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#### The Right to Identity in Romania in the Light of Population Registration

Ensuring the right to identity or, in other words, “diversity”, constitutes the heart of the protection of minorities. It can be said that the right to identity is the alpha and omega of the protection of minorities, since an ethnic group, in order to be protected, have to exist, that is, has to know, profess and accept its “diversity”. *In order to qualify as a minority, every ethnic group has to have an awareness of survival beyond presenting objective characteristics. Acknowledging the identity also serves to prove this awareness.* At the same time, the final goal of the protection of minorities is to achieve that a given ethnic group could preserve its diversity and identity. However, in the case when it loses its identity, it will not seek to emphasise its diversity any more and there will be no need for the legal protection of the minority either, since assimilation into the majority has taken place. *That is, the declaration of identity is a precondition of the preservation of the identity.*

This right of those belonging to a minority is ensured by the UN Covenant on Civil and Political Rights (1966, 1976), which declares in Article 27 that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”. *Although this does not specifically state the right to identity, this text enumerates the objective components of identity and urges on their preservation making it possible that providing for the right to identity could be classified here.*

The Copenhagen document of the Second Conference on the Human Dimension of the Conference on Security and Co-operation in Europe declared in 1990: “Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will (Article 32, Paragraph 2).” This declaration was confirmed at the meeting in Geneva in 1991. Recommendation 1201 of the Council of Europe also orders in Article 3 Paragraph 1 that “Every person belonging to a national minority shall have the right to express, preserve and develop in complete freedom his religious, ethnic, linguistic or cultural identity, without being subjected to any attempt at assimilation against his will.” These orders are confirmed by the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992): “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity (Article 1, Paragraph 1).”

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At the same time, according to professional literature on minorities, persons belonging to any national group or minority can profess their identity free of aggression or control on the part of the state. The Copenhagen document of the Second Conference on the Human Dimension of the Conference on Security and Cooperation in Europe also declared that "To belong to a national minority is a matter of a persons individual choice and no disadvantage may arise from the exercise of such choice (Article 32, Paragraph 2)." Recommendation 1201 of the Council of Europe also confirms this. This problem was also mentioned in the proposal of the peace conference to end the war in Yugoslavia: "Those belonging to ethnic or national groups have the right to decide which ethnic or national group they would like to belong to." At last, under the Council of Europe Framework Convention for the Protection of National Minorities (Article 3, Paragraph 1) "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice." The above-mentioned rules also apply to Romania, a member of the UN, the OSCE and the Council of Europe. *Even more so, since under the Constitution of Romania, the covenants protecting human rights enjoy primacy over domestic law. At the same time, one must not forget that the majority of the above-mentioned international rules are only soft laws.*

In theory, all persons belonging to an ethnic or national minority have the right to freely declare, preserve and develop their religious, ethnic, linguistic and/or cultural identity without being subjected to any attempt at assimilation against their will in the meanwhile.

In order that we could talk about the protection of identity, those belonging to a minority have to declare where they belong. For this reason, we have to talk about one's right to preserve his declared identity. However, it must not be forgotten that declaring one's identity can be free from risk only in a functioning democracy and in a state founded on the rule of law, since in the case of dictatorial or racist regimes, this declaration may lead to discrimination or, under extreme circumstances, may form the basis of the extermination of masses.

### **1. Right to identity, as a constitutionally guaranteed fundamental minority right**

In Romania, Article 6 of the Constitution declares that "The State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity."

Romania has made an important step on the road of democratic transformation with the introduction of the "national holiday (day)" of the national minorities, which is celebrated on December 18 every year<sup>1</sup>. The existence of

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<sup>1</sup> Government resolution no. 881/9 December 1998 (published in Official Journal no. 478/1998.12.14.).

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minority identity received emphasis with this step. However, such a holiday generalises the minorities – although the ethnic groups concerned are in almost 20 – and they will observe the very same holiday, while their own holidays might fall into the background or sink into oblivion. *In this process, a “colour blind” minority identity develops that pushes the real one into the background.*

The fact that the Romanian state power hinders the declaration and, *more importantly, the development* of Csángó-Hungarian identity can be mentioned as a drawback in the field of guaranteeing the right to identity. In spite of Article 6 of the Constitution, the position of the power is that the assimilation of the Csángó by the Hungarian communities implies their Magyarisation and, taking this as a starting point, the state, through local representatives, prevents the Csángó from deciding independently whether they confess the Hungarian identity, which is closely related to their own.

The Csángó originate from Hungarians who emigrated from the Székely Land regions. The first re-settling wave dates back to 1420 when 20,000 Hungarians were banished from Hungary because they accepted the catechism of John Huss. The refugees of the peril of Madéfalva of 1764 arrived from Székely Land with the second wave. It is the descendants of these refugees that the current Romanian government tries to transform – without having asked them – into Romanians speaking a dialect or simply classify them as a religious minority in the case the question arises why the Csángó are Catholics when the majority is almost completely Greek Orthodox<sup>2</sup>. The representatives of the Roman Catholics of Moldova consider the Csángó a group of Romanian origin that speaks Romanian. Accordingly, they form merely a religious minority and belong to the majority from the point of view of ethnicity. The Romanian high priests of the church generally said that “we are and will always be Romanians<sup>3</sup>.” Certain Romanian historians, notwithstanding the fact that Transylvanian Romanians either remained Orthodox or converted to the Greek Catholic faith without orienting toward the Roman Catholic faith, regard the Csángó as Romanians professing the Roman Catholic faith who had to flee from Transylvania. The answer of Gheorghe Bejan<sup>4</sup> to the question on why most of the Csángó have a Hungarian name is noteworthy. His opinion is that the Hungarian names might have appeared as a result of the work of the “Névmagyarosító Központ” (Name Magyarising Centre) of 1898 of Budapest. At the same time, he states that that 24,000 families emigrated there from Transylvania in 1767 only. It is rather difficult to imagine how the Hungarian state could change the names of the Csángó who emigrated in the 15th–18th centuries into Hungarian in 1898.

<sup>2</sup> Beder, T. Ezért mondom nektek, ne aggódjatok életemek miatt [I Am Telling You, Do Not Worry about Your Lives]. *Krónika* 2002.01.12–13.

<sup>3</sup> Erdeş, Şt. Am fost, suntem și vom fi români, O falsă problemă “Ceangăii din Moldova”, *Formula AS* 498(2) 2002.01.14–21.

<sup>4</sup> Gheorghe Bejan is chairman of the Roman Catholic Association “Dumitru Mărtinaş” in Moldova established in 2001.

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Beyond the theoretical examination of their origin, another problem is that the Csángó who declare themselves Hungarian are denied the right to this identity. For while one can declare his identity freely, the local bodies of the Romanian state prevent the use of the mother tongue in the schools, churches and in front of official bodies and also prevent Hungarian lessons given in private flats, thereby making the unfolding of identity impossible.

The Council of Europe also discussed this problem in 2000. Then, the Romanian party continued to unilaterally state, without having asked the Csángó, that they were Romanians and they did not need minority rights. The Standing Committee of the Parliamentary Assembly of the Council of Europe took up a position in connection to the Csángó issue in Istanbul on May 24, 2001. On the basis of the report of Finnish Rapporteur Tytti Isahookana Asunmaa, the body drafted its recommendations to Romania in nine points. Recommendation 9078 presents the Csángó as a non-homogeneous group of Roman Catholic faith that has been living in Moldova since the Middle Ages, speaks an archaic form of the Hungarian language and represents a world of traditions and culture most valuable for the whole of Europe. According to the recommendation, the opportunity of education in the mother tongue should be assured in conformity with the Constitution of Romania and the laws on education. Classrooms have to be provided in the local schools for the teaching of their mother tongue and teachers teaching in the Csángó language have to receive adequate wages. According to the document, the Csángó parents have to be informed about Romanian legislation on education and they are to be helped so that they could apply the regulations concerning language use. At the same time, the Csángó have to be provided an opportunity to attend Roman Catholic masses in their mother tongue and that they could sing their religions songs in their mother tongue<sup>5</sup>. The behaviour of Romanian Senator Gheorghi Prisăcaru highlights the absurdity of the issue. He, although he had voted for the recommendation, subsequently brought up the argument again that not Hungarian but Csángó was the mother tongue of the Csángó and opportunities for the use of this language will have to be ensured for them. Right now, the debate is about whether the Csángó consider themselves persons of Hungarian or Romanian tongue. Those who declare themselves Hungarians are classified as Csángó and they are given an identity which this ethnic group does not identify with and which has no independent language. *Thus, the Csángó can be said to constitute a less free ethnic group whose protection some want to wreck already when it comes to the declaration of their diversity.*

### 2. Organisation and execution of the censuses in Romania

The census is an occasion when those belonging to a minority have to declare themselves or have the opportunity to have the representatives of the state count them.

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<sup>5</sup> Gazda, Á. Általános európai ügy a csángóké [That of the Csángó is a General European Issue]. *Krónika* 2001. 12. 29–30.

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Government resolutions decreed the organisation of Romanian censuses subsequent to 1990. Three government resolutions regulated the 1992 census that did not remain valid during the 2002 census.

Three resolutions issued by the government in the course of 1999–2000 were to prepare the 2002 census as well but a different majority was formed in the Parliament following the elections in 2000, which cancelled these. The new government issued two new resolutions, which were subsequently modified by two other resolutions. It is on purpose that I draw attention to all these changes and modifications, emphasising that, in Romania, the organisation of the census is a monopoly of the government on power and no legislation exists which would regulate this.

As far as minorities are concerned, the valid government resolution no. 504/24 May 2001 decrees the following on the recording of the population and flats:<sup>6</sup>

During the census, all those people are counted who are Romanian citizens and are in possession of a residence in Romania (Article 2). On the basis of this, Romanian citizens with a residence abroad are not included in the count.

A Central Committee, set up for this purpose, deals with the organisation of the census and establishes a “technical secretariat” next to the National Commission for Statistics. Most of the ministries are represented in the Central Commission for Population and Housing Census.

Government resolution no. 680/19 March 2001 on the organisation and execution of the census amends and specifies this resolution<sup>7</sup>.

Under it, the censuses fill out the census forms at the domicile or residence of the citizen on the basis of the statements of persons with legal capacity and official documents. Those persons whom the counters cannot find are counted on the basis of the statements of the relatives or the information found in local-level official records.

According to Article 6 of the government decree: “Personal data and information that are recorded in the census forms are to be treated as strictly confidential material and can only be used for statistical purposes.”

“The declarations of the population recorded during the census cannot be used when decisions are made about the persons in concern or measures are carried out with respect to them.”

“Citizens are obliged to provide the counters with complete and exact information.”

Accordingly, under this, those belonging to a minority are theoretically ensured the right to freely declare their identity, not having to suffer any disadvantages because of their declaration. Moreover, non-governmental organisations are allowed to send observers to join the census committees.

One of the questions of the census forms is about ethnic and national belonging, so every Romanian citizen has thus the possibility to exercise his right to identity

<sup>6</sup> Published in Official Journal no. 296/2001.06.06.

<sup>7</sup> Published in Official Journal no. 439/2001.08.06.

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and declare himself belonging to a certain ethnic or national group. Confessing one's belonging is not obligatory but *the voluntary declaration takes place on a nominal basis and there is no possibility to express a multiple identity*.

In practice, however, the declaration of one's identity is hindered or its false declaration is facilitated by a series of interventions that are carried out on the basis of government resolutions and with the help of biased censors who belong to the majority. Thus, for example, while Romanian nationality had a separate rubric on the forms, a number indicated the other nationalities only and it was more difficult for the ones declaring their identity to follow the notes of the censor. It happened on several occasions that the commissioners filled out this rubric with a pencil making its unilateral modification at a later time possible. At the same time, the mayor of Kolozsvár (Cluj) tried to intimidate those belonging to the Hungarian minority by saying that he himself would examine who dared to declare himself Hungarian and he sent out his own forms together with the census forms to carry out a parallel illegal mayoral census<sup>8</sup>. The censors also spread confusion with the use of ambiguous questions and tried to influence the awareness of ethnic identity (*confronting various religious and ethnic identities as well as citizenship and ethnic belonging*). Another opportunity to abuses emerged with the regulation, under which those persons who did not stay at their domicile during the census were to be counted on the basis of existing official data. Consequently, these persons were not granted the right to declare their identity personally within a certain period of time.

### 3. Population registration in Romania

The decision on the creation of an informatised national population registration system, which was to help the work of the police first of all, was brought already at the beginning of 1990<sup>9</sup>.

The legislation on "Population registration and the identity card" entered into force in 1996<sup>10</sup>. Under the law, the records on the citizens rests on the principle of domicile and the task is carried out by the Minister of the Interior in the framework of the "Informatised National Population Registration System" and with the help of population recording units. The Permanent Population Register is administered so that the number, composition and changes, mobility of the population could be followed within the territory of the country.

Romanian citizens are recorded at the time of their birth and they also receive a registration number. An identity card is issued to every Romanian citizen at the age of 14 that also serves to prove one's citizenship.

<sup>8</sup> *Szabadság* Volume XIV, issue 68/2002.03.23. Attention turned to the censuses in Kolozsvár (Cluj).

<sup>9</sup> Government resolution no. 548/1991.05.17 on the establishment of an informatised national population registration system (Published in Official Journal no. 74/1990.05.18.).

<sup>10</sup> Act no. 105/1996.09.25. (Published in Official Journal no. 237/1996.09.30.)

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The law states that a person's data are confidential and they cannot be handed out in any case to other natural or legal personalities but only within the scope of the law or with the agreement of the given person. This law says nothing about the fact that the population registration touches upon the ethnic belonging of natural persons. However, a rubric appears in one of the annexes of the implementation regulations of the law, which also requires the indication of *nationality* (naționalitate) in the case when a Romanian citizen applies for the establishment of a domicile abroad<sup>11</sup>. There is no confusion of concepts in this case. Nationality does not mean citizenship, since the person submitting such an application is a Romanian citizen and has to indicate his nationality as well in the application.

The implementation regulations of statute no. 119/1996 on the documents based on the birth register<sup>12</sup> contain the following regulations applying to nationalities as well:

1. Statements are made orally in front of the registrar in the case of birth or death and in writing in the case of marriage.
2. The birth registers (registrul de stare civilă) and records are administered in the Romanian language using the letters of the Latin alphabet. The regulations decree that the declared nationality has to be recorded in the "nationality" rubric, which appears in certain documents, while the citizenship that figures in one's identity card has to be entered in the "citizenship" rubric (Article 24, Point c).
3. Every document has to be issued according to the rules established by the Romanian Academy of Sciences, including the rules applying to the use of letters ă, î, â, ș, ț. In connection to this, it is to be noted that the regulation does not touch upon the particular letters and accents existing in the languages of the minorities, although the lack of their recording causes many problems in the use of names, especially in the case of inheritance matters.
4. The cancellation, modification or rectification of the documents and records of the birth register can be carried out only on the basis of a final, irrevocable judicial decision. In the case of minorities, the problem of rectification occurs with respect to the corrections of the accents, which qualify as material errors (erori materiale).
5. The certificates of the birth register are filled out in the Romanian language only.
6. The religious belonging is not included in these certificates.
7. The person whose first or last name has been recorded in a way that it was translated from the mother tongue into another language or has been recorded according to the orthography of another language, may request

<sup>11</sup> Annex 7 to the Implementation Regulations no. 1/1997.07.01: "Form of the person applying for the establishment of a domicile abroad" (Published in Official Journal no. 177/1997.07.30.).

<sup>12</sup> Regulation no. 1/1997.10.13 on the uniform implementation of the specifications of Act no. 119/1996. (Official Journal 318 bis/1997.11.19.)

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that that these names be recorded in the form of a note in the mother tongue and the accents used in the mother tongue. This is valid for the names of both the person entitled to this and his parents. The request has to be submitted to the mayor's office administering the registrar and the mayor has to approve it with a decree. After the change of name, new birth certificates are issued and the modifications also apply to the names of the children and spouse, in the case this latter agrees with this.

Under government decree no. 113/1997<sup>13</sup>, the following data are recorded about natural persons in the Permanent Population Register, functioning as active records:

- main personal data: first name, last name, sex, date and place of birth, name of parents, id number, name of husband or wife, children, *nationality* and marital status
- general data: school qualification, occupation, military service
- data on domicile and residence
- data on one's papers
- emigration and immigration data
- date of death
- photo

The given person provides the authorities with these data (with the exception of certain data like the notifications on birth and death), which the authorities also update on the basis of each other's databases.

Nationality and ethnic belonging is also recorded in one's soldier's book, although the act on the preparation of the population for national defence<sup>14</sup> does not allude to this, since it does not touch upon the contents of the soldier's book in the respective section. On the other hand, the same law specifies that the Ministry of Defence should set up its own data bank for the registration of enlisted persons or reserves on the local or central level on the basis of the data of the "Informatised National Population Registration System".

From an administrative aspect, it has to be mentioned that community (local) population registration public services were created as of January 1, 2002. These are in charge of the issuing birth register files, identity cards, voter's book, driving licenses and register<sup>15</sup>.

From a historical aspect, it has to be mentioned with respect to population register that the records administered by the state succeeded that of the churches in Old Romania in 1887 and in 1894 in Transylvania<sup>16</sup>.

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<sup>13</sup> Government resolution no. 113/1997.04.14. on the content, updating and marketing of the data of the Permanent Population Register (Published in Official Journal no. 71/1997.04.21.).

<sup>14</sup> Act no. 46/1996.06.05. (Published in Official Journal no. 120/1996.06.11.)

<sup>15</sup> Government resolution 84/2001.08.20. (Published in Official Journal no. 120/1996.06.11.)

<sup>16</sup> Act no. XXXIII/1984.12.09 on the documents based on the birth register.

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### 4. Data protection in Romania

The law on data protection in Romania, the Act Ensuring the Protection of Natural Persons, was passed by the Parliament in 2001 and entered into force on March 12, 2002 with respect to the processing and free flow of personal data<sup>17</sup>. Therefore, no debate can be launched on established implementation problems. For this reason, the text of the law will be examined with respect to identity protection.

The explicit goal of the law is to guarantee the rights and basic liberties of natural persons with a special emphasis on their right to intimate, family and private life, and the protection of all these in the course of personal data processing. The law regards those occurrences of data processing that are carried out by Romanian or foreign natural or legal personalities, independent of the fact that it happens in the public or the private sphere. The law cannot be applied in those cases when data processing is carried out in the framework of national defence or security activities with the observation of the legal framework.

All those information qualify as data of personal character that concern an identified or identifiable person. An identifiable person is a person who can be directly or indirectly identified on the basis of an identification number or based on the physical, physiological, intellectual, economical, cultural or social components of his identity.

Under the law, those natural or legal personalities (falling under public or civil law) – including of the state authorities, their institutions and local structures – that define the goal and means of the processing of personal data can be the ones who carry out data processing or administration. Every intervention or an aggregate of interventions qualifies as processing (administration) when it is carried out with respect to personal data with automatic (mechanical) or non-automatic means and its result is the data collection, recording, arrangement, storage, conversion, removal from the data bank, reviewing, handing out to a third person, dissemination, combination with other data, blocking or deletion of the data.

The law stipulates the following on the characteristics of the processed data:

- they are to be processed bona fide in compliance with the law
- they can be collected with a specific, explicit and legal purpose; an exception to this is their use with a purpose of subsequent statistical or historic research or scientific object (objective related, objective oriented data processing)
- they have to be appropriate, free of exaggeration and pertinent
- they have to be accurate and, in cases, up-to-date and updated
- they have to be stored in a form that they could identify the person whom they apply to only until the time needed for the realisation of the objective expires.

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<sup>17</sup> Act no. 677/2001.11.21. (Published in Official Journal no. 790/2001.12.12.)

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Article 3 of the law specifies special rules with regard to the processing of certain special personal data. Identity falls among these data. Paragraph 7 states that the processing of those personal data is prohibited that concern ethnic or racial origin, political, philosophical and religious belief, affiliation with a union, state of health and sexual life. The prohibition ceases in the following cases:

- the given person expressly gave his authorisation for such processing;
- the one carrying out the processing is obliged by a legal regulation to do so under the act on labour;
- when processing is carried out for the sake of the life and health of the given person or it is needed for the sake of the protection of another person in the case the given person is in a state that he cannot express himself and give his consent;
- when the processing is carried out by a foundation or association in the framework of some legal activity or when other non-profit, political, philosophical, religions or union-like organisation carries it out under the condition that the given person is a member of theirs or is in a regular relationship with them and, in the course of the processing, his personal data cannot be revealed to a third person without his authorisation;
- when processing concerns data that the given person has made public;
- when processing is needed to establish, exercise or protect a right in court;
- when an important public interest needs to be protected but under the condition that the rights of the person are to be respected and he is to be granted every legal guarantee.

The one carrying out the processing has to notify the subject of the data survey on the date of his visit and has to make known his identity, address, name, the purpose of processing, the potential recipients (identity of the commissioner), and has to inform the person on his right and about what will happen to him/her in the case he is no willing to deliver the data.

Every person concerned can apply for and receive a free answer from the processor to the question on what happens to his data. The processor is obliged to provide the requested information within 15 days. Anybody can ask the processor to modify, update or delete those data that are incorrect, incomplete or are not in compliance with the regulations of the law. The person concerned, can at any time, prohibit the processing of his data should he have strong reasons to do this. In this case, that is, when the prohibition is well founded, processing will stop. At the same time, every person concerned has the possibility to lodge a complaint with the judicial bodies or the authority supervising the implementation of the law in order to protect his rights prescribed by the law. The person can request that compensation be awarded if the processing of his data caused damages. An obligation of attaching a fee stamp is imposed on the request, which has to be submitted at the court, which has the jurisdiction in the area of the residence of the plaintiff.

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The body or authority supervising the implementation of the law is the ombudsman or the commissioner for human rights (Avocatul Poporului) who has the role of the commissioner for data protection in Romania. In the case when he notices that the regulations of the law have been violated, the ombudsman can stop or suspend data processing, has the processed data deleted in part or in whole, and has the possibility to notify the organisations fighting against crime or take proceedings at a judicial body. The employees of office of the ombudsman are obliged to handle the information with respect to data processing confidentially even after the termination of their employment.

One can lodge a complaint with the ombudsman only in the case when the given person has not presented the same plea at court and when 15 days have passed since he submitted his complaint to the data processor. The resolutions of the ombudsman can be contested within 15 days in front of the competent administrative court. The data processors cannot reject the request of the ombudsman by referring to professional or state secret, since the ombudsman is also obliged to keep the state secret.

Romania, as a member of the Council of Europe, ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted in Strasbourg in 1981, in 2001<sup>18</sup>. On the basis of the primacy stipulated in the Constitution of Romania, the implementation of this convention enjoys primacy with respect to the above-mentioned law. At the time of the rectification, Romania informed (*unilaterally declared* toward) the Council of Europe that this convention would be applied not only in the case of digitalised data processing but also in the case of processing carried out by different means, should it concern data already present in the records or data collected for the records.

The purpose of the convention is to secure for every individual respect for his rights and fundamental freedoms and, in particular, his right to privacy, with regard to automatic processing of personal data relating to him. The convention touches upon the problems in connection to identity and declares that “Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards”.

### **5. Practical benefit from declaring one’s identity in the case of minorities in Romania**

Seemingly, the registration of national belonging has no importance, since the creation of a register with respect to it is not stipulated with the exception of the censuses. In everyday life, however, one has to declare his identity on several

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<sup>18</sup> Act no. 682/2001.11.28. on the ratification of the “Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data” (Published in Official Journal no. 830/2001.12.21.).

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occasions and this ethnic belonging is recorded. The police indicate nationality in the file of the person who commits a crime and the soldier's book also contains it. Declaring one's identity is not obligatory during the census, while several record systems require it.

Registration results in both benefits and drawbacks.

On the one hand, the discrimination resulting from the declaration of identity in everyday life, in the dealings with the representatives of the authorities, at the workplaces and at state institutions constitutes a drawback. In theory, the regulations of the law on data protection eliminate the risk that these data might become public. Moreover, should this happen, the laws of the country generally prohibit discrimination, that is, in theory no person can suffer damages because his identity has become publicly known. In 2000, the government adopted an additional resolution on the "prevention and punishment of every form of discrimination"<sup>19</sup>.

On the other hand, the registration of identity forms the basis of a series of "advantages" in Romania as well, which not only make it easier to endure minority existence but may also constitute the tokens of survival. Accordingly, for example, under Article 90 of the Act on Local Administration (215/2001), the Romanian language is to be used in the relations between the citizens and the local administrative authority. In those territorial administrative units, where the number of inhabitants belonging to some national minority exceeds the 20% of the overall number of the inhabitants, these persons can turn to local authorities and their departments in their mother tongue both orally and in writing and they will receive the answer both in Romanian and Hungarian. Under such circumstances, personnel speaking the language of the minority in concern also have to be employed for positions handling public relations. Local administrative authorities are to ensure that the name of the localities and institutions within their sphere of authority, as well as the notices of general interest appear in the language of the minority in concern. The government resolution of November 27, 2001<sup>20</sup>, amends these regulations with respect to the implementation of the regulations included in the act on local administration, on the right of those belonging to a minority to use their mother tongue, which entered into force as of March 7, 2002. In conformity with the two laws, the following concrete possibilities open up for a minority when its proportion exceeds the 20%:

<sup>19</sup> Government resolution no. 137/2000.08.31 on the prevention and punishment of every form of discrimination (Published in Official Journal no. 431/2000.09.02.). It entered into force on 02 November 2000. This resolution is a rather irregular legislative instrument, since it tries to specify the implementation of the fundamental right prescribed in the Constitution but it qualifies the acts of discrimination merely as minor offences. In practice, almost every such act qualifies as a criminal act, and it is exactly because of this that the law declares that a given act qualifies as a minor offence only in the case when it does not qualify as a criminal act under another law.

<sup>20</sup> Government resolution no. 1206/27.11.2001 on the confirmation of those implementation regulations included in Act no. 215/2001. that specify the right of the citizens belonging to a minority to the use of their mother tongue in local administration (Published in Official Journal no. 781/07.12.2001).

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1. the local and county councils have to make public the agenda of the meetings and the resolutions adopted in the given mother tongue as well;
2. those belonging to a minority have the right to submit requests to the local and county administrative authorities in their mother tongue and receive replies in the same language;
3. the place names have to be displayed in the given mother tongue besides the name in the official language;
4. the local administrative bodies are obliged to display their name and the names of the subordinate institutions in the given mother tongue and this is also valid for notices of general interest;
5. the mother tongue of the minority can be used at celebrations organised by the local administrative bodies;
6. upon request, the wedding can be celebrated in the mother tongue;
7. the draft resolutions have to be placed in front of the council in the given mother tongue as well;
8. normative resolutions appear in the given mother tongue besides Romanian;
9. the local administrative bodies will employ persons who understand and speak the language of the given minority.

According to the fundamental rules of the operation of the police, policemen who speak the language of the given minority will be employed in territorial administrative units where the number of inhabitants belonging to a minority exceeds the 20% of the overall population.

Besides this 20%, another “magic number” for minorities (as far as the use of mother tongue is concerned) is the one third. That is, in the case when the number of minority councillors exceeds 1/3 of the composition of the local council, these councillors can enjoy the following:

1. they can use their mother tongue at the council meeting;
2. it is obligatory to translate the resolutions in their mother tongue;
3. in the case when the presence of an interpreter is not ensured at three consecutive council meetings, the local council can be dissolved.

An annex of the government resolution enumerates those Romanian place names that have to be displayed in the language of the minority as well. From a statistical point of view, in conformity with the 20% proportion, there are 1200 localities in Romania where bi- or multilingual signs have to be displayed. The distribution on the basis of languages is as follows: in 1071 cases in Hungarian (in 17 counties), while there are 36 German, 57 Ukrainian, 15 Russian, 8 Turkish, 3 Tartar, 26 Slovakian, 6 Polish, 7 Serbian and 112 Roma occurrences of the same kind.

Looking at the law from the point of view of the right to identity as well, a deficiency of it is that it still does not regulate “ethnic proportion” applied in Western Europe, since the law states at all places that persons will be employed

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who know the language of the given minority. That is, they might know the language of the minority but they can belong to the majority as well. Moreover, this law grants no possibility of establishing an autonomy or local government based on ethnicity either.

In the field of education, where minority education is facultative, the law on public education stipulates that everything can be achieved upon requests only. As far as the lower limit on the number of students needed for operation is concerned, it is not specifically defined in the case of minority classes. According to this, the general lower limit has to be reached in their cases as well, which is 10 children at the nurseries and 15 in the case of elementary-, secondary- and grammar-school education. That is, those belonging to a minority have to assert their claims to their rights originating from their identity in this field as well.

In the interest of the minority, as a community, identity can and has to be registered. However, the data collected from individuals are to be treated confidentially. This register can only be based on the personal declaration of the individuals but this declaration cannot be of an absolute character, since under the law on data protection, everyone has to be granted the right to change his identity and to determine until when he considers himself the member of a minority. Indirect declaration of the identity is a special case, since under Article 29, Paragraph 6 of the Constitution "Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of the minor children whose responsibility devolves on them" and, thereby, also determine the identity of the minor, which he, after his coming of age, may not retain. A return to the first identity chosen by the parents, in my opinion, questions the positive concept of identity of a person, since in reality there is an identity disorder behind the frequent changes of one's identity. In these cases, it can be assumed that the change of identity means that the majority or another minority assimilated the given person. *As opposed to this, identity disorder in the case of those descending from a mixed marriage, is understandable.*

The declaration of identity must not be linked to the existence of objective characteristics as long as this declaration is honest and does not aim at neutralising measures of positive discrimination with respect to the minority or those resulting in real equality: for example, those belonging to a minority received quotas at certain faculties as a sign aimed at emphasising the multicultural character of the Babeş-Bolyai University in Kolozsvár. In this case, it is not enough for a person to declare himself the member of a minority. He is to have the characteristics of the minority, that is, he has to speak the language of the minority. In the case of the Roma minority, the applicant has to prove that even if he does not speak the language, he and his parents belong to such a community and has to prove that he is familiar with the customs and culture of the community. *Accordingly, objective factors are to be involved depending on the purpose of the declaration of one's identity.*

In conclusion, starting out from the fact that a passive, tolerating minority rights policy is conducted in Romania, it can be stated that an obligatory registration of identity exists in the case when the state needs it. However, it becomes facultative

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when, due to the declaration of identity, the minority acquires or retains certain rights. Identity, as a personal data, receives special protection but the offices of the Commissioner for Minorities and Commissioner for Data Protection do not exist. The ombudsman exercises their role. However, for him the problems concerning minorities or data protection mean only a supplementary occupation. At the same time, there is no regulation on when and under what conditions a person can change his identity and what consequences this implies. *In Romania, the electoral register of minorities is not a timely issue, since no minority local governments exist and those belonging to a minority elect their representatives (mayors, councillors) strictly in conformity with democracy and the classical election rules.*