection of minorities”[18]. There is also provision about “**respect for borders and rights of minorities**” in neighbor countries, which aims to promote stability in Europe ([18]: 16).

These and other requirements were faced by Romania in the process of the EU accession, while the official application for EU membership was submitted by Romania on 22 June 1995.

However, as Geoffrey Pridham noted, Romania’s “**high expectations were exposed painfully**” ([19]: 37-40), as Luxembourg European Council, held in 12-13 December 1997, did not include Romania in the list of countries with which it was decided to start the first round of accession negotiations, as, according to an “Opinion on Romania's Application for Membership of the European Union”, published by the Commission in July 1997:

“Negotiations for accession to the European Union should be opened with Romania as soon as it has made sufficient progress in satisfying the conditions of membership defined by the European Council in Copenhagen” [20].

In the respect of minority protection, the Commission noted some positive changes in Romania, such as providing special representation rights in Parliament for national minorities; signing several international agreements, where particularly important was a bilateral treaty with Hungary, signed in September 1996.

The signing of this treaty was also as a result of European integration since its came after the Pact on Stability in Europe, signed in March 1995, also known as Balladur Pact, “**which combined conflict prevention with minority problems solution**” [21].

Therefore, the Treaty of understanding, cooperation and good neighborliness between Romania and Hungary was signed by the influence of the EU enlargement process,

according to which Romania had to promote good relations with its neighbors by “respecting borders and rights of minorities”. This treaty is of great importance in the sphere of minority protection, as it grants a lot of rights for national minorities (namely for the Romanian minority in Hungary and the Hungarian minority in Romania), which are fully described in Article 15 of the Treaty:

“(2) ... the right to create and maintain their own educational, cultural and religious institutions, organizations or associations; (3) ... the right to freely use their mother tongue, in private and in public, orally and in writing; (5) ... the right to effectively take part, individually or through their political parties or organizations to the political, economic, social and cultural life and to resolution of issues of national or local interest, through their elected representatives in bodies of central or local public authorities” ([22] Article 15), and others.

Moreover, according to the Treaty,

“Any person belonging to a minority shall observe, as any other citizen of the respective state, the national legislation and the rights of others. These persons shall enjoy the same rights and shall have the same obligations as all other citizen of the country they live in.” ([22] Art. 15: 8).

This bilateral agreement has not gone unnoticed by the Commission, which in its Opinion in 1997 noted that situation with the Hungarian minority have improved appreciably since the signing of this Treaty, but the general situation of minority protection still needs improvement, especially regarding the Roma minority:

“Even if the Hungarian minority seems well integrated [...], the same cannot be said for the Roma (gypsies), who constitute a sizeable minority in the country.” ([20] sec. 1.3).

The situation with Roma minorities didn't change either next year or in 1999, though the country met the Copenhagen political criteria in 1998. However, despite the necessity for future improvements in non-discriminatory policy towards Roma (gypsies), the Commission noted significant positive changes in the minority policy of the country during these two years, during which the republic set up Inter-ministerial Committee for national minorities in August 1998 and adopted in July 1999 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” [23].

1999 was remembered by Romania as a year when the country was incorporated into the negotiating process by the decision of the European Council in Helsinki in December 1999:

“Determined to lend a positive contribution to security and stability on the European continent and in the light of recent developments as well as the Commission's reports, the European Council has decided to convene bilateral intergovernmental conferences in February 2000 to begin negotiations with Romania, [and other states] on the conditions for their entry into the Union and the ensuing Treaty adjustments” [24].

However, it was only in 2001, that the situation with Roma minority started to change in positive direction:

“Since the last Regular Report, the government has taken several major initiatives to address the problems faced by the Roma minority. The most important of these was the adoption, in April 2001, of a National Strategy for Improving the Condition of Roma – which means that Romania has met one of the key political priorities contained in the 1999 Accession Partnership” [25].

There was also development in the minority sphere due to the Law on Local Public Administration, which gave linguistic minorities, in localities where they represent more than 20% of the population, the right to receive services from local authorities in their mother tongue. That provision was also harmonized with European legislation, namely with **the Council of Europe's European Charter for Regional or Minority Languages**, the European Charter of Local Self-Government, and Recommendation 1201 (Ram, 2001).

Moreover, one of the positive changes in the sphere of Roma minority protection was the fact that a National Strategy **admitted that “discrimination against Roma is a serious problem in Romania”, which require “to set objectives that include changing negative public perceptions, improving living conditions for the Roma, and encouraging Roma participation in all aspects of civil society” [25].** In the ensuing years, these and other criteria were met by the country, resulting in Romanian accession to the EU on January 1, 2007.

In general, there were adopted and ratified many legal and official documents, international minority rights conventions and recommendations, were established new institutions during the pre-accession period as a result of the EU enlargement process, which served as a driving force behind all these transformations.

However, the special role belongs to the Constitutional Revision in 2003 as a necessary step of accomplishing EU's **conditionality criteria** in legal sphere. That is why I will refer to this issue in more detail.

The first post-communist Romanian constitution was adopted in the sitting of the Constituent Assembly on November 21, 1991, published in Official Gazette of Romania, Part I, No. 233 of 21 November 1991, and came into force after its approval by the national referendum of 8 December 1991 [26]. It was criticized by the UDMR that it does not consider rights of ethnic minorities by establishing **"unitary and indivisible National State"** (Article 1 of the Constitution), and making Romanian the official language (Article 13). However, despite its criticism, the 1991 constitution marked turning point in the Romanian history of constitution-making, as it was the first constitution of post-communist period that proclaimed a republican form of government, protection of fundamental rights and freedoms, separation of powers, pluralism, free elections and others, which can be summarized briefly as a **legal strengthening of new regime's democratic values**. The main changes in comparison with the previous 1965 communist constitution have been made, according to Mihai Lucian, in Title I, **"reflecting the rejection of the idea of proletarian dictatorship and the affirmation of a state governed by the rule of law"** ([27]: 55).

The Constitution also specifically spelled out fundamental principles for building a democratic state, for example, according to Article 4, all citizens are equal regardless of **"race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin"**. This provision is also enshrined in Article 16, according to which **"citizens are equal before the law and public authorities, without any privilege or discrimination."**

The Constitution also enshrined provisions about rights of national minorities. Therefore, Article 6 specifically establishes the right to identity, which means that **"The State recognizes and guarantees the right of persons belonging to national minorities to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity"** [28], but on the basis of equality and non-discrimination with respect to the Romanian population.

In general, the Constitution regulated different spheres of social, political and economical life, having, as Rett Ludwikowski noted, **"clear structure and compact character"** [4] (1996: 127). However, life has proved the need for its further improvement, which is why the Constitution was revised in 2003 by an approval in two-day referendum, held on 18-19 October. There were altogether seventy-nine amendments, which touched on

problematic issues, solution of which allowed Romania to move forward in building a democratic society on par with other western countries.

These constitutional amendments have been directed to the preparation of Romania's accession to the European Union, according to which there were need for improvement of the legislative process through a more efficient allocation of powers **between the Houses of Parliament, an increase of the legislative process's efficiency, as well as expansion of constitutional guarantees in order to resolve unrestricted exercise of fundamental rights and freedoms.**

The core of **constitutional amendments concerning Romania's accession to the European Union is located in the newly added title "Euro-Atlantic Integration", which establishes the basis of integration into the EU:**

"Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint session of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators." ([29] Art.145.1: 1).

and Accession to the North Atlantic Treaty:

"Romania's accession to the North Atlantic Treaty shall take place by means of a law adopted in the joint session of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators." ([29] Art.145.2).

One of the most important issues in EU-Romanian relations in terms of law is the relationship between domestic law and international law. Article 11 of the 1991 Constitution provides that **"treaties ratified by Parliament, according to the law, are part of national law"**. And despite the fact that there is no specific provision that such treaties take precedence over domestic legislation, the majority of Romanian legal writers are of the opinion that the provisions of Article 11 should be taken to mean that international law takes precedence over domestic law ([30]: 33).

At the same time, Article 20 of the 1991 Constitution stated that in the sphere of fundamental human rights treaties, **in case of "any inconsistencies [...] between [these treaties] Romania is a party of, and the national laws, the international regulations shall take precedence", but, due to amendments of 2003, it is so, "unless the Constitution or**

national laws comprise more favourable provisions". These two articles shows "a partially dualist" nature of the country, where precedence has been given only to some treaties ([31]: 105).

The issue of the supremacy of EU law was also brought into picture by amendments in 2003:

"As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act."
([29] Art.145.1)

The next bulk of amendments raised the question of equal rights for EU citizens and Romanian citizens. Thus, for instance, Article 16 of the Constitution was amended, granting the EU citizens the right to elect and be elected in the local public administration bodies if they comply with the requirements of the organic law; and Article 35.1 gave the right for Romanian citizens to elect and be elected for the European Parliament. There were also changes in rights of citizens as a result of EU accession in Article 19, according to which Romanian citizens can be extradited in accordance with international agreements; and in Article 41, where foreign and stateless persons received the right to acquire land "under the terms resulting from Romania's accession to the European Union" and "under the terms stipulated by an organic law, as well as a result of lawful inheritance".

Concerning the rights of national minorities, Article 127 was amended by the provision that they have the right to use their mother-tongue in courts.

In general, it is considered that constitutional amendments in Romania are one of the most comprehensive among other countries in the region, and that they "meet, and even go beyond, what has been deemed necessary", because of the high level of support for EU membership and because of "the absence of urgency", as it was in other states ([31]: 106-107).

4. CONCLUSION

Based on the abovementioned review of the Romanian pre-accession period to the EU, as well as analysis of key legal documents, which accompanied that process, it is possible to conclude that most of the democratic transformations and reforms in the country were not only accelerated as a result of European integration, but also were caused by it. This influence covers all spheres of economic, political and social life of Romania, which was supposed to meet certain criteria for entry into the EU. The problem of national

minorities' discrimination in the country has not gone unnoticed by the European Commission either, solution of which became one of the conditions of EU membership. The country adopted many legal and official documents in the sphere of human rights, ratified the majority of international minority rights conventions and recommendations, established new institutions during the pre-accession period as a result of the EU enlargement process, which served as a driving force behind all these transformations.

Nowadays, despite the presence of some areas in which improvements are still required, we can say with confidence that the tragic events of the early '90s when there were serious and mass clashes between members of different ethnic groups do not occur in the near future. And a major contribution to the stabilization of this issue has been made by the European Union and by its accession criteria.

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