

ROMANIA IN THE COUNCIL OF EUROPE: INDIVIDUAL RIGHTS, DISCRIMINATION AND SPECIAL MEASURES

GABRIEL ANDREESCU*

Romania applied to become a full-fledged member of the Council of Europe as far back as 1990 and it actually joined the Council only in 1993. The former Minister of Exterior Adrian Severin, who is very knowledgeable about these events, summed up this event as follows: "Romania was one of the first states to apply to join the Council, after the changes occurred at the end of the 80s. I believe that Romania's advancement could have been faster had it not been for the miners' coming to Bucharest. (...) Our way to the Council of Europe was blocked all of a sudden after the miners' arrival to Bucharest on 13-15 June 1990. On 28 June, the very day on which the Government was formed, after the confidence vote, I left for Innsbruck together with other ministers and MPs, trying to join again the broken ends. But although we made some progress on the occasion of that meeting, it was clear that it would be very hard to re-enter the network at a normal pace. We made huge efforts in this sense. (...) Our efforts paid back faster than we expected: in January 1991, Romania was granted the status of special guest. (...) When the Prime Minister, Petre Roman, arrived in Strasbourg to advocate for Romania[i], the most optimistic of our diplomats gave him 50% chances to obtain the status of special guest and 50% not to obtain this status. Others credited him with even fewer chances. And I think they were absolutely right.

It appears that the efforts made until then helped us recover to a certain extent the delay caused by the famous miners' arrival to Bucharest in June 1990. But almost immediately afterwards, in September 1991, the miners came to Bucharest for the second time, which virtually took us back where we had started. Neither was our status of special guest suspended, not was our transition to the status of full-fledged member sped up. On the contrary, it was slowed down. The suspicion that we might not be honest, that we might not be capable to make a genuine progress on the path to democracy, to the rule of law and human rights turned 1992 into a year when nothing happened with regard to our accession. At the time I joined the Romanian delegation at the

* Es miembro del Centrul Pentru Drepturile Omului (Centro para los Derechos Humanos) de Bucarest. Dirección de correo electrónico: apador@dnt.ro

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

Council of Europe, at the beginning of 1993, I became aware of the strong resistance and lack of confidence in us.

It could even be said that in 1993 our status of full-fledged member was obtained faster than we thought it would. (...) A pragmatic approach indicated that Romania was, however, an important country which could not be kept away from the European structures, especially at a time when Russia was also pushing hard to join this organisation.”ii[ii]

I used this extensive quotation because it indicates the somehow exceptional circumstances of Romania’s accession in the Council of Europe. The accession was not the result of a typical streamlining of the human rights situation and of the construction of the rule of law in accordance with the standards of the Council of Europe, but rather the outcome of a laborious process of political negotiation. The whole process of accession to the Council of Europe was placed, as Adrian Severin showed, under the sign of the miners’ rebellionsiii[iii]. What the former Romanian Minister of Exterior does not mention, however, is the second dimension of the difficulties Romania faced in order to be accepted in the “community of democracies” represented by the organisation based in Strasbourg: the issue of minorities and nationalistic-extremist politics.

1. A PERSPECTIVE ON ROMANIAN DEMOCRACY AND OPINION 176 OF THE PARLIAMENTARY ASSEMBLY.

This second dimension is clearly revealed by Opinion 176 by means of which the Parliamentary Assembly of the Council of Europe finally decided to answer Romania’s request to become a full-fledged member of the Council of Europe. Leaving aside the niceties in the preamble and the reference to the “commitment expressed by Romania’s authorities to sign and ratify speedily the European Convention on Human Rights”, the opinion includes the following remarks, which as so important that they are worth being quoted *in extenso*:

“5. It appreciates the written declaration of the Romanian authorities in which they commit themselves to basing their policy regarding the protection of minorities on the principles laid down in Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, as well as the commitments laid down in the letter dated 22 June 1993 of Mr. Melescanu, Minister of Foreign Affairs of Romania. It wishes the honoring of these commitments to be monitored in accordance with the Assembly Order No. 488 (1993).

6. In accordance with commitments made by the Romanian Parliament and authorities, as well as the remarks and proposals contained in the reports of the committees concerned with the application for membership, the Assembly calls the attention of the Romanian authorities to the necessity of instituting separation of powers, guaranteeing the real independence of the media, and ensuring the conditions for the free functioning of local administrative bodies. The Assembly recommends that the Romanian authorities sign the European Charter on Local Government as soon as possible.

7. It expects that Romania will shortly change its legislation in such a way that:

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

i. Article 19 of the Act on the organisation of the judiciary, and possibly other legal provisions, will render it impossible in future for a minister to give instructions to judge; ii. Article 200 of the Penal Code will no longer consider as a criminal offence homosexual acts in private between consenting adults;

8. The Assembly calls upon the Romanian Government to return property to the churches and to permit the establishment and operation of church schools with a particular view to teaching children of minority groups their mother tongue.

9. In accordance with commitments entered into by the Romanian authorities, the Assembly urges them to implement improvements in conditions of detention. It also calls upon the competent Romanian political leaders to reconsider in a positive manner the issue of releasing those persons imprisoned on political or ethnic grounds.

10. The Assembly proposes that the Romanian authorities and the Romanian Parliament: i. adopt and implement as soon as possible, in keeping with the commitments they have made and with Assembly Recommendation 1201, legislation on national minorities and education; ii. make use of all means to combat racism and anti-Semitism, as well as all forms of nationalist and religious discrimination and incitement thereto.

11. The Assembly recommends that Romania sign the European Charter for Regional or Minority Languages as soon as possible”.

2. ROMANIA’S COMPLIANCE WITH OPINION 176 AFTER GAINING THE STATUS OF FULL-FLEDGED MEMBER.

Let us explore to what extent Romania has complied with its obligations under Opinion 176 of the Parliamentary Assembly of the Council of Europe. As we have already shown, these measures aimed to ensure the independence of the judiciary, media freedom, to ban discrimination against homosexual persons, to facilitate the enforcement of an appropriate protection system for national minorities. And, obviously, to ensure the enforcement of the European Convention on Human Rights.

The then Romanian President, Ion Iliescu signed the lists of irremovable judges from the fall of 1995 nearly until the end of his mandate, the fall of 1996. Thus, an important means of influencing court decisions was removed. One of the conditions of the separation of powers mentioned by Opinion 176 was fulfilled. The irremovability of judges is, however, far from ensuring an appropriate justice system. Legislative anarchy, the lack of financial resources, the work overload, incompetence and corruption will put a long-term mark on the act of justice in Romania. Still, this minimal step towards ensuring the independence of legal institutions – irremovability – was essential and it was effected within 3 years since Opinion 176.

After the adoption of the new Penal Code, in 1996, art. 200 on same-sex relations was modified. In its new form, the article no longer punishes with jail terms consensual same-sex relations between adults. Paragraph (1) introduces a condition, namely that same-sex relations should not cause public scandal, a provision easy to abuse. Moreover, the age of consent is different for

Andrescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

heterosexual and homosexual relations. What is even more important is that the association of homosexual persons with a view to expressing their identity is forbidden. Consequently, homosexuals continue to be discriminated against. In 2000, the Chamber of Deputies adopted a draft bill that proposed the repeal of article 200. Several groups, including the Romanian Orthodox Church, have exerted pressure on the Senate, which has not yet voted on this draft law. The pressure put by such groups, who vocally advocated against homosexuality in the fall of 2000, could do even more harm: to determine the Senate to preserve the status of homosexuals as a threatened category^{iv}[iv].

The concern voiced by the Parliamentary Assembly about the lack of guarantees for the genuine independence of the media were related to several articles of the Penal Code (art. 205, art. 206, art. 239) which punish press offences – calumny, insult, defamation of the country – with terms in prison. For years and years after Romania was accepted as a full-fledged member of the Council of Europe, these provisions have prejudiced the activity of Romanian journalists. The new Penal Code adopted at the end of 1996 preserved the punishments with imprisonment. A new legal proposal aiming to turn the punishment into fine was submitted at the end of 1999, but it has not yet been adopted by the Romanian Parliament. It so happens that, in the year 2000, the requirement set by the Council of Europe in 1993 with regard to this sensitive spot has not been observed yet. Meanwhile, several journalists have been imprisoned; President Constantinescu pardoned one of them. On 28 September 1999, the European Human Rights Court in Strasbourg ruled against the Romanian state in a case involving another journalist, Ioan Dalban, sentenced to imprisonment for calumny. In this case, the Court ruled: “there has been a violation of Article 10 of the Convention”.

Perhaps the most systematic attempt to comply with the requirements of Opinion 176 was made by the Department for Penitentiaries, which has constantly tried to improve conditions of detention, as much as possible. This was a long-term evolution, sped up after the appointment of a new management of the department, after the 1996 elections. Important changes in the detention system were effected through the research and information program initiated by the department, by changing the regulations, by accepting fact-finding missions organised by independent organisations. At the end of 2000, the conditions of detention, characterised mainly by overcrowding, are far from satisfactory. But this situation is largely due to the lack of funds rather than to a wrong approach of reform in the Romanian penitentiary system.

Romania signed the European Charter “Autonomous Exercise of Local Power” on 4 October 1994. But the Romanian central authorities have constantly harassed certain activities of the local authorities, in particular their international activity^v[v] or the exercise of competencies relevant to the situation of national minorities. In May 1997, the Romanian Government adopted an emergency ordinance that significantly modified the former Law on Local Administration no. 69/1991 and guaranteed a stronger local autonomy. However, this law was sabotaged for months, even by ministers of the central authority, who challenged the emergency character of the ordinance. The new draft bill on local administration is still pending in the Parliament, with no chance of being adopted until after the elections that are going to take place in the fall of 2000.

The return of property to churches has been only partially observed. By means of governmental decisions, several of the old buildings that used to be owned

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

by Hungarian and Mosaic churches were returned. The Greek-Catholic Church also got back some of its former worship places by means of court decisions. But the essential problem related to the former properties owned by churches has still not been generally solved in accordance with legal norms. Actually, property is an issue that has not been approached in accordance with the standards of the Council of Europe. The European Human Rights Court ruled against Romania first in the Vasilescu casevi[vi] and later in the Brumarescu casevii[vii].

But the most spectacular clash between the commitments made by Romania upon its admission to the Council of Europe and the state of facts is related to the protection of minorities. The situation of national minorities was grossly undermined in the period 1994-1996viii[viii]. Besides the nationalistic campaigns against the Hungarians and the Roma, encouraged even at the level of state authorities, several official positions that challenged the commitments made by Romania in 1993 are noteworthyix[ix]. I will only mention the attitude of the Standing Delegation of the Romanian Parliament at the Parliamentary Assembly of the Council of Europe, which challenged Romania's obligation to observe Recommendation 1201 as specified in Opinion 176. It should be noted that Recommendation 1201 continued to be endorsed by the Parliamentary Assembly even after the decision made by the Vienna summit of heads of states and governments of the Council of Europe member states on 9 October 1993 to ask the Council of Ministers to elaborate a Framework Conventionx[x]. The same attitude is revealed by several resolutions of the Assembly: see Recommendation 1255, Order no. 484/1993 and Order no. 508/1995xi[xi]. At the end of its 1995 session, the Romanian Parliament made one of the most unfortunate decisions in its history, by adopting a new Law on Education that restricted the rights national minorities used to enjoy in the field of education. This situation, running counter to the general principles regarding the rights gained but also counter to Recommendation 1201 led to tensions in the Romanian-Hungarian relations. Only by postponing to enforce this law did Romania avoid a major domestic and international crisis.

In the fall of 1996, this trend was shifted. The Romanian-Hungarian Treaty was signed before the elections and turned Recommendation 1201 into a legally binding documentxii[xii]. Later on, the political change occurred at the end of 1996 redefined the whole situation of national minorities in Romania. The representatives of the Hungarian minority, the Democratic Alliance of Hungarians in Romania, became part of the Government, which improved significantly the participation of minorities in the public decision-making process. Emergency ordinance 36/1997, whose main provisions were then adopted by law at the end of 1999, represented a progress in the rights of national minorities in the field of education. Thus, the system of special measures advances in Romania towards the level regarded as appropriate. Despite the complex evolution of inter-ethnic dialogue in Romania, this is the field in which the most obvious progress towards complying with the commitments made to respect Opinion 176/1993 of the Parliamentary Assembly of the Council of Europe was recorded. This evolution is probably best expressed by the idea of creating "a pattern of Romania-Hungarian reconciliation"xiii[xiii].

3. THE HIERARCHY OF RIGHTS AND THE EUROPEAN CONVENTION.

What is relevant for Opinion 176 is the multitude of references to policies that did not make the object of the European Convention on Human Rights which the Romanian authorities were required to adopt by means of legal and practical measures. A significant number of these items are related to minority issues that are not covered by the European Convention. The Opinion makes reference to Recommendation 1201, which codifies the rights of national minorities, to church properties in connection with the identity they are associated with, to the European Charter for Regional or Minority Languages. One may ask whether the Parliamentary Assembly did not set absurd conditions for Romania's accession by making reference to standards that are not provided by its Constitution, the European Convention. Several remarks are necessary from this perspective.

First of all, although they are instruments specifically created to protect individual rights and freedoms, several articles of the European Convention are directly relevant for the status of ethnic-cultural groups and national minorities. Such is the case of Article 9: Freedom of thought, conscience and religion, Article 10: Freedom of Expression, Article 11: Freedom of assembly and association, Article 14: Prohibition of discrimination or even Article 18: Limitation on use of restrictions on rightsxiv[xiv].

Secondly, the enforcement of and compliance with the European Convention supposes, as a pre-requisite, respect for the rule of law. No state where individual rights and freedoms are observed can disregard the rule of law. The explicit equivalence between the enforcement of the European Convention and the establishment of the rule of law is set forth at least in the following articles: Article 1: Obligations to respect human rights, Article 5: Right to a fair trial, Article 7: No punishment without law, Article 13: Right to an effective remedy, Article 14: Prohibition of discrimination, Article 17: Prohibition of abuse of rights. The pressure exerted on the rule of law creates a socio-political and institutional framework that is incompatible with the feeling of protection required by a practical and symbolic endorsement of human rights. Sooner or later, directly or indirectly, challenging the enforcement of norms regarding group rights has negative consequences over the status of individual rights. That is why nationalistic politics are a threat to the individual status as well as to the status of minority groups. The connection between the claims against minority rights and those against individual rights was obvious all the time before Romania joined the Council of Europe, which explains the very specific contents of Opinion 176. This situation went on for a while, from 1994 to 1996, when the ruling coalition had strong nationalistic features. But even after 1996, the legal norms have been often violated at the highest levels of state authority due to prejudice against minorities. The opposition to the enforcement of the emergency ordinance on modifying and completing the law on local administration, after 1996, is a classic example in this sense. This case was so blatant that it deserves a second look.

The adoption of new regulations regarding the use of mother tongue in the field of administration and education was posed by DAHR as one of the conditions of its participation in the government after the November 1996 elections. On May 26, the Government kept the first part of their promise. Following the adoption of this

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

ordinance, the mayor of Târgu Mureş had several bilingual inscriptions placed at the entrance to this town. During the night, the Hungarian inscriptions were covered in paint. New inscriptions were placed and the same thing happened all over again. Despite the Townhall's requests, the Târgu Mure Police refused to guard the inscriptions. Moreover, the chief of the Mures County Police Inspectorate declared: "Since it has been proved that the placement of bilingual inscriptions was illegal, no measures have been taken against the persons who painted over the inscriptions". But Law no. 26/1994 on the Organisation and Operation of the Romanian Police clearly provides the obligation of this institution to prevent potential conflicts. The Târgu Mures case was related to the deterioration of public property. Consequently, when the Police refused to step in to defend public order, they broke the law.

On July 17, the Chief State Secretary of the Department for Local Public Administration sent to the Mureş County Prefect's Office a letter explaining how the Emergency Ordinance on the modification and completion of the Law on Local Public Administration should be interpreted. He stated that the enforcement of the Emergency Ordinance adopted by the Government supposed informing the Local Council, which was "competent... to assign and change names, as well as to manage the local budget". The State Secretary also asked that bilingual inscriptions be applicable only to the names of localities, public institutions and bodies established by local administration authorities (therefore, not to streets - an action against the Government decision that he was supposed to enforce).

That is why the question whether the rule of law is genuine can be raised not just when the status of the person as such is under scrutiny, but also when the status of national minorities is threatened. The clear-cut distinction between individual and collective rights is an illusion. In a multiethnic society, the balance among the various types of rights is a pre-requisite for the appropriate operation of the democratic mechanisms. That is why it is relevant to have a global perspective on the system of rights, even when we focus only on a specific field, such as, in this case, the rights covered by the European Convention.

If we want to have a global perspective on the system of rights, it is relevant to focus on its functions that suppose the involvement of the whole system. Such a function is precisely the protection of groups, in particular the protection of national minorities. Indeed, we cannot imagine a functional system for the protection of communities in the absence of individual rights[xv]. To these should be added the clause of non-discrimination. Finally, there comes the system of special measures. Some authors believe that non-discrimination and equal opportunities mean the same thing. However, it is desirable to make a distinction between the deeds by means of which a citizen is prevented from exercising the individual rights other citizens enjoy and the enforcement of special measures. While the former reflect an elementary civic attitude and depend exclusively on the political will, special measures raise issues of doctrine and have specific costs.

Therefore, we are dealing with a hierarchy of rights, whose balance vary from one society to another. (E.g. the French state attaches special importance to individual rights and lesser importance to collective rights.) As an almost general rule, however, individual rights rank higher in European democracies, followed by discrimination and eventually, as a last addition, by the special measures aiming to ensure group protection. This idea can be rephrased by

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

saying that the European Convention ranks higher on the continent than other systems of protection.

4. THE ROMANIAN PARADOX: SPECIAL MEASURES RANKING HIGHER THAN ANTI-DISCRIMINATION MEASURES.

Given the European framework, it should be mentioned, as a paradox, that special measures rank higher than anti-discrimination measures in Romania. In Romania, the principle of non-discrimination is enshrined in the Romanian Constitution and in the international documents in the field, which are part of the domestic legislation. But no piece of legislation incriminates discrimination as such, and the use of arts. 317 or 247 of the Penal Code in the field of discrimination is difficult, disputable and insufficient. A reason can be the fact that they refer only to very serious manifestations. Another reason, maybe the most obvious, is the lack of political support. After 1997, the Department for the Protection of National Minorities asked the General Prosecutor's Office to start inquiries into several dozen cases that fulfilled the conditions set in articles 317 and 247. Only one case of anti-Semitism was punished, with a two-year suspended sentence.

Roma are the most common target of discrimination. The Hungarians are also discriminated, especially with regard to the opportunity to be appointed in high-ranking positions in the army, the police and intelligence services. The main forms of discrimination against the Roma are discrimination in economy, in terms of employment and profession, discrimination with regard to access to public administrative and legal services, health, other services, goods and facilities, discrimination related to access to public places. Adds such as "we employ... /no gypsies", "No gypsies allowed in this restaurant", "we sell apartment/no gypsies in the building" are current items in the press or in public places. None of the companies or journals that have placed/printed such adds has been sanctioned so far; neither have those who discriminate in terms of employment or the sale of goods, services, etc[xvi][xvi].

Whoever examines the Romanian system of special measures will notice the high level of domestic standards, obviously higher than what is accepted today as international standard[xvii][xvii]. The constitutional foundation itself is very generous: "Art. 6(1): The State recognises and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity." One of the most important provisions is related to representation in the parliament: "Art. 59(2): Organisations of citizens belonging to national minorities which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law." Mother tongue tuition is guaranteed at all levels. A very important article is, obviously, art. 124 of the Law on Education, as modified in 1998: "In the education system, at all degrees and levels, admission and graduation examinations can be taken in the language in which those subjects have been taught, under the law". Higher education is regulated by art. 123 paragraph (1): "In the state-sponsored higher education, groups, departments, colleges, faculties and institutions of education with tuition in the mother tongue can be established. In that case, specialised terminology shall be taught in Romanian" and paragraph (2): ""Higher education institutions with multicultural structures and activities shall be encouraged to

Andrescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

promote harmonious inter-ethnic relations and integration at the national and international level”.

This is not the right place to compare the rights listed above with the situation in other European countries, or to make a comparison with the level of rights that can be regarded as satisfactory given how heterogeneous the Romanian society is from the perspective of its ethnic composition. But, even from the few examples above, we can state that the system of special measures is quite developed. Such openness to special measures can be judged both at the political and at the legal level. Actually, all important universities nowadays have an affirmative action program regarding Roma students, therefore for the members of a seriously discriminated community. This situation best stresses the paradox I mentioned beforehand: the advancement of the special measures system as opposed to anti-discrimination measures.

5. RECENT DEVELOPMENTS OF ANTI-DISCRIMINATION LAW.

The wish to eradicate such discrimination has materialised at the institutional level only in the last few years. This concern is not independent from international developments. The states and important international organisations that watch over human rights and democracy worldwide have launched in 2000 a campaign against discrimination. Several events organised in 2000 prepare the UN 2001 session dedicated to fighting against discrimination. The most important developments in this field have occurred in Europe. Both the Council of Europe and the European Union have decided to address discrimination with coercive instruments. The Council of Europe has reached an advanced stage of discussions regarding Protocol no. 12, a legally binding document fighting against racism and intolerance. Following the signing of this Protocol, more fields of discrimination will fall under the incidence of the European Convention, and cases of discrimination will be easier invoked and judged by the Human Rights Court in Strasbourg. On 6 June 2000, the European Union adopted a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The European Commission uses the following arguments: “Finally, the Directive will provide a solid basis for the enlargement of the European Union, which must be founded on the full and effective respect of human rights. To avoid social strains in both existing and new Member states and to create a common Community of respect and tolerance for racial and ethnic diversity, it is essential to put in place a common European framework for the fight against racism.”

This demonstrates that the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is part of *the acquis communautaire*. Compliance with the Directive becomes a pre-requisite of integration in the European Union. Consequently, it is more urgent now than ever before the accession negotiations to introduce in Romania measures aiming to reduce the various forms of discrimination. In the spring of 2000, the Department for the Protection of National Minorities initiated a draft bill on the elimination of all forms of discrimination that was adopted by means of an emergency ordinance during the parliamentary recess. It will come into force in November 2000, when a Governmental decision necessary in order to enforce

Andrescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

the law is also supposed to be adopted. What are the main provisions of this legal document?

According to the Ordinance On Preventing and Punishing All Forms of Discrimination the term "discrimination" shall encompass "any difference, exclusion, restriction or preference based on race, nationality, ethnic appurtenance, language, religion, social status, beliefs, sex or sexual orientation, appurtenance to a disfavoured category or any other criterion, aiming to or resulting in a restriction or prevention of the equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural field or in any other fields of public life". The anti-discriminatory policy shall be achieved by means of (a) affirmative action in favour of persons and groups of persons belonging to national minorities, of the communities of national minorities, when they do not enjoy equal opportunities; (b) sanctions instituted against the discriminatory behaviour.

The provisions of the ordinance shall be applicable to all public and private natural or legal entities as well as to public institutions with competencies in the following five fields: (a) employment conditions, conditions and criteria of recruitment and selection, criteria for promotion, access to all forms and levels of professional orientation, professional training, and refresher courses; (b) social protection and social security; (c) public services or other services, access to goods and facilities; (d) the education system; (e) enforcement of public peace and order.

With respect to equality in the economic activity, in terms of employment and profession, the following shall constitute offences: discrimination on account of the race, nationality, ethnic group, social status, disfavoured category one belongs to, respectively on account of one's beliefs, sex or sexual orientation in a labour and social protection relation, with respect to: (a) the conclusion, suspension, modification or conclusion of the labour relation; (b) the establishment and modification of job-related duties, of the work place or of the wages; (c) the granting of social rights other than the wages; (d) the professional training, refreshment, conversion or promotion; (e) the enforcement of disciplinary measures; (f) the right to join a trade union and to access to the facilities it ensures; (g) any other conditions related to the carry out of a job, in accordance with the law in force.

Denying the access to legal, administrative and health public services, to other services, goods and facilities to a disfavoured category on account of their beliefs, sex or sexual orientation, if the deed does not fall under the incidence of criminal law, shall constitute an offence.

Offences are also: denying the access of a person or of a group of persons to the state-owned or private education system of any kind, degree or level; any threats, constraints, use of force or any other means of assimilation, colonisation or forced movement of persons with a view to modify the ethnic, racial or social composition of a region or of a locality shall constitute an offence; any offending public behaviour, any public behaviour with a nationalistic-chauvinist character, any incitement to racial or national hatred, or any behaviour aiming to prejudice a person's dignity or to create a hostile, degrading, humiliating or offending atmosphere, perpetrated against a person, a group of persons or a community on account of race, nationality, ethnic group etc. The offences provided under the ordinance shall be sanctioned with fine if the deed

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

does not fall under the incidence of criminal law are not punishable by law. The offences shall be found and sanctioned by the members of the National Council for the Prevention of Discrimination.

6. CONCLUSIONS.

Romanian's accession to the Council of Europe had indisputable consequences over the country's institutional structure. However, if one examines closely the commitments made by Romania in 1993 will notice that an important share of them have still not been fulfilled seven years later (non-discrimination of homosexual persons, the right to property, press offences, the establishment of a genuine rule of law). Under these circumstances, one may be entitled to wonder whether lifting the monitoring on Romania in 1997 or even its recognition as a full-fledged member of this respectable organisation have been truly beneficial decisions.

My answer would be affirmative, based on the remark that Romania's integration in the Council of Europe has lent an essential legitimacy to the political and civic actors whose aim was to achieve the democratic standards of the Council of Europe. As a result, the democratic system was stabilised and, as a result, the first change of power by means of free elections in the history of the past 67 years took place in 1996. Hence, it is not surprising that Romania succeeded in completing its human rights instruments. Mention must be made, however, that this completion took place "upside down", that is, starting from the system of special measures that ensure inter-ethnic peace. The year 2000 could remain as a cornerstone in adopting and enforcing anti-discrimination measures. Surprisingly, in that case, the adoption of measures that guarantee the exercise of human rights and basic freedoms in accordance with the rule of law would remain a kind of "Cinderella", the last item on the list to be addressed. Today, when we celebrate 50 years since the adoption of the European Convention, Romania has to answer the following question: when will the Romanian justice system become strong enough to guarantee the enforcement of this continental human rights Constitution?

Apador@dnt.ro

Andreescu, Gabriel. Romania in the council of Europe: individual rights, discrimination and special measures.

i[i] I happened to take part in the hearings at the Parliamentary Assembly of the Council of Europe - with Smaranda Enache and Ion Ratiu - on the same topic: Romania's accession in the Council of Europe. Smaranda Enache and myself voiced our opinion that Romania did not observe its human rights commitments. Petre Roman's performance in support of Romania's application was excellent - if we could qualify as "excellent" a spectacular speech that denied grossly, among others, what had happened during the miners' trip to Bucharest.

ii[ii] Andreescu, Gabriel, *Locurile unde se construie[te Europa. Adrian Severin `n dialog cu Gabriel Andreescu*, to be published by Polirom publishing house.

iii[iii] Periodically, the authorities in power at that time brought to Bucharest groups of miners and incited them to use force against the groups that challenged the legitimacy of the regime represented by Ion Iliescu, President of Romania at that time.

iv[iv] The study was written at the end of October 2000, during the electoral campaign, when the attitude of populist forces has the upper hand over the political representatives in the Parliament.

v[v] Popescu, Corneliu-Liviu, "Legislation and Legal Practice to the International Relations of Local Communities", in *International Studies* no. 2, Bucharest 1996, pp. 43-55.

vi[vii] Ciobanu-Dordea, Aurel, "Considera]ii pe marginea hot[r]rii Cur]ii Europene a Drepturilor Omului `n Cauza Vasilescu v. Romania, *Romanian Human Rights Quarterly*, no. 17, 1999, pp. 19-27.

vii[viii] In 1999, the Court unanimously found a violation of Article 6 of the European Convention in the case of a Romanian citizen whose building had been nationalised without compensation in 1950. (***) Decision of the European Court of Human Rights of 28 October 1999 in the case *Brum[re]scu v. Romania*, *Romanian Human Rights Quarterly* no. 18, pp. 76-79.

viii[ix] See APADOR-CH reports 1994, 1995, 1996, Bucharest.

ix[x] Andreescu, Gabriel, "Political Manipulation at Its Best", *Transition*, vol. I, no. 22, December 1995, pp. 46-50.

x[xi] Klebes, Heinrich, "The Council of Europe's Framework Convention for the Protection of National Minorities", *Human Rights Journal*, vol. 16, No. 1-3, 1995, pp. 92-98

xi[xii] Andreescu, Gabriel "Recommendation 1201 and a Security (Stability) Network in Central and Eastern Europe", in *International Studies*, Bucharest 1997, pp. 49-63

xii[xiii] Recommendation 1201 was also introduced in the Romanian-Ukrainian Treaty. (Popescu, Corneliu-Liviu, "National Minorities Protection under Romania's Basic Treaties with Its Neighbours", *International Studies*, Bucharest, 1998, pp. 47-57.

xiii[xiv] Andreescu, Gabriel, "The Transylvanian Issue and the Issue of Europe", in *Hungarian Quarterly*, Vol. 39, Winter 1998, pp. 56-64

xiv[xv] Added according to the Provisions of Protocol No. 11 (ETS.No.155)

xv[xvi] The counterpart of this sentence in political language is the idea that the foundation of protection for national minorities is democracy.

xvi[xvii] In 1998, the Department for the Protection of National Minorities urged the Prosecutor's Office to institute proceedings against the companies that had placed ads such as: "S.C. GRIZZLY GUARD hires... bodyguards. No Roma should apply", or "We select (S.C. MGD STYLE SRL) 500 security guards from sectors 2, 3 and 4 Bucharest. Age: 21 to 45. Roma are excluded." The Prosecutor's Office turned down the request to institute proceedings. (See Andreescu, Gabriel, "Shadow Report on the Enforcement of the Framework Convention on the Protection of National Minorities", Ombudspersons for National Minorities, Bucharest, June 2000.)

xvii[xviii] Which does not mean complete and sufficient.