

THE MINORITIES' STATUS IN THE EUROPEAN UNION

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Abstract: *The problem of the minorities' status in the European Union represents a research topic still less analyzed in Romanian historiography. Usefulness lies in deepening the clarification of concepts like "minority", "national minority", "linguistic minority", etc. and the establishment of certain criteria and scientific methodological approach to minority issues.*

Our contribution in this article consists in presenting the evolution of historical, sociological and legal concerns regarding the fate of the people belongs to national minorities, summarizing the achievements, but also the failures of this development in European area.

Keywords: minority status, rights, European Union, EU legislation

JEL Classification: J15, J78, J71, A13

Discussions on the status of minorities, their relations with the state, with the majority, other minorities are increasingly present in Romanian historiography space. This aspect can only enjoy the historian trying to move, in a certain extent, from the political speeches, which are often marked by populism and demagoguery and to look not so much or not only on the current state of the problem, but to try to explain this by appealing to past historical developments. The minority "theme" is a generous one which invites to research not only through the fact that similar debates are taking place in Western Europe or the European Union, but because it often raises, acute problems, which are still looking for response. Although in the West it was written extensively on the subject, many questions remained unanswered, raising methodological dilemmas which are still causing disputes, the remained problems expect their solutions, both from a legal perspective but also from a sociological and historical perspective.

One of the themes of debate is undoubtedly that of defining the term "minority." Most international texts do not give a general definition of the concept, able to identify groups likely to benefit from rights attached to this status (Vandycke, 1992, p. 98). Legal difficulties are actually caused by the multiplicity of angles from which a community can be analyzed and characterized and the need to include in one category - the minority - ethnical "diversities" such as language, religion, etc. The last three hundred years of evolution marked the transition from the stage of a community maintained by multiple alliances of natural and spontaneous order (culture, family, neighborhood), at the society based on associative connections and contract ones (legal and

institutional bodies). Obtaining sovereignty and state organization were the ultimate objectives of these developments, affirming features being the first act of determination and the "first otherness" (Yacoub, 1998, p. 67).

Throughout this development communities have become aware of themselves and of their specificity and were grouped according to common criteria and spiritual values. Past, language and religion were and are major forms of identity. Faith and ritual practices were evidence of formation and differentiation of human communities, a challenge for recognition and power and thus a socio-political factor.

Religion has joined, has clotted feelings and contributed to awareness of identity and even led to the creation of independent states, if we consider only the example of Pakistan. Ernest Renan argued that: "There are no masses to believe in a uniform manner. Each thought and practice faith in his manner. There is no state religion. Religion is a personal matter pertaining to the individual conscience." (Yacoub, 1998, p. 74). Yet experience shows the opposite and shows that religions are cultural forms that, consciously or not, visible or not, are influencing political institutions, shaping attitudes, inducing social and political behavior of individuals and groups. In turn, languages are the vectors of social cohesion, determining, to a certain extent, how the thought, perception and cultural universes outlines specific people. Robert Mallet wrote about the role of language: "Language is for the individual, both a mean to identify and give thought to its most intimate resonance to others" (Yacoub, 1998, p. 80). Languages distinguish, separate, but at the same time, unite people. They are used as means of enhancing citizen's relationship with the state. Any action taken to achieve national unity is accompanied by a policy of linguistic unification and uniformity and for that the state uses a variety of means, based on the imposition of a single official language and by the politicization of the education system. These aspects regarding the characteristics of minorities, their evolution, and their constant metamorphosis are undoubtedly more complex and they are subject to special research of sciences as *minoritology* and *minoritografy* (Yacoub, 1998, p. 68). Analysis of data collected from historical and sociological research have, in this case, a practical purpose, because attempts to define the concept of minority, establishing specific features, allowing classification into categories was one of the stakes in law international disputes. To grant rights to the minorities, to bring legislation to clarify their status in society, to regulate the relationship with the State, for the majority was necessary to define the concept, to know exactly which segment of the population to be addressed in that law. The complexity of the problem, the multiplicity of perspectives from which could be considered the potential features of a minority group led, on several occasions, to failures in attempting to include in a legislative act and to define the term minority. At European level consideration of this issue was excluded from discussions of the

Conference of experts in minority in Geneva in 1991, and the "Framework Convention for the Protection of National Minorities, adopted by the Council of Ministers of November 10, 1994, has also circumvented the problem (Benoit-Rohmer, p. 55).

Internationally, the act which regulated the long minorities was "International Covenant on Civil and Political Rights", drafted in 1966 by the UN. Article 27 was credited with having established some benchmarks on the rights of persons belonging to minorities, but it also left enough room for interpretation. From the analyze of the article we might infer that membership rights of this category are not universal, because minority groups do not "exist" necessarily in all states, and it doesn't state that community members actually enjoy these rights, but rather that they may be deprived of them and does not provide any action or mobilization of resources from the states in their favor (Miall, 1997, p. 35). The text also referees to the right people, not the group, which limits the collective communitarian dimension. In general, recognized rights of minorities are non-discrimination, freedom to participate in public life of the country (cultural, religious, social, economic, political) freedom to establish contacts within and outside the country, freedom of association and to maintain and develop their identity. Collective rights are recognized to a group which, in turn, may impose certain obligations of its members and elects representatives in addition to central authorities. The minority collectivity is the holder of the rights and it enjoys, in this case, some autonomy and has the means necessary to implement such a right. Group right concerns local cultural collectivities and seeks to maintain and develop their particular identity, is focused on satisfying the demands of its members in terms of promoting equality and social, economic and political interests. Collective rights are rights and development of the identity of cultural groups, right to protection against any activities which could threaten their existence and identity, the right to participate in state issues and decisions concerning areas in which they live. In international law there is, from this perspective, a double trend: on the one hand, to put less emphasis on individual rights than that of the group and secondly, to guarantee minority rights, rather than give them a simple protection (Vandycke, 1992, p. 84).

In Europe, interest in the fate of national minorities started once with the first years of the Council of Europe. On September 5, 1949, the first report of the Legal and administrative commission of the Consultative Assembly, through the "Teitgen Report" recognized "the importance of the problem of a closer protection of minority rights." On November 4, 1950 "European Convention for human rights and fundamental freedoms" was adopted, which provided in Article 14 that "the rights and freedoms recognized in this Convention shall be secured without discrimination based mostly on gender, race, color, language, religion, political or other opinion, national or racial origin, membership of a national minority, birth or other status "(Yacoub, p. 211).

There followed a series of European documents which have gradually enlarged the area of rights and freedoms granted to minorities and have created new minority categories. Thus, on March 20, 1952, the "Additional Protocol No. 1 to the European Convention for human rights and fundamental freedoms, adopted in Paris, stipulated in Article 2, in education and training that "No person shall be denied the right to education. State, in exercise of duties which it assumed in education and education will respect the right of parents to ensure such education and teaching as their religious and philosophical convictions "(Yacoub, p. 212), and on October 18, 1961 was adopted the "European Social Charter of Turin", which contains Article 19, especially for immigrant workers. A new problem has appeared with the discussions on ratification of the "Paper of the European regional and minority languages". On March 16, 1988, the permanent Conference of local and regional powers in Europe (organ of the Council of Europe) adopted Resolution 192 on regional and minority languages. In May 1989 the Committee of Ministers decided to create an ad hoc committee of experts which was entrusted a mandate to prepare a draft on European Charter on Regional or Minority Languages. In 1992, on June 20, the Committee of Ministers adopted the Charter as a convention, but some countries: Turkey, Greece, France opposed its adoption, proposing instead a mere recommendation. Roland Dumas, French Foreign Minister, reasoned his decision stating that "it contained incompatible provisions with our principles such as equality before the law" (Yacoub, 1998, p. 128). In the French concept of state and nation citizenship and nationality coincide. One state, one nation, one language, the same law system - here's the details of the French nation-state, that vision is eloquently illustrated by Article 2 of the constitution: "France is an indivisible republic, secular, democratic and social. It provides all citizens equality before the law without distinction of origin, race or religion. It respects all beliefs." The Convention stated at Article 1 that regional and minority languages are "spoken traditionally in a State, the people who form a group numerically inferior to the rest of the state population and are different from official state language, dialects are not included here (Miall, 1997, p. 40). Attempts to define the concept of national language as the one of national minority are marked by obvious theoretical difficulties, because not only linguistic criteria should be considered.

First, it is necessary to distinguish rigorously between dialects and minority languages. The term dialect refers to a vernacular language and has a socio-political significance, because it induces the idea of subordination. A dialect becomes a minority language when its speakers claim autonomy and begin to impose rules of grammar and vocabulary. For the existence of such a minority, the community members should be aware of their particularity, to identify themselves rather than to be characterized as such from the outside (Giordana, 1992, p. 52).

In 1990, the Legislative Assembly adopted Recommendation 1134, relative to the rights of minorities. It recommended the Council of Ministers to draw up a Charter or a special protocol to the "European Convention on Human Rights." Following this approach, the European Commission for Democracy through Law (Council of Europe advisory body) adopted in 1991 a "European Convention for the protection of minorities." The text contains 37 articles and states the guaranteeing minority rights, guarantee which should not, however, authorize any activity contrary to the sovereignty, territorial integrity and political independence of the States. The Convention tried, at Article 2, a definition of minority, which constituted, according to the text "a group numerically inferior to the rest of the population of a state whose members, having the nationality of that State, have distinctive ethnic, religious, language other than the rest of the population and are animated by the desire to preserve culture, traditions, religion and language." (Miall, 1997, p. 40). To ensure the rights set out in the document, it was established the European Committee for the Protection of Minorities, which Member States had to send reports on the measures taken under the Convention.

Continuing the concern series for the fate of minorities, the Parliamentary Assembly adopted in 1993 Recommendation 1201 relative to Additional Protocol to the European Convention on Human Rights. The recommendation contains one of the most suggestive and valuable definitions of the term minority. It would be "a group of people from one state, living in its territory which are its citizens, maintain old, solid and durable contacts, with that country, shows ethnic, cultural, religious or linguistic characteristics and are sufficiently representative while being less numerous than the general population of that country or a region of that state and are animated by the desire to keep together what form their common identity, particularly culture, traditions, religion or language" (Miall, 1997 p. 41). Also in 1993 the Council of Ministers adopted a mandate to commission an ad hoc committee to start work on drafting a convention on minorities, the works were completed in 1994 when the Council of Europe adopted the "Framework Convention for the Protection of National Minorities. This document, which has as object to transpose in legal obligations the political commitments taken at the CSCE level, reviews the rights and freedoms enjoyed by national minorities and specify both their obligations and those of the states on whose territory they are. Through the complexity and quasi completeness of provisions, the text is considered the main legal instrument devoted to the protection of minorities (Yacoub, p. 230). It provides free use of minority languages in public and private space, free education, right to use the full name of the maternal language, the right to their official recognition, the right to use traditional local names, the right to learn their mother tongue, the freedom of Association. The states are bound by signing this agreement to protect the existence of national minorities, to prevent the disappearance or

assimilation of a minority by force of authority or other minorities, to protect persons belonging to different groups of acts of discrimination, hostility, violence, and attempts to defend them of any purge, extermination or deportation tentative. States were forbidden to use assimilation policy and undertook to keep particularities by creating conditions for conservation and development of culture, religion and language minorities. Authorities could not take action to change the proportion of population in a geographical area and promised to ensure "as far as possible" conditions to allow use of minority languages in dealings with government and "if necessary" to take action in education and research to promote knowledge of the culture, history, language and minorities religion. Doing so, the states create conditions to ensure effective participation of minorities in cultural, social, economic and public affairs which interests them in particularly. On the other side, minorities hired not to carry out activities contrary to the principles of international law and especially to encroach on the territorial integrity and political independence of States (Benoit-Rohmer, p. 120). The convention has, however, aspects of criticism or vulnerability. It does not provide a definition of national minority, while the clarification of terminology is fundamental to legal acts. It does not recognize for the minorities collective rights jointly exercised by the community group and individual recognition is made in an indirect manner, as obligations undertaken by states. For example, national minorities do not have a direct indication of religious freedom, but countries engage to recognize any person the right to manifest religion or belief. The paper also sometimes subordinates the obligations of Member states to the exigencies of a certain number share of minorities, using formulas such as "if possible" or "if necessary" to avoid an excessive burden in relation to the size of that group. Obligations of member states concern not only the recognition of rights and freedoms, but require action involving "positive action", namely providing funding to ensure these rights effectively.

Minority rights issues were and are in the attention of the Organization for Security and Cooperation in Europe (OSCE), which today reevaluates a number of older concerns and contributions, of the OSCE, in this field. Since 1975, principle number 7 of the first part of the Helsinki Final Act states: "Respect for human rights and fundamental freedoms, understanding freedom of thought, conscience, religion or belief. Participating States, acknowledging the contribution that national minorities or regional cultures can bring to their cooperation in various fields of culture aims to facilitate such contributions." At the Madrid meeting from November 1980-September 1983 the discussion were again on minorities and the conclusion of the meeting was the need for concrete action to be sure that these groups actually benefit from their rights. Following this conclusion, the Final Act of the Vienna Conference stated, in Articles 18 to 19, that

participating States will take all necessary measures to protect traditional rights and freedoms of persons belonging to national minorities.

Conference in Copenhagen (5 to 29 June 1990) marks, in turn, a milestone in the series of European concerns for minority issues. Final Act of the conference devotes a whole chapter to the national minorities' rights and states clearly not only the freedoms enjoyed by these people, but also the obligations of states to adopt measures to ensure their full equality with other citizens (Benoit-Rohmer , p.112). According to the text persons belonging to national minorities have the right to freely use their language in public and private space, to create and maintain their own educational, cultural, religious institutions, associations or organizations, to profess and practice their religion freely, to maintain connections with citizens of other states that share ethnicity, cultural heritage or religious beliefs, to disseminate and exchange information in their native language to access information and participate in activities of international nongovernmental organizations (Benoit-Rohmer , p.119). Following the Helsinki conference of 1992 the post of high commissioner for minorities was created, a true body of mediation, which was intended to trigger a swift action where tensions arising from minority issues, threatening to escalate into conflicts in the CSCE area. The meeting in Budapest in 1994, which transformed the CSCE into OSCE, has meant in the same time the reiteration of the participating States commitments to minorities (Yacoub, p. 252).

Thus, when creating the European Union in 1995, there already were a number of concerns and European regulations concerning the protection of national minorities, there was a legacy that the new Union had only to take. We can not therefore speak of minorities in "new Europe", without making any reference to "old Europe", the one until 1995, because the legal framework of the EU today is based on previous contributions in this field. The founding Act of the EU, the Maastricht Treaty, can, under these conditions, only reaffirm the concern for the fate of minorities in the wording of two articles: 126 and 128. The first stated that: "Community action target to develop the European dimension in education, particularly through the teaching and dissemination of the Member States languages" and in the second: "The Community shall contribute to the culture development of Member States in respect for the national and regional, highlighting the common cultural heritage "(Yacoub, p. 231). In the same spirit of concern for the fate of minorities, at 20 to 21 March 1995 the foundations bases were made for Europe Stability Pact, which aims to assume among its objectives the prevention of tensions and potential conflicts and establishment of a good neighborhood and cooperation on the continent. The text stated that to have a united Europe there must be prevented manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia, anti-Semitism (Benoit-Rohmer, p. 162). The pact constitutes a declaration and a list of

bilateral and multilateral agreements concluded on the initiative of interested states to contribute to the objectives set out in the document.

The most recent EU document which refers to the protection of persons belonging to national minorities and undoubtedly the most important is the draft constitution, the text adopted on 29 October 2004 in Rome and in the process of ratification by EU member states. We do not think that the significance of this document can stir debate as the European Constitution is the birth of "new Europe". From the content of this document could not miss the provisions on the protection of national minorities. It is true that there are direct and explicit references to these people, only at Article II 81, but taken as a whole, Part II of the Constitution entitled "Charter of Fundamental Rights" makes general references to human rights and freedoms, in which are circumscribed obviously, and those of minorities. The Constitution stipulates that the Union joining the *European Convention for the protection of human rights and fundamental freedoms*, and those fundamental rights resulting from constitutional traditions common to the Member States are part of EU law, with the status of general principles. The preamble to Part II provided the Union to "contribute to the preservation and development of these common values while respecting cultural diversity and traditions of the peoples of Europe, and national identity of Member States and their public power organization at national, regional and local level". Among the rights and freedoms set forth in the Charter we find: the right to freedom of thought, conscience, religion, the right to change religion and beliefs, to manifest his religion or individual or collective beliefs in public or privately, right to freedom of expression, freedom of opinion, freedom to receive or impart information and ideas without the emergence of public authorities, media freedom and media pluralism, freedom of peaceful assembly, association at all levels, right to education and access to training and freedom to create educational institutions respecting democratic principles (Article II, 70, 71, 72, 74, 80). The Constitution explicitly states in Article II 81 that "it is prohibited any discrimination based especially on gender, race, color, ethnicity, social, genetic features, language, religion, belief, political or other opinion, membership of a national minority, wealth, birth, disability, age or sexual orientation".

Concluding on our historical, sociological and legal "deviation" we notice that over the past 50 years there have been debates in all three views regarding minorities. Discussions often resulted in failure, but, taken together, they have helped clarify terminology on specific topics, to establish scientific and methodological criteria of approaching the problems and the formation of a legal "body", governing the international situation of minority groups.

There have remained, however, several key problems whose solutions are related to the ability to adapt, to change state institutional systems, cultural heritage of each nation and not least,

individual mentality. One of these problems is the classification into categories of persons belonging to national minorities. The theme provides two perspectives of approach that complement each other, but can be considered separately: a sociological and political perspective. Under the first category we can establish categories on the basis of religion, language, culture, ethnicity, nation, territory, and from the political perspective, we can distinguish several categories: autonomist minorities, the trend towards independence, pre national minorities, minorities in training and formed minorities. A second problem that raises discussion is the one of acceptance and definition of the term national minority. The attribute "national" is more generous in terms of semantic coverage, but that's why it is more difficult to define and conceptualize it. Difficulties related to the different understandings of the meaning of "national" cultural heritage, nation-specific models according to which they judge the issue. Thus, if the French model supports the theory of civic nation – from the nation belong all citizens of the state - the German model supports the idea of cultural and linguistic affiliation of a person in the nation. Because of these differences in perspective there was controversy over how to address community problems, options being integration or multiculturalism. On one hand there are countries - as is the case of France - who did not want to destroy the homogeneity proclaimed through the nation (one state, one nation, one language, one culture). Moreover, there were countries that accepted the challenge of multiculturalism and argued in favor of granting rights of persons belonging to national minorities. Another difficulty came in the moment when the allocation of rights to collective or individual was questioned. Most international instruments refer to individual rights, using the words 'national minorities' collective dimension appearing as a supplement in the form of "rights and freedoms can be enjoyed individually or collectively ..." Finally, involving the states in minority issues was another problem which had to be regulated and triggered various reactions. To ensure the preservation and development of national minorities is not only necessary to recognize the rights and freedoms, but the allocation of funds, direct participation and active states. However, in international texts, at the chapter obligations there are frequently used formulas such as "if necessary", "if possible", which limited the responsibilities and involvement of central authorities. These problems can only invite to debate on the conceptual and legal clarifications to the permanent improvement of European legislation. They remain important issues on the agenda of experts, of theorists, but also to policy makers interested in managing minority issues at the continental level.

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