

**ENHANCING MINORITY GOVERNANCE IN ROMANIA**

**THE ROMANIAN DRAFT LAW ON THE STATUS OF  
NATIONAL MINORITIES: ISSUES OF DEFINITION,  
NGO STATUS AND CULTURAL AUTONOMY**

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ECMI ROUNDTABLE FOR NATIONAL MINORITY MPs AND THE  
COUNCIL OF NATIONAL MINORITIES

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## **I. Background to the Project**

The goal of the project is to strengthen the qualitative aspects of inter-ethnic dialogue and minority representation vis-à-vis the Romanian government. The project seeks to improve inter-ethnic relations in a visible and sustained manner by enabling the Romanian Government to develop a new law on the status of national minorities based upon good practices and to establish standards for enhanced minority governance. It is hoped that the project will improve inter-ethnic understanding and acceptance by clarifying the legal status of national minorities; improving stakeholder involvement in the drafting of the law on national minorities; improving the quality of the draft law; and enhancing awareness of minority issues among the main political parties in parliament.

In March 2004, the Romanian state secretary and head of the Department of Inter-Ethnic Relations (DRI) came to the European Centre for Minority Issues (ECMI) headquarters to discuss the minority situation in Romania. At this meeting it was decided that the DRI and ECMI would forge a working relationship on minority-related issues and, particularly, the draft law on the status of national minorities that the government was planning to submit to parliament. ECMI was invited by the DRI to attend a seminar in Romania on the draft law in May 2004. Following the presidential and parliamentary elections that took place in November and December 2004, a new government was formed and a new head of the DRI was appointed by the prime minister. In February 2005, ECMI staff and two experts on cultural autonomy met with members of the Romanian Government to discuss what cultural autonomy is and to examine the Estonian model. Cooperation between ECMI and the DRI has grown progressively closer over time and activities concerning the drafting of the law and capacity building of the Council of National Minorities are set to continue.

Since 1993, nine drafts of the law on the status of national minorities have been drafted by different minority groups. However, none has received sufficient support. There has been little progress in reconciling the views of the various minority organizations, let alone between them and the majority. Inter-ethnic relations in Romania are negatively affected by the poor socio-economic situation of the Roma population and the political debates between Romanians and Hungarians on the

autonomous organization of Hungarians in Transylvania, as well as questions of local self-government and academic education in the Hungarian language. In spite of the Roma community's significant size (between 1,800,000 and 2,500,000 people according to experts), Roma continue to be underrepresented in parliament and in public administration. Moreover, observers of the 2000 elections in Romania expressed concern over the use of anti-minority sentiments by the Greater Romania Party, which became the largest opposition party in parliament with 25 per cent of the seats. While the Greater Romania Party received roughly 13 per cent of the vote in the 2004 election, its leader placed third in voting for the presidency.<sup>1</sup>

Romania is a country of many national, linguistic and religious minorities. Although formal mechanisms for consultation on minority issues do exist, minority organizations (especially smaller minorities' organizations and the Roma) often lack the technical competence to engage the government at a commensurate level where concrete aspects of proposed legislation or implementation of programmes or projects for minorities are concerned. In the preparatory discussions on this project, representatives of both the Romanian Government and of various minority communities have strongly encouraged ECMI to pursue this project to enhance legislation and practice on minority issues in Romania.

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<sup>1</sup> OSCE (2005), *OSCE/ODIHR Assessment Mission Report on Parliamentary And Presidential Elections in Romania on 28 November and 12 December 2004*, 14 February.  
[http://www.osce.org/documents/odihr/2005/02/4281\\_en.pdf?PHPSESSID=dcf490b26320756cea03d50a5bd36886](http://www.osce.org/documents/odihr/2005/02/4281_en.pdf?PHPSESSID=dcf490b26320756cea03d50a5bd36886).

## **II. Introduction**

ECMI and the DRI organized the second event of the “Improving Inter-ethnic Relations through Enhanced Minority Governance” project on 17–19 March 2005 in Sinaia, Romania. The head and both deputy heads of the DRI attended the roundtable along with national minority members of the Romanian Parliament and representatives of the national minority organizations represented on the Council of National Minorities. There were two fundamental purposes for the meeting. One was to provide the group with background information on the three major issues that will feature in the draft law on the status of national minorities, namely: defining a national minority; the status of national minority organizations under Romanian law; and cultural autonomy. The second purpose was to facilitate dialogue between the national minorities and the government concerning these main issues to be addressed in the draft law, so as to allow the government to hear the concerns and wishes of the national minority groups. It was noted that this was the first time that national minorities have been able to have a forum to discuss a draft law before it was presented to parliament. This report seeks to provide an account of the presentations and discussions that took place during this meeting, including some of the theories and practicalities of differing forms of definition, laws concerning NGOs and political parties, and models of cultural autonomy used in European states.

### III. Definitions of ‘National Minority’

Mr Aidan McGarry, ECMI, began the roundtable by making a presentation on defining/describing national minorities. He stated that while the need for a coherent minority rights policy is accepted across political and legal contexts, from the international, to the state, down to the sub-state level, debates have brought to the fore several quandaries such as: who or what is a ‘national minority’; and what rights and duties should they expect? In international legal circles, the topic of minority rights is too often dealt with in rather unspecified terms.<sup>2</sup> The broad definition of minorities forged in 1977 by United Nations Special Rapporteur Francesco Capotorti is still in use today as the most authoritative distinction: “a minority is a group numerically inferior to the rest of the population, in a non-dominant position, consisting of nationals of the state, possessing distinct ethnic, religious or linguistic characteristics and showing a sense of solidarity aimed at preserving those characteristics.”<sup>3</sup>

However, this definition is somewhat imprecise and has led to inconsistency in the term’s application. He stated that one can see how finding a universally agreeable definition for the term ‘minority’ has proven to be near impossible in the international institutional context. Even, the former OSCE High Commissioner on National Minorities, Mr. Max van der Stoel, spoke of his inability to describe what a ‘national’ minority was: “Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one”.<sup>4</sup>

Mr McGarry pointed out that even agreeing on the appropriate terminology has proved arduous. The first international standard which included minority rights, Article 27 of the International Covenant on Civil and Political Rights, refers to

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<sup>2</sup> On the problem of definitions see Thornberry, P. (1991), *International Law and the Rights of Minorities*, Oxford: Clarendon Press; Packer, J. (1993), “On the Definitions of Minorities”, in Packer, J. and Myntti, K., eds., *The Protection of Ethnic and Linguistic Minorities in Europe*. Turku: Abo Academy University.

<sup>3</sup> Capotorti, F. (1977), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Document E/CN.4/Sub.2/384/Add.1-7.

<sup>4</sup> Van der Stoel, M. (1993), “Case Studies on National Minority Issues: Positive Results”, Address to the CSCE Human Dimension Seminar, Warsaw, 24<sup>th</sup> May. Available at: <http://www.osce.org/hcnm/speeches/1993/24may93/htm>



“...those States in which ethnic, religious or linguistic minorities exist”,<sup>5</sup> yet tellingly omits to define how these minorities can be determined. Also, the Council of Europe’s Framework Convention for the Protection of National Minorities<sup>6</sup> does not endeavour to identify particularity or difference or to provide a definition, however flawed.

Mr McGarry noted that one is left in a situation in which you are able to ‘spot’ a minority when you see one, but you are stuck when you are confronted with a whole host of minorities, and have to try to determine what they need or should be entitled to, if anything. Besides, this subjective determination is of little use in the international context when international organizations try and deal with minorities on a practical level. He explained that: “the failure of recourse to a standard definition may not, in itself, determine weakness or failure, (...) but surely (...) the failure to agree on a standard term does not enhance the ‘success rate’ of such an important area”.<sup>7</sup> The ramifications of relying on an indeterminate definition such as Capotorti’s means that multiple interpretations have been attached to the term national minority. Since minority rights concepts tend to be very elastic and open-ended, they are capable of being given a wide range of meanings, including inconsistent and inappropriate meanings.

### **A. Identity**

Mr McGarry went on to discuss the importance of identity. Of particular concern here is that identity is an individual right which is provided for in the Romanian Constitution, albeit supplemented with a collective dimension. The constitution recognizes the existence of persons belonging to national minorities and, at the same time, recognizes and guarantees the right of those persons to their identity (ethnic, cultural, linguistic and religious).<sup>8</sup> Groups or national minorities are not recognized as such. One thing should be remembered: whilst self-identification is a universal human

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<sup>5</sup> International Covenant on Civil and Political Rights (1966), Art. 27. Available at: <http://www.ibiblio.org/ais/iccpr.htm>

<sup>6</sup> Framework Convention for the Protection of National Minorities (1995). Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>

<sup>7</sup> Potier, T. (2001), “Regionally Non-dominant Titular Peoples: the Next Phase in Minority Rights?”, *Journal on Ethnopolitics and Minority Issues in Europe*, Summer.

<sup>8</sup> Constitution of Romania (2003), Art. 6.

right, one's identity does not exist in and of itself, as people often derive much of their identity from the recognition that they are accorded by others.<sup>9</sup>

Coping with a plurality of identities in multi-ethnic societies is a difficult task. The basic philosophy has been to try and integrate diversity. Since most states are multi-ethnic, the state should reflect and protect this plurality of identities and interests. This means ensuring there is a legal framework to protect the equal rights of all members of society including persons belonging to national minorities.

This involves protecting and promoting the identity of minorities, creating the necessary conditions for dialogue between minority and majority communities, allowing for the effective participation of minorities in public life and being sensitive and responsive to the linguistic and educational needs of minorities. Fundamentally, it means according equal respect to all, to be inclusive, and not to discriminate. However, minorities have duties as well as rights, specifically the duty not to pursue their rights to the detriment of others (including smaller and less organized minority groups).

### ***B. Framework Convention for the Protection of National Minorities***

Mr McGarry explained the Framework Convention's effect on defining minorities. He stated that the Framework Convention was a milestone in the process of strengthening minority protection, and converted the political declaration of the OSCE Copenhagen Document (1990) into legal terms. It became the first legally binding international agreement devoted to minority protection and has been ratified by 36 countries.

The provisions contained in the convention allow signatories a degree of discretion when determining what persons belonging to national minorities are entitled to and what governments should do: "States are encouraged to adopt the approach they find most suitable for local conditions".<sup>10</sup> Almost all countries in Central and Eastern

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<sup>9</sup> For a more nuanced communitarian argument see Taylor, C. (1994), "The Politics of Recognition", in Gutmann, A., ed., *Multiculturalism*, New Jersey: Princeton University Press; and Tully, J. (1995), *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge: Cambridge University Press.

<sup>10</sup> Gál, K. (2000), "The Council of Europe Framework Convention for the Protection of National Minorities and its Impact on Central and Eastern Europe", *Journal on Ethnopolitics and Minority*

Europe have now ratified the convention whilst several Western European countries such as Belgium, France and Greece have not.

Another reason for this successful ratification process might be that it never actually defines the subjects of the convention. As there was no definition of minorities included in the text, several states took the occasion to interpret their understanding of the subjects of this legal document.

Mr McGarry noted that, to some experts, one of the weaknesses of the Framework Convention is that it gives states such room to manoeuvre, particularly since they are given exclusive power to submit a definition or enumerate who the national minorities are, should they so choose. As a corollary, others claim that the latitude given to states by the Framework Convention could lead to more efficient implementation and monitoring than is the case with other human rights instruments. For example, the lack of a definition of minorities means there is no strictly worded distinction between ‘traditional national minorities’ and the so-called ‘new minorities’ (such as immigrants). Likewise, it is not necessary for these national minorities to be citizens of the given country.<sup>11</sup>

### ***C. Western European Definitions of National Minority***

In order to give some comparative examples to assist the participants in their discussions about definition, Mr McGarry listed some Western European definitions of minority. He noted that some states have not defined national minority but have enumerated who the national minorities actually are: Denmark; Netherlands; Sweden.

DENMARK: “In connection with the deposit of the instrument of ratification by Denmark of the Framework Convention for the Protection of National Minorities, it is hereby declared that the Framework Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark.”<sup>12</sup>

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*Issues in Europe*, Winter, p. 2.

<sup>11</sup> As noted in Gál (2000), *ibid.*, p. 3.

<sup>12</sup> Declaration contained in a Note Verbale dated 22 September 1997, handed to the Secretary-General at the time of deposit of the instrument of ratification on 22 September 1997.

NETHERLANDS: “The Kingdom of the Netherlands will apply the Framework Convention to the Frisians.”<sup>13</sup>

SWEDEN: “The national minorities in Sweden are Sami, Swedish Finns, Tornedalers, Roma and Jews.”<sup>14</sup>

Other states have opted to provide a definition of national minority but have not enumerated who these minorities actually are: Switzerland and Austria.

SWITZERLAND: “Switzerland declares that in Switzerland national minorities in the sense of the Framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language.”<sup>15</sup>

AUSTRIA: “The Republic of Austria declares that, for itself, the term “national minorities” within the meaning of the Framework Convention for the Protection of National Minorities is understood to designate those groups which come within the scope of application of the Law on Ethnic Groups (1976) and which live and traditionally have had their home in parts of the territory of the Republic of Austria and which are composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures.”<sup>16</sup>

If an individual claims that he/she belongs to a national minority, and the state claims that there are no national minorities in that state (e.g., Kurds in Turkey or Finns in Sweden until 1998), there is a conflict, and the state may refuse to grant the minority person or group rights which it has accorded or might accord to national minorities. In

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<sup>13</sup> Declaration contained in a Note Verbale from the Permanent Representative of the Netherlands deposited with the instrument of acceptance on 16 February 2005.

<sup>14</sup> Declaration contained in the instrument of ratification deposited on 9 February 2000.

<sup>15</sup> Declaration contained in the instrument of ratification deposited on 21 October 1998.

<sup>16</sup> Declaration contained in the instrument of ratification deposited on 31 March 1998.

most definitions of minority, minority rights thus become conditional on the acceptance by the state of the existence of a minority in the first place.

GERMANY: “The Framework Convention does not contain any definition of the term national minority. According to the Explanatory Report to the Framework Convention it has been decided that a pragmatic approach should be taken, based on the realization that it was not possible to find a definition that all the Member States of the Council of Europe could agree on. In view of this legal situation, Germany invokes the competency to define the term as regards the application of the convention to the groups in question. In this respect, Germany considers national minorities to be groups of the population who meet the following five criteria: “their members are German nationals; they differ from the majority population insofar as they have their own language, culture and history, in other words, they have their own identity; they wish to maintain this identity; they are traditionally resident in Germany; and they live in the traditional settlement areas.”<sup>17</sup>

Application of the Convention, on this basis, to the Danes, Frisians, Sorbs, Sinti and Roma ensures that it will also apply to all ethnic groups that are traditionally resident in Germany.

Mr McGarry explained that the Danish minority found it regrettable that no common definition of minorities had been agreed upon by the Council of Europe. Supplementary terms such as ‘national minorities’, ‘traditional minorities’ or ‘autochthonous minorities’ help to better understand a desired and/or necessary distinction among various groups but in discussions these terms always require additional explanations and thus also can cause unintended consequences, namely cultural and social differentiation. It is important to remember that the interests and preferences of national minorities are not the same. Some national minorities push for cultural autonomy (in education and language) whilst others are more concerned with anti-discrimination, fair representation in the media and access to adequate social provisions such as housing and health care.

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<sup>17</sup> Declaration contained in a letter from the Permanent Representative of Germany dated 11 May 1995, handed to the Secretary General at the time of signature on 11 May 1995 and renewed in the instrument of ratification deposited on 10 September 1997.

#### **D. Definitions in Status Laws**

Mr McGarry then compared the definitions used by others states that have specific laws on the status of national minorities. Various states in Central and Eastern Europe have elaborated status laws on national minorities. These include: Hungary;<sup>18</sup> Serbia and Montenegro;<sup>19</sup> Czech Republic;<sup>20</sup> Croatia;<sup>21</sup> and Ukraine.<sup>22</sup> He provided some common themes and points of interest.

Each Status Law attempts to define the term national minority to varying degrees of specificity:

- Each mentions citizenship
- Each cites group or community explicitly
- Territory in one form or another is mentioned (apart from in Ukraine's)
- Reference is made to the ethnic, cultural, linguistic and traditional differences that national minorities possess (except for Ukraine).

The Hungarian example is probably the most far-reaching. Not only does it provide a definition of national minority, it actually enumerates who is a national minority and who is not. Furthermore, it details a provision that opens the possibility for other groups to be accorded national minority status provided they fulfil certain criteria.

#### **E. Conclusion: Advantages and Disadvantages of these Approaches**

Mr McGarry explained that a careful balancing act must be sought. What is required is a sufficient legal definition that provides for an unequivocal determination of who or what constitutes a national minority. It is necessary in this respect that the definition does not exclude certain minorities. That is, that the door is left open if and

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<sup>18</sup> Act LXXVII (1993) on the Rights of National and Ethnic Minorities.

<sup>19</sup> Law on Protection of Rights and Freedoms of National Minorities (2002). OG FRY No. 11/2002, 27 February.

<sup>20</sup> Act on Rights of Members of National Minorities (2001). Act No. 273/2001 Coll., 2 August.

<sup>21</sup> Constitutional Law on the Rights of National Minorities (2002). OG No. 155/2002

<sup>22</sup> Law on National Minorities (1992). No. 2494-12, 25 June.

when circumstances arise. A strict definition can prevent the ability of smaller, less organized, minority groups to flourish.

With (at least) 18 national minorities in Romania, any attempt to provide a definition of national minority requires a degree of latitude and negotiation. Minority groups represent different historical circumstances and this is reflected in their respective interests and preferences. Generally speaking, minority groups desire at the very least: recognition; support; funding; co-operation; inclusion; and permanent institutionalized dialogue. The key is to provide a definition of national minority that allows for the successful pursuit of national minorities' interests and aspirations and that is, on the one hand, receptive to the needs of smaller, less organized minorities and, on the other, not too inclusive.

Some points of concern and their implications in the definition:

- Definition on nationality makes sense but this raises the problem of how you define nationality: blood or soil (German example).
- Enumeration is exclusionary and gives great power to the state.
- Mentioning the number of years settled on land closes the door firmly on some groups (such as economic migrants and asylum seekers).

In this respect it is necessary to strike a balance which leaves the door open for smaller and less organized minorities. Safeguards should be put in place which allow for minorities to join the “club” at a future date providing they fulfil certain criteria laid down in the status law.

## **F. Discussion**

One participant noted that he felt there was confusion between the terms ‘ethnic’ and ‘national’ minorities. He also noted that ethnic minorities do not have kin-states whereas national minorities do, except for Roma.

One contributor expressed his belief that there are historical and philosophical distinctions between a ‘definition’ and a ‘description’ of a minority. He felt that a

definition would be too problematic. Citing the current situation in Romania he felt that the best option would be to define a minority along historic criteria. He proposed a definition that would “define” a national minority as any group of people in Romania that have been present for 100 years, have an ancient connection with the Romanian state, are numerically inferior citizens that are different from the majority due to culture, language, religion and traditions and want to preserve and confirm their identity.

Another person asked why was there a need to include a nationality element, querying whether it had to do with participation in the economic, social and cultural life of Romania. He also noted that Ordinance 26/2000<sup>23</sup> mixes the terms ‘national minorities’ and ‘professional organizations’. He felt that this is where some of the confusion begins with some of these terms.

A participant noted that a definition is very useful but that the suggested one refers too much to Romania. He was also concerned with the 100 years requirement because he felt that populations move and this definition might be arbitrarily denying some groups national minority status. He also explained that Ordinance 26/2000 made it possible for any three people to form a political national minority party regardless of whether they are citizens.<sup>24</sup> He suggested that a suitable definition should include citizenship because it will prevent newcomers from being entitled to the special privileges that national minorities are entitled to.

One of the drafting committee members explained that the current formulation of the definition has been worked on over the past few weeks. The purpose of tying the definition of national minority to some sort of length in Romania is that some minorities should get special rights because these minorities helped the political, economic, and social development of the Romanian state.

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<sup>23</sup> Ordinance on Associations and Foundations (2000). OG #39, 31 January.

<sup>24</sup> *ibid.*, at Art. 4.



One person felt that the definition was too restrictive and would prevent minorities that have been present in Romania for 20–50 years from benefiting from the special status.

Another person responded that when groups like Pakistanis or Arabs stay for the 100 years they will become national minorities.

An MP stated that only those groups that have contributed to Romania should be recognized.

One of the drafters stated that the draft is still being elaborated but that the law must start with some sort of definition/description. Romania is unique because all neighbouring states of Romania can find their kin-groups within it. While it would be easy to come up with a definition of national minority that would suit one or two groups, each national minority has its own history in Romania (Greeks came because Romania had the same religion, Hungarians came because there was a Catholic cult in Transylvania, etc.) and the drafters must therefore strive to find a definition that will be inclusive of all of them.

Another drafter explained that the language in the draft is taken from European law. The Estonian cultural autonomy law has been used as a basis but the law will need to be Romania specific. All 20 communities' concerns will be taken into account concerning definition. The national minorities that will be mentioned in the law have contributed to the establishment of the modern Romanian state. In the last Romanian constitution the term 'national minority' was not present, only 'individual' appeared. Now 'national minority' does appear. Another principle is that each community is a culture itself. They have a unique culture and must be respected. Another important principle is that each person decides if he/she is a member of a national minority. Other principles that need to be included are equality (no discrimination), equal opportunities, positive measures and freedom of expression. The law should also reflect the importance of government consultation with minorities in the area of education and media. There should also be no forced assimilation, either direct or indirect. Lastly, the law should ensure that the representatives of the national

minorities are legitimate and that the groups have a role in their preservation through representation.

One MP was concerned about the use of self-identification because the German national minority in Romania enjoys certain benefits. He was afraid that many people would want to become 'German'. Mr Decker explained that there is a relevant example of this from the border region of Germany and Denmark. Some German parents in the area believe that the Danish schools are superior to the German ones. As such the German parents send their children to Danish schools. Mr Decker pointed out that this is positive. The society ends up with multi-lingual speakers that have been exposed to each other's culture more intensely. It can be an excellent means of creating solid majority–minority relations. A representative from the Romanian Government also stated that there was no moral or legal basis for denying someone his or her right to self-identification. Mr Decker also added that there are three options as to who can determine one's identity: the state, the community or the individual. All present agreed that it was most prudent for the individual to choose his or her identity rather than one of the other two options.

#### **IV. The Status of National Minority Organizations**

The situation in Romania concerning the legal status and formulation of national minority organizations is complex. While the organizations are technically NGOs, they are also allowed to run in elections to parliament to receive one of the seats set aside for the 18 national minorities. Because of this special rule in the electoral system, it is open to abuse by anyone who claims to be a national minority NGO. Under Romanian NGO law, only three persons are required to found an NGO<sup>25</sup> and there is no special certification procedure to ensure that a national minority organization is actually constituted of that minority. This occurs not only because of the seats set aside in parliament but also because under Romanian political party finance law the state distributes funds for any party/organization that runs in the election.

The other issue is tied to legal status but deals with how to determine which national minority organization is the legitimate representative of the national minority. This is quite a complex issue because the state does not want to be involved in labelling minorities and wants to defer to self-identification. However, this has led to people declaring themselves a minority, forming a party and running against other national minority parties that may have a better claim to actually be representative of the community that they allege to represent.

The presentation made by D. Christopher Decker, ECMI Research Associate, on NGO and political party laws was aimed at comparing and contrasting the state laws of three European nations to those of Romania so that the group could discuss possible ways to alleviate the problems created by the current legal framework. The case studies were the Czech Republic, Hungary and Sweden. Mr Decker began by describing the Czech Republic's legislation concerning NGOs.

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<sup>25</sup> Ordinance on Associations and Foundations (2000), Art. 4. #26/2000, O.G. #39, 31 January.

## **A. Czech Republic**

### **1. NGO Law**

Mr Decker stated that freedom of association is ensured in the new constitution of the Czech Republic and that the main legal framework governing the civil sector consists of five basic regulations. These regulations are the Civil Code,<sup>26</sup> the Citizens Civil Law Associations Act,<sup>27</sup> the Act on Public Benefit Corporations,<sup>28</sup> the Law on Religions and Religious Congregations and the Act on Foundations and Endowment Funds.<sup>29</sup> Some of these new laws have been amended and changed since their enactment, due to a lack of technical support when they were first drafted. The changes have made the legal framework governing the civil sector in the Czech Republic somewhat complex.

In the Czech Republic, civil society organizations are divided into associations, foundations and funds, and Public Benefit Corporations. Associations are membership organizations with a not-for-profit purpose. At least three natural persons are needed to form a civic association. These persons form a Preparatory (Founding) Committee, which registers the association at the Department for Civic Affairs of the Ministry of Interior. For the registration, the Preparatory (Founding) Committee needs to present an establishment proposal, bring a copy of the organization's by-laws and identify the person that will represent the association. The association also needs to have a unique name, which is not used by any other registered legal entity. One ground for rejection could be that the organization resembles a political party or a religious congregation, as these kinds of organizations are regulated by other laws.

The purpose of civic organizations is defined in a negative manner in the Citizens Civil Law Associations Act, which states that civic associations may not be established: "to abolish or restrict the personal, political or other rights of citizens due to their nationality, sex, race, social origin, political or other views, religious preferences and social status, or to invoke hate and intolerance for the above reasons, or to support violence or any other way of disobedience to the Constitution and the

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<sup>26</sup> Act No. 40/1964.

<sup>27</sup> Act No. 83/1990.

<sup>28</sup> Act No. 248/1995.

<sup>29</sup> Act No. 227/1997.

Laws”.<sup>30</sup> Moreover, associations are not allowed to conduct any activities that are reserved for the public administration or political parties or to impose duties on citizens that are not members of the association.

Mr Decker highlighted three legislative acts which clearly elaborate on the purpose of civic organizations. Firstly, the Citizens Civil Law Associations Act states: “Unless a specific Act provides otherwise, the associations shall not have the right to perform the functions of state administrative authorities. They shall not control bodies of state administrative authorities or impose duties on citizens, who are not their members”.<sup>31</sup> Secondly, the purpose of a foundation or fund is defined in the Act on Foundations and Endowment Funds. This law states that a foundation or fund needs to serve a public benefit purpose, for example: the development of intellectual values, the protection and development of the natural environment, the protection of human rights or the promotion of science, education and sports. Foundations and funds are not allowed to support political parties or political movements. Finally, the Citizens Civil Law Associations Act states: “The present act shall not apply to citizen associations a) in political parties and political movements, b) to gainful activities or to ensure regular execution of certain professions”.<sup>32</sup>

## **2. Political Party Law**

Mr Decker pointed out that there is no definition of political party in the normative text. The regulation of political parties is not through the constitution but through ordinary legislation.

There is nothing in the law which explicitly states that political parties cannot be civil society organizations (and therefore can be elected), perhaps because this is covered in reverse. That is, civil society organizations cannot be elected to public office. As is the case with Hungary, the crucial point comes when organizations have to register their status. That is, as a political party or other. The registration process is justified by the need for formal recognition of an association as a political party.

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<sup>30</sup> *op cit.*, note 27 at Section 4(a).

<sup>31</sup> *op cit.*, note 27 at Section 5.

<sup>32</sup> *op cit.*, note 27 at Section 1(a) – (b).

## **B. Hungary**

### **1. NGO Law**

Mr Decker began by stating that independent voluntary organizations were not permitted in Hungary until the late 1980s but, thereafter, the sector grew significantly. Laws regarding nonprofit organizations are generally supportive of this growth. While all nonprofit organizations must be registered and acquire legal personality to exist, registration cannot be refused if groups meet the basic legal requirements.

There are five types of nonprofit voluntary organizations in Hungary. The government may only establish two types: public law foundations and public law associations, both of which undertake activities that would otherwise be state responsibilities. The other types of organizations are associations, foundations (‘open’ to other donors and contributions or ‘closed’) and public benefit companies. Subject to meeting the requirements in the Law on Public Benefit Organizations (PBOs),<sup>33</sup> all of these organizations may qualify for public benefit status and be eligible for associated tax benefits.

Hungarian law generally permits organizations to undertake any activities that are not prohibited by law. However, the activities of foundations must meet a long-term public interest. The law does not limit the ability of voluntary organizations generally to participate in political activities. However, the Law on PBOs provides that organizations with PBO status cannot pursue “direct political activity”,<sup>34</sup> defined as: “political party activity and nomination of candidates for Parliamentary and local governmental elections at the county level, including the city of Budapest”.<sup>35</sup>

Furthermore: “To be registered as a public benefit organization, the founding document of the organization shall include a statement that the organization does not pursue direct political activity, is independent of political parties and does not provide financial support to them”.<sup>36</sup> This complements Article 10 of the Act on the Rights of National and Ethnic Minorities: “Participation in public life by a person belonging to

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<sup>33</sup> Act CLVI of 1997 as amended by Act XIV and Act XXXIII of 1998.

<sup>34</sup> *ibid.*, Art. 4(d).

<sup>35</sup> *ibid.*, Art. 26(d).

<sup>36</sup> *ibid.*, Art. 4(d).

a national minority must not be restricted. Members of minorities may establish societies, parties and other civil organizations to express and protect their interests—in accordance with the regulations of the Constitution.”<sup>37</sup> This law further elaborates that: “Minorities have the right to establish civil organizations, as well as local and national self-governments”.<sup>38</sup> However, whilst minorities are free to establish civil society organizations, these organizations must not pursue political activities.

## **2. Political Party Law**

Mr Decker highlighted that the nature and function of organizations in Hungary are determined at their registration, similar to the Czech Republic. The registration process requires that any organization must clarify, before it is granted legal recognition, its precise form and function.

The most relevant legal text in Hungary is the Law on the Operation and Financial Functioning of Political Parties.<sup>39</sup> This law concludes: “If a legally registered social organization would like to operate as a political party, it must, openly and before a court of law, recognize its obligation to the rules set forth in the law on the operation and financial affairs of political parties, and simultaneously submit its bye-laws to the court of law.”<sup>40</sup> It elaborates further: “A social organization may operate as a political party if it simultaneously submits its petition for registration with its balance sheets”.<sup>41</sup>

Taken together, this means that all organizations must declare their status upon registration. This is in effect an either/or question. Either you are a political party or you are something else (such as a civil society organization). An organization’s failure to fulfil its function as a political party or a civil society organization may result in its dissolution.

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<sup>37</sup> Act No. LXXVII (1993).

<sup>38</sup> *ibid.*, Art. 17.

<sup>39</sup> Act No. XXXIII (1989).

<sup>40</sup> *ibid.*, at Section 15.

<sup>41</sup> *ibid.*, at Section 16.

## *C. Sweden*

### *1. NGO Law*

Mr Decker began his evaluation of Sweden by stating that the Swedish system is characterized by a liberal reading of Article 11 of the European Convention on Human Rights, which deals with freedom of association. He outlined the different types of NGOs that exist: not-for-profit organizations (NPOs); foundations; and economic associations. Of particular concern are the not-for-profit organizations and foundations.

Firstly, not-for-profit organizations are not subject to any law governing their existence. A typical characteristic is that NPOs have a charitable purpose and that they are not intended to promote their members' economic interests. An NPO gains legal capacity if it has a governing document stating the purpose of the organization and a board acting as the executive organ. Therefore, the organization must be registered.

Secondly, the main legal instruments governing foundations are the Foundations Act<sup>42</sup> and the Regulation for Foundations.<sup>43</sup> To establish a foundation and gain legal capacity no state approval is needed. The founder or founders only need to specify the purpose of the foundation and transfer the property to a third party, which usually consists of the board of the foundation or its administrators.

A not-for-profit organization often works to promote improved living conditions for a certain target group that are not members. So the distinction between a political party and an NGO is not found in the question of whether it works for its own members or for some group outside. The difference might be found in the way the work is taking place. Normative reasoning allows one to conclude that a not-for-profit NGO would have a target group for its operations but would not be, or try to be, representatives of this group. It follows that a political party would be representative of a group, opinion or ideology.

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<sup>42</sup> (1994:1220).

<sup>43</sup> (1995:1280).



## ***2. Political Party Law***

Mr Decker maintained that Sweden's legislation has avoided, as far as possible and as a matter of principle, any restriction of the freedom of assembly. Constitutional protection of freedoms of association and opinion are seen to be so far-reaching that any additional legislation could lead to infringements of these freedoms. However, Sweden has enacted basic rules for the participation of political parties in elections and for the financing of political parties and election expenditure. The Swedish Constitution defines a political party as: "any association or group of voters which puts itself forward in an election under a particular designation."<sup>44</sup>

Sweden recognizes in constitutional documents political parties as associations with the special purpose of participation in elections. Participation in elections is at the heart of the activities of political parties. By participating in elections parties can get acceptance of and support for their program and confirmation of their political efforts. The right of an individual or a group of individuals to create an association with the aim of participating in the political life of a country is an integral part of the human rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the UN Covenant on Civil and Political Rights of 1966 and other international instruments.

### ***D. Discussion***

One MP opened proceedings by stating that, in Romania, there exists a special law to establish political parties. If a group wants to establish themselves, they must form a political party; have settled in the territory; have differentiated membership. The law details further provisions that explain funding for organizations, however it does not mention minority communities specifically. She pointed out that the Romanian government tried to solve this problem by giving NGOs a political character.

One participant enquired how it was possible for NGOs to have political rights. A member of the DRI responded that minorities have an "extra" right in order to rectify problems of representation. Therefore, minorities are accorded a place in parliament that does not apply to other political parties. This does not mean that non-minority

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<sup>44</sup> Constitution of Sweden (1989), Art. 7.

parties have fewer rights. Rather, the democratic system means that the majority is always favoured so it is natural to provide positive discrimination to give minorities a voice. Minorities, of course, have different views (preferences and interests) but are united for a common purpose that is stronger than any political affiliation. He went on to say that minorities must achieve their objectives in the best way they can. Therefore minorities require a special status between NGO and political party without diminishing freedom of association. No one should stand in the way of self-identification. An individual may identify himself as Macedonian without always sharing the views of others in the community and thus cannot claim to represent the whole Macedonian people. However, nor should the individual be excluded from the Macedonian community simply for holding different views, as membership in that community may be important for the individual in other terms, such as language or culture. This relates to the problem of determining who decides if you are accepted or not. Crucially, this is subjective. Nobody can tell someone who or what they are.

Mr Decker interjected by noting that there are a number of rights that minorities in Romania are seeking but little has been said in respect of what duties to the community should be owed by members of a minority. This may foster a climate where non-minorities claim to be minorities to reap benefits. If the relevant minority community can inflict a duty on people claiming to be minorities, it is less likely that there will be interlopers claiming to be national minorities simply to receive benefits or entitlements. For instance, less non-minority people would claim to be part of a minority for gains if they had to pay a special tax to support their minority schools.

One participant asked how to determine who is a member of a community? Who can be accepted and under what criteria? One solution would be registration. Indeed, what you are declared at birth should stand, even if you change your mind later. He concluded by stating that organizations do have a duty, that is, to the community or group that they claim to represent.

Another participant suggested that organizations should be given a two-year period to prove that they have an interest in the minority community that they claim to represent. If they do not fulfil this obligation then the state should liquidate the organization in question.

The point was made that personal ambitions will always exist. So, how can we handle these members? Someone could claim to be Macedonian in order to secure a seat in parliament reserved for minorities and neither the government nor the community can stop the person from claiming to be Macedonian. However, on the other hand, this person could then be sympathetic towards and work hard for their (adopted) community.

One contributor maintained that when two organizations claim to represent a community then the one with the most votes can declare their authority.

One of the DRI members present tried to clarify the situation and agreed that representation was a persistent problem. From the state and public's point of view, an MP represents an ethnic group, and must serve that community. Registration is one way to solve the problem of representation. In this way, everyone has one vote but must be registered. The DRI member did not agree with a nominal list for minorities. He stated that it would be a "Schindler's list", even if guided by data protection norms.

Mr Decker raised two related questions which must be resolved: first, how to prevent non-minorities from claiming they are a new minority or part of an established minority to reap the perceived benefits and, secondly, how to determine membership of a minority community.

One participant pointed out that in Romania all minorities are interested in achieving their aims for their community. Each organization has special by-laws. Ordinance 26/2000 established that an organization should have its own (autonomous) by-laws, its own structure and hierarchy, and its own members.<sup>45</sup> These by-laws are applied by special commissions (legal, administrative, cultural, etc.) but there is a problem in deciding if an MP represents his organization or his community.

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<sup>45</sup> Ordinance on Associations and Foundations (2000), Art. 6. O.G. #39, 31 January.

One contributor elected to discuss more technical issues. He noted that a law on registration already exists.<sup>46</sup> Organizations that are numerically larger are more representative. So, how will this be explained in law from a more technical point of view?

An MP offered a practical solution. If it were accepted that all organizations would be represented in parliament, then there would need to be a law which allowed this. Therefore, a right to be registered and represented in parliament.

One participant expressed his concern over registration, given his community's historical situation. He felt that there should be no file which holds anyone's status.

Another participant noted that the Romanian Constitution is unique in that it allows national minorities to be represented in parliament. This means that national minorities are accorded more than simple preservation rights: they are involved in political life. Some organizations only deal with preserving culture and are not necessarily concerned with political activity in the conventional sense. They only require political support. The state needs the assent of the minority if it is to be fully representative, and minorities want to be represented. A law cannot decide if any organization is political or cultural. Only the minority can decide.

An MP concluded by stating that organizations may be different. Competition within minorities must be left open to different competitors, both cultural and political. Therefore we need a legal solution to a legal problem.

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<sup>46</sup> The speaker was referring to the Law on Legal Persons (Associations and Foundations) (1924). Law no. 21/1924, O.G. Part I, #27, 6 February. However, Ordinance 26/2000, Art. 86 states that "On the date the present ordinance comes into force, Law no. 21 of 1924 for legal persons (Associations and Foundations), published in the Official Gazette, Part I, #27 of 6 February 1924, is abrogated together with the subsequent modifications, as well as any other contrary provisions".

## V. Cultural Autonomy<sup>47</sup>

Mr Decker gave a background presentation on cultural autonomy, including what the concept involves, why states have created cultural autonomy, for who and how cultural autonomy is created, before discussing the models used in Estonia and Belgium.

### A. *What is Cultural Autonomy?*

Mr Decker began by explaining that cultural autonomy is a means by which the state gives power over personal rights such as religion, language or culture to a group within the state. Furthermore, cultural autonomy assumes that *all* citizens, both the majority and minority, have a vested interest in the overall well-being and prosperity of the state in which they live. Cultural autonomy allows for self-government in cultural and educational matters. He stated that it is possible to establish cultural autonomy regardless of whether the minority is geographically concentrated or dispersed throughout the country. Minority community members are able to study in their native language and to influence the central and local decision-making bodies in matters concerning their cultural needs. For this purpose, the minority community is represented in the central and local governments but does not have self-government (or general autonomy) in political and economic matters. However, Mr Decker continued that regarding cultural matters, the minority institutions' authority is independent of the central government.<sup>48</sup> Mr Decker also emphasized that a leading Baltic German theorist on cultural autonomy, Paul Schiemann argued: "Politics means working *for* the state in which one lives; any other end is suicide". Schiemann also believed that there are: "no rights without obligations".<sup>49</sup> When the state permits a national minority to form cultural autonomy, it is implicit that the minority will remain loyal to the state and, therefore, it follows that cultural autonomy does not automatically create 'states within states'. Furthermore, cultural autonomy is not

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<sup>47</sup> For a more in-depth discussion of cultural autonomy in Estonia see Decker, D. Christopher (2005), "Enhancing Minority Governance in Romania: Report on the Presentation on Cultural Autonomy to the Romanian Government", ECMI Report #53. Available at: [http://www.ecmi.de/download/Report\\_53.pdf](http://www.ecmi.de/download/Report_53.pdf)

<sup>48</sup> However, the institutions are required to uphold minimum standards that can be set by the state. Ideally, when the state is setting these standards, it should carry out consultations with the minority group.

secession from the state, nor does it necessarily mean regional autonomy. Lastly, he stressed that cultural autonomy is against *assimilation* but not against *integration* of national minorities.

### **B. *Why Choose Cultural Autonomy?***

Mr Decker noted that after World War I ethnic conflicts did not subside although borders had been redrawn. The theory of cultural autonomy was developed in the period between the wars. Cultural autonomy was seen as a way of taking culture out of politics and giving it to the group that holds it most important; the minority itself. Cultural autonomy is also seen as a way of reducing the likelihood of ethnic conflict in a state. Furthermore, he said that cultural autonomy is a vehicle that can empower minorities without affecting a state's territorial integrity.

### **C. *Who Can Create Cultural Autonomy?***

Mr Decker explained that cultural autonomy applies to all members of a group, usually based on ethnic, cultural, religious or linguistic minorities. The groups who are eligible to create institutions of cultural autonomy are usually enumerated in the law that sets out the procedures that must be followed.

### **D. *How is Cultural Autonomy Established?***

Mr Decker stated that cultural autonomy and the establishment of its institutions generally takes place through legal provisions and includes certain elements. There is a registration of the minority group for electoral purposes. This is done so that the minority group can demonstrate to the government that there is a sufficient interest on the part of the minority to take control over cultural institutions. Furthermore, having a register of national minorities allows for the smooth functioning of elections for the minorities executive. Once a certain threshold is met, according to the precepts of any new law, elections may be held. There may be requirements as to minimum voter turnout—once again to demonstrate the level of interest on the part of the minority in acquiring institutions of cultural autonomy. A successful election allows for the creation of a legislative body that is responsible for the organization and administration of schools operating in the mother tongue of the minority. The

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<sup>49</sup> See generally Hiden, J. (2004), *Defender of Minorities: Paul Schiemann 1876-1944*, London: Hurst.

legislative body may also have control over minority cultural institutions and activities more generally. While the institutions are still bound by state laws concerning education (i.e., minimum standards), the group develops its own institutions to make binding decisions, levy taxes and execute educational and linguistic policies. The autonomy is funded by a portion of the state taxes allocated for educational purposes and often by additional taxes that the institution levies on its members.

### ***E. Models of Cultural Autonomy***

Mr Decker stated that Estonia, Belgium, Finland, Italy and Hungary are among many states in Europe that have some degree of cultural autonomy. However, he noted that the only models of true cultural autonomy are the Baltic Republics. All other states that have cultural autonomy have a mixed system whereby some other autonomy is also granted, usually some form of regionalization. Regional autonomy is always based on territorial considerations and is therefore limiting for minorities that are dispersed. He then offered an explanation of the Estonian and Belgian models.

#### ***1. Estonia***

Mr Decker said that, under Estonian law, cultural autonomy could be established by persons belonging to the German, Russian, Swedish and Jewish minorities and persons belonging to national minorities with a membership of more than 3000 persons. National minorities are defined in the law as: “citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; and are motivated by a concern to preserve together their cultural traditions, their religion or their language which constitute the basis of their common identity.”<sup>50</sup>

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<sup>50</sup> Law on Cultural Autonomy for National Minorities (1993), Art. 1, 26 October. [http://www.einst.ee/factsheets/cult\\_auton/](http://www.einst.ee/factsheets/cult_auton/). The effectiveness of the cultural autonomy law has been somewhat undermined by the Estonian definition of citizen. “The widely criticized Estonian citizenship law requires evidence of pre-World War II historical roots in Estonia to be considered a citizen of Estonia. Those that do not fulfil this requirement must pass a language exam and demonstrate sufficient knowledge of Estonian history. Language restrictions also adversely affect ethnic [Russians’] educational and occupational opportunities. While the Russians are permitted to participate in local elections, there are significant legal restrictions in terms of voting and organizing at the national level and attainment of high political office for non-citizens. Once they achieve citizenship however, there are no restrictions.” Minorities at Risk Project (2000), *Assessment of Russians in Estonia*. College Park, MD: University of Maryland. <http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=36601>.

He explained that the Cultural Autonomy Law gives representatives of eligible minority groups the power to elect their own cultural councils of between 20 and 60 people. The councils are responsible for the organization, administration and control of public and private schools operating in the mother tongue of the relevant minority, as well as for the supervision of minority cultural institutions and activities.

The cultural council is a legislative body, which in turn elects a cultural administration that acts as the executive arm for cultural autonomy. The exercise of minority rights is *not* linked to particular territorial sub-regions of the state. Each culturally autonomous minority has the status of a corporation at public law, whose remit extends to the state territory as a whole. This is particularly important for minority groups that are dispersed throughout the state. Institutions of autonomy are financed partly by central and local government, which are obligated to provide the same level of funding previously allocated to minority schools within the state sector. Since cultural self-governments have the status of public corporations, they also have the power to levy taxes on members of the national minority and the cultural council determines the exact level of taxation.

## **2. Belgium<sup>51</sup>**

Mr Decker stated that Belgium is a federal state that is structured along community, regional and linguistic lines. The communities consist of the French, the Flemish and the Germans. Walloon, Flanders and Brussels are the territorial regions and the linguistic regions are French, Dutch, German and a multi-lingual region.

He explained that the Belgian central government's powers are limited to the budget, defence and foreign policy. However, even the constituent units also have some degree of influence in the area of foreign policy. Instead of a strong federal government, the constituent units carry out most of the daily workings of politics. The territorial regions primarily make decisions regarding affairs within their territory,

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<sup>51</sup> For a fuller explanation of the Belgian system, see Stroschein, S. (2003), "What Belgium Can Teach Bosnia: The Uses of Autonomy in 'Divided House' States", *Journal of Ethnopolitics and Minority Issues in Europe*, Autumn. Available at [http://www.ecmi.de/jemie/download/Focus3-2003\\_Stroschein.pdf](http://www.ecmi.de/jemie/download/Focus3-2003_Stroschein.pdf)



such as on transportation and economic policy. Another set of units are the three linguistic communities: the French, the Flemings and the Germans. These non-territorial units control educational and linguistic matters. The various layers of constituent units create a complex division of powers. The Flemish and the Francophone communities have jurisdiction over educational and linguistic matters within the Brussels region, therefore requiring a non-territorial aspect in the government structure. The governmental structure is highly unequal because the Germans have only a community and Brussels has only a region. Furthermore, the Flemish have combined: “their community and region administrations to produce a more unified Flemish structure”.<sup>52</sup> However, the French community remains administratively separated both from the Walloon region and from the Brussels capital region.

The Belgian model is highly complex with roots in both territorial and cultural autonomy. It is also a system which attempts to create “equal” groups rather than a majority/minority scheme with special protections for the minority. This model is also evolving. Revisions to the power structure are still occurring and the situation is not static.

#### ***F. How to Make Cultural Autonomy Work***

Mr Decker then discussed how the parties involved in forming cultural autonomy could help ensure its success. He stated that cultural autonomy should be established with the consent of the group intended to benefit from it. It helps if kin-states are involved for two reasons. Kin-states can help support the cultural autonomous institutions politically and financially if they are also part of the process. Also, kin-states are more likely to forge better relations with the state their minority is present in if their minority is well protected. It is important that both the state and the minority group should benefit from the autonomy scheme. The division of powers between the institutions of cultural autonomy and the state and local government should be defined as clearly as possible in the law so as to avoid conflict and power struggles. When the state is legislating in an area that affects the minority group, the minority should be consulted. There should also be some mechanism or body of cooperation between the

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<sup>52</sup> *ibid.*, p. 13.

central government and the cultural autonomous institution that can act as an impartial mechanism to negotiate conflicts that arise. The body must be established before the cultural institutions are established or else the body will become a political fight in and of itself. Overall, conciliation and goodwill is the key to the success of cultural autonomy.

### ***G. Discussion***

A member of the DRI began the discussion by asking why cultural autonomy might be necessary for Romania? Cultural autonomy means that minorities will be able to participate directly in their affairs no matter where they reside in the country. Cultural autonomy creates the opportunity for minorities to govern their own affairs. Minority communities have their own culture, often their own language, history, and mass media outlets, so it is natural to want to administer them. Crucially, cultural autonomy is not territorial autonomy but he acknowledged that some communities might be against it. Taking culture out of the political environment is a positive way of dealing with the issue. Minorities can decide on crucial cultural issues. The state can still pursue its education policies and establish standards that minorities must uphold, or surpass if they wish. When the Law on Public Administration<sup>53</sup> first appeared it was highly contentious but, after a while, the issue subsided. The same could happen for the cultural autonomy issue, which is sure to evoke some negative attention at the start.

Another participant pointed out that there is still conflict in the West (of Europe). He admires the Swiss example but doubts it is perfect. He went on to say that autonomy in education is not only necessary but must be operationalized. The state is not receptive to recommendations or amendments, therefore the state should allocate budgetary funds to minorities and then leave minorities to do what they see fit with those funds.

One dignitary noted that culture unites us all. Autonomy can be interpreted in various ways. Some will interpret cultural autonomy as territorial autonomy, therefore the

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<sup>53</sup> Law no. 69/1991.

problem is more complicated than it was presented. He went on to say that the state should provide all schoolbooks, not just for minorities, but that this will be expensive.

One member of the DRI highlighted that the media, as well as some political leaders, can manipulate the truth for their own ends. Whilst there may be no more ethnic hatred between minorities, they have some “common enemies”. These “people” may try to disrupt any plans for cultural autonomy.

One participant noted the misperception of ‘autonomy’ among the rest of Romanian society, suggesting it was a dangerous concept due to the fact that people automatically equate it with territorial autonomy. Therefore, the name should be changed from ‘autonomy’ to something less controversial. Most of society and the media see cultural autonomy as the first step towards secession, or a state within a state.

Another contributor asked which cultural autonomy model is best? Mr Decker responded by saying that most of the cultural autonomy models are the result of some sort of catalyst or conflict (e.g., Spain, Italy, and Belgium). In Romania, this conflict does not exist. The Estonian model probably serves as the most appropriate example because it does not require changes in the form of government; it needs no new legislative structure; and it can be implemented without upheaval. Other models are highly intrusive on the executive and legislative branches of government. In the Estonian model, the institutions of cultural autonomy only intrude on executive ministries such as the Ministry of Education and the Ministry of Culture.

He stated further that there has been a recent trend in the EU towards decentralization, as was the case in the context of the Annan Plan for Cyprus, as well as in governmental reforms in FYROM and Kosovo. The time is right for regionalization and for people to take control of the issues which affect them directly.

A member of the DRI concluded the discussion by stating that worrying about the word ‘autonomy’ is futile and that there is no need to change the word. Before 1997, minorities only had an education law but now they have a lot more. So, perhaps, Romanian society is more open to change than people think. Whilst the Estonian

model is useful, Romania should concern itself with designing its own cultural autonomy model.

## **VI. Conclusions and Recommendations**

Mr Decker began by summarizing some of the key issues that were raised by the discussion on definitions of national minority.

1. The group seemed to believe that the draft definition that was read out referred too much to Romania. However, Mr Decker noted that mentioning Romania sends an important message back to the state that minorities are still part of Romanian society despite their ethnic identity. Further clarification might be needed on state versus kin-state.
2. On the issue of national minority versus ethnic minority, Mr Decker noted that the group felt that the definition should refer to national minority, which is the norm in other states. The group also felt that national minorities have resided in Romanian territory longer than ethnic minorities and therefore should be entitled to special privileges.
3. The group seemed to come to the conclusion that the definition should not include the number of years settled on land as this might inadvertently exclude some minorities. Why is it 100 years and not 150 years? The length of time, on its face, seems too arbitrary.
4. All participants believed that national minorities should be recognized as contributing to the development of the modern Romanian state. Finally, the group seemingly came to the same conclusion as Max van Der Stoel, that it is impossible to develop a strict definition and that an all-encompassing definition would be the most appropriate for Romania.
5. The issue of who should decide who is a national minority was discussed at length. There are three ways to do this: the state decides; the community decides; or the individual decides. Surely determining whether you are a minority or not is a personal and entirely subjective matter, and one outside the confines of state or community consensus. Mr Decker noted that all participants agreed that the state should not determine who is a member of a national minority but that there was not unanimity concerning the other two possibilities.
6. Everyone agreed that the state should protect and actively develop minority organizations. The Council of Europe's Framework Convention for the Protection

of National Minorities places positive duties on the state to protect national minorities.

7. There was concern over how organizations should be registered. This divergence of opinion centred on how the law would be written and the procedural implications thereon.

## **VII. Follow-up Activities**

The DRI and ECMI decided that it was important for the larger NGO and civil society to be able to make their thoughts known on the legislation. It was decided that another roundtable would be hosted by the two organizations from 16–17 April, to target the NGOs that deal with minority and human rights in Romania.

## VII. Annexes

### A. Programme of the Workshop

ROMANIAN GOVERNMENT  
Department for Inter-Ethnic Relations

EUROPEAN CENTRE  
FOR MINORITY ISSUES

Seminar:

Reasons in Favour of a Law Regarding the Status of National Minorities

Sinaia, 17–19 March 2005

#### **Thursday, 17 March**

- 11.00–13.00 Transportation by bus from Bucharest to Sinaia. Starting point: the Parliamentary Palace
- 13.00–15.00 Lunch
- 15.00–15.30 **Seminar Opening:** D. Christopher Decker, ECMI  
**Seminar Objectives and Agenda:** Attila Marko, State Secretary DRI
- 15.30–16.30 **National Minority: Different European and Worldwide Definitions, Criteria for Identification, Various Approaches in Romania**  
Moderator: Roxana Ossian, ECMI  
Speaker: Aidan McGarry, ECMI  
Discussions
- 16.30–17.00 Coffee break.
- 17.00–18.00 Principles that are at the bedrock of the draft: UDMR presentation  
Discussions
- 19.30 Dinner

#### **Friday, 18 March**

- 09.30–11.00 **The Status of the National Minorities Organizations: the 3 Levels of Representation at the Parliamentary, Governmental and Civil Society Level**  
Moderator: Liana Dumitrescu, MP, The Association of Macedonians in Romania  
Speaker: D. Christopher Decker, ECMI  
Discussions



- 11.00–11.30 Coffee break
- 11.30–12.00 Discussions
- 12.30–14.30 Lunch
- 14.30–15.30 **Different State Minorities Forms of Dialogue: the Issue of Cultural  
Autonomy**  
Moderator: Attila Markó, State Secretary, DRI  
Speaker: D. Christopher Decker, ECMI  
Discussions
- 15.30–16.00 Coffee break
- 16.00–17.30 Discussions
- 19.30 Dinner

**Saturday, 19 March**

- 09.30–11.00 **Seminar evaluation, conclusions, suggestions.**

## B. List of Participants

|     | <b>Name</b>                | <b>Organization</b>                    |
|-----|----------------------------|--|
| 1.  | Mr. Gheorghe Fireczak      | Cultural Union of Ruthenians           |
| 2.  | Mr. Gal Francisc           | Cultural Union of Ruthenians           |
| 3.  | Mr. Berci Margarian        | Union of Armenians                     |
| 4.  | Mr. Florin Albulescu       | Democratic Forum of Germans            |
| 5.  | Ms. Selda Ismail           | Turkish Democratic Union               |
| 6.  | Ms. Seila Azis             | Union of Turkish Muslim Tatars         |
| 7.  | Mr. Tiboriu Benedek        | Federation of Jewish Communities       |
| 8.  | Mr. Ivanciov Carol Matei   | Union of Bulgarians                    |
| 9.  | Ms. Liana Dumitrescu       | Member of Parliament (Macedonian)      |
| 10. | Mr. Mile Ilici             | Union of Serbs                         |
| 11. | Mr. Mihai Radan            | Member of Parliament (Croat)           |
| 12. | Mr. Sotiris Fotopolos      | Member of Parliament (Greek)           |
| 13. | Mr. Ferrarini Gino Modesto | Italian Association                    |
| 14. | Ms. Ioana Grosaru          | Italian Association                    |
| 15. | Mr. Gabriel Haskal         | Federation of Jewish Communities       |
| 16. | Mr. Halsznik Pavel         | Democratic Union of Slovaks and Czechs |
| 17. | Mr. Hagi Memet Kemaleddin  | Union of Turkish Muslim Tatars         |
| 18. | Ms. Ivanov Fanica          | Community of Russian-Lippovans         |
| 19. | Mr. Árpád-Francisc Márton  | Member of Parliament, UDMR (Hungarian) |
| 20. | Ms. Elena Birjovanu        | United Kingdom Embassy                 |
| 21. | Ms. Maria Koreck           | Project on Ethnic Relations            |

## Department of Inter-Ethnic Relations Staff

|    | <b>Name</b>           | <b>Position</b>  |
|----|-----------------------|--|
| 1. | Mr. Attila Markó      | Head of the Department of Inter-Ethnic Relations, State Secretary, Romanian Government |
| 2. | Mr. Zeno Pinter       | Deputy Head of the Department of Inter-Ethnic Relations, Under State Secretary         |
| 3. | Mr. Platon Valentin   | Deputy Head of the Department of Inter-Ethnic Relations, Under State Secretary         |
| 4. | Ms. Monica Presecan   | Superior Counsellor  |
| 5. | Ms. Alina Dodocioiu   | Expert   |
| 6. | Mrs. Rodica Precupețu | Head of the Division for Relations with Civil Society and International Bodies         |
| 7. | Mr. Marius Jitea      | Principal Expert   |

## ECMI Staff

|    | <b>Name</b>               | <b>Position</b>                            |
|----|---------------------------|--|
| 1. | Mr. D. Christopher Decker | Research Associate                         |
| 2. | Mr. Aidan McGarry         | PhD Candidate, Queen's University, Belfast |
| 3. | Ms. Roxana Ossian         | Project Officer                            |