

ENHANCING MINORITY GOVERNANCE IN ROMANIA

**THE ROMANIAN DRAFT LAW ON
THE STATUS OF NATIONAL MINORITIES:
A CONSULTATION WITH CIVIL SOCIETY**

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ECMI ROUNDTABLE FOR CIVIL SOCIETY ORGANIZATIONS

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Disclaimer and Explanation:

The views expressed during the roundtable do not necessarily reflect the views held by ECMI, the Romanian Government or any other associated party. The views are those of the contributors. In an effort to foster open dialogue, none of the contributors’ comments are attributed.

Not all the comments made are factually accurate. Where possible the authors of the report have attempted to add explanatory footnotes to either explain comments, add legal citations to laws that were referenced, or “correct” misstatements. Furthermore, there were two drafts of the law that were used during the conference. Both of which were in Romanian. Two English translations of the draft law now exist. In the report, the authors have footnoted which draft is being discussed when specific articles are referenced by the participants.



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I. Background to the Project

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

In March 2004, the Romanian State Secretary and Head of the Department of Inter-Ethnic Relations (DRI) came to the 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. After the presidential and parliamentary elections which 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 the Estonian model. In March 2005, ECMI and the DRI hosted a roundtable meeting with Romanian national minority Members of Parliament (MP), Presidents of the Commissions of the Council of National Minorities, and members of national minority organizations. The purpose of the roundtable was to provide the national minorities with some basic information about the legal standards of certain issues of concern to the national minorities and to create a forum where the national minorities could have greater influence in the draft law. Cooperation between ECMI and the DRI continues to grow closer and more activities concerning the drafting of the law and capacity building of the Council of National Minorities will continue.

Since 1993, different minority groups have produced nine drafts of the law on the status of national minorities, but none has received sufficient support. There has been little progress in reconciling the views of various minority organizations as well as 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 autonomous organization of Hungarians in Transylvania, 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, which has led to problems of Roma not being sufficiently represented at the political level. 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 percent of the seats. While the Greater Romania Party received roughly 13% of the vote in the 2004 election its leader placed third in voting for the Presidency.¹

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 an eye-to-eye level where concrete aspects of proposed legislation or implementation of programmes or projects for minorities are concerned. In the preparatory discussions about this project, representatives of both the Romanian Government and of various minority communities have strongly encouraged ECMI to pursue this project of enhancing legislation and practice on minority issues in Romania.

¹ OSCE/ODIHR Assessment Mission Report, Romania Parliamentary and Presidential Elections 28 November and 12 December 2004 (14 Feb. 2005) *available at* http://www.osce.org/documents/odihr/2005/02/4281_en.pdf?PHPSESSID=dcf490b26320756cea03d50a5bd36886.

II. Introduction

The European Centre for Minority Issues (ECMI) and the Romanian Department of Inter-Ethnic Relations (DRI) organized the third event of the Improving Inter-Ethnic Relations through Enhanced Minority Governance Project on 16–17 March 2005 in Sinaia, Romania. The head and both deputy heads of the DRI attended the roundtable along with numerous members of the human rights/minority rights NGO community. Additionally, some members of national minority organizations attended. The fundamental purpose of the meeting was to provide civil society an opportunity to discuss the draft law with representatives of the Romanian Government and to offer suggestions to improve the draft. It was noted that this was the first time that civil society organizations 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 discussions that took place during this meeting.

III. Discussions on the Draft Law

A. Day One – Morning

Mr D. Christopher Decker, ECMI, began the roundtable by making a very short presentation on defining/describing national minorities. He also discussed cultural autonomy; how it is established and how it operates in practice. Following the two presentations, the discussion began.

One participant started the discussions by posing the question: why do we have to talk about national minorities and ethno-cultural communities? He stated that Romania needs an organic law that should regulate its ethno-cultural diversity. He noted progress since the mid-1990s. There is a legal framework against discrimination now, which is very important for the minority communities. He also noted that there is a new trend within the Council of Europe regarding diversity. In the 1990s the Council of Europe simply wanted to find answers about diversity so as to prevent conflicts.

Since then things have evolved. There is a new trend to extend the sphere of influence of the Framework Convention for National Minorities (FCNM) so that it also includes “new minorities.” This law is essentially about the rights of the historical minorities in Romania.

One of the members of the DRI gave an update on the status of the draft law. He stated that Romania does not yet have the political will to accept concepts like cultural autonomy. He stated that he had a copy of the comments of the Legislative Council and that these comments will be in the hand of the deputies and senators when discussions on the law take place. He believed that this was a positive development. He then proceeded to note certain points made in the Legislative Council’s opinion. The Legislative Council stated that some of the norms included in the draft law are moving away from the FCNM and the draft law tries to legitimate some concepts that are not part of the FCNM. The FCNM does not grant collective rights, so the law exceeds the FCNM. Furthermore, the law is not in agreement with the internal legislation because it creates institutional parallelisms, it establishes collective rights of the persons belonging to national minorities, and it creates the right to cultural autonomy – all of which are not legal under international or Romanian law. The member of the DRI went on to say that, in practice, this opinion would probably kill the law. The Ministry of Justice added that the Councils of Cultural Autonomy, envisioned under the draft law, cannot be public authorities.

A participant commented that the opinion of the Legislative Council is not encouraging for acceptance of the concepts. The foreigners that work in Romania could be part of different cultural groups – and we must not limit their freedom of forming such cultural groups in Romania.

One commentator did not understand what problems there could possibly be for the draft in parliament since parliament is what sustains the government. Any law that is presented by the government should also be accepted by parliament.

The member of the DRI stated that there were harsh comments about the draft law in parliament and that the coalition is not untied on this draft.

Another person stated that it is a good thing that there is so much opposition to the draft because if the government did agree to the text and it had passed, what would happen to the Roma NGOs? The draft law is so biased toward one Roma group that currently represents the Roma that it would solidify this group as the only representative. There are real questions about whether the Roma representative really represents the interests of the Roma or himself. This is a pressing issue that needs to be addressed in the draft law and it is not in its current form.

A member of the DRI stated that even inside the Hungarian community there were different opinions, but there is a consensus regarding the need for the elements of representation and legitimacy.

One participant noted that there had been a great deal of progress in the situation of minorities compared to the 1990's. However, he stated the UDMR² (the main drafters and political force behind the law) had made a mistake. Despite the progress in majority/minority relations, the political elite is not ready to accept these concepts (collective rights, cultural autonomy). So, if the law passes it is bad, if it does not it is an equally bad outcome. There is an unfounded expectation regarding the level of support in the government that would allow this law to pass. Romania has some very generous laws for minorities, but the consequences of these laws are not applicable because of the opposition to minority rights within the government. The integration of the Hungarian community within the political elite is not yet possible. On one side, there will be the radicalization of that part of the Hungarian community that thinks that its objectives are not fulfilled. On the other side, this failure and the attractiveness of moving to Hungary as an alternative of staying in Romania will result in a decrease of the community's size.

A member of the DRI then gave a brief presentation of certain aspects of the law. The fact that the law noted that national minorities were constitutive factors of the Romanian state and that there were no comments from any of the government ministries is a very good outcome. One of the ministries objected to the wording in Article 5 of the draft because it granted rights to "national minorities" and not persons

² Democratic Alliance of Hungarians in Romania

belonging to national minorities, since “minorities” are not subjects of law.³ Article 13 has also been criticised because the terms “native land” and “homeland” are not considered juridical phrases.⁴ Article 29 uses the term “cultural-educational institutions” and the drafters have been asked to remove this term because these bodies are not called “cultural-educational institutions.” The member of the DRI stated that there are such institutions so it has been changed to “unit” rather than “institution.”⁵ Article 30 has also been criticised because some parts of the government thought that “significant percentage” is too vague. However, this has been left like this because of the disagreement in attempting to create a percentile standard for the Law on Public Administration.⁶ In the end the term “significant percentage” was used in that law. There was a request to insert a clause at the beginning of Chapter III that the law create a specific form of organization for national minorities and there are no other forms.⁷ The Ministry of Justice also requested that new articles be added that create the Register that is referred to in Chapter III.⁸ The government was also concerned with Chapter V that addresses the establishment of institutions of cultural autonomy. The Legislative Council and the Ministry of Justice stated that the Councils cannot have the character of a public authority. They said one choice would be that if the forming and the function of these public authorities are well regulated (more so than in the current draft) then they could become public authorities. A second option is that the state’s institutions should impose the application of the decisions of the cultural institution (acting as an executive) perhaps through the DRI itself. The Ministry of Justice also requested that Article 20 of the FCNM be incorporated into Chapter VI.⁹ Furthermore, a new article regarding the abrogation of any contrary dispositions was to be added.¹⁰ This issue came about because the Ministry of Justice stated that certain legislative acts dating from 1945 are still in force and that the draft law would conflict with these unless there was an article which stated that the draft law supersedes any other laws on the issue.

³ Draft Law on the Status of National Minorities, version 1, see Annex A. [Hereinafter Draft 1]

⁴ Ibid. Draft 1.

⁵ Ibid. Draft 1. See also Article 30 Draft Law on the Status of National Minorities, version 2, see Annex B. [Hereinafter Draft 2]

⁶ Law No. 215/2001.

⁷ Draft 1.

⁸ Article 40(3) Draft 1.

⁹ Article 75 Draft 2.

¹⁰ Article 78 Draft 2.

One participant stated that the draft should specifically state all the laws that will be abrogated if the draft is adopted. If not, then the 1945 decree is still in force. He also added that in his opinion the goals of this law are too intricate (complicated). There should have been an evaluation carried out of the draft law's possible impact with arguments for and against and a cost analysis. Specifically, he wanted to know how much the law would cost to implement and whether his taxes would rise because of the implementation of this law.

A member of the DRI pointed out that on the contrary, if the law passed in its current form, there would be tax contributions on the part of the community's members that opt for cultural autonomy.

A member of one of the national minorities made the point that in Article 2 the national minorities are just constitutive factors of the society, not of the state. He stated that the constitution assures the ex officio representation of the national minorities in parliament. The national minorities are seen as fragile communities. By considering them constitutive factors they are deemed as a category that needs privileges.

A participant added that the enumeration of rights, such as the rights to association and participation, are positive aspects, but he felt that the law actually restricts political participation. He said that there are representation problems in Romania. In particular, the Roma need supplementary protection measures to assure a better protection, especially considering that the Roma are still subjects of discrimination. He also suggested that there needs to be an evaluation of the advances of minorities in Romania.

Another participant stated that during the Iliescu regime Romania had experienced divergent positions. Now there is a different situation. The DRI has been a partner with the NGOs, as demonstrated by the DRI's negative reaction regarding the unfavourable comments of the Legislative Council. A part of the money allocated for national minorities can be given to the Council of National Minorities and the

remainder can go to the institutions of cultural autonomy. He also said that cultural autonomy represents a small problem compared with other issues.

A contributor queried the issue of recognition of “legitimate minorities” as being the organizations that have representatives in parliament. He felt that there are 20 communities and that organizations that lost their representative in parliament should not as a result be excluded from the CNM.

A national minority representative stated that the political parties formed after the revolution (whether there were traditional parties that had been forbidden during the communist era or new parties) had a difficult time accepting the new national minority organizations.

An NGO representative noted that the Macedonians did not exist in Romania until 2000, yet they are guaranteed a seat in parliament while other groups, such as the Csango, are not recognised at all. The law should incorporate a procedure that would allow for the recognition of new minorities.

One person noted that if the law will create a special authority in charge of the issues of national minorities then it should not create public institutions. There are two options to rectify this situation, either regroup the provisions of the draft law or make more fundamental changes throughout the law that will effect the protection of national minorities. He also noted some of the continuing problems in the area of national minorities, such as the un-transparent manner of allocating money to minority organizations and that some organizations do not have representatives in parliament, are not addressed in the law. Furthermore, the law has three parts that have no connection to each other. Concerning cultural autonomy, there is no need to create new public institutions because the national minorities should work with those that already exist. Cultural autonomy would be misplaced in Romania because there is no conflict between the majority and the national minorities. National minorities are not interested in the state, but in the rights of people. The law should focus on the present problems and not on historical ones.

A member of the DRI then addressed the issue of representation and why there is a need for cultural autonomy. He began by stating what the term “national minority organization” means. Ordinance 26/2000¹¹ does not take into consideration the fact that these organizations have a public character and, being represented at the parliamentary level, they are somewhere in between a political party and an NGO. The ordinance is still in force, but a new regulation is needed. The principle of representation must be taken into account. The national minority organizations are the only representatives of the national minority communities until the institutions of cultural autonomy are established. These organizations are the only bodies that will be able to organize internal elections. He stressed that there is a very important distinction that needs to be drawn between the organizations that participate in the parliamentary election (political sphere) and organizations that take part in the setting up of cultural autonomy (cultural sphere). The identification of the national minority communities will continue to be a problem. Take for instance the French people in Banat that have been in Romania from the 17th century – they fit in the general definition of national minority, but they are not recognised. The law lacks a specific procedure to identify the various minorities.¹²

A participant asked why the parliamentary national minority organizations become do not become political parties.

Another participant answered that this is the way it is set out in the law so as to make it easier for minority groups to take part in the elections.

A contributor stated his belief that the ethno-cultural neutrality of the state does not exist and that this is normal. Individual human rights create consequences, especially for the majority. When it comes to minorities, these consequences can manifest themselves in the form of discrimination. There are cultural differences between minorities that have a kin-state and those that do not. The public authorities, as stated in this law, can make up this assistance gap for minorities that do not have kin-states.

B. Day One – Afternoon

¹¹ Ordinance on associations and foundations, O.G. #39 (31 January 2000).

¹² In other words, to develop a procedure that authenticates a group’s claim to national minority status.

A member of the roundtable listed what he felt were the most pressing issues surrounding the law. He noted: 1) list of minorities; 2) the inconsistency of approaching the concept of national minorities' identity; 3) the legal or legitimate representatives; 4) equal opportunity of minorities; and 5) Article 4(2)¹³ *vis-à-vis* special measures.

Another member of the roundtable explained that while the right to self-identification, as contained in Article 4(2),¹⁴ is a generally recognized principle, just self-identification is not enough and could lead to abuse of positive measures. For example, some Romanians declare themselves to be Roma in order to become candidates for certain university faculties on special lists; the authority cannot say "no, you are not Roma". There are some faculties that have special places for Roma, at the Faculty of Social Assistance, for example, ten places are dedicated to Roma students and only Roma people can be candidates. But there are Romanians who declare themselves to be Roma and therefore candidates for those places, because it is easier to compete against just 20 candidates rather than 500. The elements of identity do not need to be subjects of norms.

The point was made by a participant that Article 9(4),¹⁵ which states that there can be no limit on freedom of expression and the use of ones' mother tongue to express ones' self, should be limited. The right to freedom of expression can conflict with somebody else's rights and there is no absolute entitlement. He also stated that the prohibition on inciting national, racial, or religious hatred and the instigation of discrimination and public violence under Article 12(1)¹⁶ should also be forbidden against some parts of the majority as well.

A member of the DRI stated in response to some of the points made that the freedom of expression is a universal right and only one or two of the elements of identity present in the draft law, for instance language, culture, religion, might be present per

¹³ "The public authorities have the obligation to accept as such these [a person's expression of being a national minority]." Draft 1.

¹⁴ Draft 1.

¹⁵ Draft 1.

¹⁶ Draft 2.

ethnic group rather than all of the elements. Therefore, the elements should be enumerated, but not cumulative.

A participant noted that in sociology there are different definitions for “group,” “community,” and “society,” but in the draft law this is not the case. He did not view this as a problem. He explained that circular definitions do exist and they are accepted.

A DRI representative stated that the terms “national minorities” and “communities” are used interchangeably in the draft, but the drafters wanted to convey the community aspect of national minorities.

A second participant stated that in his opinion Article 4(2)¹⁷ should be removed from the draft.

A member of the DRI agreed that Article 4(2) would be removed. He also agreed that the word “legitimate” will be removed from Article 10.¹⁸ Because several roundtable participants made the point that enumerating the national minorities only provides a snap-shot of the current national minorities in Romania, he felt that Article 3(2)¹⁹ should be placed in the last chapter with the specification “when this law comes into force these are the national minorities.”

One participant disagreed with the new formulation that the member of the DRI was proposing in relation to the enumeration of national minority groups to be recognised. He stated that the current situation can be found in parliament (where the national minorities are represented), but that the future for minorities lies in the definition from the draft law.

Another participant noted that in the list of national minorities there are some communities that have dubious claims to being a national minority, such as the Macedonians. Too many minorities could destroy the parliamentary system. However,

¹⁷ Draft 1.

¹⁸ Draft 1. In the English translation the word “legitimate representative” appears as “legal representatives”, but in the Romanian version the meaning seems to imply “legitimate”.

the list does not take into consideration the request of the Ceangai (Csangos) or the Aromanians. In his view the solution is to put the article at the end of the draft and to mention the date that the article was written, or remove the list altogether.

A contributor stated that at least 50% of the community should vote for the organization. This is what it means to be representative. Concerning legitimacy, it is not the number of votes, but the make-up of the membership of the organization.

Another contributor stated that there is a problem regarding the issue of communities' internal democracy and that there is a certain degree of ethnic entrepreneurialship taking place. He also suggested that a way to make the national minorities more representative would be to have elections for the institutions of cultural autonomy and then one of the members of the elected council will take the national minority seat in parliament.

A participant disagreed with this, stating that if the law is good and some minorities have problems with the representation then it is their problem. The sphere of association rights is already over-regulated. The organizations that have political goals and those that do not should be regulated by the same law. If there are exceptions to Ordinance 26/2000²⁰ this could lead to governmental corruption, whereby a public servant decides if the organization matches the criteria or not. Another point raised was that the creation of public corporations in the manner elaborated in the law would allow the UDMR and the other national minorities to ensure that there will be no elections.

One person explained that the draft needed an article that incorporated the concept of cross-border communication found in the FCNM.

An ECMI staff member expressed concern about Article 46,²¹ which requires national minority organizations that are not in parliament to re-register. He stated that this

¹⁹ Draft 1, but see Article 74 Draft 2 for the current formulation.

²⁰ Ordinance on associations and foundations, O.G. #39 (31 January 2000).

²¹ Draft 1.

article is borrowed from the law on local elections²² which has been criticised by the Organization for Security and Cooperation in Europe²³ and the Venice Commission.²⁴

A member of the DRI responded that the article has been deleted from the draft. He went on to say that a system should not be created whereby organizations that are founded today can have a MP tomorrow. The current limitations are well conceived. He also wondered how one can determine if an organization truly represents the interest of the community.

One participant suggested that the DRI gives its approval of those that can participate in the election.

A member of the roundtable stated that by having the institutions of cultural autonomy created as a public benefit body, it will violate the Constitution because under Romanian law public benefit bodies are controlled by the government and this gives the government the right to control those that can take part in the election.

The DRI member disagreed stating that Councils of Cultural Autonomy can be public authorities under Romanian law and the election procedure for the councils will be part of the draft law.

One participant felt the state should not give grants only to those organizations that have representatives in parliament. The DRI should administer the funds equally. A mechanism to separate the political segment of the organization from the segment that works toward the cultural well-being of the community is needed. A mechanism for fiscal oversight is needed for the community and for the funder.

A participant stated that the national minority organization should be required to write projects proposals in order to receive grants. However, if this did happen the

²² The Law for the Election of Local Public Administration Authorities No. 67/2004, O.G. 67/271 (29 March 2004).

²³ Organization for Security and Cooperation in Europe/Office for Democratic Institutions and Human Rights, Romania Parliamentary and Presidential Elections 28 November and 12 December 2004, OSCE/ODIHR Assessment Mission Report, p. 22 (14 February 2005).

²⁴ Council of Europe, European Commission for Democracy through Law (Venice Commission), Opinion on the Law for the Election of Local Public Administration Authorities in Romania, Opinion

organizations would lose their grants because they do not have members with the knowledge on how to draft and manage projects.

Another participant noted, concerning the development of institutions of cultural autonomy as public authorities, that it is unacceptable for the government to have any part in choosing the leadership. Furthermore she added that the criteria used in Chapter III, Article 40²⁵ appears to be random and without a proper rationale.

One person suggested that the criteria be lowered to 10% for the national minority population in each county.

C. Day Two – Morning

Going back to yesterday afternoon's discussion, a DRI member stated that if percentages can be established then the problem of representation would not need additional clarification in the draft law.

A representative of a national minority stated that on 31 March the drafting committee had approved Article 46²⁶ and it was agreed to by the National Minority Parliamentary Group. He stated his displeasure that Article 46 had been deleted, thereby requiring long established national minority groups to re-register. He said that his minority group disagrees with this and that they want the paragraph reinserted.

The DRI representative stated that the draft that was agreed to was the one that did not include Article 46.

The national minority representative insisted that his organization had not been informed, nor another minority group that he spoke with.

No. 300/2004, CDL-AD(2004)040 (4 January 2005).

²⁵ This article concerns the threshold requiring that there must be at least 300 founding members of an organization if the national minority has 250,000 members according to the most recent census. See Draft 2.

²⁶ Draft 1.

The DRI member insisted that on 31 March, at the meeting of the Council of National Minorities, the first draft was discussed. At that time it was also decided that the draft should be analyzed by the organizations which were going to send their comments. He stated that he has the suggestions from those organizations. At the National Minority Parliamentary Group meeting the changes were agreed to. He expressed his displeasure that the minority group wanted to revisit an issue which had long been settled.

The national minority representative insisted that the minority organizations do not know about Article 46 having been deleted. He stated that the minority organizations will look bad in front of their members if they are required to re-register. He wanted to know what the reference point for this article was.

The DRI member explained that the laws on local elections and political parties were analyzed by the Venice Commission and other European organizations. Their comments stated that the laws were discriminatory because the laws contained different treatment regarding the organizations that have parliamentary representations and those that do not.

The national minority representative said that the organizations already have these rights.²⁷ He said that Romania's national minorities live in Romania not Venice. The national minorities have a system that works and why should it be destroyed.

A DRI participant stated that the national minority organizations that were set up according to the Law #21 of 1924²⁸ had to reregister according to the Ordinance 26/2000 when it came into effect.

The national minority representative stated that his organization was not required to re-register after Ordinance 26/2000 went into effect.²⁹

²⁷ It was not clear what rights the speaker was referring to.

²⁸ Law on Legal Persons (Associations and Foundations) Law no. 21/1924, O.G. Part I, #27 (6 February 1924).

²⁹ This statement is in fact true. Under Article 82 and 83, petitions for or associations that are already established will maintain their legal status and were not required to re-register. See Law on Legal

A roundtable participant stated that the NGO community has a common point of view concerning registration requirements. He noted that Article 7 from the Law on Local Elections³⁰ made the NGOs form coalitions that protested against the monopoly of the organizations that have parliamentary representation. The NGOs argued that this is against the interests of the community. This article is also discriminatory. It introduces—through equal measures at different situations—an indirect discrimination.³¹ For example, it stops the capacity of the Roma to participate in local political life.

A participant stated that the constitution of Romania is very generous regarding the national minorities, but this is also the source of some problems. The rights granted in the constitution belong to the minority, not to the national minority organization. One organization is not the minority, but this is the idea that is promoted through this law. In the case of the Roma, the elected organization blocks other Roma from the chance of being elected, especially at the local political level. The government will lose the support of those organizations that have fought for the rights of national minorities if the draft is adopted in its current form. Some minorities do not care about how they are represented. If this happens it will negatively impact Romania. When the Council of National Minorities was formed it was the result of an external effort. This belief, that a community is not united with the other communities, is not correct.

The representative of a national minority stated that his organization was founded in 1919. It is difficult for the leadership to ask the members to re-register. The leadership

Persons (Associations and Foundations) Law no. 21/1924, O.G. Part I, #27 (6 February 1924).

³⁰ Law No. 67/2004, 29 March 2004. This law was adopted only two months prior to the local elections. The law lists separate and stringent requirements that organizations representing national minorities that are not currently represented in parliament must meet to participate in local elections:

- Organization members must be at least 15% of the given national minority community according to the last census;
- If this number exceeds 25,000 people, the members should be at least 25,000 coming from 15 administrative counties and the capital Bucharest [this effectively applies only to the Hungarians and the Roma];
- Each county should have at least 300 members;
- Personal data, including name, address, date of birth, identity card number, should be included on the membership list with signatures of the member and the collector of information.

These standards were further complicated by Government Decree No. 505/2004 (16 April 2004), which elaborated how the member lists of minority organizations should appear. In particular the date of the election had to appear in the headers of the list. This was not mentioned as a condition not mentioned in Law No. 67/2004.

³¹ The authors would argue that in fact the law is discriminatory period. It establishes criteria that only apply to national minority organizations that are not currently represented in parliament.

does not want to compromise itself in front of its members. He asked the drafters to take into account this suggestion.

A contributor stated that registration does not necessarily mean the registration of the members. An organization will have to go to a state authority with the papers that you already have and hand in the copies. The authority will say: “yes, it satisfies the criteria of the new law”. He responded to the representative of the national minority that the representative’s particular organization does not have the problem of under-representation. He explained that 70% of the community that the representative comes from are already members of the organization. It is unlikely that the representative’s organization will have a competitor. There are other organizations that have problems with representation and the capacity of certain national minorities to participate in public life. For these organizations re-registration could be a problem because they do not have the membership of 10% of national minority members that these organizations claim to represent. In a roundtable like this, the participants cannot make the final decision they can simply state their points of view. The decision about these issues will be taken at the political level.

The minority representative stated that simply having these discussions is a sign of instability.³² He reiterated his displeasure with the process of amending the draft and stated that there should have been discussions with every organization concerning amendments.

Another member of the DRI stated that the 10% threshold may not be permanent and the law will most likely be modified. The re-registration will not be such a problem if the percentage is decreased to 5%. The registration procedure, according to Ordinance 26,³³ was not so complicated. The only problem could be for those organizations that are not from Bucharest (because they have to register at the Bucharest Court).³⁴ He suggested that maybe the draft could be changed to allow registration in a county law court.

³² It was not clear what the speaker meant by this statement.

³³ Ordinance on associations and foundations, No. 26/2000, O.G. #39 (31 January 2000).

³⁴ See Article 41, Draft 2

Another national minority representative noted that the working group asked the opinions of the national minorities group. The deputies (MPs) are the spokesmen of the community. If they do not know the point of view of the party leadership they can not speak for the organization, especially in cases where the draft has not been discussed within the organization.

An NGO representative came back to the issue about the percentages needed for registration. She stated that the issue is not about percentages, but about principles. The draft clearly discriminates against those organizations that want to register. She added that the deputies are not necessarily the spokesmen of the community, but they do represent the organization.

Another NGO representative made a proposal. He suggested that the number of founding members was of no importance. His interest is in how many members the organization has when it wants to become a representative organization for that community. He suggested that the draft state that the registration should have 10% active members (who pay the fee), who identified themselves as belonging to that ethnic group at the last census (in the counties where there are members of that minority). In response to the national minority representative, he stated that if the deputy the national minority group elected is not representing the group's interest anymore there is a simple mechanism under parliamentary procedure according to which the organization submits to parliament a declaration that the deputy is no longer supported and his mandate will be invalidated.

The national minority representative responded that this was not what he meant. The representative explained that this comment was concerning the process of drafting the law and that the process does not give the organizations the chance to discuss things because every day the text changes several times. This proposal was that the process should stop for a while so the organizations have the chance to analyze the draft. In this way the deputies will be able to represent the point of view of the community. Otherwise, the Council of National Minorities should no longer be involved in this process.

The NGO representative stated that Ordinance 26³⁵ should remain in force and if the national minority organization wants to be the parliamentary representative of the national minority then additional criteria should be imposed to ensure representation.

The national minority representative sarcastically responded that if a new political party wants to register today does that mean that all the others organizations are required to re-register so the new one will not be discriminated against?³⁶

A member of the DRI said that a new and old organization would be required to respect the same regulations stated in the law. He added that the institutions of cultural autonomy are the essence of each community's survival.

An NGO representative noted that in previous chapters of the draft law, the binding consent³⁷ could become problematic. In Romanian administrative law it is not possible for a private law administration to have the power of binding consent. The Council of National Minorities uses the same policies for all the minorities without taking into consideration their special needs. As the institutions of cultural autonomy are created, the Council of National Minorities will disappear.³⁸ These institutions of cultural autonomy will have the power to provide binding consent for particular

³⁵ Ordinance on associations and foundations, No. 26/2000, O.G. #39 (31 January 2000).

³⁶ Some critics of the draft law have stated that the stringent registration requirements placed in the Law on Local Election and adapted for the draft law are designed to prevent new national minority organizations from forming so as to maintain the status quo. Once an organization gets a seat in parliament, they have access to government money to help fund their political machinery. Because those groups elected to parliament also get seats on the Council of National Minorities, they have access to a wide array of government funds for cultural activities. If there is only one organization that is registered on behalf of the minority, the organization is assured of the spoils of office. This debate that took place during the roundtable demonstrated the difference in approach between the NGO sector, trying to promote democracy, versus the national minority organizations that are trying to maintain their power. While many organizations do represent their minority, other organizations leadership have dubious claims to even belonging to a national minority.

³⁷ Under Romania law, government bodies can have two types of powers in regard to decisions made by other bodies. One is a "consultative consent" which is a non-binding recommendation, in essence. The other power is called "binding consent", meaning that the body's decision is enforceable and/or that its assent is required for another bodies decision to be enforceable. In the Romanian context this distinction is very important because there are many bodies, which have overlapping jurisdiction. For example, in the Romanian Senate there are several commissions that review legislation. If a piece of legislation falls within the remit of more than one commission then two or more commission will review the legislation. However, none of the commissions have binding consent, their comments and vote on the legislation is strictly "consultative" in relationship to the full Senate. This power structure is prevalent in many areas and levels of Romanian government.

³⁸ What the speaker was implying is that the Council of National Minorities will lose its importance because the national minorities will have control over their education, language and culture. The state will fund these institutions directly therefore cutting out the need for the Council of National

issues. The draft law must ensure that all the organizations of national minorities participate in the creation of such institutions of cultural autonomy. It would be wonderful if the system could ensure that all national minorities have cultural autonomy without being represented in parliament. The draft should provide that not only those national minority groups that have parliamentary representation have the right to set up cultural autonomy, but also the unrepresented minority groups. He asked if binding consent has some relation to the representatives of the minorities or with the institutions of cultural autonomy? If so, is it possible for a minority to have cultural autonomy but not parliamentary representation? Is it possible that within three, five or ten years the Council of National Minorities will be dissolved and replaced with a structure composed of representatives of the cultural autonomies? If this happened, the “Authority” would be a kind of “Ministry” and the cultural autonomies will play the role of prefectures.³⁹

A participant expressed his belief that the public law entities should be subjects of norms (organization, status and the internal election of cultural autonomies). He said that ideally a representative of the elected institution of cultural autonomy should take over the parliamentary representation of the national minority.

The NGO representative stated that if the Chinese immigrants in Romania wanted to establish cultural autonomy, they would not be allowed parliamentary representation because they have not lived in Romania since the creation of the modern state. If the representatives of the minorities will come from the cultural autonomy institution then it is likely they will have the status of a senator and not of a deputy. Currently, the senators are the representatives of the communities and the deputies are the representatives of the masses.

An ECMI staff member expressed his opinion that it would be an excellent idea to expand the applicability of cultural autonomy to include people that are not

Minorities.

³⁹ They envisage a system where there is a high authority (that had replaced the Council of National Minorities) that can play the role of a Minister of Administration, formed of the representatives of the councils of cultural autonomies (that will be like the prefectures of minorities). Then there would be no need for a small parliament of minorities (the Council of National Minorities), because there would be a direct executive relation. The idea is to have a higher body that coordinates the councils of cultural autonomies.

considered national minorities within this law, as this law defines national minorities only on the basis of ethnicity. The definition does not encompass some of the language groups that might be interested in forming institutions of cultural autonomy, if only for the purpose of language education. In that sense it could be quite important to try to incorporate those particular groups. This would include some of the minority language groups (such as the Csangos⁴⁰ and the Aromanians⁴¹) that the Council of Europe and other bodies have criticized Romania for failing to promote and protect.

A member of the DRI stated that the argument made by the NGO representative regarding the power of binding consent is similar to that raised by the Minister of Culture. He stated that it is likely that the Ministry of Culture will block the draft. He posed a question as to the relationship between the state's authorities and the Association of War Veterans. He stated that the consent of the association for the issuance of annuities is not done through the power of binding consent. In the draft law a minority could give its binding consent for a person nominated for a job that is proposed by a ministry.⁴²

The NGO representative responded that when it comes to veterans the binding consent is given in order to respect an individual's right and not to abuse them. In the current case of the draft law, the binding consent does not refer to the individual right of a person to become the headmaster of the school—to the contrary the binding consent refers to the right of the community to have a particular person as the headmaster in that particular school. The binding consent, in this case, is more like a normative administrative act than an individual administrative act although it concerns only one person. The Association of War Veterans can give binding consent.

The DRI member responded that the minority community should have the power to decide whether Popescu or Ionescu (Smith and Jones) gets to be the headmaster. If a government body decides Popescu fulfills all the criteria, then somebody from the

⁴⁰ Parliamentary Assembly Council of Europe, Csango minority culture in Romania, Recommendation 1521 (2001).

⁴¹ Parliamentary Assembly Council of Europe, Aromanian culture and language, Recommendation 1333 (1997).

⁴² The Association of War Veterans is a private law organization. According to the DRI member, if this organization can have the power of binding consent over veterans' issues, then the national minorities organizations should be able to decide who should be the headmaster of a certain school.

private sphere should give its binding consent to determine which one should get the job.

The NGO representative wanted the DRI to look at the issue in the public sphere. If Popescu from a national minority NGO makes a decision about the employment of a headmaster, that is not legal and transparent, but if Popescu from the Roma Cultural Autonomy decides, then it would be legal because it is a public authority.

The DRI member asked the NGO representative what should happen if a national minority does not want to establish cultural autonomy.

The NGO representative responded that the state should make them want to establish cultural autonomy.

A participant interjected that this has to do with the functional capacity of the community to actually carry out the duties of cultural autonomy.

The NGO representative stated that a minority is, by definition, disadvantaged (culturally, educationally and politically). To create institutions of cultural autonomy that have the right to additionally tax their members would place minorities in an even more disadvantaged situation. There are two choices: either everybody should sustain the institutions of cultural autonomy financially or the minority imposes a self-taxation, but enjoys additional facilities.

Another participant stated that under the administrative law, binding consent is a power used by a public authority for other public authorities. She stated that cultural autonomy cannot have a legal personality because it is a concept. The councils or institutions of cultural autonomy should have legal personality. Their organization and manner of functioning should be regulated by the law and not by its own status.

A national minority representative stated that his organization agreed with the law. However, concerning Chapter 2, Section 1 on education, he explained how his minority had had bad experiences with the education in their mother tongue that was

imposed by the state after 1948. The organization wanted to replace the education in mother tongue with the right to learn the mother tongue.

Another national minority representative stated that Section 4, Article 30,⁴³ on religious freedoms was not necessary because there is a law on religion that already regulates this issue.

A participant concurred that the chapter should be taken out because of the existing law on religions.

The member of the DRI returned to the subject of binding consent. He stated that if one looks at the administrative law, there is still a question about what happens with the consent that is given by the Association of War Veterans. Binding consent is necessary. He strongly believed that the communities must be allowed to decide in this area. He also cited the example of the Slovak minority. They lack education inspectors in the two counties of Bihor and Salaj, and this could destroy education in that language. He suggested using different terminology, but keeping the concept of binding consent. He saw two possible choices: 1) the competences are ensured by the structures of cultural autonomy, but the implementation and enforcement is made by other currently existing state institutions; 2) the structures of cultural autonomy are public institutions so they can implement their own decisions. In the latter case, the draft needs more details regarding the set-up of the institutions and their status in this law. The idea of introducing direct voting as a way of setting up the institutions of cultural autonomy will only be utilised by the Hungarian community, because the Hungarian party particularly wants to have this intern freedom.

One NGO representative wondered that if the goal of the law is to create institutions of cultural autonomy that represent the interests of the community, then the draft should not try to connect cultural autonomy with parliamentary representation. Both are very important. The organizations that want to be political representatives should fulfil some criteria, so they can establish representative organizations and cultural autonomy. These organizations have the interest and motivation to set up cultural

⁴³ See Draft 2.

autonomy if the institution of cultural autonomy gives binding consent and if the parliamentary seat is won after an election between representatives of organizations of the national minorities.

The DRI representative stated that this discussion made him believe that the law is only on cultural autonomy for the Hungarians. There are differences between communities that must be accounted for.

D. Day Two – Morning

A DRI representative expressed the view that each minority should decide for itself whether to establish cultural autonomy or not. He noted that a system for internal elections also exists in the German minority. It is normal to have a competition within the community.

An ECMI staff member requested an explanation concerning the prevailing belief that smaller national minorities would have problems organizing elections. Obviously organizations have some internal election in order to have a president of their association. He explained that according to his knowledge of other systems of cultural autonomy, there is an election that sets up institutions of cultural autonomy and this would have to meet the same standards as national elections or local election in the sense of freedom, secret ballot, etc. He did not understand why having elections would necessarily preclude the smaller minorities from taking part because in other states the election is assisted by the states (the election board or similar body from Romania). The electoral body would be in charge of running the election because they are required to certify the results, just like any other election needs to be certified in Romania.

The DRI representative responded that the national minorities have elections but they are not organized in the same manner as national elections. He explained that his minority organizations have a system of representatives. Every area elects a delegate that participates in a national conference where there are discussions with the candidates for parliament. He understood the other DRI representative to mean that

each member of the national minority should vote directly for members of the institution of cultural autonomy and not through representatives. He said that direct election would be too difficult for his minority to undertake. He stated that his minority could not afford the expense that it would entail, but they might be able to if the state assisted in the organization of the election. However, he felt that the members of his minority community are pleased with their current system.

An NGO representative believed that there was a misunderstanding. She said that there are two different issues, namely the elections for parliament and elections for the council (institutions) of Cultural Autonomy. She stated that the Hungarian party wants to use the direct vote when establishing the institutions of cultural autonomy. Many of the other minorities will not follow the law if the law stipulates the way the council is elected. If the national minorities want the councils to be public authorities then the law should state how to establish the councils.

A participant suggested that the election criteria could be set out in the law.

An NGO representative argued that if a minority really wants control over education, language and culture then it would establish cultural autonomy. If establishing cultural autonomy is linked to unresponsive and unrepresentative national minority organizations then the law will not solve anything. The law only strengthens the dominant position of one organization within the minority. There may be two reasons for this, either the minority is satisfied with the organization that fights for its interests and establishes cultural autonomy, or there needs to be at least two organizations for each minority. In order to have a council (institution of cultural autonomy) it is necessary to organize a selection (like elections) that will be financed through the DRI and controlled by the Permanent Elections Authority— similar to the elections for the County Council. Parliamentary representation (the election for the national minority MP) can be organized by the council (institution of cultural autonomy) or the current system can be maintained, but this is a political decision. Concerning the parliamentary elections, the council (institution of cultural autonomy) should organize and run the election in the community as well.

The DRI representative stated that from a technical point of view this suggestion would be very difficult. Many minorities have dispersed members all over Romania and it would be very difficult for the minority to organize places for them to vote. Additionally, it is not fair, for example if the Union of Serbs organizes their elections using a system of delegates, with these delegates being the ones that decide who will be a part of the council (institution of cultural autonomy), as this can lead to corruption.

A national minority representative expressed the opinion that by proposing the model of cultural autonomy two issues are resolved. On one hand, the establishment of cultural autonomy will solve some cultural problems faced by the national minorities. On the other hand, cultural autonomy attempts to eliminate the consequences of the fragmentation that is present in the cases of some minorities. Through the council of cultural autonomy everybody will have the opportunity to be heard. But the question is whether or not the council will be able to protect the minority against racial hatred.

The DRI representative explained that there are specialized bodies that deal with this issue.

The national minority representative said that the specialized bodies should deal with this issue, but they do not. The national minorities need to support each other.

An NGO representative commented on Chapter 2, sections 1 and 5⁴⁴ explaining that there has been no evaluation of the costs regarding the implementation of the provision so there is no way for the state to budget for it. He stated that the provisions regarding the consultation of national minority representatives would need to be amended if the “institutions of cultural autonomy” are used instead of “legitimate representatives”. If the wording in the draft law continues to refer to the national minority organizations, then the Law No. 52/2003 on Transparency of Decision Making in Public Administration already regulates the issue concerning binding consent. He also stated that in Article 19(3),⁴⁵ if cultural autonomy is established then it is not possible for education textbooks to be identical because each national

⁴⁴ See Draft 2.

minority will be responsible for developing its own textbooks. Furthermore, he noted the complexity of creating driving licence tests in multiple languages.

A DRI representative used the example of Germany where the driving licence tests are available in Turkish, English, etc., so it is possible to organize the exams.

The NGO representative said that it may be possible in Germany, but how much will it cost? Where will the money come from? What is the deadline for the implementation this requirement?

A national minority representative expressed the view that the text needs improvements. For example, he pointed out that Article 16(3)⁴⁶ refers to the mother tongue of a religion. He stated that a religion does not have a mother tongue.

The DRI representative addressed the textbook issue by stating that when it comes to textbooks the Ministry of Education allocates funds, but the minority must deal with developing the books.

IV. Conclusions

The DRI and ECMI thanked the participants for their very thorough comments on the draft law. It was agreed that ECMI would prepare a report on the conference which would be made available in Romanian and English and posted on the ECMI website.

⁴⁵ See Draft 2.

⁴⁶ See Draft 2.

VII. Annexes

A. First Draft of the Law on the Status of National Minorities

Please visit www.ecmiromania.org/Collection_of_Materials.13.0.html for the first draft of the law, available in both English and Romanian.

B. Second Draft of the Law on the Status of National Minorities

Please visit www.ecmiromania.org/Collection_of_Materials.13.0.html for the second draft of the law, available in both English and Romanian.

C. Programme of the Workshop

ROMANIAN GOVERNMENT
Department for Interethnic Relations

EUROPEAN CENTRE
FOR MINORITY ISSUES

Roundtable:

Civil Society's Perspectives on the Draft Law regarding the National Minorities in Romania

Sinaia, 15-17 April 2005

Friday, 15 April

18.30 Transportation by bus- Bucharest-Sinaia. Starting point:
University Circus
20.00 Dinner

Saturday, 16 April

9.00 - 10.15 Seminar opening - D. Christopher Decker, ECMI
Seminar objectives and agenda - Attila Marko, State-Secretary, DRI
Presentation of the draft - goal, reasons, objectives
10.15 - 10.45 Coffee break
10.45 - 13.00 Choosing of the moderator
Debates on the draft
13.30 - 15.30 Lunch
15.30 - 16.45 Debates on the draft
16.45 - 17.15 Coffee break
17.15 - 19.00 Debates on the draft
19.30 Dinner

Sunday, 17 April

9.00 - 10.30 Choosing the moderator
Debates on the draft
10.30 - 11.00 Coffee break
11.00 - 12.00 Debates on the draft
12.30 - 14.30 Lunch
14.30 - 15.30 The issue of cultural autonomy
15.30 - 16.00 Coffee break
16.00 - 17.00 Seminar evaluations, conclusions
Seminar ending
18.30 Transportation by bus Sinaia-Bucharest

D. List of Participants

	Name	Organisation
1.	Mr. Gabriel Andreescu	Association for the Defense of Human Rights in Romania - the Helsinki Committee
2.	Mr. Tiberiu Benedek	Federation of Jewish Communities
3.	Mr. Costel Bercuş	Romani Criss- Roma Center for Social Intervention and Studies
4.	Mr. Enikő Biró	Association of Hungarian Lawyers from Romania
5.	Mr. Vasile Dolghin	Community of Russian-Lippovan
6.	Mr. Abdula Gülten	Turkish Democrat Union
7.	Ms. Judit-Andrea Kacsó	Pro-Europe League
8.	Ms. Maria Koreck	Project on Ethnic Relations
9.	Ms. Simona Lupu	Delegation of the European Union in Romania
10.	Mr. Berci Margarian	Union of Armenians
11.	Mr. Stefan Mihai	Pro-Democracy Association
12.	Ms. Cătălina Rădulescu	Centre for Legal Resources
13.	Mr. Călin Rus	Timisoara Intercultural Institute
14.	Mr. Levente Salat	Ethno-cultural Diversity Resource Center
15.	Ms. Oana-Valentina Suci	Institute for Public Policies
16.	Mr. Codru Vrabie	Transparency International Romania

Department of Inter-Ethnic Relations Staff

	Name	Position
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. Valentin Platon	Deputy Head of the Department of Inter-Ethnic Relations, Under State Secretary
4.	Ms. Monica Presecan	Superior Counsellor
5.	Mr. Marius Jitea	Principal Expert
6.	Ms. Adriana Petraru	Principal Expert
7.	Ms. Alina Dodocioiu	Expert

ECMI Staff

	Name	Position
1.	Mr. D. Christopher Decker	Research Associate
2.	Ms. Roxana Ossian	Project Officer